

REPORT  
OF THE  
DEBATES AND PROCEEDINGS  
OF THE  
CONVENTION  
FOR THE  
REVISION OF THE CONSTITUTION  
OF  
THE STATE OF KENTUCKY.  
1849.

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R. SUTTON, OFFICIAL REPORTER TO THE CONVENTION.  
WM. TANNER & J. W. FINNELL, PRINTERS TO THE CONVENTION.

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FRANKFORT, KENTUCKY.  
PRINTED AT THE OFFICE OF A. G. HODGES & CO.,  
FRANKFORT COMMONWEALTH.  
1849.

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## A TABLE

Showing the qualified voters for the years 1847 and 1848, and the number of votes cast for the call of the Convention in 1847 and 1848.

	Total Voters in 1847.	Vote for a Con- vention, 1847.	Total Voters in 1848.	Vote for a Con- vention, 1848.
Adair county, - - - - -	1,452	1,086	1,507	1,090
Allen county, - - - - -	1,228	853	1,413	859
Anderson county, - - - - -	998	698	1,086	800
Ballard county, - - - - -	699	615	728	654
Barren county, - - - - -	2,871	1,719	2,939	1,981
Bath county, - - - - -	1,861	1,304	1,823	1,412
Boone county, - - - - -	1,863	1,254	1,865	1,433
Bourbon county, - - - - -	1,819	841	1,773	964
Bracken county, - - - - -	1,510	1,009	1,586	1,114
Boyle county, - - - - -	1,112	371	1,136	596
Breathitt county, - - - - -	547	453	590	383
Breckinridge county, - - - - -	1,689	1,055	1,745	1,139
Bullitt county, - - - - -	1,130	879	1,165	850
Butler county, - - - - -	850	510	875	593
Caldwell county, - - - - -	1,886	1,599	1,860	1,504
Calloway county, - - - - -	1,206	959	1,206	1,070
Campbell county, - - - - -	1,282	1,225	1,447	1,116
Casey county, - - - - -	960	448	938	620
Carroll county, - - - - -	846	614	923	809
Carter county, - - - - -	828	837	908	885
Christian county, - - - - -	2,086	1,298	2,138	1,462
Clarke county, - - - - -	1,665	999	1,719	1,015
Clay county, - - - - -	697	505	750	599
Clinton county, - - - - -	760	668	897	640
Crittenden county, - - - - -	905	638	947	778
Cumberland county, - - - - -	985	787	971	644
Daviess county, - - - - -	1,751	940	1,933	1,251
Edmonson county, - - - - -	619	384	647	483
Estill county, - - - - -	960	562	1,011	678
Fayette county, - - - - -	2,603	903	2,584	1,328
Fleming county, - - - - -	2,321	1,754	2,311	1,635
Floyd county, - - - - -	920	695	961	746
Franklin county, - - - - -	1,593	863	1,723	1,065
Fulton county, - - - - -	602	574	631	514
Gallatin county, - - - - -	786	560	813	677
Garrard county, - - - - -	1,576	1,159	1,563	1,009
Grant county, - - - - -	1,051	696	1,098	745
Graves county, - - - - -	1,523	1,420	1,576	1,395
Greenup county, - - - - -	1,582	950	1,597	1,245
Green county, - - - - -	2,313	1,762	2,365	1,032
Grayson county, - - - - -	1,075	575	1,127	690
Hancock county, - - - - -	523	304	560	341
Hardin county, - - - - -	2,331	1,473	2,384	1,455
Harlan county, - - - - -	631	417	661	417
Hopkins county, - - - - -	1,751	1,566	1,813	1,612
Hickman county, - - - - -	633	530	656	572
Harrison county, - - - - -	2,001	1,397	2,060	1,358
Hart county, - - - - -	1,323	1,195	1,345	1,113
Henderson county, - - - - -	1,476	576	1,467	950
Henry county, - - - - -	1,840	1,244	1,849	1,382
Jefferson county, - - - - -	6,737	4,831*	1,774	1,747

	Total Voters in 1847.	Vote for a Con- vention, 1847.	Total Voters in 1848.	Vote for a Con- vention, 1848.
Jessamine county,	1,280	793	1,325	905
Johnson county,	549	427	570	398
Kenton county,	2,080	1,483	2,560	1,822
Knox county,	1,036	912	1,091	852
Laurel county,	715	473	777	548
Larue county,	919	674	981	758
Lawrence county,	877	754	956	769
Letcher county,	339	241	365	202
Lewis county,	1,232	1,025	1,336	1,175
Lincoln county,	1,315	851	1,436	964
Livingston county,	822	531	808	544
Logan county,	2,047	1,251	2,016	1,372
Louisville city,†				1,882
Madison county,	2,517	1,430	2,566	1,655
Marion county,	1,710	817	1,768	1,105
Mason county,	2,729	2,073	2,845	2,278
Marshall county,	793	613	824	611
McCracken county,	603	511	742	648
Meade county,	1,006	784	1,022	793
Mercer county,	2,118	1,190	2,125	1,227
Monroe county,	1,152	993	1,230	1,004
Morgan county,	1,167	813	1,225	898
Montgomery county,	1,352	1,122	1,398	1,124
Muhlenburg county,	1,477	1,000	1,539	1,001
Nelson county,	1,967	1,017	2,007	1,185
Nicholas county,	1,587	1,336	1,713	1,486
Ohio county,	1,463	1,055	1,510	1,184
Oldham county,	1,038	762	1,073	802
Owen county,	1,627	902	1,674	1,036
Owsley county,	516	455	566	480
Pendleton county,	1,214	586	1,210	799
Perry county,	457	251	463	301
Pike county,	781	621	807	548
Pulaski county,	2,156	1,817	2,305	1,979
Rockcastle county,	790	321	802	478
Russell county,	868	519	919	521
Scott county,	1,807	774	1,839	743
Shelby county,	2,299	1,589	2,317	1,610
Simpson county,	952	789	924	745
Spencer county,	1,012	600	1,007	676
Todd county,	1,322	900	1,383	943
Trigg county,	1,337	1,052	1,384	1,102
Trimble county,	921	591	994	673
Taylor county,‡				879
Union county,	1,300	1,002	1,264	1,144
Warren county,	2,100	1,289	2,131	1,516
Washington county,	1,672	1,064	1,770	1,208
Wayne county,	1,436	1,020	1,426	1,036
Whitley county,	985	712	1,021	704
Woodford county,	1,244	545	1,255	765
Total	136,945	92,639	139,922	101,828

\*This includes the vote of Louisville in 1847. † See Jefferson. ‡New county formed out of part of Green.

# MEMBERS OF THE KENTUCKY CONVENTION, 1849.

JAMES GUTHRIE, PRESIDENT, of the City of Louisville.

NAMES OF MEMBERS.	PROFESSION.	AGE.	COUNTY REPRESENTING.	PLACE OF NATIVITY.	POST OFFICE.
Apperson, Richard	Lawyer,	50	Montgomery,	New Kent county, Va.	Mountsterling, Ky.
Ballinger, John L.	Lawyer,	43	Lincoln,	Franklin county, Ky.	Stanford, Ky.
Barlow, John S.	Farmer,	47	Monroe,	Barren county, Ky.	Hilton, Monroe county, Ky.
Bowling, William K.	Physician,	41	Logan,	Westmoreland county, Va.	Adairville, Ky.
Boyd, Alfred	Farmer,	47	Trigg,	Nashville, Tenn.	Cadiz, Trigg county, Ky.
Bradley, William	Farmer,	49	Hopkins,	Greenville District, S. C.	Madisonville, Ky.
Bravner, Luther	Farmer,	38	Estill and Owsley,	Charles county, Md.	Boonville, Ky.
Bristow, Francis M.	Lawyer,	45	Todd,	Clarke county, Ky.	Elkton, Ky.
Brown, Thomas D.	Trader,	36	Hardin,	Sumner county, Tenn.	Elizabethtown, Ky.
Bullitt, William C.	Farmer,	56	Jefferson,	Jefferson county, Ky.	Linford, Ky.
Chambers, Charles	Lawyer,	47	Boone,	Washington county, Ky.	Burlington, Ky.
Chenault, William	Farmer,	43	Madison,	Madison county, Ky.	Richmond, Ky.
Chrisman, James S.	Farmer,	31	Wayne,	Wayne county, Ky.	Monticello, Ky.
Clarke, Beverly L.	Lawyer,	36	Simpson,	Chesterfield county, Va.	Franklin, Ky.
Coffey, Jesse	Farmer,	65	Casey,	Amherst county, Va.	Middleburg, Ky.
Coleman, Henry R. D.	Farmer,	50	Crittenden,	Edgecomb county, N. C.	Marion, Ky.
Copelin, Benjamin	Farmer,	51	Hart,	Garrard county, Ky.	Munfordsville, Ky.
Cowper, William	Farmer,	42	Livingston,	Gates county, N. C.	Smithland, Ky.
Curd, Edward	Farmer,	41	Calloway and Marshall,	Warren county, Ky.	Murray, Ky.
Davis, Garrett	Lawyer,	47	Bourbon,	Montgomery county, Ky.	Paris, Ky.
Desha, Lucius	Farmer,	37	Harrison,	Mason county, Ky.	Cynthiana, Ky.
Dixon, Archibald	Lawyer,	47	Henderson,	Caswell county, N. C.	Henderson, Ky.
Dudley, James	Farmer,	72	Payette,	Spotsylvania county, Va.	Lexington, Ky.
Dunavan, Chasteen T.	Sheriff,	52	Warren,	Rockingham county, Va.	Bowlinggreen, Ky.
Edwards, Benjamin F.	Merchant,	42	Nicholas,	Bourbon county, Ky.	Cavilse, Ky.
Elliott, Milford	Farmer,	40	Pulaski,	Nelson county, Ky.	Somersct, Ky.

# MEMBERS OF THE CONVENTION—(Continued.)

NAMES OF MEMBERS.	PROFESSION.	AGE.	COUNTY REPRESENTING.	PLACE OF NATIVITY.	POST OFFICE.
Forrest, Green	Physician,	41	Marion,	Marion county, Ky.	Lebanon, Ky.
Gaither, Nathan	Physician,	64	Adair,	Rowan county, N. C.	Columbia, Ky.
Garfield, Selcius	Miller,	26	Fleming,	Rutland county, N. C.	Sherburne, Fleming co., Ky.
Garrard, James H.	Salt Maker,	39	Clay, Letcher and Perry.	Clay county, Ky.	Manchester, Clay county, Ky.
Gholson, Richard D.	Farmer,	47	Ballard and McCracken.	Garrard county, Ky.	Lovellaceville, Ballard co., Ky.
Gough, Thomas J.	Farmer,	45	Meade,	Scott county, Ky.	Flint Island, Ky.
Gray, Ninian E.	Lawyer,	42	Christian,	Livingston county, Ky.	Hopkinsville, Ky.
Guthrie, James	Farmer,	56	Louisville,	Nelson county, Ky.	Louisville, Ky.
Hamilton, James P.	Farmer,	49	Larue,	Barren county Ky.	Oak Hill, Ky.
Hardin, Ben.	Lawyer,	65	Morgan and Breathitt,	Pennsylvania.	Bardtown, Ky.
Hargis, John	Lawyer,	47	Butler and Edmonson,	Washington county, Va.	Jackson, Ky.
Hay, Vincent S.	Farmer,	41	Grant,	Butler county, Ky.	Morgantown, Ky.
Hendrix, William	Physician,	50	Clarke,	Washington county, Tenn.	Downingsville, Grant co., Ky.
Hood, Andrew	Lawyer,	54	Carter and Lawrence,	Montgomery county, Ky.	Winchester, Ky.
Hood, Thomas J.	Farmer,	28	Spencer,	Estill county, Ky.	Grayson, Carter county, Ky.
Huston, Mark E.	Farmer,	48	Logan,	Logan county, Ky.	Taylorsville, Ky.
Irwin, James W.	Physician,	44	Muhlenburg,	Fauquier county, Va.	Keysburg, Logan county, Ky.
Jackson, Alfred M.	Farmer,	34	Hickman and Fulton,	Shelby county Ky.	South Carrollton, Ky.
James, Thomas	Farmer,	52	Scott,	Franklin county, N. C.	Clinton, Ky.
Johnson, William	Farmer,	50	Shelby,	Scott county, Ky.	Great Crossings, Ky.
Johnston, George W.	Lawyer,	45	Anderson,	Madison county, Ky.	Shelbyville, Ky.
Kavanaugh, George W.	Lawyer,	32	Washington,	Boyle county, Ky.	Lawrenceburg, Ky.
Kelly, Charles C.	Lawyer,	37	Floyd, Pike and Johnson,	Floyd county, Ky.	Springfield, Ky.
Lackey, James M.	Farmer,	37	Mason,	Mason county, Ky.	Petersburg, Ky.
Lashbrooke, Peter	Farmer,	57	Franklin,	Campbell county, Ky.	Maysville, Ky.
Lindsey, Thomas N.	Lawyer,	41	Green,	Green county, Ky.	Frankfort, Ky.
List, Thomas W.	Lawyer,	44	Caldwell,	Green county, Ky.	Greensburg, Ky.
Machen, Willis B.	Farmer,	39	Allen,	Caldwell county, Ky.	Princeton, Ky.
Mansfield, George W.	Physician,	54	Jessamine,	Lincoln county, Ky.	Scottsville, Ky.
Marshall, Alexander K.	Farmer,	41	Fleming,	Woodford county, Ky.	Nicholasville, Ky.
Marshall, Martin P.	Farmer,	51	Bracken,	Fauquier county, Va.	Flemingsburg, Ky.
Marshall, William C.	Farmer,	42	Taylor,	Bracken county, Ky.	Augusta, Ky.
Marshall, William N.	Farmer,	61	Barren,	Charlotte, Va.	Campbellsville, Ky.
Maupin, Robert D.	Iron-keeper,	58	Graves,	Albermarle county, Va.	Glasgow, Ky.
Mayes, Richard L.	Farmer,	43	Russell,	Payette county, Ky.	Mayfield, Ky.
McClure, Nathan	Farmer,	42	Ohio and Hancock,	Russell county, Ky.	Jamestown, Ky.
McHenry, John H.	Lawyer,	52		Washington county, Ky.	Hartford, Ky.

Meriwether, David,	Farmer,	Jefferson,	Louisa county, Va.	Louisville, Ky.
Mitchell, William D.	Lawyer,	Oldham,	Henrico county, Va.	Lagrange, Ky.
Moore, Thomas P.	Lawyer,	Mercer,	Charlotte county, Va.	Harrodsburg, Ky.
Morris, John D.	Farmer,	Christian,	Hanover county, Va.	Garrettsburg, Ky.
Nesbitt, James M.	Lawyer,	Bath,	Bath county, Ky.	Owingsville, Ky.
Newcum, Jonathan	Lawyer,	Rockcastle and Laurel,	Rockcastle county, Ky.	Mt. Vernon, Ky.
Newell, Hugh	Farmer,	Harrison,	Bourbon county, Ky.	Cynthiana, Ky.
Nuttall, Elijah F.	Lawyer,	Henry,	Carroll county, Ky.	New Castle, Ky.
Pollard, Henry B.	Mechanic,	Greenup,	Pendleton county, Ky.	Pollard's Mills, Ky.
Preston, William	Lawyer,	Louisville,	Jefferson county, Ky.	Louisville, Ky.
Price, Johnson	Physician,	Garrard,	Garrard county, Ky.	Lancaster, Ky.
Proctor, Larkin J.	Lawyer,	Lewis,	Bracken county, Ky.	Clarksburg, Ky.
Robinson, John T.	Clerk,	Carroll and Gallatin,	Mason county, Ky.	Warsaw, Ky.
Rockhold, Thomas	Farmer,	Whitley,	Sullivan county, E. Tenn.	Rockhold's P. O. Ky.
Rogers, John T.	Farmer,	Barren,	Barren county, Ky.	Glasgow, Ky.
Root, Ira	Lawyer,	Campbell,	Grafton county, N. H.	Newport, Ky.
Rudd, James,	Farmer,	Louisville,	Prince George county, Md.	Louisville, Ky.
Spalding, Ignatius A.	Farmer,	Union,	St. Mary's county, Md.	Morganfield, Ky.
Stevenson, John W.	Lawyer,	Kenton,	Richmond, Va.	Covington, Ky.
Stone, James W.	Lawyer,	Hardin,	Nelson county, Ky.	Elizabethtown, Ky.
Stoner, Michael L.	Physician,	Cumberland and Clinton,	Clarke county, Ky.	Burksville, Ky.
Talbot, Albert G.	Farmer,	Boyle,	Bourbon county, Ky.	Danville, Ky.
Taylor, John D.	Farmer,	Mason,	Mason county, Ky.	Maysville, Ky.
Thompson, William R.	Lawyer & Farmer,	Bullitt,	Nelson county, Ky.	Shepherdsville, Ky.
Thurman, John J.	Lawyer,	Grayson,	Washington county, Ky.	Litchfield, Ky.
Todd, Howard	Farmer,	Owen,	Scott county, Ky.	New Liberty, Ky.
Triplett, Philip	Lawyer,	Davies,	Madison county, Va.	Owensboro, Ky.
Turner, Squire	Lawyer,	Madison,	Madison county, Ky.	Richmond, Ky.
Waller, John L.	Minister of Gospel,	Woodford,	Woodford county, Ky.	Frankfort, Ky.
Washington, Henry	Farmer,	Breckinridge,	Westmoreland county, Va.	Buleyville, Ky.
Wheeler, John	Mechanic,	Pendleton,	Mason county, Ky.	Flour Creek, Ky.
White, Andrew S.	Farmer,	Shelby,	Fayette county, Ky.	Shelbyville, Ky.
Wickliffe, Charles A.	Lawyer & Farmer,	Nelson,	Nelson county, Ky.	Bardstown, Ky.
Wickliffe, Robert N.	Lawyer,	Fayette,	Westmoreland county, Va.	Lexington, Ky.
Williams, George W.	Lawyer & Farmer,	Bourbon,	Bourbon county, Ky.	Paris, Ky.
Woodson, Silas	Lawyer,	Knox and Harlan,	Knox county, Ky.	Barbourville, Ky.
Wright, Wesley J.	Physician,	Trimble,	Annerst county, Va.	Bedford, Ky.



# THE CONVENTION.

## REPORTED FOR THE CONVENTION.

R. SUTTON, CHIEF REPORTER.

MONDAY, OCTOBER 1, 1849.

The members elected to the Convention to re-adopt, amend, or change the Constitution of this State, assembled in the House of Representatives, at the city of Frankfort, in the Capitol of the State, this day, under and by virtue of the provisions of "an act to call a Convention," approved January 13, 1849, in words following, to-wit:

SEC. 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That a Convention, for the purpose of re-adopting, amending or changing the Constitution of the State, be called, to be held, commencing on the first day of October, 1849, and to continue from day to day till the business thereof shall be completed, with power to adjourn and re-assemble at such times as it may deem proper, in the town of Frankfort, in the Capitol of the State; and said Convention shall consist of as many members as compose the House of Representatives, and no more; and they shall be apportioned among the several counties in the same manner and proportion that Representatives are, by the law apportioning Representatives among the several counties, approved February 29th, 1848.

SEC. 2. That it shall be the duty of the Sheriffs, and other returning officers, at the next general election to be held for Representatives, after the passage of this act, to open a poll at their several places of voting, for Delegates to said Convention; and all citizens entitled to vote for Representatives shall have the right to vote for Delegates.

SEC. 3. That the Sheriffs shall, within ten days after the election of Delegates to said Convention, severally deliver to each individual who shall have been elected a Delegate, a certificate of his election as a Delegate; and shall, within twenty days after said election, transmit a copy thereof to the Secretary of the State, for the time being, which certificate shall be in the form following, viz: "Be it known to all to whom these presents shall come, That I \_\_\_\_\_, Sheriff of the county of \_\_\_\_\_, in my full county, by an election held on the \_\_\_\_\_ days of August, 1849, by the electors of my said county, qualified according to law, caused to be chosen \_\_\_\_\_, for my said county, to represent the same in the Convention to be held in the town of Frankfort, on the first

day of October, 1849, for the purpose of re-adopting, altering or amending the Constitution of the State. Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 1849:" *Provided*, That in case of the resignation or death of any member who may be elected a Delegate to said Convention, that in such case the Governor shall, upon information, issue a writ to the Sheriff of the county where such vacancy may occur, authorizing him to hold an election at the earliest time practicable, to elect other Delegates to fill any vacancy thus occurring.

SEC. 4. That the President, Printer, and other proper officers of said Convention, and each Delegate thereof, shall receive, as a compensation for their services, the same allowance and mileage, to be paid by the Treasurer, upon the warrant of the 2d Auditor, as is now allowed by law to the Speakers, Officers, Members, and Public Printer, of the Legislature of the State.

SEC. 5. That the Sheriffs and other officers of the election, shall be liable to all such fines and penalties, for failing to discharge the several duties imposed by this act, as are now imposed upon them, by law, for a failure to perform their duty in conducting other general elections; and all persons who shall be found guilty of casting illegal votes for Delegates, shall be liable to all the pains and penalties now inflicted by law for illegal voting.

SEC. 6. That when two or more counties vote together, the Sheriffs shall meet at the Court House of the county to compare the polls at the same place and time when and where they meet to compare the polls for Representatives; and the certificate to the Delegate from such counties shall be given by the Sheriffs of those counties.

SEC. 7. That the Sheriffs of the several counties in this State shall be governed by the same laws now in force regulating the comparison of the polls for Representatives.

SEC. 8. That said Convention, when so assembled, shall have authority to cause to be printed, at the cost of the State, all such of their proceedings, debates, &c., as deemed proper.

SEC. 9. *Be it further enacted*, That in case of the failure, by death, sickness, or other cause, of the Sheriff of any county to attend to compare the list of votes in his county, it shall be the duty of the County Court Clerk, or Deputy of such Clerk, to attend with the list of votes



of said county, and make the comparison, and in every respect perform the same duties which the Sheriff would have to perform were he acting, and the Clerk to receive the same compensation allowed the Sheriffs for similar services, and shall be liable to the same penalties for a failure to discharge the duties hereby imposed.

Mr. MERIWETHER rose in his seat at 11 o'clock and called the Convention to order. He then said—Gentlemen, as a preliminary step to the organization of this Convention, I propose to call Col. GEO. W. JOHNSTON of Shelby county to the Chair temporarily. Is there any objection? [Several voices—None.] There appears to be no objection to the proposition. Col. Johnston will have the goodness to take the Chair.

Mr. JOHNSTON took the Chair accordingly.

Mr. DESHA moved that Mr. KELLY of Washington county act as Clerk to the Convention temporarily.

The motion was agreed to.

Mr. IRWIN then rose and said—A Clerk having been selected, I move that a committee be appointed to wait upon the Secretary of State to obtain a list of the Delegates who have been returned to this Convention.

Mr. HARDIN. I will move to alter that resolution so that it shall read that a committee be appointed to verify the credentials of the members; and let the committee get their information in regard to the credentials, in the best way they can.

Mr. IRWIN. I have no objection.

Mr. GREY. It seems to me that the first plan suggested would be the proper mode of proceeding. The Secretary of State certainly has the correct returns from all the counties in the State of the members elected to this Convention, and it appears to me unnecessary to appoint a committee to examine those credentials. If the Secretary of State will produce the list made from the returns of the proper officers, it will be sufficient; and if there should then be any doubt as to the correctness of the returns in any particular case, there might be a committee appointed to examine and report on the right of the person returned as elected. I see no necessity for going through all these details. It is perfectly useless to examine all these credentials, inasmuch as we have the returns of the proper officers of the several counties. I hope the first motion will prevail, and that the amendment will be withdrawn or voted down. Many members may not have in their possession the certificates delivered to them or returned by the Sheriff of the counties, and I think it would be better that the Secretary of State should return to us a list of members elected which has been the practice in other Conventions.

Mr. HARDIN. It is a matter of very little importance how the credentials are obtained. With regard to the mode of proceeding, appoint a committee and it can report in five minutes. We are not to depend on a Secretary of State. I met Mr. Secretary a few minutes ago upon the stairs, and I mentioned to him that it was probable a committee would be appointed to wait upon him to obtain a list of members as returned by the Sheriffs of the counties. Now suppose some of these certificates should be lost?

One way of proceeding will answer as well as another; but it shows that we are not to depend upon any officer as to who is elected or not. Our committee can ascertain the facts in a few minutes, and if there be a contested election it will require the future action of this Convention.

Mr. IRWIN. I had no idea, being a young man, of taking any interest in the organization of the Convention, but I thought it seemed to be our first duty to call for a roll of delegates. I enquired from the Secretary of State and he informed me that he had a roll already made out, which is now in his office. If we go into an examination as suggested by the gentleman from Nelson, (Mr. Hardin,) it will occupy all day. I think it better to take the course first proposed, and if any case of contested election should hereafter appear, it may be investigated by a committee. I insist that the motion shall be put as first presented.

The CHAIR. Do I understand the gentleman from Logan to have accepted the amendment of the gentleman from Nelson?

Mr. IRWIN. No, sir.

The question was then taken on the amendment, and it was negatived.

The question then recurred on the original resolution, and it was adopted.

The CHAIR. Of how many shall the committee consist?

A MEMBER. Three.

The CHAIR. How shall they be appointed?

A MEMBER. By the Chair.

The CHAIR. If there be no objection, Mr. Irwin, Mr. Meriwether, and Mr. Turner will be the committee.

The committee then retired to wait upon the Secretary of State and in a few minutes returned, when

Mr. IRWIN, on behalf of the committee, reported that they had discharged the duty intrusted to them, and received from the Secretary of State certain papers one of which was the list of members returned, and another was in relation to a contested election or tie vote, all of which he submitted to the Convention.

The CHAIR. If there be no objection the Clerk will call the roll of members to ascertain if there be a quorum in attendance.

The Clerk called the roll accordingly; from which it appeared that the following gentlemen are the

#### MEMBERS OF THE CONVENTION.

RICHARD APPERSON, of Montgomery.  
JOHN L. BALLINGER, of Lincoln.  
JOHN S. BARLOW, of Monroe.  
WILLIAM K. BOWLING, of Logan.  
ALFRED BOYD, of Trigg.  
WILLIAM BRADLEY, of Hopkins.  
LUTHER BRAWNER, of Estill and Owsley.  
FRANCIS M. BRISTOW, of Todd.  
THOMAS D. BROWN, of Hardin.  
WILLIAM C. BULLITT, of Jefferson.  
CHARLES CHAMBERS, of Boone.  
WILLIAM CHENAULT, of Madison.  
JAMES S. CHRISMAN, of Wayne.  
BEVERLY L. CLARKE, of Simpson.  
HENRY R. D. COLEMAN, of Crittenden.  
BENJAMIN COPELIN, of Hart.  
WILLIAM COWPER, of Livingston.  
EDWARD CURD, of Calloway and Marshall.

GARRET DAVIS, of Bourbon.  
 LUCIUS DESHA, of Harrison.  
 ARCHIBALD DIXON, of Henderson.  
 JAMES DUDLEY, of Fayette.  
 CHASTEEN T. DUNAVAN, of Warren.  
 BENJAMIN F. EDWARDS, of Nicholas.  
 MILFORD ELLIOTT, of Pulaski.  
 GREEN FORREST, of Marion.  
 NATHAN GAITHER, of Adair.  
 SELUCIUS GARFIELD, of Fleming.  
 JAMES H. GARRARD, of Clay, Letcher and Perry.  
 RICHARD D. GHOLSON, of Ballard and McCracken.  
 THOMAS J. GOUGH, of Meade.  
 NINTIAN E. GREY, of Christian.  
 JAMES GUTHRIE, of City of Louisville.  
 JAMES P. HAMILTON, of Larue.  
 BEN. HARDIN, of Nelson.  
 JOHN HARGIS, of Morgan and Breathitt.  
 VINCENT S. HAY, of Butler and Edmonson.  
 WILLIAM HENDRIX, of Grant.  
 ANDREW HOOD, of Clarke.  
 THOMAS J. HOOD, of Lawrence and Carter.  
 MARK E. HUSTON, of Spencer.  
 JAMES W. IRWIN, of Logan.  
 ALFRED M. JACKSON, of Muhlenburg.  
 THOMAS JAMES, of Hickman and Fulton.  
 WILLIAM JOHNSON, of Scott.  
 GEORGE W. JOHNSTON, of Shelby.  
 GEORGE W. KAVANAUGH, of Anderson.  
 CHARLES C. KELLY, of Washington.  
 JAMES M. LACKEY, of Floyd, Pike and Johnson.  
 PETER LASHBOOKE, of Mason.  
 THOMAS N. LINDSEY, of Franklin.  
 THOMAS W. LISLE, of Green.  
 WILLIS B. MACHEN, of Caldwell.  
 GEORGE W. MANSFIELD, of Allen.  
 ALEXANDER K. MARSHALL, of Jessamine.  
 MARTIN P. MARSHALL, of Fleming.  
 WILLIAM C. MARSHALL, of Bracken.  
 WILLIAM N. MARSHALL, of Taylor.  
 ROBERT D. MAUPIN, of Barren.  
 RICHARD L. MAYES, of Graves.  
 NATHAN McCURE, of Russell.  
 JOHN H. McHENRY, of Hancock and Ohio.  
 DAVID MERIWETHER, of Jefferson.  
 WILLIAM D. MITCHELL, of Oldham.  
 THOMAS P. MOORE, of Mercer.  
 JOHN D. MORRIS, of Christian.  
 JAMES M. NESBITT, of Bath.  
 JONATHAN NEWCOM, of Laurel and Rockcastle.  
 HUGH NEWELL, of Harrison.  
 ELIJAH F. NUTTALL, of Henry.  
 HENRY B. POLLARD, of Greenup.  
 WILLIAM PRESTON, of City of Louisville.  
 JOHNSON PRICE, of Garrard.  
 LARKIN J. PROCTOR, of Lewis.  
 JOHN T. ROBINSON, of Carroll and Gallatin.  
 THOMAS ROCKHOLD, of Whitley.  
 JOHN T. ROGERS, of Barren.  
 IRA ROOT, of Campbell.  
 JAMES RUDD, of City of Louisville.  
 IGNATIUS A. SPALDING, of Union.  
 JOHN W. STEVENSON, of Kenton.  
 JAMES W. STONE, of Hardin.  
 MICHAEL L. STONER, of Cumberland and Clinton.  
 ALBERT G. TALBOTT, of Boyle.  
 JOHN D. TAYLOR, of Mason.  
 WILLIAM B. THOMPSON, of Bullitt.  
 JOHN J. THURMAN, of Grayson.  
 HOWARD TODD, of Owen.  
 PHILIP TRIPLETT, of Daviess.

SQUIRE TURNER, of Madison.  
 JOHN L. WALLER, of Woodford.  
 HENRY WASHINGTON, of Breckinridge.  
 JOHN WHEELER, of Pendleton.  
 ANDREW S. WHITE, of Shelby.  
 CHARLES A. WICKLIFFE, of Nelson.  
 ROBERT N. WICKLIFFE, of Fayette.  
 GEORGE W. WILLIAMS, of Bourbon.  
 SILAS WOODSON, of Knox and Harlan.  
 WESLEY J. WRIGHT, of Trimble.

The CHAIR then announced that a majority of Delegates had answered to their names.

#### OATH OF MEMBERS.

Mr. C. A. WICKLIFFE. There is not in the law calling this Convention any form of oath prescribed to be taken by the members of this body; it seems to me however proper that an oath should be administered to support the Constitution of the United States. I will therefore submit a resolution to that effect, if it meet the approbation of the Convention.

The CLERK read the resolution as follows:

*Resolved.* That an oath to support the Constitution of the United States be administered to the members of this Convention.

Mr. GUTHRIE. I move to amend the resolution so that it shall read, "That the members be qualified by taking an oath to support the Constitution of the United States and be faithful and true to the Commonwealth of Kentucky."

Mr. WICKLIFFE. I desire so to modify it.

Mr. HARDIN. I have a form of oath drawn up which I will read to the Convention. It is in these words:

"You solemnly swear to support the Constitution of the United States and to continue true and faithful to the State of Kentucky as long as you remain a member of this Convention."

I think we ought to be true to Kentucky as well as to support the Constitution of the United States.

Mr. WICKLIFFE. The only difference between my colleague and myself is this, that he confines the fidelity of members to the continuance of the Convention, whereas I go beyond it.

The resolution as modified was then adopted.

The members were then called by counties and the oath was administered to them by Chief Justice Marshall, of the Appellate Court.

On the motion of Mr. C. A. WICKLIFFE, by general consent, his resolution was amended by adding the words, "and that the oath be administered by Chief Justice Marshall."

#### OFFICERS OF THE CONVENTION.

Mr. IRWIN offered the following resolution:

*Resolved.* That a committee of five be appointed by the Chair, whose duty it shall be to report what officers are necessary to the proper organization of this Convention.

Mr. HARDIN. I had not the pleasure to hear my colleague sufficiently to know what object he has in view. We know very well that according to parliamentary usage, we are to have a President, Chairman, or Speaker, or whatever else he may be called. We know very well that we are to have a Clerk, a Secretary if you please. We know another thing very well, that we are also to have a Door Keeper and a Sergeant-at-

Arms. Whether we shall need an Assistant Clerk and an Assistant Sergeant-at Arms, is a question that may be enquired into hereafter.—How then can the necessity grow up for the appointment of a committee to inquire what officers are necessary? I will ask my colleague where is this committee to get its information? Are they to get it from the Governor? Are they to get it from the Secretary of State? Or, are they to get it from the innumerable candidates who are pressing us here? No. Where then will you get it? What then is your object? We have come here under an expression of public opinion from the mouth of the Big Sandy to Mills Point, and from Louisville to Cumberland Mountain, that there is to be no party here, which will by postponement endeavor to produce an organization that may favor their purposes—though I do not say that such is intended. But we do know that we can now proceed as well in the organization of the House as far as respects the President, the Secretary, a Door Keeper and a Sergeant-at-Arms, as we can after this committee shall have gone into an enquiry on this subject. Of whom the committee shall enquire if they do go out, the Lord in his mercy only knows, for I do not. I hope we shall now proceed. I do not know if there is any chance to get the yeas and nays on this resolution, but I should be glad to get them. I want to see who is for postponement. We know that no good can grow out of it. Every member of this House knows as much as he will know after this committee shall have sat and reported with all possible solemnity to-morrow. If we go to the House of Commons of Great Britain we find that they have a Speaker there. If we go to the House of Lords, we shall find a Chancellor. If we go to the House of Representatives in Congress, we find a Speaker there, and in the Senate a Vice President. Why did we call you to the Chair, sir? Because it was necessary to have some one to put the question, and preserve order. There is no necessity for a committee. I hope we shall now proceed to the election of a President of this Convention.

Mr. C. A. WICKLIFFE. My colleague appears a little worried. He ascribes to me the paternity of the resolution, but I did not offer it. The gentleman from Logan had the honor of being the mover of this resolution; but nevertheless the proposition meets my approbation, and I shall with great cheerfulness vote for it—not for the purpose of seeking information abroad from the sources indicated, but in obedience to a propriety of action which should govern a body constituted like this and brought together for the purposes that this is. There is no law—no regulation—no parliamentary rule in existence that applies to this body, prescribing its authority, its powers, or its duties in reference to the election of officers necessary to the proper transaction of its business. There is perhaps a variety of opinion, as to the number of officers that this body should appoint. Whether we shall have the number that has been selected by the Legislative Department of this Government in times gone by, is a question respecting which the committee may well enquire. I therefore most cheerfully agree with the mover of this proposition that it is right and proper that a committee should take the matter in charge and re-

port upon it. We have no resolution to select a Door-keeper or a Sergeant-at-Arms, but we know that these officers will be necessary as well as a presiding officer; and I find that the resolution of the member from Logan is drawn in accordance with the precedents set by conventions in other States—first a temporary organization, and then a committee to report officers. With this explanation, and assigning the authorship of the resolution to its appropriate source, I shall vote for its adoption.

Mr. APPERSON. I have a resolution which I desire to offer as a substitute. It is in these words:

*Resolved*, That we now proceed to the election of a President to preside over the deliberations of this Convention.

Mr. IRWIN. I will accept the substitute.—I had no particular object in presenting the resolution. I offered it because I thought it the usual course pursued on such occasions, but if the House think it proper to go on now with the election of Officers, I shall make no opposition to that course. Had it not been however for the delay occasioned by the gentleman from Nelson, I have no doubt the report would have been made by this time.

Mr. GUTHRIE. I move that we disagree to the acceptance of the substitute by the member from Logan. I have no idea of a vote of this House being got rid of in that way.

Mr. McHENRY. This seems to me to be a very unusual motion. I am not very well acquainted with parliamentary proceedings, but I have always understood that the mover of a resolution might accept a modification of it at his discretion: the House can then move to amend, but certainly it is not competent for the House to disagree to the gentleman's acceptance of a modification of his proposition. But what I chiefly rose for was to move to amend the proposition of the gentleman from Logan as it now stands, by adding the words, "and proceed to make such election without nominating any particular candidate."

Mr. GUTHRIE. I desire to move an amendment which I hold in my hand:

*Resolved*, That a committee of five members be appointed to report what officers are necessary for the better transaction of the business devolving upon the Convention.

The CHAIR. The proposition of the gentleman from Ohio will have precedence.

Mr. IRWIN. I accept the amendment of the gentleman from Ohio, and as I understand it, it now becomes the original proposition.

Mr. APPERSON. I, as the mover of the original resolution have not accepted the amendment of the gentleman from Ohio.

Mr. McHENRY. Well, then, I desire to have it put to the House. As remarked by a gentleman who has preceded me, it is expected in the organization of this body, and in all our proceedings here, that we shall not be governed by party tactics or party policy. If every man shall vote according to the dictates of his own judgment, we shall be more apt to get officers unbiased by party feeling than we shall be by having particular candidates nominated and having those only voted for as heretofore. My only object is to present to the Convention a mode of

organization by pursuing which we shall elect officers who will be free from party drill, party bias, and party policy, on either side.

Mr. HARDIN called for the yeas and nays, and they were ordered, and being taken resulted thus: yeas 55, nays 41. So the amendment was agreed to.

Those who voted in the affirmative were,

William K. Bowling,	Nathan McClure.
Luther Brawner,	John H. McHenry,
Francis M. Bristow,	David Meriwether,
Thomas D. Brown,	William D. Mitchell,
William C. Bullitt,	John D. Morris,
William Chenault,	Elijah F. Nuttall,
Garret Davis,	Henry B. Pollard,
James Dudley,	Johnson Price,
Chasteen T. Dunavan,	Larkin J. Proctor,
Milford Elliott,	John T. Rogers,
Selucius Garfield,	Ira Root,
James H. Garrard,	James Rudd,
Thomas J. Gough,	James W. Stone,
James Guthrie,	Albert G. Talbott,
Ben. Hardin,	John D. Taylor,
Vincent S. Hay,	Wm. R. Thompson,
William Hendrix,	John J. Thurman,
Thomas J. Hood,	Howard Todd,
Mark E. Huston,	Philip Triplett,
James W. Irwin,	Squire Turner,
Alfred M. Jackson,	John L. Waller,
Thomas James,	Henry Washington,
George W. Johnston,	John Wheeler,
Thomas N. Lindsey,	Andrew S. White,
Thomas W. Lisle,	Robert N. Wickliffe,
Martin P. Marshall,	George W. Williams,
William C. Marshall,	Silas Woodson—55.
Richard L. Mayes,	

Those who voted in the negative were,

Richard Apperson,	William Johnson,
John L. Ballinger,	Geo. W. Kavanaugh,
John S. Barlow,	Charles C. Kelly,
Alfred Boyd,	James M. Lackey,
William Bradley,	Peter Lashbrooke,
Charles Chambers,	Willis B. Machen,
James S. Chrisman,	George W. Mansfield,
Beverly L. Clarke,	Alex. K. Marshall,
Henry R. D. Coleman,	William N. Marshall,
Benjamin Copelin,	Thomas P. Moore,
William Cowper,	James M. Nesbit,
Edward Curd,	Jonathan Newcum,
Lucius Desha,	Hugh Newell,
Archibald Dixon,	William Preston,
Benj. F. Edwards,	John T. Robinson,
Green Forrest,	Thomas Rockhold,
Nathan Gaither,	Ign. A. Spaulding,
Richard D. Gholson,	John W. Stevenson,
Ninian E. Grey,	Charles A. Wickliffe,
John Hargis,	Wesley J. Wright—41.
Andrew Hood,	

The question was then about to be put on the substitute offered by the gentleman from Louisville, (Mr. Guthrie.)

Mr. GUTHRIE. I do not design to go into an argument on this subject. We have met, and many of us are unacquainted with each other, and it is necessary to decide what officers we are to have. We might decide that we would elect first a President, then Clerk, then a Door Keeper, and so on, but it seems to me it would be more in accordance with what is due to a delib-

erative body that we should determine first what officers are necessary to the transaction of the business and then proceed to their election. Deeming it proper that we should so proceed I have moved the substitute. Of course it is only my individual opinion against the opinion of a distinguished gentleman who moved the original proposition.

Mr. HARDIN. I did not hear very well when the question was stated, and I do not perceive that we have gained anything by the vote that has been taken. I understand now it is upon the simple proposition of the postponement of the election of officers necessary for the complete organization of this House. Well, Sir, do we not know as well now as we will after the committee report, that a President is necessary, that a Secretary is necessary, that a Door Keeper is necessary, and that a Sergeant-at-Arms is necessary. After we have a President and Secretary then this proposition for a further organization of the House can be put to the House. We have every information that this committee can obtain. If the object be that it shall be done with solemnity I am sure it is just as solemn to elect a President now as it will be after dinner or to-morrow morning. At what time is the committee to report? When they please. And when will they please? They may delay as long as they choose. I do hope that we shall now proceed to the election of a President, and then to the election of a Clerk. Whether we go on to the election of a Door Keeper is a matter of but little importance; but let us at least give to the House an organization that we know it needs. I have not heard from either of the gentlemen what is the object to be obtained by the committee. Is it expected that they can get any information that we do not now possess? None in the world. I do hope then that the House will vote down the proposition. I did not understand the nature of the proposition upon which we have voted. I thought it was that we would proceed with the election. I am sure the gentleman from the county of Ohio thought we would have a right to vote for whom we pleased. You may put in nomination A, B, C or D, and I might nevertheless vote for Z, if there were such a name in the Convention. All then that we have obtained by the yeas and nays amounts to nothing. We have been voting on nothing at all, (laughter) and if my friend imagines he has accomplished anything I beg leave to say that he is greatly mistaken.

Mr. TALBOTT. There is no member who would regret more than I would to see a difficulty arise. I have a resolution which I think will satisfy all parties, and it is simply to require the committee to report in thirty minutes.

Mr. A. K. MARSHALL rose to offer as a substitute a resolution in these words:

*Resolved*, That the officers of this Convention shall be a President, a Secretary, an Assistant Secretary, a Door Keeper, and a Sergeant-at-Arms.

The CHAIR. The question is first upon the amendment of the gentleman from Boyle.

Mr. TURNER. I understand that we are getting further than any parliamentary law will authorize us to go. This substitute altogether supercedes the original proposition, and it will

not be necessary to vote on these different propositions if this substitute be entertained.

Mr. MERIWETHER. I apprehend my friend from Madison is in error. My friend from Montgomery offers the original resolution; the gentleman from Louisville offers a substitute, and the gentleman from Boyle offers an amendment; now the question is, whether the amendment be to the substitute or to the original resolution which has been already amended. If it be to the substitute, it is in order. If it be to the resolution offered by the gentleman from Montgomery, it is in order, for the friends of the resolution may amend and perfect their measure before a vote can be taken upon the substitute.

Mr. TALBOTT. The amendment is offered to the substitute of the Gentleman from Louisville, (Mr. Guthrie.)

The CHAIR. I have been under the impression that the friends of an original resolution have a right to perfect it. Even after an amendment has been acted upon, the gentleman's proposition would be in order as a substitute for the substitute.

Mr. TALBOTT. As far as my resolution is concerned, I have no anxiety to press it. I am perfectly ready to go into an election of officers; but if the resolution for that purpose fails, I want to submit an amendment according to the proposition I have offered.

Mr. BROWN. It seems to me we are piling resolution upon resolution, substitute upon substitute, and amendment upon amendment. If I understand the position of the question it is this: the original proposition offered by the gentleman from Logan was amended by the gentleman from Montgomery. The gentleman from Louisville offered a substitute; the gentleman from Boyle now offers an amendment to that substitute; the proper and legitimate question then is on the amendment that is offered to the substitute. The other is out of order until this question is first put.

Mr. NUTTALL. It does seem to me that we are getting things so tangled up here that we had better now, before going further, submit them to this committee and let them untangle them. I understand that what is said and done here is to be reported, and I do not intend to put any thing on paper, or say anything myself that shall be brought up in judgment against me hereafter. One word however in regard to a remark which fell from the gentleman from Nelson, (Mr. Hardin.) I wish to say that I have no desire to provoke either his satire or his ire. He wants to get rid of the host of candidates here who are seeking the offices which this Convention may make. Now I do not know how it is with him, but down our way just before the August election we like to have the friendship of all such gentlemen as are seeking office here at our hands. This is a Republican Government; and I like to meet all candidates, I do not care whether it is for a Secretary's place, or that of Door-Keeper, or Sergeant-at-Arms, or any other office that they seek. They are free men and have a right to be here, and if they press the gentleman hard I have no doubt he has a very good way of getting clear of them. He can with a wink or a motion of his finger get rid of all candidates for small offices. I think it would be best, if it be within

the parliamentary rule, to move to lay all these resolutions on the table for the present, and if I can get any one to second that motion I will make it.

The motion being seconded, the question was put and agreed to.

#### NEW MEMBER.

Mr. C. A. WICKLIFFE. I discover upon looking at the list of Delegates the name of a gentleman who has not been enrolled and sworn, although he has his credentials in his possession—I mean the gentleman from Casey, (Mr. Coffey.) I desire that he now be registered and sworn as a Delegate to this Convention.

Mr. HARDIN. I would enquire why he was not sworn at first.

Mr. C. A. WICKLIFFE. His name was not on the printed list.

Mr. HARDIN. Has he got the certificate of election?

Mr. C. A. WICKLIFFE. He has a certificate of election from the Sheriff.

Mr. TURNER. I have no doubt if the Sheriff of Casey had done his duty, the gentleman was properly entitled to his seat here; but my difficulty is whether he is here in such a manner that we can recognize him as a member. If I understand the facts they are these: The Sheriff of Casey county returned that there was a tie between the gentleman who desires to take his seat and another individual. When he did that his official power was at an end. The official return has remained in the office of the Secretary of State from August until within a few days. Since then the two competitors by agreement between themselves referred the matter to arbitration, and the arbitrators decided in favor of the gentleman who is now here, because four individuals who refused to vote at the commencement of the election, were permitted to come and vote afterwards—contrary to law, contrary to the act of Assembly, and contrary to the usages of parliamentary bodies. Upon that the Sheriff has assumed the power to make another return. Now the difficulty is whether the Sheriff, after having made one return can make another; and whether the gentleman shall be permitted to come in and be qualified now, without having the facts come before us in some other way. I supposed that when the Sheriff had made one return, his function was at an end; but that if a committee were to report that the original return was wrong, and report the facts of the case, it would then be a question for us to determine whether we could not permit him to take his seat. But in the present case I apprehend that the Sheriff's last return is without authority of law and we cannot receive it. I have no doubt that he should have returned this gentleman at first, if the circumstances are as I understand them; but when the gentleman gets his seat I want him to get it according to law.

Mr. C. A. WICKLIFFE. I am very sure that the Delegate from Casey is properly here, and that if his name had been on the list and he had been called at first he would have been sworn without opposition; and I hope that will be the case now. It is our duty, as I understand it, to identify the members of this body. In the county of Casey there was a contest, and at the close

of the polls the Sheriff made out his report in which he stated that there was a tie. There is no provision in the law which covers this case. Vacancies may be filled when caused by death or resignation, but here was a failure to elect, so far as appears by the papers. It appears that the people of Casey county, governed by first principles, determined to supply the omission of the law, and by consent of friends on all sides to submit the poll book to two gentlemen to examine and ascertain which one of them had a majority of the qualified voters of the county of Casey. Where there was a difference of opinion in regard to any vote, an umpire was agreed upon to determine the question. This was done, and the Sheriff though he returned, as I understand, a tie vote to the Secretary's office, has given, upon an investigation by this tribunal, voluntarily, and mutually, friendly and cordially selected by all parties, a certificate of election to the gentleman now present. I therefore see no reason why the gentleman should be kept out of his seat. There will be no law violated, he has certainly been elected by the voters of Casey county, he is now here to be qualified, and I move that he be permitted to take his seat. The question was taken and the motion agreed to.

Mr. COFFEY then presented himself and the oath was administered to him by Judge James Simpson of the Appellate Court.

#### ELECTION OF OFFICERS.

Mr. APPERSON submitted a resolution as follows:

*Resolved*, That the officers of this Convention be a President, a Secretary, an Assistant Secretary, a Door Keeper, and a Sergeant-at-Arms, and that we now proceed to the election.

After a brief conversation between Mr. A. K. MARSHALL and Mr. APPERSON on a point of order, the resolution was agreed to.

The CHAIR then announced that nominations for the office of President were in order.

Mr. APPERSON nominated Mr. Dixon.

Mr. HARGIS nominated Mr. GUTHRIE.

Mr. PRESTON enquired how the vote should be taken, whether *viva voce* or by ballot.

Mr. APPERSON understood that it should be *viva voce*.

Mr. BULLITT concurred that *viva voce* was the usual practice, and that it should be adhered to.

The CHAIR announced that the vote would be so taken.

The roll was then called, and the result was announced to be:

#### FOR MR. GUTHRIE—

John S. Barlow,	Green Forrest,
Alfred Boyd,	Nathan Gaither,
William Bradley,	Selucius Garfield,
Luther Brawner,	James H. Garrard,
James S. Chrisman,	Richard D. Gholson,
Beverly L. Clarke,	John Hargis,
Jesse Coffey,	William Hendrix,
Henry R. D. Coleman,	Alfred M. Jackson,
Benjamin Copelin,	Geo. W. Kavanaugh,
William Cowper,	Charles C. Kelly,
Edward Curd,	James M. Lackey,
Lucius Desha,	Peter Lashbrooke,
Benjamin F. Edwards,	Willis B. Machen,
Milford Elliott,	George W. Mansfield,

Alex. K. Marshall,	Henry B. Pollard,
William N. Marshall,	John T. Robinson,
Richard L. Maves,	Ira Root,
David Meriwether,	Ignatius A. Spalding,
William D. Mitchell,	John W. Stevenson,
Thomas P. Moore,	James W. Stone,
John D. Morris,	Squire Turner,
James M. Nesbitt,	John Wheeler,
Jonathan Newcum,	Charles A. Wickliffe,
Hugh Newell,	Robert N. Wickliffe,
Elijah F. Nuttall,	Wesley J. Wright—50.

#### FOR MR. DIXON—

Richard Apperson,	Thomas W. Lisle,
John L. Ballinger,	Martin P. Marshall,
William K. Bowling,	William C. Marshall,
Francis M. Bristow,	Nathan McClure,
Thomas D. Brown,	John H. McHenry,
William C. Bullitt,	William Preston,
Charles Chambers,	Johnson Price,
William Chenault,	Larkin J. Proctor,
Garret Davis,	Thomas Rockhold,
James Dudley,	John T. Rogers,
Chasteen T. Dunavan,	James Rudd,
Thomas J. Gough,	John D. Taylor,
Ninian E. Gray,	Wm. R. Thompson,
Ben. Hardin,	John J. Thurman,
Vincent S. Hay,	Howard Todd,
Andrew Hood,	Philip Triplett,
Thomas J. Hood,	John L. Waller,
Mark E. Huston,	Henry Washington,
James W. Irwin,	Andrew S. White,
Thomas James,	George W. Williams,
George W. Johnston,	Silas Woodson—43.
Thomas N. Lindsey,	

FOR NATHAN GAITHER—Wm. Johnson.

FOR GARRET DAVIS—Albert G. Talbott.

The CHAIR proclaimed that the Hon. James Guthrie, of the City of Louisville, having received a majority of all the votes given, was duly elected President of the Convention.

Messrs. HUSTON and HARDIN were appointed a committee to conduct Mr. Guthrie to the Chair.

The PRESIDENT having assumed the station to which he had been elected, rose and addressed the Convention as follows:

GENTLEMEN OF THE CONVENTION:—I return you my sincere thanks for the honor you have conferred upon me, particularly so, as it has been unsolicited on my part, and unexpected. I am unpracticed in the duties of the Chair, though I have been a long time in a deliberative body, and I shall therefore have to claim your kind indulgence, aid and assistance in the discharge of my duties. We have convened here, selected from different counties, and I may truly say in regard to myself, totally irrespective of politics; and I believe it is the case with many of us who are in this Convention. We are to make a Constitution for the people of Kentucky, under which all are to live, and under which the rights of all are to be secured. All that I have to say to the members of the Convention upon this occasion is, that we should practice the same forbearance and discretion that our constituents in selecting us have practiced, and by mutual concession and forbearance endeavor to agree upon the best Constitution—one that will best promote the interests of all. Without saying



more, and with confidence that I shall have the aid and assistance and forbearance of all, I beg to return you my sincere thanks.

The PRESIDENT stated the next business in order to be the election of Secretary, for which office nominations were then in order.

Mr. APPERSON nominated Mr. Thomas J. Helm, of Barren county.

Mr. A. K. MARSHALL nominated Mr. Joseph Christopher, of Jessamine.

The roll was called, and the result was announced as follows:

For Mr. Helm, - - - - 90

For Mr. Christopher, - - - - 7

The PRESIDENT proclaimed that Mr. Thos. J. Helm, having received a majority of all the votes given, was duly elected Secretary to the Convention.

Mr. Helm presented himself, and the oath of office was administered to him by Judge James Simpson of the Appellate Court.

On motion, the Convention adjourned to 10 o'clock to-morrow morning.

## TUESDAY, OCTOBER 2, 1849.

### ELECTION OF OFFICERS.

On the motion of Mr. MERIWETHER it was *Resolved*, That in all future elections of officers for this Convention, after the first ballot, and on each succeeding ballot, the candidate having the lowest number of votes shall be dropped, and a majority of all the votes cast shall be necessary to make an election.

### ASSISTANT SECRETARY.

The PRESIDENT announced that nominations for the Office of Assistant Secretary were now in order.

Mr. FORREST nominated Mr. W. S. KNOTT.

Mr. W. N. MARSHALL nominated Mr. T. D. TILFORD.

Mr. STEVENSON nominated Mr. V. MONROE.

Mr. SPALDING nominated Mr. B. C. ALLIN.

Mr. WHITE nominated Mr. T. W. BROWN.

Mr. STONE nominated Mr. SAMUELS.

Mr. HARDIN nominated Mr. SLAUGHTER.

Mr. RUDD nominated Mr. POLLARD.

The vote having been taken, the PRESIDENT

announced the result as follows:

Mr. Tilford received - - - 30 votes.

Mr. Monroe received - - - 19 votes.

Mr. Allin received - - - 17 votes.

Mr. Samuels received - - - 9 votes.

Mr. Pollard received - - - 8 votes.

Mr. Brown received - - - 6 votes.

Mr. Knott received - - - 5 votes.

Mr. Slaughter received - - - 3 votes.

There being no choice, the Convention proceeded to a second vote. (Mr. Slaughter's name having been first withdrawn by Mr. Hardin,) with the following result:

Mr. Tilford received - - - 32 votes.

Mr. Monroe received - - - 21 votes.

Mr. Allin received - - - 18 votes.

Mr. Samuels received - - - 8 votes.

Mr. Pollard received - - - 8 votes.

Mr. Knott received - - - 7 votes.

Mr. Brown received - - - 4 votes.

No one having a majority of votes, the Convention proceeded to a third vote, with the following result:

Mr. Tilford received - - - 33 votes.

Mr. Monroe received - - - 22 votes.

Mr. Allin received - - - 18 votes.

Mr. Pollard received - - - 9 votes.

Mr. Knott received - - - 8 votes.

Mr. Samuels received - - - 6 votes.

There being still no election, the Convention proceeded to a fourth vote, with the following result, Mr. Pollard's name having been withdrawn by Mr. Rudd:

Mr. Tilford received - - - 34 votes.

Mr. Monroe received - - - 25 votes.

Mr. Allin received - - - 20 votes.

Mr. Knott received - - - 18 votes.

There being yet no election the Convention, proceeded to a fifth vote, the list of candidates under Mr. Meriwether's resolution being reduced to three, with the following result:

Mr. Tilford received - - - 40 votes.

Mr. Monroe received - - - 31 votes.

Mr. Allin received - - - 26 votes.

There was still no choice, and the Convention proceeded to a selection from the two remaining candidates, with the following result:

For Mr. Tilford, - - - 52 votes.

For Mr. Monroe, - - - 45 votes.

The PRESIDENT announced that Mr. Tilford had received a majority of all the votes given, and that he was duly elected the Assistant Secretary to the Convention.

Mr. Tilford accordingly entered upon the discharge of his duties.

### SERGEANT-AT-ARMS.

The PRESIDENT announced that nominations were now in order for the office of Sergeant-at-Arms.

Mr. PROCTOR nominated Mr. J. D. MCCLURE.

Mr. BARLOW nominated Mr. JOSEPH GRAY.

Mr. CLARK nominated Mr. HUMPHREYS.

Mr. JAMES nominated Mr. JOSEPH W. ALLEN.

Mr. G. W. JOHNSTON nominated Mr. SANDERS.

Mr. KELLY nominated Mr. BOOKER.

The vote was taken with the following result:

Mr. Gray received - - - 26 votes.

Mr. Sanders received - - - 20 votes.

Mr. McClure received - - - 19 votes.

Mr. Booker received - - - 15 votes.

Mr. Humphreys received - - - 13 votes.

Mr. Allen received - - - 4 votes.

There being no choice, the Convention proceeded to a second vote, when

Mr. Gray received - - - 24 votes.

Mr. Sanders received - - - 22 votes.

Mr. McClure received - - - 19 votes.

Mr. Booker received - - - 16 votes.

Mr. Humphreys received - - - 15 votes.

Mr. Allen received - - - 1 vote.

There being still no choice, the Convention proceeded to a third vote, Mr. Allen having the lowest vote, being dropped, and Mr. Booker was withdrawn.

Mr. Sanders received - - - 32 votes.

Mr. Gray received - - - 27 votes.

Mr. McClure received - - - 20 votes.

Mr. Humphreys received - - - 17 votes.

There being no choice, the Convention proceeded to a fourth vote, when

Mr. Sanders received	-	-	43 votes.
Mr. Gray received	-	-	30 votes.
Mr. McClure received	-	-	23 votes.

On a fifth vote between the two remaining candidates,

Mr. Sanders received	-	-	57 votes.
Mr. Gray received	-	-	40 votes.

Mr. Sanders having received a majority of all the votes given, was declared duly elected, and he entered upon the discharge of his duties.

#### DOOR KEEPER.

The PRESIDENT announced that nominations were now in order for the office of Door Keeper.

Mr. JAMES nominated Mr. JOHN M. HELMS.

Mr. BOYD nominated Mr. C. C. GREEN.

Mr. PRICE nominated Mr. HORACE SMITH.

Mr. McHENRY nominated Mr. ELISHA BROWN.

Mr. STEVENSON nominated Mr. WILL. R. CAMPBELL.

Mr. DESHA nominated Mr. JAMES G. LEACH.

Mr. IRWIN nominated Mr. GREENUP KEENE.

Mr. IRWIN said: While I am up, I desire to say a few words in explanation of the circumstances surrounding the gentleman whom I have put in nomination for Door Keeper. Mr. Keene is a gentleman of intelligence, of very agreeable manners, and I sincerely believe would make a most excellent officer; but the chief merit of his case, sir, consists in the object he has in view with the means to be raised by the salary attached to the office. He is the father of Mrs. James W. Davidson, of the county of Logan, whose husband, some time since, while at the Muhlenburg Court, was stricken down with disease, and died in a few hours. She is an elegant and amiable lady, with several children, in very embarrassed circumstances; and the object of Mr. Keene, the father, is to secure a little home and a few acres of land for his widowed daughter and grand children. Mr. Keene has some claims upon his country. In the war of 1812, he became a soldier, and I understand that a distinguished gentleman upon this floor can bear testimony to his manly bearing. I believe, sir, that in voting for Mr. Keene, we shall not only secure a good officer, but shall have the additional consolation of knowing that we have wiped away the widow's tears and secured a home to the fatherless.

Mr. ROOT nominated Mr. SAMUEL C. BRISTOW.

The vote was taken, with the following result:

Mr. Keene received	-	-	19 votes.
Mr. Helms received	-	-	17 votes.
Mr. Green received	-	-	14 votes.
Mr. Brown received	-	-	14 votes.
Mr. Campbell received	-	-	14 votes.
Mr. Leach received	-	-	10 votes.
Mr. Smith received	-	-	6 votes.
Mr. Bristow received	-	-	3 votes.

There being no election, the Convention proceeded to a second vote, Mr. Bristow's name being withdrawn, when

Mr. Keene received	-	-	19 votes.
Mr. Helms received	-	-	17 votes.
Mr. Brown received	-	-	16 votes.
Mr. Green received	-	-	14 votes.

Mr. Campbell received	-	-	13 votes.
Mr. Leach received	-	-	10 votes.
Mr. Smith received	-	-	8 votes.

On a third vote being taken, Mr. Leach having been withdrawn and Mr. Smith dropped,

Mr. Helms received	-	-	24 votes.
Mr. Brown received	-	-	21 votes.
Mr. Keene received	-	-	19 votes.
Mr. Campbell received	-	-	18 votes.
Mr. Green received	-	-	14 votes.

A fourth vote was taken, when

Mr. Helms received	-	-	30 votes.
Mr. Brown received	-	-	26 votes.
Mr. Keene received	-	-	21 votes.
Mr. Campbell received	-	-	19 votes.

On a fifth vote,

Mr. Helms received	-	-	36 votes.
Mr. Brown received	-	-	31 votes.
Mr. Keene received	-	-	29 votes.

On a sixth vote,

Mr. Helms received	-	-	49 votes.
Mr. Brown received	-	-	48 votes.

Mr. Helms having received a majority of all the votes given, was declared duly elected, and he entered upon the discharge of his duties.

#### RULES OF ORDER.

Mr. MERIWETHER submitted the following resolution:

*Resolved*, That a committee, consisting of seven members, be appointed by the President, whose duty it shall be to prepare and report a set of rules for the government of the Convention.

Mr. MITCHELL moved to substitute, in lieu thereof, the following:

*Resolved*, That the rules of order which governed the House of Representatives of Kentucky at its late session, be adopted for the government of this Convention so far as they are applicable, and that said rules be referred to a committee, consisting of five members, with directions to report such alterations or amendments as in their judgment may be deemed necessary.

Pending these resolutions, on motion, the Convention adjourned.

#### WEDNESDAY, OCTOBER 3, 1849.

The Journal of yesterday having been read,

Mr. HARDIN rose and stated, that he had heard some apprehension expressed as to the correctness of the last vote for the Door Keeper of this Convention yesterday. The vote, he was aware, was taken by a very able and experienced Clerk, but it was also taken by members of the Convention, some of whom were of opinion that Mr. Brown received 49 votes, and Mr. Helms 48, and not 49 for Mr. Helms and 48 for Mr. Brown, as reported.

After a brief conversation, it was agreed that the roll should be called, so that if any gentleman's vote was improperly recorded, a correction could now be made.

The roll was called accordingly, and as no error was pointed out, the election of Mr. Helms remained undisturbed.



## RULES OF ORDER.

The first business in order, was the consideration of the resolution offered yesterday by Mr. Meriwether, which was in these words:

*Resolved*, That a committee, consisting of seven members, be appointed by the President, whose duty it shall be to prepare and report a set of rules for the government of the Convention.

And the substitute of Mr. MITCHELL as follows:

*Resolved*, That the rules of order which governed the House of Representatives of Kentucky at its late session, be adopted for the government of this Convention, so far as they are applicable, and that said rules be referred to a committee, consisting of five members, with directions to report such alterations or amendments as in their judgment may be deemed necessary.

Mr. HARGIS said he desired, if it were in order, to offer a substitute for both the resolutions.

*Resolved*, That a committee of three be appointed to digest and report certain rules to govern the action of this Convention, and so far as applicable, that the same shall conform to the parliamentary rules of the Congress of the United States.

He observed, that he was of opinion that this Convention was a little above the Legislature; at least he apprehended their constituents so regarded it.

Mr. MERIWETHER said the difference between the gentleman's proposition and that which he submitted yesterday was simply a difference between "three" and "seven;" for the rules of Congress would be before the committee, and they might select such as in their judgment were applicable. The committee would likewise have before them the rules of the Legislature of Kentucky, from which also, they could make a selection. Why then was it necessary to make any special reference? It was surely a very important question whether a committee should consist of five, three, or seven! A bare amendment to strike out and insert three, five, or seven, would have accomplished the gentleman's object.

Mr. HARGIS was of opinion that there was a difference between the two resolutions. Whether the Parliamentary rules of Congress would be before the committee he was not advised. The resolution spoke only of the rules of the Legislature, and the good people of Kentucky, their constituents, he apprehended, looked for something in this body a little above that.

Mr. MERIWETHER suggested that the gentleman from Morgan and Breathitt had mistaken the substitute of the gentleman from Oldham for the original proposition. The original resolution made no reference to the rules of the Legislature.

Mr. HARGIS replied, that he knew no other proposition; and at his request they were again read.

Mr. MITCHELL said the proposition of the gentleman from Jefferson, as he understood it, was to raise a committee whose business it would be to digest a system of rules for the government of the Convention; but the object which he had in view, in offering his substitute, was to provide some rules for the immediate govern-

ment of the Convention until other rules were reported by the committee. The resolution offered here as a substitute, provides that the rules which governed the House of Representatives of Kentucky at its last session, shall be adopted, so far as applicable to this House, and then referred to the committee to report such alterations and amendments as were deemed necessary. Until they did report these would be the rules for the government of this Convention. His object was to facilitate business.

Mr. MERIWETHER said the gentleman's explanation was evidence that his proposition would defeat its own object. The gentleman wished to adopt the rules of the State Legislature. Now, on looking over these rules, it would be found there was one requiring a vote of two-thirds for their alteration. If they were adopted, the report of the committee must first get a vote of two-thirds in order to secure its adoption; and the effect would be to place them in a position where they could get none other than the rules of the Legislature, without a vote of two-thirds, and the question would be eternally arising in the House as to the applicability of a rule—for, "so far as applicable," says the gentleman's proposition. He thought it better to be without rules, for a day or two, than to have those which would create a controversy as to their applicability.

Mr. MITCHELL said the substitute, to him, did not appear obnoxious to the objection made by the gentleman from Jefferson. The adoption of the rules and their reference to a committee would be simultaneous. The resolution is an entire thing, and must be taken together. The power to alter and amend is not posterior in point of time to their adoption. Then, the rule requiring a two-third vote for their alteration would not be applicable, because it would conflict with the power to alter or amend. It might be that questions would occasionally arise as to the applicability of the rules to this body, but it was better to have some rules, even if this question did arise, than to have none at all.

Mr. DAVIS said he comprehended the proposition of the gentleman from Oldham precisely as that gentleman had explained it, and in that form he was opposed to it. He thought the proposition of the gentleman from Jefferson a proper one, and that it ought to be adopted. He understood that the rules of the House of Representatives of the State of Kentucky provide for a call for the previous question. The consequence would be, as there was no previous question in committee of the whole, when in the House the previous question might be sprung upon every proposition. He desired in this Convention that every gentleman who offered a proposition for its consideration should have an opportunity of calling for the yeas and nays on every one he might choose to submit. If a proposition were submitted in committee of the whole, and was found to be unacceptable to the majority, he did not want that majority to have an opportunity by going into the House and calling for and sustaining the previous question to stifle and suppress the question on a proposition voted down in committee. In other words, he wanted a system of rules which would enable each member to have a call of the yeas and nays

on his proposition in committee of the whole, as well as in the House, and he trusted the motion of the gentleman from Jefferson would prevail, and the committee constituted under it would so establish the rules of this House.

The question was then taken on Mr. MITCHELL'S proposition, and it was rejected, and the original resolution of Mr. MERIWETHER was adopted.

The PRESIDENT then named the following gentlemen as the committee on rules under the resolution just adopted: Messrs. Meriwether, Dixon, Davis, McHenry, Barlow, Mitchell, and Irwin.

#### MODE OF PROCEEDING.

Mr. C. A. WICKLIFFE. Mr. President, I rise to submit some resolutions, not proposing any specific proposition to change or alter the Constitution, but to indicate the views which I have at this early hour as to the mode and manner by which we shall approach the labors which lie before us. I desire to have the resolutions read, and if it is the pleasure of the House to consider them now, I will give such explanations as occur to me with regard to them, that they may be comprehended by those who hear me.

Mr. NUTTALL. I would make a suggestion to my friend from Nelson (Mr. Wickliffe.) Had we not better first elect Public Printers? When the important business of the Convention is about to be brought before us in a tangible shape, we ought to be enabled to have the documents printed, that we may form deliberate opinions upon them.

Mr. PRESIDENT. The resolutions are before the Convention, and therefore the proposition of the gentleman from Henry is not now in order.

Mr. NUTTALL. I am aware of that, but I suggest that the gentleman withdraw his resolutions; then we can proceed to the election of a Printer, after which the gentleman's resolutions will be first in order.

Mr. C. A. WICKLIFFE. The resolutions propose no change of principle; but only indicate the appointment of certain committees to whom the body will refer certain duties to be performed in the preparation of business.

The Resolutions were then sent up to the Secretary's Desk and read as follows:

1. *Resolved*, That a committee of nine Delegates be appointed, whose duty it shall be to report such "amendments or changes" in the Constitution of Kentucky, as they may deem necessary in the provisions thereof which relate to the election and appointment, term of office, powers and duties of the Governor, Lieutenant Governor, Secretary of State, and such other executive civil officers whose duties ordinarily are required to be discharged at the Seat of Government.

2. That a similar committee be appointed to report such "amendments or changes" as may be necessary in the Constitution of Kentucky, in the provisions thereof which relate to the appointment, qualifications, term of office, duties and powers of all other executive or ministerial civil officers whose jurisdiction and powers may be confined to counties, districts, cities, or towns.

3. That a like committee be appointed to report what "amendments or changes" are neces-

sary in that portion of the Constitution of Kentucky concerning the Militia, and the appointment of the officers thereof.

4. That a committee of nine Delegates be appointed to report what "amendments or changes" are necessary to be made in so much of the Constitution of Kentucky as concerns the Legislative Department of the Government.

5. That a committee of fifteen Delegates be appointed to report what "amendments or changes" are necessary in that portion of the Constitution of Kentucky that relates to the Court of Appeals, the appointment of the Judges and Clerk thereof.

6. That a committee, to consist of fifteen Delegates, be appointed to report what "amendments or changes" are necessary to be made in that portion of the Constitution of Kentucky which relates to the appointment of the Judges of inferior Courts, and officers thereof, and the tenure of their offices.

7. That a committee, to consist of Delegates, be appointed to report what "amendments or changes" are necessary to be made in the Constitution of Kentucky in relation to the County Courts, the qualifications and mode of appointment, and the tenure of office of the Justices and Clerks thereof.

8. That a committee, composed of Delegates, be appointed to report what "amendments or changes" are necessary to be made in any of the miscellaneous provisions of the Constitution of Kentucky; and that said committees have power to report from time to time, until their labors are completed.

Mr. WALLER. Mr. President, I wish to offer a resolution as a substitute. Similar resolutions were adopted in the Conventions of the States of Virginia and New York.

The Secretary read the Resolution as follows:

*Resolved*, That a committee of seven be appointed to inquire and report what method will be most expedient in bringing before the Convention alterations or amendments of the Constitution which may be preferred.

Mr. G. DAVIS. Mr. President, before the substitute is considered I will offer an amendment in the form of an additional resolution to those offered by the gentleman from Nelson (Mr. C. A. Wickliffe.)

The Secretary read the Resolution as follows:

*Resolved*, That a select committee of five be appointed by the President, with instructions to report, in substance, as the first provision of a new, or amended Constitution, that no member of this Convention shall be eligible to any office, or place of trust or profit, established directly by it, or that may be established under the authority of any constitutional provision which it may adopt; or the mode of appointment, or election, to which may be prescribed by any such constitutional provision, or by any such law, until after the expiration of ten years from the ratification and approval of this Constitution by the qualified voters of this Commonwealth.

Mr. IRWIN. At this distance I could not distinctly hear the resolution of the gentleman from Bourbon (Mr. Davis,) but so far as I could understand, it seems to me to cut off every gentleman in this House from any office to be created by the Constitution. (Laughter.) If I am

correct in my understanding, before this resolution shall have been adopted I feel some disposition to resign. (Renewed laughter.)

Mr. C. A. WICKLIFFE. I did not in the *prolet* I drew in my resolutions, borrow from any system adopted as I am aware by any Convention of a sister State, as I had not access to the journals of any other State. I am therefore entirely responsible for the propriety of these resolutions, and I desire that they may not be encumbered, when they are only intended to enable the presiding officer of this body, if in accordance with the views of the delegates, to go to work and select committees, to whom certain duties devolving on us under the law calling the Convention, may be assigned. Of course there is nothing in these resolutions, which expresses directly or indirectly, or desires to extract the opinions of any member of this House upon any principle either of the Constitution to be framed, or any change of the present Constitution or amendment thereof. I should carefully abstain from thus early introducing such a resolution myself; but to enable us to do this work, I think we should have something of system or order, and certain duties and labors assigned and apportioned out among the members thereof.—Hence it was that I proposed the appointment of different committees. There should devolve on one committee, the duty of examining the present Constitution with reference to the Executive department of the government; another with reference to the Legislative department; another, with reference to the Judicial department; and then the miscellaneous provisions of the Constitution. These committees, composed of the delegates of this House, selected by the judgment of the presiding officer, would immediately go to work.—They would make a report to-day, or to-morrow, or the next day, of so much of their labor as they had prepared,—say connected with the Executive department,—calling it if you please, number one. That will then be placed upon your calendar as an order of the day. Another will be prepared to report in part, the duties allotted to them. They have examined, deliberated upon, and digested the work; have consulted, and carefully put together the result of their labors in a manner and in language that cannot possibly be misunderstood. We can then take up those reports from day to day, and if it is the desire of the House, we can discuss them here, and if necessary the committee may explain, and any member of the House will be at liberty to offer amendments and have a vote taken upon them. And when it is perfected, we can take the vote on its engrossment and lay it aside as so much labor finished, to be put together in the mode hereafter to be agreed upon by the House. The proposition of the Delegate from the county of Bourbon, might be very appropriate as a matter of instruction to the committees, or a separate committee might be raised, and instructed to put such a proposition in the Constitution as would have that effect. But it seems to me not appropriate to the resolution which I had the honor to submit to this House. If the object of the resolutions I submitted is understood, I desire not to consume the time of the House; and if they desire further time to reflect and examine a better plan than I have submitted, I will cheerfully

postpone their consideration. Certainly I cannot vote for the amendment of the gentleman from Bourbon, because it involves a great principle. I do not know that I have so great an objection to it as my young friend from Logan (Mr. Irwin,) for I certainly have no idea of holding office under the new Constitution.

Mr. NUTTALL. I wish to superadd to the amendment of the gentleman from Bourbon the following: "provided however, that this amendment shall only apply to such members of this Convention as shall vote for the same."

Mr. A. K. MARSHALL. It seems to me that this is a very important step which we are about to take, and it is one which I am not disposed to vote upon at present. This resolution is to govern the future action of the Convention, as I understand it, and should be fully examined. I therefore move that it be laid on the table and printed.

Mr. DAVIS. Mr. President, I believe that motion is subject to debate. I made my proposition in all good faith, and should be greatly gratified myself to see this Convention, if they think it proper, adopt it. It is not the presentation of a new principle to me, but a new application of one found both in the Federal and our own State Constitution, and as I think not an unimportant and useless one as proposed in the amendment I have offered. I will call the attention of the gentleman from Henry, (Mr. Nuttall,) and of the Convention to the clause in each Constitution. I do not know that the amendment suggested by my very respected friend from Henry would have any personal application to himself, because I am not satisfied that the effect and tendency of my amendment would in any way be to exclude him from any place under any Constitution. [Laughter.] If it had the effect to exclude myself, why I should have no sort of objection to it—none. What I have said is in pure good humor to my respected friend, for whose talents and abilities I have the highest respect, and to whom I am ready to tender my personal regard and friendship; and I should feel some distress to be sure if he should be cut off from any office or the country lose the great advantage of his talents and experience. Any proposition I have made here, I trust, will be fraught with no such catastrophe, either to himself or the country.

In the Constitution of the United States, Sec. 6, of the 1st Article, the second clause reads thus:

"No member of the Senate or of the House of Representatives shall, during the time for which he shall have been elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office."

The provision of our own Constitution I presume was borrowed by the wise men who framed it from the words just read from the Federal Constitution. It is as follows:

"No Senator or Representative shall, during the term for which he was elected, or for one year thereafter, be appointed or elected to any civil office of profit under this Commonwealth, which shall have been created, or the emoluments of

which shall have been increased, during the time such Senator or Representative was in office, except such offices or appointments as may be made or filled by the elections of the people."

Now I propose an extension and application of this principle of exclusion from office to those who are to make offices, the members of this body, and that this exclusion shall have effect and operation for a term of ten years. It is not a total exclusion, but its extent will depend on the innovation and change which this body may make upon the existing Constitution, and according to my best care and deliberation I drew it up to have that restricted operation. If this Convention by any constitutional provision should establish a new office, every member of it, if my proposition should prevail,—including myself, who will vote for it, and including my respected friend from Henry who I presume will vote against it—would be necessarily excluded from office. And so it is meant for myself. If the provisions of the Constitution should authorize the Legislature to create and establish other offices, and the Legislature under the authority of such a provision or provisions should pass laws for the establishment of other offices, why, in like manner, he and myself would be excluded from appointment or election to those offices? There is another branch of the resolution that provides that where the mode of appointment or of election shall have been changed by this amended or new Constitution, or by any law passed under its authority, this exclusion shall have application to such cases also. If the office of Governor or Lieut. Governor remains intact by this body, no gentleman aspiring to those high positions, under the effect and operation of my amendment, would be excluded from them. If the term of these offices is deemed too long, it might be limited to three or two years, and still the prohibition not extend to any member of this Convention. If there should be a change made in the organization of the Legislative department of the Government—for example, that its election should be biennial, and that unless convened on extraordinary occasions by the Governor, its sessions should be, by the Constitution, restricted to once in two years—which I hope will be a provision and feature in the new Constitution—every gentleman who should vote for that provision would be eligible to seats in either branch of the Legislature. If the mode of appointing Judges should remain the same as it is under the existing Constitution, and to my mind, there will be great if not insuperable difficulty in improving that mode, although it is objectionable to myself—still, if that mode should be preserved under a new Constitution, and the Judges be required to hold their offices for a limited time—which principle I should like to see adopted in the Constitution—every gentleman on this floor will be eligible to the judicial offices of the State. So that I beg leave to inform my young friend from Logan, or at least so recently from Logan, that he will pardon me for forgetting his locality—and to my friend from Henry, that the provision which I have submitted to the consideration of the Convention, is not as sweeping as a superficial view would authorize gentlemen to infer.

Now I do not know, and indeed have no hope, unfortunately, that the proposition will prevail; nevertheless it has as much of my confidence, and will have from me as steady and as earnest a support, though I stand solitary and alone in uttering my voice in its favor, as if it was to receive the unanimous sanction of this body and the people of this State. I believe it to be right, and that it would work good to our constituency and the country. I will add one or two arguments why I believe it will not prevail. Under the existing system, and the principles of our present Constitution, a great, powerful, and talented party, consisting of nearly one half of the voters of Kentucky, are excluded from executive appointments. I admit it to be a wrong. I maintain that in all our governments, General and State, the mass of the important political offices, those that mould the administration and give character to it—the executive administration and the active politics of the government—ought to be filled with the friends of that government. But when you come to judicial and minor ministerial offices, I utterly condemn and abhor that piratical principle that would eject men from such places because they dared to think for themselves, and to entertain principles, and to cherish systems of policy not acceptable to the incumbents having the appointing power. Such a principle is oppression and tyranny, and I would like to see the free people of this country trample it in the dust and annihilate it. I admit that it is wrong and unjust to exclude the great Democratic party in this State from all executive appointments. We see them rallied against the present mode as one man, and why? Because the present system entirely excludes them from these places, these judicial offices, and authorizes their filling by executive appointment. I am not prepared to say that any system we may introduce in its stead would be better. We are all frail and erring. No human institution is perfect. No system that the experience and wisdom and virtue of man can devise will ever work infallibly. None! On this subject I have no fixed principles or predilections. I want light—to interchange views and feelings and sentiments with my associates in this body. I want the best system that can be devised by the reflection, experience, wisdom, and patriotism of this body, to be thrown before it for its fair and unrestricted consideration; and if I know myself, when that system is addressed to me, and conforms to the dictates of my conscience and judgment, I am prepared to adopt it, come from what source it may. But I am utterly and irreversibly opposed to the election of the judiciary by the popular vote. I am equally inflexible in my opposition to the election of the judiciary by the vote of the two Houses of the Legislature. On the other hand, I see how impracticable and vain would be any proposition that did not concede something to this party that has been entirely excluded from these offices. The organization which at present seems to me most proper, but which I will cheerfully yield to any proposition that on reflection appears to me better, is this: That when the Legislature convenes, and there is a vacancy in a judicial office, the members of the House of Representatives from the district in which such vacancy exists, shall get

together and form themselves into an electoral college, and shall name for the office two candidates—two gentlemen resident within the district—and shall nominate them to the Senate, which body shall nominate one of them to the Governor, and he shall receive the commission of the Commonwealth as Judge of the district. I would like some such system as that—something that would do justice to both of the great parties in this State.

While our friends constitute numbers nearly as great as ourselves, embodying talents, virtue, and patriotism nearly or quite as great as we do, I regard it as unjust and oppressive that they should be excluded from all these offices. If any one of the number of the able men of that party on this floor, whose reflection and experience will enable him to devise a system that will secure something like equal justice to both parties—that will at the same time avoid the violence, the corruption, the bribery, and the great train of ills that will follow the popular election of the judicial officers of this Commonwealth, and will prevent the offices being thrown into the Legislature of the State for scramble and intrigue—I say, if any gentleman will devise a better system than the one I have introduced, I will thank him for myself, and will most cordially adopt it. I did not intend to debate this proposition, but to throw it out, not for present action or discussion, but that members might think and ponder upon it, and if they came to the conclusion that it was worthless—reject it. If it deserved a better consideration, they could give it to it—but I think now is the proper time—at the very threshold of our deliberations—to offer it. If it was possible by my vote to cut off the members who are to frame a Constitution, from all political office and hope, and even from every party tie, I would cast such a vote. I would say that they should stand aloof, as impartial, unsullied, pure, unsuspected arbiters among contending partizan factions. They should form a government for the present and for posterity. They should have no political object or hope beyond that work. If that work was badly done, it would be sufficient evidence that they ought not to be trusted with any other. If it was well done, it would, in my opinion, afford a just and sufficient fame to satisfy the ambition of any properly organized mind. I would not only exclude them from office under the State, but under the general government. I would cut them off as far as practicable from being partizans. They should know none of the motives, personal or private, that operate upon the human mind and conscience, to debauch it and to pervert it to wrong conclusions. None! But I will add nothing more on this subject at present, but to express the hope that gentlemen will give this subject, as I have sought to give it myself, a careful examination, and if they are not satisfied with it and think it ought to be rejected, I shall feel no disappointment at the result.

Mr. HARGIS. When the gentleman offered his resolution, it appeared to me that perhaps his intention was to defeat any Constitution which this Convention might make. I do not know that I clearly apprehended the gentleman's object, but I think I am not mistaken when I say that the citizens of his county voted, by a considerable

majority, in favor of calling the Convention. If then the citizens of his county voted for calling the Convention and elected him a member of it, how is it that he offers a resolution which I cannot but think was offered with the intention of defeating any Constitution which this Convention may make. He seems to mourn for the fate of the democratic party of Kentucky. I did not expect to hear much, in this place, in regard to the democratic party, or in regard to the party of which the gentleman is a member. We were not elected for party purposes. If the gentleman comes here with the intention of defeating the very object of the Convention—with the intention of securing the rejection of any Constitution which this Convention may make—I imagine that when he goes back to his constituents, they will tell him that he has not truly represented their will and wishes. The people have expressed their will, and have sent us here not to act upon principles of party policy. No, Sir, but to change the organic law of the State, and to make it conform to their will and wishes. What is the great object which is to be accomplished by us? Is it not to change the mode of appointment of the various important officers of the State? The Judiciary is one class of those officers. The duration of their offices, as those offices are at present constituted, is highly objectionable to the people. No mode of appointment, the gentleman says, can be perfect—no system of government can be perfect. That is true; but if there be any mode on earth by which appointments can be made that is as pure and as free from corruption as when made by the sovereign people, I acknowledge that I am mistaken. The people are the sovereignty of the State, and the power belonging to the people is that power which regulates the interests and welfare of this great Commonwealth. When the government is in the hands of the people, it is near and dear to them. Then why should we trust to any other power than that of the people of the Commonwealth to do this important work? I mean, to appoint the high officers of government—those officers who derive the pay for the services they render directly from the people. Who, I say, can be better qualified to appoint those officers than the people themselves? It would be a shame to deprive them of it; and I should be very reluctant to see my name enrolled with those who would deny to the people the privilege of making such appointments. I should be equally reluctant to favor the proposition that no member of this Convention should hold office for the next ten years. I should be ashamed that it should go forth to the world, that this Convention passed a resolution that no one of its members should hold office under the Constitution that we may make, within a period of ten years. I would ask the gentleman where he ever found a precedent for such a resolution? If such should be adopted, I apprehend both he and myself would be quite too old afterwards to participate in the affairs of the government. It strikes me, that we are pretty well advanced in years already. I do not know that he entertains any wish to receive an appointment, but I have no doubt there are friends of the gentleman who would not be so reluctant to render their services to the State.

But at all events I have more confidence in the members of this Convention, than to be willing to declare that they shall not hold office under the new Constitution for a period of ten years. I want to show that we are not ashamed or afraid to submit the work of our hands to our constituents, and if it be found that we have been good and faithful servants, perhaps the people may desire that we should continue in their service.

The gentleman says, let the Districts nominate two persons to the Senate for the office of Circuit Judge and let the Senate determine between them. But would not that defeat the very intention which the gentleman professes to have in view? If you should have a Whig Senate would they not be very apt to appoint a Whig Judge? Or if the Senate should be Democratic would not the appointee be a man of their own politics? Why not then, to avoid this dilemma, refer the matter to the people themselves? If, sir, the people are the sovereign power of the State, which they are,—if they support and uphold the State, which they do,—for they pay for the services of their officers—ought they not to have the right to appoint those officers? And ought they not to have the right to say how long they shall serve, and to have the right also to say whether those who have served them already in one capacity shall continue to serve them in a different capacity? But do not understand me as saying that I would place a man before the people for a high office unless he were a man of high standing. For instance, in the case of the appointment of a Judge, I would require that the candidate should be a man of long experience at the bar. Although I belong to the Democratic party, a fact which I believe is very well known, so far from placing before the people for appointment a man not duly qualified, I would require full and complete qualification and fitness in all candidates for office. I would not only have them qualified to discharge the duties of the office, but I would have them to be residents of the Districts in which their duties are to be performed. I would not only have the appointments of the Judges made by the people, but I would leave to the people the election of all officers whom they are to pay for their services. As regards the Secretary of State, Auditors, and such other officers, I would not insist upon their appointments being made by the people; but as regards those officers who reside in the various Districts, and whose services are to be there discharged, the people are better qualified to elect them than any other tribunal. There is a great deal that I might add upon this subject, but I do not desire to consume the time of the Convention. I merely wish to throw out these suggestions, and I would be glad to hear the opinions of gentlemen on both sides upon a matter as important as this is. Indeed I do not know that any remarks upon this subject are in order at this time. The subject seems to have been brought forward prematurely.

Mr. NUTTALL. I do not myself believe that this is the proper time for the discussion of this question. Nor do I think it is a time for the indulgence of pleasantry; and, perhaps, had I sufficiently considered what was due to self-respect, I should not have offered the amendment

to the gentleman's resolution. I shall now ask leave to withdraw it, and at the same time tender my respects to the gentleman from Bourbon, (Mr. Davis,) for whom I have always entertained a high regard. I shall not however vote in favor of the gentleman's proposition, because I prefer to save to the country the benefit of his ability and talents, (laughter,) for I am well assured, that the country would never be able to progress without the aid of his distinguished talents. (Renewed laughter.)

Mr. CLARKE. I do not intend to present to the consideration of the Convention, any *projet* or plan of change necessary to be made in the Constitution of the State; nor will I detain the Convention more than a few minutes. I have read with some care and particularity, the proposition of the gentleman from Bourbon, and I have only to remark, that the principle that is therein attempted to be applied to the members of this Convention, has never been applied to the members of any Convention in this Union which has assembled for the purpose of forming a Constitution. I am aware that in the Constitution of the United States, and I believe that in the Constitution of every State in the Union, there is a provision that no member of a Legislative body, who shall be engaged in the creation of any office, shall be appointed or promoted to that office, during his term of service in the body by which the office was created. If I understand the position of the gentleman from Bourbon, it is this—it seems at least to resolve itself into the enquiry—what is the creation of an office? If a change be made in the manner and mode of appointment, does the gentleman mean that such change shall be considered as the creation of a new office? I certainly so understand the gentleman. If I misunderstood him, I would be glad to be corrected.

Mr. DAVIS. The gentleman does misunderstand me. That is a distinct class of cases. The gentleman will find that there are two classes provided for in the resolution; first, those cases where offices are newly created; secondly, those in which there is only a change or modification in the manner of appointment.

Mr. CLARKE. And am I to understand that the gentleman intends that in this latter case it shall be considered as the creation of a new office?

Mr. DAVIS. I do not pretend to determine; but my proposition is to this effect: that where any action is had by the Convention itself, or by legislation occurring under the provisions which we may adopt, which may operate merely to change the mode of appointment of public officers, it will form a distinct class of cases to which the restriction shall or shall not apply according to the nature of the change produced.

Mr. CLARKE. Yes, I understand. Now, I have no idea that this Convention will create in that sense any new office whatever; but I do expect and I trust that expectation will be verified by the ultimate action of this Convention, that there will be a change in the mode of electing almost every officer in the State. For my own part, I desire that there should be a change in the mode of electing the Judges of the Court of Appeals, and indeed I may say I desire to see almost every officer elected by the people of the



State over whom they exercise jurisdiction or power. At present I will not argue this question, but I must say that I cannot come to the conclusion that, by a mere change in the mode of the appointment of a Judge, by the action of this Convention, you create a new office. If you have a Circuit Judge now appointed by the Governor whose appointment is confirmed by the Senate, his functions are the same as they would be if he were nominated by the people of the State and confirmed by the Senate. The resolution seems to me ambiguous. It leaves open a controversy which in aftertimes will grow up, if a gentleman of this Convention should aspire to an office, whether it was an office created by the Convention, or an office where merely the mode of appointment had been changed. Instead of shutting out difficulties hereafter, it will only produce doubt and controversy that can never be settled without calling a new Convention. As I remarked, I did not rise to make a speech. I merely wished to understand the true construction to be given to the proposition of the gentleman from Bourbon. I am not prepared to vote for his resolution, but shall vote for the motion to lay it, together with the amendment and the substitute, on the table.

Mr. DIXON. I do not rise with the intention of taking any part in this discussion, for I am very well satisfied myself that it is wholly irrelevant to our present business. This is not the proper time for the discussion of this question; the principle which is involved in it will come properly before us for discussion after the various propositions which ought to be submitted to us shall have been reported upon by their appropriate committees. I am anxious to get forward with the business for which we have been sent here, and I am averse therefore to entering upon a discussion of this nature at this time. I understand there is a motion now pending to lay the original resolution and the amendment and substitute on the table. I do not know any good reason why they should not be laid upon the table and printed. I hope that we shall now proceed to adopt some rule by which our business will be facilitated that we may satisfy the country that we are in earnest in going about the duties that have been entrusted to us. I would further remark that I do not think that the subject is now properly debateable. Although we have not yet adopted specific rules for our guidance, yet we ought to be governed by a due regard to an economy of time with a view to the dispatch of business.

Mr. DAVIS. A motion to lay on the table and print is debateable.

Mr. DIXON. The debate then should be confined strictly to the question of printing. When the question does come up, I shall be glad to hear the opinions of gentlemen on all sides, but really it appears to me that this is not the proper time.

Mr. HARDIN. I rise only to make one or two suggestions to the mover of these resolutions. There is a great deal in them which deserves mature deliberation, and it would be well to have them before us in a printed form, and that they should be referred to the committee of the whole, and made the order of the day from day to day. I want at the proper time to sub-

mit my views upon the subjects embraced in them. I do not intend to do it now. I wish it to be remembered, however, that every office in this government, from the Governor down, has to be re-filled under the new Constitution. The terms of the resolutions appear to me to be too broad; indeed I do not think that my honorable friend, himself, intended that they should go to the extent which their language would imply. I differ from him, too, as to the election of a Judiciary, but I will give my reasons on a future day.

At the suggestion of Mr. C. A. WICKLIFFE, the resolutions were laid on the table until tomorrow, and were ordered to be printed.

#### ELECTION OF PRINTERS.

Mr. A. K. MARSHALL offered the following resolution which was adopted, viz:

*Resolved*, That William Tanner and John W. Finnell be, and they are hereby, appointed Printers to this Convention.

#### PROPOSITIONS TO AMEND.

Mr. TURNER offered the following resolutions, viz:

1. *Resolved*, That all the officers of Government should be elected at stated times, either directly or indirectly by the qualified voters of the county or district in which the officer is to serve.

2. *Resolved*, That elections should continue but one day, and votes should be cast *viva voce*; and to enable the electors to cast their votes in one day, the counties should be divided into townships of not exceeding two hundred electors, and an election held in each township.

3. *Resolved*, That members of the House of Representatives of the State Legislature should be elected for *two* years, and of the Senate for *four* years—one half of the latter to go out every two years. The Legislature to sit biennially, subject to be called together by the Governor. No person shall be eligible to either House who has not resided in Kentucky *years*, and who is not a citizen of the United States. No person shall be eligible to the Senate who has not attained the age of *thirty-five* years, or to the House of Representatives who has not attained the age of *twenty-five* years.

4. *Resolved*, That the Legislature shall have no power to grant divorces, but shall, by law, authorise the courts to do so. The Legislature shall have no power to pass any local or special law, unless *three-fifths* of all the members elected to each House, by yeas and nays, concur in its passage.

5. *Resolved*, That the General Assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners. They shall pass laws to permit the owners to emancipate them, saving the rights of creditors: *Provided*, The persons emancipated shall be sent out of the United States at the expense of the person who emancipates them, and be sold into bondage for the benefit of the public Treasury, in case of their return to Kentucky.

6. *Resolved*, That no persons shall henceforth be slaves within this Commonwealth, except such as are now so and the descendants of the females of them, and such as may be brought to this State by *bona fide* emigrants and the descend-

ants of the females of them, and such as citizens of Kentucky shall derive title to out of the State by marriage, devise, or descent, and the descendants of the females of them.

7. *Resolved*, That the Supreme Appellate Court of the State should consist of *four* Judges, who should hold their offices for the term of *eight* years, subject to removal by impeachment or address—no person to be eligible to the office except a licensed Attorney who has attained to the age of *thirty* years, and who has actually resided in Kentucky for *years*, and is a citizen of the United States—one Judge to go out every *two* years, but to be re-eligible.

8. *Resolved*, That no person should be eligible to the office of Judge of any inferior court, who has not attained the age of *thirty* years, and who is not a licensed Attorney and a citizen of the United States, and who has not resided in Kentucky *years*. They should hold their offices for the term of *eight* years, subject to removal by impeachment or address—one-fourth to go out every *two* years, and to be re-eligible.

9. *Resolved*, That no religious test or property qualification shall be required to entitle a citizen to vote or hold office.

10. *Resolved*, That instead of the mode pointed out in the present Constitution for calling a Convention to re-adopt, amend, or change the same, the persons legally authorised to vote shall, every *year* after the adoption of the new Constitution, at the stated elections for members of the Legislature, cast their votes on the propriety of calling a Convention, and if a majority of all the legal voters of the State shall vote for the call of a Convention, two years in succession, then the next Legislature shall pass a law for holding a Convention; but if such majority do not so vote either year, then at the end of *years* from that time, a similar vote shall be taken, and so on every *years*, until the requisite majority shall vote two successive years for the call of a Convention.

11. *Resolved*, That writs of error, from the inferior courts to the Court of Appeals, should be allowed to the accused in criminal prosecutions.

12. *Resolved*, That any amendments to the present Constitution, which this Convention may adopt, shall be submitted to the qualified voters of this Commonwealth for approval, and if not approved by a majority of those who cast their votes, such amendments shall not take effect, but the present Constitution shall still remain in full force until changed according to its own provisions.

The resolutions having been read,

Mr. TURNER said, in offering these resolutions, I am not vain enough to expect that they will all meet the views of a majority of the Convention. They are thrown out merely as suggestions for the consideration of the Convention among other propositions that may be submitted. Indeed there are some of them that I have considerable doubt about myself. I intend to act here upon deliberation and not upon preconceived opinions. I have drawn them up with some attention, however, and I hope they may be received and such consideration given to them as may be deemed proper. It may be doubtful whether we ought to debate propositions of this sort until after the committees have

been appointed and have examined and reported upon them. But it appeared to me that it would be appropriate at this time to present the resolutions in order that the attention of members might be drawn to them, and that they might, at the proper time, be referred to the committee of the whole. The opinion has been expressed that it would be better to let the committees mature the different subjects which will be brought up for our deliberation before any opinions are expressed upon them in this body. On the other hand, it is said that it would be perfectly right and proper to discuss the great principles involved in these various propositions; but I have drawn up the resolutions and presented them at this time with the view that the attention of the Convention may be drawn to them. I hope they will be printed, and that they will come up at the proper time, and that they will be referred to the committee of the whole Convention in connection with the reports of the various committees.

The resolutions were laid upon the table, and were ordered to be printed.

#### DAILY JOURNAL.

Mr. WALLER submitted the following resolution:

*Resolved*, That the Printers to the Convention be, and they are hereby, directed to print six hundred copies of the Journal of the Convention.

Mr. HARDIN moved to amend by striking out "600" and leaving the blank to be filled hereafter.

The motion was agreed to, and the resolution was then laid on the table.

#### SEATS OF MEMBERS.

Mr. McHENRY offered the following resolution, and it was laid over, and made the special order after reading the Journal in the morning:

*Resolved*, That this Convention will now assign seats, by lot, in the following manner: The Secretary shall put the names of the members on separate papers, as near alike as may be, in a box, and proceed to draw them out, one at a time, shaking the box before every drawing, and each member shall, as his name is drawn, select his seat, and have a right to occupy the same during the session of the Convention.

#### DISCUSSION OF PROPOSITIONS.

Mr. DIXON offered the following resolution, and on the suggestion of Mr. Meriwether it was referred to the Committee on Rules:

*Resolved*, That no original resolution, offered to the Convention, proposing any amendments to the Constitution, shall be discussed on its merits, till it shall have been referred to the appropriate committee.

#### COMMITTEES.

Mr. CHAMBERS offered the following resolution, viz:

*Resolved*, That the people of the Commonwealth of Kentucky, in ordering and calling this Convention, desired not to abolish, but to alter and amend their existing State Constitution; and that, to enable the Convention to determine what amendments are required, it is expedient to appoint six committees, to consist of—



members each, to whom the appropriate divisions of the Constitution, with the amendments that may be offered to the same may be referred; and that the first of said committees be styled *The committee on the Legislative Department*; the second, *The committee on the Executive Department*; the third, *The committee on the Judicial Department*; the fourth, *The committee on Slavery*; the fifth, *The committee on General Provisions*; the sixth, *The committee on the mode of revising the Constitution*.

Mr. KAVANAUGH submitted the following as a substitute:

1. *Resolved*, That a committee of ten be raised to ascertain the number of standing committees necessary to facilitate the deliberations and business of the Convention; and that said committee report the same, together with a proper designation of each of said committees.

2. That, in order to form said committees, the delegates, collectively, from the counties of each congressional district of the State, shall select one of their own number as a member of said committee, and report such selection to-morrow morning.

On motion both propositions were laid upon the table and ordered to be printed:

Mr. THOMPSON submitted the following, of which the same disposition was made:

*Resolved*, That the preamble, and first article of the Constitution of this Commonwealth be referred to a committee of five members; that the second article thereof be referred to a like committee of five members; that the third article be referred to a like committee of five members; that the fourth article be referred to a committee of nine members; that the fifth article be referred to a committee of five members; that the sixth article be referred to a committee of five members; that the seventh article be referred to a committee of five members; that the eighth article be referred to a committee of five members; that the ninth article be referred to a committee of five members; that the tenth article be referred to a committee of five members; and that the schedule in said Constitution be referred to a like committee of five members; the members or said several committees to be appointed by the President: and that said several committees report to this Convention, for its action, such amendments as to them shall seem proper, to the several articles of the Constitution to them referred.

#### ANOTHER MEMBER.

Mr. MICHAEL L. STONER, from the counties of Cumberland and Clinton, appeared and took his seat.

#### ADMISSION OF A REPORTER.

Mr. PRESTON offered the following resolution:

*Resolved*, That H. M. McCarty, reporter for the Louisville Courier, be admitted to the floor of this Convention, and have the privilege of a reporter's desk.

He presumed there would be no inconvenience attending it, and he hoped the privilege would be extended to this gentleman.

Mr. C. A. WICKLIFFE. The subject of reporting the debates of this body, is one which has not yet attracted the attention of its members. It seems

however to have engaged the attention of the Legislature, by which the act for assembling this Convention was passed. How far this body will adopt what has been done by the Legislature, it is not for me to indicate. If the resolution be passed to admit this gentleman, every reporter from every paper in the State, who may present himself, will be entitled to the same privilege, and it is a subject which I think is worthy of a little consideration, how far this privilege ought to be extended, and how far this body will acquiesce in the course which the Legislature has pursued. I do not desire now to express any opinion as to the propriety of that legislative action. I supposed that the question would have been called for, and that there would ere now have been an expression of the body in regard to it. For one I may be permitted to say that I have no objection to that course. The object which I had in rising was to ask the gentleman to postpone this matter for a little, that members may see how far they will be inconvenienced by reporters' desks in this Hall. We may have conflicting reports in the different papers, and I think at least that we might take a few hours to reflect, because, if the privilege be conferred upon the individual whose application is before us, we must extend it to all others. Certainly we cannot make a distinction. Therefore I think it is a question which is worthy of a little reflection. I hope the gentleman will consent to let the resolution lie upon the table.

Mr. PRESTON. I would willingly consent to the proposition made by the gentleman from Nelson, (Mr. C. A. Wickliffe,) but I believe it will be useless and only take up the time of this House about a matter that is not of much importance at any time. I did not intend to present this resolution to-day to the interruption of any material business, and should have postponed it, but that I was afraid that to-morrow important matters would be brought up in committee of the whole, and that it might then be more inconvenient to present it. I know that in Congress a great many Reporters are admitted, there being thirty States of the Union interested in their proceedings, but so far from that being the case here, it would have been almost impossible to have obtained a Reporter, had it not been for the action of the Legislature. This proposition, however, is not to appoint a Reporter, or that he shall be paid by the State, but only that a Reporter, who proposes to report gratuitously, be admitted upon the floor. It cannot produce an inconvenience as the gentleman seems to apprehend. I certainly would be the last to desire to encumber or embarrass the Convention. Another thing has been alluded to by the gentleman, and it is the probability of having contradictory reports. We have an official report prepared by a very skilful Reporter appointed for us by the State. It is probable that no other may desire the privilege except two or three from our own State—perhaps from Maysville and one or two others—and no disadvantage can possibly arise from this arrangement; perhaps our debates may be more correctly presented, for no Reporter can keep his attention so constantly fixed that he may not be sometimes in error. I believe the House will sustain no inconvenience by giving the privilege to this

Reporter, nor do I believe that we shall be encumbered by numerous applicants for the same privilege, and I can see no reason why he should not be admitted; nor can I see any good reason for postponement of the question. It will take more time perhaps to-morrow than it would now. It is certainly more convenient to settle it now, I think, and therefore I must respectfully dissent from the proposition of my friend for its postponement.

The question was then taken on the resolution, and it was declared to be rejected.

Mr. PRESTON. Will it be permissible under the rules of the House to call for the yeas and nays.

The PRESIDENT remarked that it was now too late.

Mr. NUTTALL and Mr. CLARKE both rose, and as an act of courtesy to the gentleman from the city of Louisville, to afford him an opportunity to call for the yeas and nays, moved a reconsideration.

Mr. MERIWETHER. The suggestion which I am about to make will probably settle the matter. There can be no necessity for the admission of this Reporter, because by subscribing to the Daily Commonwealth, the Louisville Courier can obtain all the Reports as correctly as by having a Reporter here, and at as early a period, for the published official reports will reach Louisville by the same mail by which the communication of any Reporter can be forwarded. The gentleman, I think, is also mistaken as to the number of applications that we shall have for the same privilege, for I have already had three such applications made to myself.

Mr. BULLITT. I was one of those who opposed the proposition of the gentleman from Louisville. It seems to me that there is no necessity for granting the privilege in this case; and, besides, before voting to admit any one, we should consider, that if we extend it in one case, we must grant the same privilege to all applicants. I would grant the privilege to those of my own neighborhood sooner than any other, but I oppose the proposition on the ground that we cannot make a distinction.

Mr. TURNER. I believe I shall vote for this man's having this privilege though rather against my judgment, for I believe that the paper for which the privilege is asked is an emancipation paper, and I wish to let him tell all he can.

Mr. HARGIS briefly spoke in opposition.

Mr. CHAMBERS moved to lay the motion for reconsideration on the table.

Mr. PRESTON desired to have the yeas and nays on that motion.

Mr. CLARKE said he had made the motion for reconsideration to afford the gentleman from Louisville an opportunity to call for the yeas and nays.

Pending this motion the Convention adjourned.

THURSDAY, OCTOBER 4, 1849.

#### RULES OF ORDER.

Mr. MERIWETHER, by consent, from the committee on rules, reported a series of rules for the government of the Convention, which were read.

Mr. WILLIAMS submitted an amendment, and moved that the report and amendment be laid upon the table and printed.

Mr. MERIWETHER suggested that as there were but few changes from the rules of the Senate, it would be desirable to consider them now.

Mr. C. A. WICKLIFFE said he should vote for the printing. There were some of the rules which did not meet his approbation, and hence he wished to have an opportunity to examine them. He alluded particularly to a rule which provided for the reception of petitions and memorials. He did not, certainly, intend to invite the presentation of memorials and petitions, of a certain class, and for other reasons he preferred that the report and the amendment should be printed, and laid upon the tables of the members of the Convention.

The motion to postpone and print agreed to.

#### TRIBUNE FOR DEBATEES.

Mr. ROOT offered the following resolution:

*Resolved*, That the President of this Convention be requested to direct the Sergeant-at-Arms to place a table in front of the Clerk's table, for the use of the Delegates when they may address the Convention at length.

Mr. HARDIN said he would like to hear an explanation as to whereabouts the table was to be put, and how it was to be used—whether a member was to get upon the table. (Laughter.) As for himself, he could never get upon the table. (Renewed laughter.)

Mr. ROOT said if it were necessary to explain, that the honorable gentleman might comprehend the design of the resolution, he would state that it was mainly to accommodate the gentleman from Nelson himself, that he might have a stand placed in front when he wished to address the Convention, so that he might be distinctly heard, and that no word of his might fall without its effect upon the Convention. (Laughter.)

Mr. HARDIN replied that he did not intend to call forth any remarks; all he desired to know was, where the table was to be put, and how high it was to be.

Mr. ROOT replied that it was intended to be placed there—(pointing to the centre of the aisle.)

Mr. HARDIN said as to accommodating him, he was obliged to the gentleman from Campbell, but he did not want any such accommodation.—He presumed that it was intended to be in imitation of the plan of the French Convention—the bloody one under Robespierre, where they had to get upon a tribune. Anything in imitation of that, he did not wish to approach at all, or approximate to. He thought it better to lay it upon the table for the present, that the Convention might consider it.

The PRESIDENT ruled the resolution out of order without unanimous consent, and as objection was made it was not received.

#### JOURNAL AND DEBATES.

Mr. LINDSEY asked unanimous consent to take up the resolution offered yesterday, in relation to the printing of the Journal of the Convention, as follows:

*Resolved*, That the Printers to the Convention be, and they are hereby, directed to print—copies of the Journal of the Convention.

He suggested as a reason for immediate action, that he was advised by the Printers that they had now a large amount of type set up which it would be desirable to dispose of.

Consent was given, and the resolution was taken up for consideration.

Mr. LINDSEY then moved to amend the resolution by adding the words, "and ——— copies of the Debates of the Convention."

The amendment was agreed to.

Mr. MAYES moved to fill the blank in the resolution in relation to the Journal with "100," which he thought would be a sufficient number.

Mr. MERIWETHER said he thought there should be a copy placed in each County Clerk's office in the Commonwealth, and that would amount to one hundred. Then each member should have a copy, which would amount to two hundred. There would then be a bound volume to provide for each member to take home, which would dispose of three hundred, and fifty would be necessary to exchange with other States that were accustomed to exchange similar documents with us. He thought three hundred and fifty would not be more than sufficient. It might be perhaps proper that he should explain that he intended to follow this up with another proposition to supply each member of the Convention with a certain number of copies of the weekly papers published here, in order that they might send to their constituents papers containing information of the proceedings of the Convention.

Mr. C. A. WICKLIFFE suggested a larger number for the additional reason that the difference in cost between three hundred and fifty and five hundred copies, was a matter of small consequence in the item of expense. But fifty copies for exchanges would leave none for Libraries, Literary Institutions, and the different courts of higher jurisdiction; and again, there might be some new counties made in the State, increasing the number of County Clerks' offices, though he thought there should be some restriction on that branch of legislation. He therefore proposed that the blank should be filled with five hundred.

That motion was agreed to.

Mr. MERIWETHER moved that the blank in the resolution in relation to the Debates, be filled with the same number.

Mr. WALLER moved that the blank be filled with two thousand five hundred. The extra cost would be small, and this was a work that should be sent broad-cast throughout the land. They were all anxious that their proceedings should be known, and they ought to be in every public Library and circulated as generally as possible.

Mr. WILLIAMS thought it was a matter that should be first enquired about before they ordered so large a number as 2500 copies. He knew not what they should do with them.

Mr. MAYES was opposed to the amendment. If he could see any public good that would result from printing 2500 copies of the Debates of the Convention he would cheerfully vote for it. It was a matter worthy of consideration and reflection, and he would therefore move to postpone the further consideration of the subject until to-morrow.

The motion was not agreed to.

Mr. GARRARD enquired if it was intended to give each member the control of twenty five copies.

Mr. WALLER supposed the matter of disposing of the Debates could be attended to hereafter. He supposed that two copies would be sufficient for each member, ten to each county, some to the libraries in the State, and the remainder might remain in the library here to be exchanged with other States. It was the custom in the State of New York, each year, to give a copy of the Debates of their Convention to every new member of the Legislature; there, they were all anxious that the people should understand the law and the constitution. The safety of this country rested on the intelligence of the people, and nothing was so important as an understanding of our laws.

Mr. HARDIN would like to hear what each copy would cost. He supposed it would not be less than two dollars, and that would be \$5000. It was a matter of very little importance except as an item of expense. He supposed they should argue enough here to fill a book of a thousand pages, and, if they continued in the way they had started, perhaps two thousand, which would make two volumes, and these at \$2 a piece would cost \$10,000. Some antiquarian, perhaps, in years to come might look into them; though probably not. He would make no motion, but he would vote for 500 copies and not for 2500.

The question was then taken on the amendment, which was rejected.

The motion to fill the blank with 500 copies was then agreed to.

Mr. MERIWETHER then moved to amend the resolution so as to authorize the Secretary of the Convention to subscribe for ——— copies of the Weekly Commonwealth and Yeoman for the purpose of distribution.

Mr. GREY said he had a resolution on the same subject. It was as follows:

*Resolved*, That the Secretary be directed to furnish each member of the Convention with five copies of the Daily Commonwealth, containing the Debates and proceedings of the Convention, and five copies of the Weekly Commonwealth, and five copies of the Yeoman.

He said it was very desirable that they should have information of their proceedings communicated to the people, and this was the cheapest way in which it could be done. He presumed that all their constituents desired to see and know what was going on here, and what they were doing. He had fixed the number at five copies, but if gentlemen desired it, he had no objection to increase or diminish it, as would best suit their views. It was desirable that they should have some copies of the Daily Commonwealth, as it was the only paper that furnished full Debates and a full account of the proceedings of the Convention. The other papers would contain a synopsis of the proceedings and information that would be very acceptable to the people.

Mr. GHOLSON offered a substitute as follows:

*Resolved*, That a committee of five be appointed whose duty it shall be to ascertain on what terms the editors of the Commonwealth and Yeoman will furnish, each, to the members of

this Convention copies of each of their papers containing the proceedings of this body, for distribution among the good people of this Commonwealth.

He would remark that many of their constituents lived at a distance from the capitol and would not be benefited by a daily paper, as most of them had but weekly mails. The weekly paper would contain a condensed report, and perhaps all that was very material to be known, for a proper appreciation of what would be done here. It would cost much less, and he apprehended they would have a large item in the way of expenditure before they got through the business of the Convention.

Mr. MERIWETHER accepted the proposition of the gentleman from Christian.

A conversation ensued in which several members took part, which was terminated by the withdrawal of the several propositions to amend.

The question was then taken on the resolution, as amended, ordering 500 copies of the Journal and Debates, which was agreed to.

#### SEATS OF MEMBERS.

Mr. McHENRY called for the consideration of the special order, being the resolution which he offered yesterday, as follows:

*Resolved*, That this Convention will now assign seats, by lot, in the following manner: The Secretary shall put the names of the members on separate papers, as near alike as may be, in a box, and proceed to draw them out, one at a time, shaking the box before every drawing, and each member shall, as his name is drawn, select his seat, and have a right to occupy the same during the session of the Convention.

Mr. WOODSON offered the following as a substitute.

*Resolved*, That each Delegate be allowed to retain the seat he at present occupies during the residue of the session.

Mr. McHENRY called for the yeas and nays thereon.

Mr. GARRARD moved to lay the whole subject on the table.

Mr. McHENRY called for the yeas and nays on that motion; and being taken, they were, yeas 54, nays 43. So the whole subject was laid up on the table.

#### ADMISSION OF A REPORTER.

Mr. PRESTON called up the question pending at the adjournment yesterday, viz: the motion to lay upon the table the motion to reconsider the vote taken on his resolution to admit to the floor of the Convention a Reporter for the Louisville Courier, on which he had called for the yeas and nays.

The yeas and nays were taken and resulted thus—yeas 70, nays 27.

#### PROPOSITIONS TO AMEND.

Mr. DAVIS submitted the following resolution which he asked to have referred to the Committee of the whole and printed.

*Resolved*, That foreigners of the following descriptions and classes, only, shall be entitled to vote for any civil officer, or shall be eligible to any civil office, or place of trust or profit under the Commonwealth of Kentucky: 1. Those who, at the time of the adoption of this amended

Constitution, shall be naturalized citizens of the United States. 2. Those who, at the time of the adoption of this amended Constitution, shall have declared their purpose to become citizens of the United States, in conformity to the laws thereof, and who shall have become citizens. 3. Those who, twenty-one years previously thereto, shall have declared their purpose, according to the existing provisions of the laws of the United States, to become citizens thereof; and who then shall be citizens of the United States. 4. Minors, who shall have migrated with their parents, or parent, to the United States, twenty-one years after their names, ages, and a particular description of their persons, shall have been entered on the records of some court of record of the State of Kentucky, or some other of the United States: such foreigners, having also, in every case, the like qualifications of residence, and on all other points, that are required of native born citizens; and a properly authenticated copy of the record being in all cases required for the verification of the facts.

The question was taken and as the result appeared to be doubtful,

Mr. DAVIS called for the yeas and nays.

Several gentlemen expressed the opinion that courtesy required that the proposition should be printed for the convenience of members in its consideration, although some of them were not favorable to the principles which it involved.—After a brief conversation the motion was agreed to without a division.

Mr. KELLY offered the following, and moved that it be postponed and printed:

1. *Resolved*, That the Legislature shall sit every four years, and shall be confined in their session to sixty days: that the qualifications of members and electors be as at present.

2. That the offices of this Commonwealth be made elective; and that those who have the collection or disbursement of money be elected for two years; and those who have not, for four years.

3. That the Circuit Judges be reduced to twelve in number.

4. That the members of the County Courts be reduced in number in each county, and that the Justices thereof be districted, and elected by their districts.

5. That the Legislature shall not borrow money on the faith of the State without a direct vote of the people.

6. That officers guilty of misfeasance or malfeasance, shall be removed on indictment and trial by a petit jury, and a verdict of guilty.

7. That the Common School Fund shall be made inviolate.

8. That the House of Representatives consist of fifty, and the Senate of twenty-five members.

9. That taxation for county purposes shall be on the *ad valorem* principle.

10. That elections be held in March or April, and continue one day.

11. That officers, after their election, shall be required to make oath to support the Constitution of the United States, and of Kentucky, and to faithfully discharge their official duty; and, also, that they, in the obtaining of office, have not directly or indirectly, by themselves or oth-

ers, with money, property, or any other commodity, attempted to corrupt or influence any electors in their district.

12. That persons convicted of any offence, criminal or penal, shall have the right of appeal to the Superior Courts.

13. That the power to divorce shall reside alone in the Courts of Justice.

14. That the Constitution formed by this Convention, be voted on directly by the people, and if a majority vote against the same, that the present Constitution be in force.

15. That all voting shall be *viva voce*, and no property qualification or religious test prescribed.

16. That a constitutional limitation be prescribed to suits for land.

17. That no slave shall be emancipated by deed, or last will, without removal from the Union.

18. That every citizen of this Commonwealth may bring from other States, and introduce slaves at his own will.

19. That the Constitution made by this body, be amended as required in the present Constitution.

Mr. ROOT offered the following as an amendment:

*Resolved*, That a committee be appointed, consisting of five, whose duty it shall be to report to this Convention the best mode of securing the present Common School Fund, as well as its views in reference to enlarging the same.

Mr. KELLY accepted the amendment, and they were postponed and ordered to be printed.

#### CHAPLAINS.

On the motion of Mr. TURNER, it was

*Resolved*, That the proceedings of this Convention be opened every morning, at the stated hour of meeting, by prayer to the Throne of Grace, and that the Ministers alternately, of the various denominations of christians, resident in Frankfort, be invited by the Secretary of this Convention, to perform the service.

#### NEWSPAPERS.

Mr. GREY renewed his resolution, heretofore offered as an amendment, and then withdrawn, in these words:

*Resolved*, That the Secretary be directed to furnish each member of the Convention with five copies of the Daily Commonwealth, containing the debates and proceedings of the Convention, five copies of the Weekly Commonwealth, and five copies of the Yeoman.

Mr. GHOLSON proposed as a substitute, the following:

*Resolved*, That a committee of five be appointed, whose duty it shall be to ascertain on what terms the editors of the Commonwealth and Yeoman will furnish to the members of the Convention — copies, each, of their papers, containing the proceedings of this body, for distribution among the good people of this Commonwealth.

Mr. A. K. MARSHALL proposed to refer the whole subject to a select committee.

The question was taken on that motion, and it was agreed to.

The PRESIDENT named the following gentlemen as the select committee: Messrs. Meriwether, Grey, and Gholson.

#### BUSINESS OF THE DAY.

The propositions submitted yesterday, by Mr. C. A. Wickliffe, then came up in their order, for consideration, but on his motion they were passed over informally.

The propositions submitted by Messrs. Turner, Chambers, Thompson and others, then came up, in their order, and were disposed of in the same manner.

The Convention then adjourned.

#### FRIDAY, OCTOBER 5, 1849.

The proceedings of the Convention were this day opened with prayer by the Rev. STUART ROBINSON, of the Presbyterian Church.

#### THE PURCHASE OF NEWSPAPERS.

Mr. MERIWETHER. Mr. President: The committee to whom was referred the resolutions in respect to the purchase of certain newspapers, are prepared to report, and as this is the day for the printing of one of the papers, if it be the pleasure of the Convention I will now make it. The committee report a substitute for the two resolutions, as follows:

*Resolved*, That the Public Printers, appointed to do the printing of this Convention, be directed to supply each member, for distribution, with as many copies of either the weekly or daily papers published in Frankfort, as he may direct; *Provided*, That the amount furnished to each member shall not exceed the cost of twenty copies of a daily, or sixty copies of a weekly paper.

It is possible some explanation as to the cost may be necessary. Upon a conference with the Editors, we were informed that the daily paper can be furnished for \$1 50 during the session, and the weekly paper for fifty cents. That resolution will permit each member to send sixty weekly, or twenty daily papers, or as many of each as he may prefer, and he will select his own paper, at a cost of thirty dollars.

Mr. HARDIN. I will enquire of the honorable gentleman what he supposes will be the cost.

Mr. MERIWETHER. If necessary, I would remark, that the cost for each member will be thirty dollars. Each member will be requested to hand to the Editors, the names of those persons to whom he would have the paper sent, and the papers will be enveloped and sent at a cost of fifty cents for the weekly, and one dollar and fifty cents for the daily paper during the session.

Mr. HARDIN. That, then, will be \$3,000 for newspapers, and perhaps the members will not send off one in twenty. I do not think we should give that amount of money, and I would move that the amount be limited to a sum not exceeding ten dollars for each member.

Mr. MERIWETHER. I would say to my friend from Nelson, that in order to make it equal to all, the proportion of the weekly or daily papers should be specified. Twenty one weekly papers will be equal to seven daily. I would remark, that I am not directly interested in this resolution, for I live in a county where there are six or eight papers published, so that

my constituents are provided for. It was for the advantage of those living in remote portions of the State who are not so fortunately situated as I happen to be, that I advocated this resolution. I think myself, that the public mind should be informed of what we do here as we proceed.

Mr. HARDIN. We know as a matter of fact, that the proceedings of this body will be published in every paper in Kentucky. A practice has been growing up here, and in the Government of the United States, I will not say it is at the suggestion of the gentlemen who print, and are interested, but our expenses in public printing are increasing every year. They are already excessive in this Commonwealth, and we are here proposing to add \$3,000 for disseminating information which the people will all get long before they get our papers. Besides, each gentleman who sends a paper, will have to pay three cents postage, for we have not the privilege of franking.

Mr. MERIWETHER. Will the gentleman pardon me. The individuals who receive the papers will pay the postage, for they will be sent from the publishing office.

Mr. HARDIN. I understand that. But they will get information of the proceedings of this Convention in other papers before they get those that we may send, and therefore they will not want them when they come. I care nothing about the expense. It is a small amount, but our expenditures are running up very much, and in truth and in fact our expenses have run up very fast during the last 20 years. Until the year 1834, the whole revenue of the country, collected by the sheriff, was no more than \$74,000; but it has now increased to the amount of \$562,000. I intend at some future day to exhibit a table of the expenditures, and the amount of revenue from taxes, each year since the operation of the government, that the people may see the profligate and prodigal manner in which their money has been disbursed. Now we are asked to expend \$3,000 for daily papers. The very resolution we voted yesterday, will cost the State \$3,000 or \$4,000, and before we quit, I shall not be astonished if the printing for the Convention should run up to ten, fifteen, or twenty thousand dollars. If it were necessary for the information of the people, I would not hesitate a moment, but we all know that in truth and fact, our proceedings will be read by the people long before we can furnish them with these papers. I will vote for the sum of ten dollars, and beg leave to call for the yeas and nays on the motion.

Mr. GHOLSON. With all imaginable deference for the opinions of my respected friend, I beg leave to correct him somewhat. The idea of this thing did not originate with the printers.—If any honor attaches to the measure so far as it relates to the members of this body, I claim that honor. I first mentioned it to the printers. We had talked this thing over before I left home, and I promised my constituents that I would make some such motion as this for their particular benefit in common with the residue of the State. This is a question in which the people feel an interest paramount to any other proposition that has excited the public attention for many years. We are not in my county as much of a newspaper reading people as the constitu-

ency of many gentlemen. Many of us are situated at a distance from post-offices, but we had made arrangements in advance for the dissemination of this information. I am in favor of a larger number than that recommended by the Committee, for we owe it to our constituents that they should be fully advised of, and have before them the reasons why we do one particular thing and refuse to do another. It is contemplated that the result of our labors shall be referred to the people for their acceptance or rejection, early in the season. Is it not important, then, that they should be fully advised, and entirely comprehend the subject on which they are to vote? This thing, I repeat, is urged not for the Printers' benefit, but for that of the people, and were I to suggest any alteration, it would be to increase the number to a hundred copies instead of sixty.

Mr. HARDIN. I am willing the gentleman should have the honor of the paternity of this resolution, and I will not give it to the printers. I conceive it to be an unnecessary expense, for very few will read the papers we send. Congress, never allowed, since I had an acquaintance with that body, more than thirty dollars for papers, sometimes during a session of eight months; but we are here proposing to incur an expense of \$3,000, for what I consider a very useless thing. I will only remark again, that my object is not to prevent information, but that we may act with a prudent and saving hand. It is indispensably necessary for this government that we should to a certain extent, retrench our expenditures.—There is not an instance known in the history of the world, where a government, without resorting to first principles, ever retraced its steps in point of expenditure. In monarchical, imperial, and aristocratical governments, heavy expenditures have repeatedly aided in producing revolutions. In republics we can only retrace our steps by recurring to first principles. We incurred yesterday an expense, I presume, of at least \$2,000 or \$2,500, and this morning it is proposed to add \$3,000. I hope we shall withhold no information, none at all, but I do think that ten dollars is enough to be appropriated to each member for daily papers.

Mr. BULLITT. On this subject I agree with my colleague, (Mr. Meriwether.) We, in our neighborhood, have an abundance of newspapers, but many are very differently circumstanced—many of the other counties have no paper at all. It is generally conceded, I imagine, that the Constitution we may frame, will be laid before the people for approval or rejection, and it becomes therefore a matter of great importance that they should be well informed of the daily progress which we make; and certainly this is the only mode by which this information can be extended to many counties in the State. In this government an intelligent public opinion, is the foundation on which it rests, and therefore the expense of a few dollars is scarcely worthy of consideration. A matter of \$3,000 is not for a moment to be taken into consideration when we view the great importance of the people being enlightened on this subject, before they act in reference to it. Where then is the man who will consider the paltry sum of \$3,000 to the State of Kentucky compared with the ob-



ject in view? As I before remarked, the constituents I represent have but little or no interest in this resolution. We have five or six daily papers at our doors, but I consider it my duty to sustain this motion, for the benefit of the State at large.

Mr. GREY. I was very sorry to hear my friend from Nelson offer the objections he has made to this resolution, and it seems to me that the only objection, which the gentleman seems to interpose, of any importance whatever, has no foundation in fact. He says, if you pass this resolution, and send out the papers to the different counties in the State, you do not afford the citizens an opportunity of receiving the information until long after they have acquired it from other sources. That is the only avowed objection of the gentleman to the passage of the resolution, and I ask you if it is true? How are they to get information, unless telegraphic wires be extended to each citizen of the Commonwealth. He certainly cannot get it sooner than through the daily paper published here, transmitted by mail to each individual. That is the most expeditious manner of disseminating information that I can conceive of. The gentleman seems anxious that this information shall be extended throughout the community, but he thinks that his constituents will read through the daily papers, all the information. His constituents may be more favorably situated than the constituency of others, but I ask you if the great body of the constituency of this assembly will not fail to receive this information, unless some plan of this sort be adopted. I would send them to different neighborhoods, and to persons not in the habit of taking papers, so as to disseminate information of what is doing here among the people as much as possible. I think a less number than that proposed would be perfectly useless. What good would it do? Each member here representing from 1,000 to 1,500 voters—to circulate less than sixty daily papers among that number—what good will it do? It seems to me a less number will be of no value; and I think if the gentleman wants to go in for retrenchment and saving of expense, he ought to commence at some other point. I believe the dissemination of information among the people is a matter of which they would never complain. What is the sum of \$3,000 in comparison with the intelligence the people will receive from the circulation of these papers throughout the State. I hope the amendment will be voted down, and the resolution, as proposed, be adopted.

Mr. MACHEN. Coming from a county distant, from the Seat of Government as well as from Louisville, where information is disseminated directly amongst the people, I perhaps feel more interest than my friend from Nelson in the passage of the resolution. I know that he is mistaken, so far as my constituents are concerned, in regard to the facility with which they will receive information of what we are here doing.—I feel that it is a duty which will be acceptable to them that I shall render here in voting for the adoption of the largest number, even though it exceed that which the committee have presented for our consideration. There are not more than 5 or 6 copies of the Commonwealth that go to my town, and perhaps not a single copy of the

Yeoman. How then are my constituents to receive weekly intelligence of what we are here transacting in any other way than that proposed? I am for economy and retrenchment of the public funds as much as possible, but I do not consider it any economy to withhold from our constituents information of what we are doing here, intended for their good. I hope the resolution will be adopted with the largest number.

Mr. NESBITT. I have but two or three words to say. I represent about 2000 constituents, and if the question were put to them, whether they would vote that 60 men of my county should have sixty papers sent to them, paid for out of the Treasury of the Commonwealth of Kentucky, I am satisfied that not ten votes would be given for it. Suppose we take them, it would be necessary to send the whole series to the same persons or they would be disconnected, and hence, but about 60 men of the county would receive a paper for nothing during the whole session, and the balance of the 2000 that I represent will bear the expense. I do not believe it would meet with their approbation. I have no objection, none in the world, that the people should have information, and I believe that when they want it they are able to pay for it and will do so.—There are some 300 papers taken in my county, and I have no doubt in the world that every single man there who desires to know what we are doing, from the newspapers published in this town, will send his money here and pay for them. I do not think they want to have a gratuity and shall vote against the whole affair.

Mr. TALBOTT. I presume the question would have but one side if put in such a form that we should be called upon to say whether we are willing that the people should or should not have information. Then there would be only one question and one vote upon it; but the only question here is, is this the best form of attaining that end? I respect all that comes from my friend from Nelson (Mr. Hardin) from his great talent and experience. I shall vote for the smallest number. In voting for the diffusion of information, I should prefer the proposition of the gentleman from Woodford (Mr. Waller.) I would rather have the deliberations of this body in a more compact and tangible form. I would rather increase the publication of the Debates and Journals, and when this convention adjourns and the people are to decide upon the new Constitution, let them have the Debates to read. It seems to me that very many of the daily and the weekly papers distributed in the way proposed would never reach the people. I am willing at all times and under all circumstances to vote for the largest possible amount when the object is to educate and enlighten the people, but it seems to me that this is not the best way to disseminate the information. I shall therefore vote for the proposition of my friend from Nelson.

Mr. HARDIN. On the question about to be taken, I call for the yeas and nays.

Mr. MERIWETHER. It may be desirable that each member shall know what the cost will be, and upon an accurate calculation I think the amount may be stated at  $4\frac{3}{4}$  cents of tax upon each legal voter of this Commonwealth.

Mr. BROWN. Before I vote on the amendment I desire to say a word or two, and it is with

some reluctance that I say anything. I do not expect to participate much in the debates or discussions of this convention, but I desire to represent my action by my votes to my constituents. I shall vote for the amendment of the gentleman from Nelson, and then against the adoption of the entire resolution. This resolution will not accomplish the purpose which it professes to have in view—the dissemination of intelligence among the people. In my county there are some 2500 voters, and if you give to each member 10 or 20 copies, to whom are they to be sent? Each delegate will select perhaps that number among the people of his county; these papers will be sent to them, and their reading will be confined pretty much to them; and it would not be sending intelligence therefore to the people generally, so that the resolution would not accomplish the object designed. If it were to disseminate intelligence to the people generally, I should be in favor of it; but if delegates desire to send papers to their constituents or favorites, let them subscribe for them. I am opposed to their doing it at the expense of the State.

Mr. MARTIN P. MARSHALL. I wish to offer an additional suggestion, with all respect for my friend from Nelson. If ever there was a time in the history of Kentucky, that required the existence amongst us of a healthy, sound, sober, public sentiment, that crisis is now approaching, when the Constitution which we shall make shall be presented to the people. We know that by the terms of our Constitution, it is necessary that we should go through a probation in regard to the collection of public sentiment, whether the Constitution shall be submitted to them, or amendments thereof. But the time has come when the whole Constitution must be submitted to them—not whether any amendment suggested shall be put in it, but whether the whole Constitution, after it has undergone the revision of this body, shall be adopted or rejected by the people at large. I consider that a most important question, and requiring the action of a sound, intelligent public sentiment. In view of that, I am prepared to vote for every proposition to extend light and information among the people at large. This is one mode of doing it. The people will not have more than six months from this time, before they are called upon to decide whether they will reject or adopt your Constitution. This is a short period, and I consider it highly important that they should be informed as to the progress of the labors of this Convention, for the purpose of creating among them a sound public sentiment. I therefore feel disposed to vote for every thing that tends to disseminate information. This Constitution is going to produce a great change in our manner of government. It is to run in opposition to many cherished opinions, and must be considered by the people at their fire-sides, in order that there may arise therefrom a wholesome public sentiment. The cost of \$3,000 or \$30,000 is as nothing when you look to the good resulting from giving public sentiment a right direction.

Mr. MERIWETHER. I think it always best for a man when he ascertains that he has committed an error, at once to correct it. I rise to correct a great error that I have made. The ac-

tual cost of these papers, to each voter, will be two and one seventh cents instead of four and three quarters, as I before stated. (Laughter.)

Mr. T. J. HOOD. I concur in the suggestion that there would be but one voice in this body as to the propriety of furnishing the people with correct information of our proceedings, so far as it can be done without incurring too extravagant an expenditure. The objection of the gentleman from Boyle (Mr. Talbott) is, that he does not regard this as the best method, and I request the gentleman to embody his proposition in the shape of a substitute or amendment, and I will most cheerfully adopt it. In the absence of any such amendment, I shall vote for the proposition for the largest number.

Mr. THOMPSON. I shall vote for the amendment of the gentleman from Nelson. It is but a few years since that the taxation of the State was but six cents on one hundred dollars; it is now in my county twenty two cents. The object of the mover of the resolution and of the mover of the amendment is to disseminate information among the people. This is very well. Suppose that the original resolution passes, and I take twenty copies of the Daily Commonwealth, and these twenty I send to twenty men of my county. In all probability there will not be forty men in the county who will ever see those papers. I think it is much more important that the people should be informed of what we have done after we have finished our labors than of what we have said while we were performing it. My object will be to have a copy of the amended Constitution printed for each voter in the State. Let provision be made by the Convention to disseminate these copies of the amended Constitution, so that each voter before he comes to the poll to vote, shall have had a copy, and this will give him all the necessary information as to what we have done. By these means he will know what we have done and not what we have said in doing it.

Mr. ROGERS. Upon this resolution to furnish \$3,000 worth of papers, I shall vote with the respected gentleman from Nelson. The number is so small, and inadequate for the purpose of giving information to the citizens of this Commonwealth, that I shall not vote for the appropriation for any at all. I represent a very large county, of near 3,000 voters; of them I do not know one half, and were you to furnish me gratuitously at the expense of the State with papers for all of them, I should have to send home and get the poll book in order to know to whom to send them. As remarked by my friend from Nelson our revenue has increased very rapidly, and I promised my people during the canvass, that my voice should be raised and my action directed at all times to endeavor to frame a Constitution to render our Government of a form that will be cheaply administered, and we not be trampled upon by taxation. The only way to do that is, to cut all off. If we begin to say this is a small item of only \$3,000 to-day, it will be \$3,000 to-morrow, and perhaps \$6,000 the next day, until there is no end to the matter. Look at us now, and it will be seen that, in some ten or twelve years our revenue has increased to some \$500,000, and it is still increasing. I shall vote for the amendment first, and then I



shall vote against the whole proposition. If we want to send papers to the people, we can pay for them ourselves. We receive pay here, and after paying our board, we cannot do better than to send the balance to our constituents.

Mr. MAYES. I will say one word. It seems to me that we are in a great measure forgetting one of the important reasons operating upon the people by which they were induced to call this Convention. One of the great complaints of the county that I represent was the extravagance of the Legislature in its appropriations. I fear if we go on passing resolutions for the expenditure of money as we have commenced, we shall exceed the extravagance of any Legislature that has gone before us. I agree with the gentleman from Nelson, that the passage of this resolution will not advance or promote the object it seems to have in view—that is the dissemination among the people of information of the action of the Convention in reference to the formation of a new Constitution. It is said that we should subscribe for papers to be scattered among the people that their minds may be informed and enlightened as to the Constitution after it has been framed by the Convention. If a gentleman will not subscribe for a paper himself, I hold it as true, that if you subscribe for it and send it to him, he will not read it even when he has it. My friend from Ballard and McCracken says that this thing was talked over in his county; mine is adjoining, and yet nothing was said there concerning it. I do not want \$3,000 nor any other sum voted for papers. Such as desire to read will subscribe for them, and they will read them if they are willing to pay their money for the privilege of reading them. They do not expect the Convention to vote \$3,000 or any other sum to scatter papers through the country to inform them what was done here to day or yesterday. Take up the proceedings of this Convention yesterday, and I ask you if there is any thing reported that will enlighten the public mind as to any principle being acted upon here bearing on the formation of a new Constitution. And there will be nothing in any paper that will enlighten any mind as to going for or against any thing in the Constitution. I shall vote for the amendment of the gentleman from Nelson, and then against the whole resolution.

Mr. TURNER. As a great many gentlemen have said they will vote against this proposition, with a view of testing its strength, and to save time, I move to lay the amendment and the resolution on the table, and I call for the yeas and nays thereon.

Mr. MACHEN. Before the vote is taken, I ask the indulgence of the House merely to reply to the remarks which fell from a gentleman who preceded me. I am for economy, but we are here spending the money for the people, and I ask if we have as yet spent a dollar that is to go for their benefit. Members may differ with me in opinion on the subject, but in my view all our printing heretofore has not resulted and will not result to the good of the people. Here is the first proposition introduced, to disseminate throughout the country the proceedings of this Convention, and the debates, discussions, and conclusions at which we arrive here. Now is it not a matter of great importance that the arguments, views, and feel-

ings which have actuated the members of this Convention should be spread abroad throughout the land, that the people may weigh the arguments here advanced, and perhaps in due time arrive at the same conclusions to which this body has arrived? My people, I am satisfied, without the expression of any opinion from them, will justify me in attempting to give them this information. I stand here without instruction from them, but I believe that I shall maintain their will and act in accordance with their pleasure in thus extending this information to them. As I said before, this is the first proposition as yet introduced to spread intelligence before them. I admit that when they look over the paper containing the report of our proceedings yesterday our constituents will feel but little interest in what we are doing; but at the same time I am willing that they shall know how we are employed. I trust the time will soon come when our debates and proceedings will have a deeper interest with the people, and then I want them to have the privilege of reading them. I feel justified, therefore, in voting for this appropriation that they may have this intelligence, and I trust this House will not entertain the motion just made.

The question was then taken on the motion to lay on the table, and it was negatived; yeas, 43; nays, 53.

The question then recurred on the amendment of Mr. HARDIN, and it was adopted; yeas, 57; nays 38.

Mr. T. J. HOOD. The number of papers that will be furnished under the amendment will be so small, that it will afford those who represent large counties, but a very limited means of disseminating information among their constituents. As the matter of expense seemed to be the main objection, in the hope that some gentleman may devise a cheaper, and at the same time, a better mode to attain the desired end, I will move that the further consideration of the subject be postponed until to-morrow.

This motion, the question being then taken, was negatived.

The question was then taken by yeas and nays on the resolution, as amended, and it was rejected, yeas, 40; nays, 56.

#### A CONTESTED SEAT.

Mr. HARDIN. I have received a communication from the county of Casey, signed by several gentlemen, and though I do not desire to have any thing to do with the subject, I suppose somebody must have. They have requested me to present the communication to the Convention, and to have an enquiry made into the election of the delegate from the county of Casey. I have heard the suggestions of my colleague and my friend from Madison, and I agree with both of them that if their statements are true, and I have no doubt of it, the gentleman present from that county is entitled to his seat. Yet it is due to those who sent this communication to me, that a committee should make an enquiry into the matter. The journals read that the Convention received the last certificate of the sheriff, and I agree with the gentleman from Madison, (Mr. Turner,) that the officer had no right to make it; and I agree also with that gentleman that no man after

he had voted on the first or second day of the election, had a right to come back on the third day and fill out his vote. A voter has a right to abandon the right of suffrage altogether, or to vote for a portion of the offices, but he has no right to come back and fill up a deficient vote. That was the decision in the case of the contested election of Williams and Mason. If it would be satisfactory to the gentlemen, I will move to refer the subject to a select committee. I have no doubt my friend from Casey, (Mr. Coffey,) is entitled to his seat, but his right should be clear and undoubted. We cannot act on a sheriff's certificate given two months afterwards.

The communication was then read.

Mr. HARGIS. This is a matter about which I know but little, but I imagine that the Convention does not fully understand all the circumstances in relation to the election in Casey county. It is questionable whether there is any law by which a contested seat, or the right to a seat in this body, can be investigated. I certainly have doubts on the subject, and in the absence of any certainty in regard to it, from the best information we have in relation to this election, it is to be presumed that the gentleman has come here by the consent and will of the majority of the voters of the county of Casey. When the gentleman presented his certificate, and claimed his seat, no one disputed his right to it, provided the sheriff had done his duty. There was no objection, then, that I have heard, to his having received really a majority of the votes of the qualified voters of Casey. That seemed to be conceded, and the only objection made by the gentleman from Madison, was, that the sheriff, perhaps, had not performed his duty. The voters of Casey, it was fair to presume, considered the gentleman entitled to his seat, or they would, I imagine, have taken some legal course in reference thereto, under the laws in relation to contested seats in the Legislature.—Nothing of the kind has been done, and the gentleman's claim to the seat appears to have been fully acquiesced in by the people of Casey.—When the vote was taken on the question whether the Delegate from Casey should come forward and take his seat, there was hardly an objection raised, and the Convention appeared to be almost unanimous in conceding that he was legally, and fairly, and honorably entitled to a seat in this body. The gentleman accordingly came to the book, was sworn, and took his seat among us. Would it be right now, and in accordance with parliamentary usage, and the habits, customs, and dignity of bodies of this character, after doing what this Convention has done—after we have, as we supposed, taken into consideration all the circumstances we could get possession of in relation to this election—would it seem right and reasonable that we should take barely the suggestions of a few gentlemen from some place—we do not know whether from Casey, or in fact anywhere else, for we can know nothing about the names attached to that paper—and go on and interrupt the business of the Convention by the appointment of a select committee, to enquire into the legal right of the gentleman to his seat? Such a proceeding, it appears to me, would be rather useless. I acknowl-

edge my inexperience in parliamentary usage, but it does seem to me that common sense, and everything else that ought to govern such a body as this Convention, requires that the gentleman should retain his seat without interruption.

Mr. HARDIN. My honorable friend last up did not understand me, I presume. These are not fictitious names, I presume, and the gentleman from Casey can answer whether there are any such gentlemen. I have never heard of them, before I received their communication through the post office to-day. They claim an investigation into the subject, and if they are voters in Casey county, it is due to them that they should have that investigation, and the matter not be laid on the table. We owe it to ourselves to judge of the qualification and election of Delegates here. As I said before, I concur with the gentleman from Madison, in understanding the law to provide that a man who voted on Monday or Tuesday, and did not fill out his vote for Delegate, has no right to come back on Wednesday and fill it out. In this case, I understand that four gentlemen who abandoned the right to vote on the first day, came back on the last day and voted; and that made the result a tie. If that was the case—and I have no doubt of the fact—the gentleman is entitled to his seat; but it was due to all concerned that the matter should be reported upon by a committee. Another reason is, that I protest against the power of the sheriff, after he has made one return, some months after to give another. His official duties ceased in the first instance, and he had no right to give another. I desire the committee to examine and report on these facts; and, for one, I will vote that no man who did not give a full vote on Monday, has a right to come back and fill it out on Wednesday. I had the good, or bad fortune—in the case of the contested seat of Williams and Mason—to hold a seat in the Senate, and I voted for the report of the committee; and, in fact, drew up every word of it, which distinctly laid down this principle. I think the gentleman entitled to his seat, but we owe it to the people to enquire about it, and I think the gentleman himself should consent to it, and let the fact appear on the Journals. I am a thousand times obliged to my friend over the way (Mr. Hargis,) for the information he has given; but perhaps he has not as much experience in parliamentary usage as some of us. I have been about half of my life in parliamentary bodies, but never having expected any elevation to the chair of speaker, or even that of chairman of committee of the whole, I know as little about parliamentary rules as almost any other man.—I hope the committee will be raised, and the facts reported upon, although not for a moment doubting that the gentleman will retain his seat.

Mr. COFFEY. I not only concur with my friend from Nelson, but I ask myself the appointment of a committee to examine into this case. Let them take the whole of the papers and certificates before them, and report the truth in regard to the matter. I discover that many members of the House are only in possession of a part of the facts. Frequent reference has been made to the case as if these four votes improperly cast, alone authorized me to come here. But there were other votes in my favor. I

wish the papers and evidence, and the written contract between myself and my worthy competitor also to be fully examined and reported upon. I am not ambitious to stand here improperly. When I occupy a seat in any body I wish to do it lawfully and honorably. I desire to be here independently, and without leaning on any man, and therefore I desire that this committee shall be raised.

The subject was then referred to a select committee, as proposed by the gentleman from Nelson.

The PRESIDENT named the following gentlemen as the committee, Messrs. Hardin, Turner, and Clarke.

#### PROPOSITIONS TO AMEND.

Mr. DIXON offered the following, which on his motion was postponed and ordered to be printed.

*Resolved*, That the judicial officers of the State of Kentucky should be elected by the people; but, to avoid the exercise of any improper influence over the Judges, in the discharge of their official duties, by those who may have taken part in their elections, it is expedient to incorporate into the Constitution a provision, requiring the judges, living in two adjoining districts, to preside alternately in each of the Courts of such districts.

Mr. ROOT submitted the following proposition, which on his motion was postponed, referred to the committee of the whole, and ordered to be printed.

1. *Resolved*, That any inhabitant of this State who shall hereafter be engaged in a duel, either as principal or accessory, shall forever be disqualified as an elector, and from holding any office under the Constitution and laws of this State; and may be punished in such other manner as shall be prescribed by law.

2. *Resolved*, That the General Assembly shall not, in any manner, create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with any previous debts or liabilities, exceed the sum of        dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein; which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due; and also to pay and discharge the principal of such debt or liability within        years from the time of the contracting thereof; and shall be irrevocable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people, and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one is published therein, throughout the State for        months preceding the election at which it is submitted to the people.

Mr. C. A. WICKLIFFE submitted the following, which was ordered to be printed.

*Resolved*, That it is the deliberate and fixed opinion of this Convention, that no provision or amendment, which shall have the effect to restrict the right of free and equal suffrage, as it now exists, or to change the conditions by which it may be now acquired, according to the Constitution of Kentucky, ought to be inserted in any Constitution which may be proclaimed by this Convention.

Mr. DIXON offered the following as a substitute for the proposition of Mr. Davis, in relation to naturalization.

WHEREAS, The people of the United States, in the 1st article and 8th section of the Federal Constitution, have given to Congress the exclusive power to establish a uniform rule of naturalization; and whereas, it was contemplated by the framers of the Constitution of the United States, that the citizen naturalized should, in all respects, touching the right of suffrage, be placed on an equal footing with the native born citizen. Therefore,

*Resolved*, That it would be inexpedient to incorporate into the Constitution of Kentucky, any principle whereby any invidious distinction should be made in favor of the native born over the naturalized citizen, in the exercise of the right of suffrage.

Mr. DAVIS. I will merely say to the gentleman in regard to these propositions, that when the time comes for their consideration, let them be taken up in their order, and then

"Lay on Macduff."

Mr. DIXON. I will only say to the gentleman that when the time comes Macduff will be in his place.

Mr. C. A. WICKLIFFE. I have only to say that wherever Macduff or Macbeth may be, a Kentucky citizen will be in his place.

Mr. GHOLSON offered the following resolutions, which were postponed and ordered to be printed, viz:

*Resolved*, That special pleading, in all Courts of Justice in this Commonwealth, should be abolished; that a speedy and impartial trial by a jury of the vicinage, upon the merits of his case, should be secured to every citizen.

*Resolved*, That, to this end, Chancery Courts should be abolished.

*Resolved*, That a constitutional provision, which shall (within a reasonable time) quiet the titles of the occupants of lands, as to the adverse claims of all persons not laboring under some legal disability, is indispensably necessary to the well-being and prosperity of the good citizens of this Commonwealth.

*Resolved*, That the jurisdiction of Justices of the Peace should be increased to        dollars.

*Resolved*, That it is expedient to lay off the State of Kentucky into four districts, in each of which the Appellate Court shall hold two terms annually.

*Resolved*, That the concurrence of a majority of the Appellate Judges should be necessary to a reversal of the opinion of an inferior tribunal.

Mr. CHAMBERS offered the following which were ordered to be printed and made the order of the day for to-morrow:

1. *Resolved*, That no part of the present Constitution of Kentucky, nor of any proposed amendment thereto, shall be referred to any committee,

other than the committee of the whole, until the same has been considered and approved by the Convention as proper to be inserted in, and made a part of, the new or amended Constitution.

2. *Resolved*, That from and after the 7th instant, the Convention will hold a morning and an evening session each day, meeting for the former at — o'clock, A. M., and for the latter at — o'clock, P. M.

3. *Resolved*, That, until otherwise ordered, the morning sessions of the Convention shall be devoted to hearing, receiving, and referring such portions of the existing Constitution as may be deemed worthy of re-adoption, and of amendments to the same, the reports of committees, &c., and that immediately on assembling in the afternoon, the Convention will go into committee of the whole upon such matters as may have been referred to it, and so continue until adjournment.

#### RULES OF ORDER.

On the motion of Mr. MERIWETHER, the Convention proceeded to the consideration of the report of the select committee of a series of rules for the government of the Convention.

The 1st 2d 3d and 4th rules were read and passed without amendment.

The 5th was amended verbally by the substitution of the word *may* for *shall*, so as to provide that "the President *may* examine and correct the journal before it is read."

The 6th rule being under consideration in these words:

"6. He shall have the right to name any member to perform the duties of the Chair but such substitution shall not extend beyond a day, or over one adjournment; and when not occupying the Chair, he may submit propositions and participate in debate."

Mr. TURNER moved to strike out the words, "and when not occupying the chair, he may submit propositions and participate in debate."—He said, I make this motion because it is giving a power to the President, and a right that is without precedent, as far as I know and believe, in any deliberative body in the United States, either of Church or State. It is very improper, according to my notion of the duties of a presiding officer. A presiding officer ought to understand thoroughly, the rules of the body over which he presides, and he ought to understand parliamentary law. It is his duty to be well versed in these, and to pay more attention to the duties of the chair than to any other. Our presiding officer, for whose appointment I myself voted, I have no doubt, is well versed in the duties belonging to his station, but like many individuals in his position, he is, I apprehend, a little rusty in a good many things. I make this remark, not as being applicable to that gentleman in particular, for no one in this Convention has a greater share of my regard than he has, but it appears to me, that our presiding officer ought to have his attention devoted exclusively to the discharge of the duties of the chair, in the preservation of order, and not to come down to the floor of the House, in order to bring forward propositions and argue them, throwing his weight and influence in their favor, and then to go back and take the chair, and decide upon

his own propositions. There may not be any harm done in the case of our President, but there is a good book which says, we ought not to lead a man into temptation. And I think this warning is particularly applicable in politics. I do not wish to lead our honorable President into too much temptation.

There is an additional reason, according to my view of the subject, why this portion of the rules ought not to be adopted. We all know—although there is no member who will admit that he is under such influence—that when a man is made President of the United States, or the Governor of a State, or President of a Convention, the official station gives him a certain degree of influence, and in the case of a presiding officer his opinions ought never to be known; he ought to be an impartial umpire; at all events his opinions ought not to be known till the debate is over and the vote taken. I have always thought that the rule which gives to the Speaker of the House of Representatives of Kentucky the right to vote is improper. You find nothing of the kind in the British Parliament nor in Congress. You find nothing of the kind in ancient legislative bodies. It is a rule that has been adopted in modern times, and one which, as I have myself seen, exerts an improper influence. The presiding officer is looked up to by the members of the body over which he presides, and when you permit him to come upon the floor and debate a proposition, and then go back to the chair and decide upon it, you destroy his usefulness and his impartiality as a presiding officer. With these suggestions, I will renew my motion to strike out the latter clause of the sixth rule. I should be gratified, when in committee of the whole upon the proposed amendments of the Constitution, to hear the views of our President expressed. I believe that his views very nearly, if not entirely, correspond with my own. I do not make this motion with any hostility to our presiding officer, or from a belief that he has any disposition to do wrong, but I do it because I think that the principle, if carried out, will have a pernicious and corrupting influence. And in this, the highest deliberative body that can be assembled in the State, there ought to be no exemption from an adherence to the practice which has invariably been followed in the most enlightened legislative bodies in the world.

Mr. MERIWETHER. With due deference to the opinions of my friend from Madison, I would suggest that he is under a misapprehension, if he supposes that whenever the President has left the chair, we are in committee of the whole.

Mr. TURNER. I mean that it is so in substance.

Mr. MERIWETHER. In substance then I differ with the gentleman, as much as in shadow. In substance, we shall not be in committee of the whole; for although the President may leave his seat, yet the previous question is applicable, so that in substance the convention will not be in committee of the whole. The gentleman will remember that we are depriving the City of Louisville of the service of one of its delegates by depriving him of the right to participate in debate upon propositions that are offered here. This is different from a Legislative body. There

the Constitution makes it incumbent upon the body to select one of their number to preside.—Not so here. No man supposed that the President of this convention was to be deprived of any of his rights by his elevation to the Chair. Will you deprive him of the right which every other member enjoys of discussing propositions and submitting propositions merely because you have elevated him to that seat? Will you require the President to vote upon propositions without giving reasons for or against them?—That is the question. Many important propositions will be made in Convention which will not be made in committee of the whole, and the President of the Convention will be required to record his vote for or against them; and yet you will not permit him to assign his reasons. I ask is it right to place your presiding officer in that position?

As to the idea suggested by the gentleman that his influence is so much greater on account of his position, I cannot concur with him. Indeed the allusion made by the gentleman to the usage in the Legislature and in this Convention, of calling upon the President to vote, shows the fallacy of that idea. The vote given by the President apprises every member of his opinion regarding the proposition upon which he votes, and his participation in the debate could not carry that influence further than his vote will go.

Again, as to another suggestion that he would descend from the Chair, submit a proposition, discuss it and then return to the Chair and decide upon it. I do not understand it as being the privilege of the presiding officer to decide any question here. He only announces the decision of the House. Points of order he does decide, but he decides no question that is submitted to the Convention for its deliberation. Having thus briefly stated my views in regard to this matter, I shall vote against the motion of the gentlemen from Madison.

Mr. LINDSEY moved to amend by adding the words, "but when in committee of the whole he shall have the right to submit propositions and participate in debate."

Mr. MERIWETHER suggested to the mover of this amendment that it was wholly unnecessary as the President had already that right under parliamentary law.

Mr. TURNER accepted the amendment as a substitute for his own, and then said: I do not wish to be importunate upon this subject, but the gentleman seems to think that the people of Louisville will not have a fair representation here, unless we allow the President to take the floor and debate every proposition as well, when not in committee of the whole, as when in committee of the whole. This same argument would apply to every Speaker, who has ever acted in Kentucky as Speaker of the House of Representatives, and it would apply in Congress, where sometimes they elect a Speaker who is a member from a State which sends but one or two representatives, as is the case with Delaware. But it was never thought that in such case, he should have this extraordinary privilege. Here the county of Jefferson is amply represented; it is represented by able and eloquent gentlemen, and notwithstanding this, it is feared that Louisville will be deprived of her

proper share of weight in this Convention—by having one of her representatives elected to preside over the body. Unless Louisville claims to do the whole business of the Convention, I think she has no cause to complain of being deprived of the services of one of her representatives out of so many able and enlightened gentlemen as are here from that city and county. It is not only the privilege of coming down from the chair and originating and debating propositions that I object to, but there is a great deal in the discretion that may be exercised in calling to the chair a delegate of similar sentiments with himself. I do not say that the President would act improperly, but I want to be governed by that invaluable rule lead not a man into temptation. I want, not only purity, but to be above suspicion. It is said by the gentleman from Jefferson, I believe, that although the President participated in the debate he would not go back and decide upon the question that had been debated. But it appears to me that under the rule which we are about to adopt, when a vote is taken which is a doubtful one, when it is claimed by both parties, the President will be very apt to decide in favor of the proposition for which he has been contending; as a matter of course he will think the majority always on his side. Human nature is a little frail, and those who have gone before us have always acted upon the principle that it is better to guard against the influence that may be exercised by a presiding officer by being permitted to participate in debate. Take your presiding officer from his station, and he will not have time to study Jefferson's Manual, which it is so difficult to understand. I doubt very much whether it has been read this week, by any one in this Convention. I want our President to discharge the duties of the chair instead of being employed in drawing up propositions and debating them. I do not think the President desires any such privilege. It would be placing him in a position in which his usefulness would be destroyed.

Mr. MERIWETHER. If the occupant of the Chair should not desire the privilege he need not exercise it. The rule does not make it obligatory upon him to do so, and by omitting to claim the privilege he will avoid all the difficulty which the gentleman suggests. The same argument was made by the gentleman in committee. I had no particular preference on the subject, but a large majority of the committee instructed me to report that provision in the rules.

If the President, as the gentleman supposes, after discussing a proposition, will return to the Chair and decide the question incorrectly, may he not so decide without the privilege of discussing it? He will doubtless be enlisted on one side or the other of every proposition that is submitted here, and if he could be prompted to an incorrect course of action in the one case, could he not as well pursue that course without having participated in the discussion as after having done so? Does not the gentleman wish to obtain light upon any subject which is brought forward for discussion? Then why not receive from the presiding officer the benefit of his judgment as well as from every other member of this body? I have no doubt that it would be acceptable to at least a majority of us.

Mr. C. A. WICKLIFFE. I shall vote for this amendment in accordance with what I think has been the proper and uniform course in all deliberative bodies. Almost the entire business in committee of the whole is matter of debate, and in that we should have the benefit of the assistance of the presiding officer. But I think that in forming rules for this House we should follow established usages, and that the presiding officer should not be permitted to originate business. Surely it could never be desired to bring the presiding officer into personal collision with the members of the body. I think we had better pursue the beaten track; it is always the safe course.

Mr. DAVIS. I will only remark that I consider this to be an innovation, and I consider with the gentleman from Madison, that there are strong reasons why the innovation should not be adopted.

Mr. McHENRY called for a division of the question and the yeas and nays on the first branch. He said, I do not desire to debate this question. I will only make the suggestion, that I do not believe the gentleman need apprehend any such impropriety of conduct on the part of our presiding officer as has been suggested.

There has been no exhibition of party feeling in this body hitherto, except in the election of a President, but I caution the majority, that this grant of additional power to the President may give rise to a suspicion that they are willing to promote party purposes.

Mr. MERIWETHER. Barely one suggestion and it is, that the majority here have not yet chosen guardians over them.

Mr. PRESIDENT. Before proceeding to put the question, I will remark that I did not know that this proposition was to be made until it was announced to the House this morning. I further ask leave of the Convention to be excused from voting upon it.

Mr. McHENRY. I will only remark that, I did not suppose that you had any such knowledge. I did not mean to insinuate any such thing. The yeas and nays were then taken, and were yeas, 52, nays, 43. So that the amendment was adopted.

The 7th rule was amended on the motion of Mr. C. A. Wickliffe, by substituting the word "plurality," for the word "majority." So that a plurality of votes in the Convention may appoint committees.

The 8th rule was passed without amendment.

The 9th rule was amended on the suggestion of Mr. Meriwether, by the substitution of the words "presiding officer," for the word "President," so that a gentleman appointed to preside in the absence of the President might have power to clear the galleries in case of disturbance or disorderly conduct.

The 10th rule was passed without amendment.

The 11th rule which provides for the appointment of standing committees on the various articles of the Constitution, was then read for consideration.

Mr. C. A. WICKLIFFE. This rule must be regarded, I suppose, as a division of the labor of this body among the committees enumerated here. Therefore it becomes a matter of some importance, before we adopt it, to consider what its effect and operation will be. We have a hundred

members in the Convention, and it is proposed that there be eleven committees, consisting of nine members each. Nine times eleven are ninety-nine, which will comprehend every member of the Convention, exclusive of our President.— If every article of the old Constitution is to be the subject matter of alterations, it appears to me that the division of labor here proposed, will be very unequal. There have been several suggestions regarding the proper division of the labor which is to be performed by us, and it is possible that the one which the committee have recommended is the best. I do not think so, however, and I will endeavor to point out a few reasons why I do not think so. I do not suppose it is a matter of very great consequence to members of this body, to be upon a committee for remodeling or amending that which requires no amendment, where there is nothing for the committee to do, except to transcribe and report the provision assigned to them precisely as it stands already. Such, I apprehend, will be the case in regard to the bill of rights. I doubt whether there is any disposition on the part of the Convention, to make any alteration in that so far as the crossing of a T, or the dotting of an I. The committee then, to which that portion of the Constitution will be referred, will have nothing to do; whilst others will have important alterations to make in the parts assigned them.

The partition of labor then, by this method, will be very unequal. It was not without attention to the provisions of the Constitution, that I attempted to partition the labor according to the partition of the various powers of the government, regarding which our judgments have been and will continue to be divided. But without detaining the Convention further with these illustrations, let gentlemen turn their attention to the eighth article of the Constitution. It is as follows:

"The seat of government shall continue in the town of Frankfort until it shall be removed by law; provided, however, that two thirds of all of the members elected to each House of the General Assembly shall concur in the passage of such law."

The time has been, sir, when a much younger man than I am now, that a position upon such committee, and, above all, the privilege of forming such committee, would have been very agreeable to me. It is one of those committees that I would like to have a hand in making, and I have no doubt that my colleague would like to have such a privilege, although I believe that he is in favor of a different place from that which I should choose, to which the seat of government, if removed at all, should be carried. If the privilege were given to me to form a committee to whom this subject should be confided, I could bring together a very formidable corps of advocates for any particular location that I might choose to designate. Therefore it appeared to me, sir, in reference to even this subject, important or unimportant as it may be regarded, as well as in reference to one or two of the general provisions of the Constitution, that it would be proper to make a different distribution of the labors of the committees from that which has been proposed by the committee on rules. We necessarily call into the committee rooms from



different sections of the State men who will bring to bear their intellect and their industry, and not have more than their due proportion of labor. Very many of the miscellaneous provisions of the Constitution will not have to be touched in the way of alteration, but merely transcribed. For these reasons I thought it necessary to make these suggestions in reference to a different division of duties. It may, perhaps, be deemed egotistical in me to set up my opinions in opposition to those of the committee and to suggest a different division of labor, but I think it will be apparent, when gentlemen examine the subject, that a different distribution would be attended with much advantage. In regard to the preamble of the Constitution, for instance, what is there for a committee of nine men to do but to direct their clerk to transcribe it. With a view then of obtaining the sense of the Convention regarding a different distribution, I move to strike out so much as relates to the appointment of committees, and to insert so much of the resolution which I offered the other day, as relates to this subject.

Mr. WILLIAMS. I suppose now is as proper a time as any other, for the consideration of the question, whether this Convention will go about its work through committees,—selected by the Chair or in any other form,—or whether it will go about it in committee of the whole. It seems to me, that if we are determined to do our work with dispatch, and with a proper understanding of what we have to do, and come to a fair and proper conclusion upon every question that is to be presented by every member of this Convention, the right way to do it, is to do it first in committee of the whole. I know of no other plan. My mind can suggest no other; although I know that there is an opinion prevalent in this Convention, in favor of submitting every thing to committees. Some gentlemen would have committees to do that work which the Convention should do itself. I know of no plan by which the work could be so well and so expeditiously done, as it could be in committee of the whole. In addition to this fact, there are other reasons why this Convention should not resolve itself into committees, to do the work of the Convention. I find the reasons, indicated by the gentleman from Nelson, as to the impropriety of raising a committee in reference to the removal of the seat of government, amply sufficient to satisfy my mind, that this work should be done in Convention, and not through committees.—The reasons which present themselves to the gentleman's mind, in reference to the seat of government, will apply with equal force, to every proposition which any gentleman in this Convention may have to make. When sub-committees do the work, the Convention loses its power of control over the work of those committees.—They will be organised in such manner, as that the force and influence and power and talent, to be found in this Convention, will be brought to bear upon particular propositions. Not that the Chair will intentionally make such an organization, but that will be the necessary result of having the work done through committees. All the talent and influence will be brought to bear in these committees, in order that they may carry out particular objects; and individual members

of the Convention, will have no more power against the weight and influence of the committee, in any attempt to overrule or controvert any proposition submitted by the standing committee, than he would have to do any thing that is perfectly impracticable. Sir, it is wrong to work by committees in forming a Constitution. It is right that we should work by Convention, all of us together, that every man in the Convention may hear what every man has to say, and every man be free to present his own proposition and stand by it to the last.

Besides all this, we will, by taking this course, save a great deal of time. We can go to work tomorrow. We can take up the old Constitution, and examine it article by article, section by section, line by line. We can re-adopt that which we consider ought to be re-adopted, and we can modify that which we think ought to be modified. How many amendments will be required to be made to the old Constitution? I apprehend that it is not to be entirely changed. Where then is the necessity for having a committee to examine every article of that Constitution, and to devise something which the people have never conceived of, and which will be perhaps utterly repugnant to them, when devised by the committees of this Convention.

What have we to do? The people desire but few alterations; they ask for but few; we have come here with the view only of making those few, and I know of no platform upon which I would rather work, than the old Constitution.—Although I have ever been in favor of Constitutional reform, and am so now, I know of no platform upon which I would rather work, than the old Constitution. There are many of its provisions which I desire to preserve, and I am not willing that new propositions shall be urged upon this Convention, with all the power and influence of a committee, which may be unacceptable to a majority of this Convention, and yet that majority be unable to control the work of the committee.

I think we can do the work in a shorter time by doing it in Convention, and that we can do it in a manner more satisfactory to ourselves, by resolving ourselves into a committee of the whole, and taking up the old Constitution as I have already intimated. Therefore, I have submitted this proposition. Whether it will meet with a favorable reception on the part of the Convention, of course I cannot tell; but it does appear to me to be the more reasonable and proper course to be pursued.

If we go to work by committees, what is the Convention to be engaged with in the meantime? When are the committees to report? This Convention, to be divided off into eleven committees, composed of nine members each, and the Convention, I suppose, to be dissolved until those committees report. We will meet, I suppose, each day as a matter of mere formality, and wait too, three, or four weeks until the committees are prepared to report. And when those reports shall have been laid before us, will they not have to be considered in Convention? They will still have to be gone over. Then, why not begin at once in Convention? It seems to me that it would be far better.

The Convention then adjourned.



SATURDAY, OCTOBER 6, 1849.

Prayer by the Rev. STUART ROBINSON.

PROPOSITIONS TO AMEND.

Mr. DAVIS offered the following, which on his motion, was referred to the committee of the whole and ordered to be printed.

1. *Resolved*, That the Circuit Court system of the State of Kentucky, be so constituted that there shall not be less than circuits, each circuit to have a single Judge, whose term of office shall be years, and who shall be appointed to office in the following manner: Whenever there shall be a vacancy in any circuit, the members of the House of Representatives living within such circuit, shall, at the ensuing session of the Legislature, form an electoral college, and shall choose two fit persons for the office of Judge therein, and report their names forthwith to the Senate, one of whom it shall nominate to the Governor, and he shall be commissioned the Judge of such circuit.

2. *Resolved*, That the Court of Appeals consist of Judges, who shall hold their offices for and during the term of years, and that they be appointed in the following manner: The Governor shall select from among the Circuit Judges, or such persons as shall have filled the office of Circuit Judge under this amended Constitution, the fittest person to fill such vacancies in said Court, who upon being nominated by him to the Senate, and being approved of by it, shall be commissioned accordingly.

3. *Resolved*, That the Governor have power to fill such vacancies in the offices of Circuit and Appellate Judges as may occur in the period between the sessions of the Legislature; such appointments to continue until the office shall be filled by regular appointment under the provisions of this Constitution.

4. *Resolved*, That the Judges of the Court of Appeals and the Circuit Courts shall receive from the public treasury a fixed annual salary, which shall not be diminished during their continuance in office; and that the Legislature shall not have the power to pass any law whatever to remove them from office, or the object and tendency of which is to constrain them to resign.

Mr. McHENRY submitted the following, which on his motion, was referred to the committee of the whole, and ordered to be printed:

1. *Resolved*, That the present mode of calling a Convention to revise the Constitution ought to be retained in the Constitution about to be framed.

2. *Resolved*, That some mode of making specific amendments, without calling a Convention, should be adopted, to apply *only* to those articles and sections of the Constitution, about to be framed, which shall be materially different from, and make radical changes in, the present Constitution.

3. *Resolved*, That the provisions of the present Constitution, upon the subject of slavery, be retained, and inserted, without alteration, in the Constitution about to be framed.

Mr. BRISTOW offered the following as an amendment, which took the same direction:

1. *Resolved*, That the specific mode of amending the Constitution, by submitting to the voters

of the State one clause at a time, is the correct and best mode, and the same can and should be adopted, with such restrictions as to secure the rights of property, and prevent the future agitation of the question of slavery.

2. *Resolved*, That, in addition to the specific mode of amendment, constitutional provision should be made for taking the vote every twenty years, as to the propriety of calling a Convention.

3. *Resolved*, That the increase of free persons of color in the State of Kentucky should be prevented in future; and, for that purpose, power should be given to the Legislature to appropriate the necessary means to transport to the colony of Liberia, all such as may consent to go, and all that may be emancipated for that purpose.

Mr. HARGIS offered the following:

*Resolved*, That the following preamble, and first and second articles (in substance, as the same is herewith presented) be adopted by this Convention as the first and second articles of the Constitution of the State of Kentucky:

THE CONSTITUTION OR FORM OF GOVERNMENT FOR THE STATE OF KENTUCKY.

*Preamble.*

We, the Representatives of the people of the State of Kentucky, in Convention assembled, grateful to the supreme Being for the blessings hitherto enjoyed, and feeling our dependence on him for a continuation of those blessings, in order to secure to all the citizens thereof the enjoyment of life, liberty, and property, and of pursuing happiness, do make, ordain, and establish this Constitution for its future government.

THE POWERS OF THE GOVERNMENT.

*Article 1.*

1. The powers of the government of the State of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are executive to another, and those which are judiciary to another.

2. No person or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except in cases hereinafterwards directed or permitted.

THE LEGISLATIVE DEPARTMENT.

*Article 2.*

1. The legislative power of this Commonwealth shall be vested in two distinct branches, the one to be styled the House of Representatives, the other the Senate, and both together the General Assembly of the Commonwealth of Kentucky.

2. The members of the House of Representatives shall continue in office for the term of two years from the commencement of the general election, and no longer. The members of the Senate shall continue in office for the term of four years from the commencement of the general election, and no longer.

3. Representatives shall be chosen on the first Monday in August every second year; and shall meet at the capitol of the State on the — day

of ——— every second year. The Senate shall also meet at the same time and place every second year, and shall be chosen on the first Monday in August every four years, but shall only assemble at the same time and place of the meeting of the members of the House of Representatives.

4. The General Assembly, as aforesaid, shall not continue in session more than forty days, unless upon extraordinary occasions, the Governor, by proclamation, should think proper to continue them in session longer, but, in no instance, shall the session be prolonged over sixty days.

5. The General Assembly shall have no power to grant divorces, or pass any law dissolving the marriage contract; nor shall they have power to pass any act or law for individual or private benefit, unless four fifths of all the members of both houses concur in the passage thereof.

6. They shall pass laws establishing in each and every county in this State at least five election precincts; and in every city or town, entitled to one or more members, they shall establish at least three election precincts, and more if the Legislature should think proper. All elections shall be held at the time and places established by law.

7. No person shall be a Representative who, at the time of his election, is not a citizen of the United States, and hath not attained to the age of twenty four years, and resided in this State two years next preceding his election, and the last year thereof in the county, city, or town, for which he may be chosen.

8. No person shall be a Senator who, at the time of his election, is not a citizen of the United States, and who hath not attained to the age of thirty five years, and resided six years in this State next preceding his election, and the last year thereof in the district for which he may be chosen.

9. In all elections for all and every officer in this Commonwealth, who are by this Constitution to be elected by the people, and also for members of Congress, or President of the United States, or Vice President, every free white male citizen who, at the time being, hath attained to the age of twenty one years, and resided in this State one year, or more, and in the county, city, or town, where he offers to vote at least four months, shall be entitled to vote for all and either of said officers, except foreigners not naturalized, and persons convicted of felony and not pardoned.

10. At the first session of the General Assembly after this Constitution takes effect, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the Senators of the first class shall be vacated at the end of the second year, so that half of the Senators shall be elected every second year.

11. The first election for Senators, after this Constitution takes effect, shall be general throughout the State and at the same time that Representatives are elected; and thereafter there shall be a biennial election for half the number of Senators to which the State is entitled.

12. Representation shall be equal throughout the State as near as may be, agreeably to the ratio as laid, from time to time, by the General

Assembly, according to the number of qualified voters in the State. The General Assembly shall never consist of more than one hundred members in the House Representatives, nor more than thirty eight Senators. At the first session of the General Assembly, after the taking effect of this Constitution, they shall lay off the State into as many senatorial districts as there may then be Senators, and apportion the representation in the House of Representatives and Senate amongst the several counties, towns, cities, and districts, to which the State is entitled.

13. The General Assembly shall have no power to pass any law for the emancipation of slaves while they remain in this State. They may pass laws to emancipate slaves, saving the rights of creditors, with the consent of their owners, upon condition that they are not to be free until they leave the borders of this State; and, upon condition, that if such emancipated slave, or slaves, should ever return into Kentucky, that he, she, or they, are to be taken up and sold for the benefit of the State Treasury.

14. The General Assembly may pass laws prohibiting the importation of slaves into this State for the purposes of sale, but shall pass no law prohibiting their importation, if acquired by gift, grant, or devise by will, or otherwise: *Provided*, the same is solely and *bona fide* for the use of the importer. Laws may be passed to compel owners of slaves to treat them humanely.

15. In apportioning the representation for Representatives to both houses of the General Assembly, where one county does not contain the number of qualified voters required by law to elect a Representative or Senator, in that case, two or more counties may be joined together (which counties must lie joining each other) for the purposes of electing a Senator or Representative. The number of Representatives at the first session of the General Assembly, after this Constitution takes effect, shall consist of one hundred members, and the Senate of ———, to be apportioned as directed in the twelfth section of the second article of this Constitution: *Provided*, that when two or more counties adjoining, have residuums over and above the ratio, when fixed by law, if said residuums, when added together, will amount to the ratio fixed, in that case, one Representative shall be added to that county having the largest residuum.

16. The House of Representatives shall choose its Speaker and other officers.

17. The apportionment of representation for members to the General Assembly, and the laying the State off into corresponding or suitable districts, shall be done every four years.

18. The Congressional Districts should be laid off and the apportionment made every ten years, containing the ratio, or number of qualified voters, agreeably to the laws of the United States, for the purpose of electing members to Congress.

19. Not less than a majority of the members of each house of the General Assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized by law, to compel the attendance of absent members, under such rules and penalties as they may prescribe.

20. Each house of the General Assembly shall

judge of the qualifications and returns of its members; and a contested election shall be determined by law.

21. Each house of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member.

22. Each house of the General Assembly shall keep and publish, weekly, a journal of its proceedings; and the yeas and nays of the members, on any question, shall, at the desire of any two of them, be entered on the journal.

23. Neither house of the General Assembly shall adjourn for more than two days at a time, during the session, nor to any other place, without the concurrence of the other.

24. The members of the General Assembly shall receive from the public treasury, for their services, such compensation as may be authorized by law, but no increase or alteration in the compensation of members of either house shall take effect during the session at which the same is altered or increased.

25. The members of the General Assembly shall, in all cases, (except felony, treason, breach, or surety of the peace) be privileged from arrest, or imprisonment, during their attendance on their respective houses, and in going to, and returning from, the same; nor for any speech or debate in the house, shall they be questioned in any other place.

26. No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be eligible to any civil office under this Commonwealth, which shall have been created, or the emoluments of which shall have been increased, during the time such Senator or Representative was in office, except such offices as may be made, or filled by the election of the people.

27. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor whilst he holds or exercises any office of profit under this Commonwealth, shall be eligible to the General Assembly, except attorneys at law, Justices of the Peace, and militia officers: *Provided*, That attorneys for the Commonwealth who receive a fixed annual salary from the public treasury, shall be ineligible.

28. No officer of any kind whatever, shall be eligible to a seat in the General Assembly, until he has obtained a quietus or receipt for all the moneys due, or owing from him, to the Commonwealth, or to the county in which he resides.

29. No bill shall have the force of a law, until on three several days, it be read over in each house of the General Assembly, and free discussion allowed thereon, unless four-fifths of the house where the bill shall be depending, may deem it expedient to dispense with this rule.

30. All bills for raising revenue, shall originate in the House of Representatives, but the Senate may propose amendments relative to the revenue, the same as in other cases.

31. The General Assembly shall have power to pass all laws not contrary to this Constitution, or the laws and Constitution of the United States, which they may think proper and expedient; they shall also regulate by law, in what manner vacancies in either house may be filled.

32. In all elections by the people, the votes shall be publicly given, "*viva voce*," and be proclaimed by the Sheriff of the election; nor shall any election in this Commonwealth continue more than one day; but nothing in this Constitution shall be construed to prohibit the Governor from proclaiming and issuing writs of elections, upon occasions extraordinary, or as may be required by law.

The Secretary proceeded to read the proposition, but before he had read it through,

Mr. IRWIN. The proposition is to print, I believe. If the House has determined to print a new Constitution of which we know nothing, it of course will do so, but I will move the old Constitution as a substitute therefor. I think it the best way of getting at the printing of the old Constitution, and I move that we dispense with the further reading of the proposition of the gentleman.

The question was then taken on the motion to dispense with the further reading of the proposition and it was agreed to.

Mr. IRWIN. I do not desire to run the State into any expense, as I do not believe we have a great deal of money to expend; but as I understand that fifty or sixty thousand copies of the present Constitution were printed last year, by order of the Legislature, I should like to modify my proposition so as to provide that members should be furnished with copies. They could perhaps be readily obtained at the printing office, or in some of the offices about the Capitol. I certainly move to dispense with the printing of the proposition just offered.

The question was then taken on printing the proposition of Mr. Hargis, and referring it to the committee of the whole; and the Convention refused so to dispose of it.

Mr. PRESTON offered the following:

*Resolved*, That it is expedient, in any Constitution which may be formed by this Convention, to classify the offices which may be declared to be elective therein, into those of a general and local character, so that the elections of persons to fill the same may occur at different times.

The attention of gentlemen will undoubtedly be engaged in regard to the mode of electing officers, and the offices would be naturally classified into those of a local and those of a general character. I hope to be able to show, when the time comes, that this will be the only practicable mode by which we can conduct those elections which I have no doubt the Convention will agree to have held, under the Constitution we propose to form. I move that the resolution be printed and referred to a committee of the whole.

The motion was agreed to.

#### RULES OF ORDER.

The Convention resumed the consideration of the report of the select committee on rules.

The 11th proposed rule being under consideration when the subject was last before the Convention, it was again read.

The question was on the substitute proposed by the gentleman from Bourbon, as published in the report of yesterday's proceedings.

Mr. MITCHELL. There is no gentleman belonging to this body with more anxiety than my-

myself, that the labors of this body should be bought to a speedy and successful close. Nor is there anyone more aware than I am that the interposition of any obstacle to a free and fair discussion, would be the means of frustrating, to a very great extent that desirable object. I am for establishing some correct basis of procedure, and not having had the honor to present any project for the consideration of the Convention, I am wedded to no plan, and I am prepared with an unbiased judgment to decide upon the various propositions which have been submitted. If I belonged to the division of this body, if there be such a division, who believe that no alteration should be made in the existing Constitution, I should be prepared to support the substitute offered by the gentleman from Bourbon. In my apprehension the substitute assumes that the existing Constitution is not susceptible of improvement. At least it presents the question in a very doubtful aspect. It presupposes that it has to a very great extent the approbation of this body, and resolves the question into a mere enquiry as to whether it can or cannot be improved. The people of Kentucky by a large and decided majority, say they will have constitutional amendment and reform. We come up here representing a constituency in favor of such a measure. Shall we then at the very threshold present ourselves in such an attitude as to appear before our constituency as doubting whether such amendment and reform can be made? In assuming the existing Constitution as a basis of our operations in committee of the whole we give to it *prima facie* our preference. So it would seem to me, and hence I am opposed to the plan proposed by the gentleman from Bourbon. The sanction of all parliamentary usage as I understand it, is against such a proposition. It is necessary that some nucleus should be formed around which the opinions of this body can be concentrated. The effect of presenting the present Constitution, and taking up article by article in committee of the whole, would be to resolve every member of this Convention who may have a plan of his own into a committee. He presents his own project, and there would be a want of concentration and unity of action, which it seems to me would be the means of protracting debate here, and of lengthening much beyond the time which has been anticipated, the session of the Convention. It has been objected that in the meantime, while these committees were digesting various plans and were preparing their reports, this Convention would be without business. The rules propose to embody this entire Convention into eleven committees of nine members each—constituting aggregately ninety-nine members, and these would be engaged in carrying forward the business of this Convention. It is true the Convention, as a body, might not be prepared to act immediately after the appointment of the committees, but still the business which has assembled us here, would nevertheless be in progress. I was at the first blush, prepared to vote for such an organization of committees as is contemplated by the resolutions of the gentleman from Nelson, but upon reflection, it seems to me that the labors of this body would be better distributed by the plan proposed in the report of the committee on rules. The labors of the com-

mittees being thus indicated, it seems to me we might at an earlier period be prepared to commence the operations which have brought us here together. Under that state of the case, and with a view to facilitate as far as may be, the object which has assembled it, and to despatch as speedily as may be the business of the Convention, I shall for one vote for the rules as they have been reported by the committee.

Mr. C. A. WICKLIFFE. The question immediately before the Convention is the motion of the gentleman from Bourbon, to substitute for the proposition I have offered, the one that we will at 11 o'clock each day go into committee of the whole, and take up the Constitution as we find it on the statute book, and then alter and amend it as each member may choose to propose. All who favor the appointment of committees in preference, will of course vote against the proposition of the gentleman from Bourbon, whether they prefer the number of committees and the division of their labors and duties introduced in the report of the committee, or in the amendment proposed by myself. I listened with a great deal of pleasure to the gentleman from Bourbon, and to his illustrations of the effect of his mode of proceeding, but some little experience in the legislative branches of our government, has taught me to believe, I may be wrong, that we must work under the guidance of rules, and that seldom, unless on extraordinary occasions, is the public business advanced or promoted by dispensing with the rules which govern us. Under these rules, to work prudently and intelligently, we must have system and order. Suppose that we go into committee of the whole at once on the Constitution of Kentucky, and each member has his project of amendment. We have had already several indications of the opinions of members through resolutions, and there was one this morning embracing almost the entire Constitution. We should have in committee of the whole, perhaps, to discuss and debate the proposition to amend in some shape and form, of every gentleman here, whereas, if the amendment or the principle upon which it is predicated was drawn out in form with care by some committee, you would see the whole framework before you. I will assume what I believe to be the fact, and I do not think I can be mistaken, that a large majority of this body have been elected here upon the principle that the tenure of all officers, whether Executive, Legislative, or Judicial, should be changed. They have been, too, a large majority upon another principle, that the mode of appointment should be changed from that of the Executive exercise of power to an election by the voters of the State. Now I assume upon that principle that the Judiciary is to be organized on the basis of the elective franchise, and I ask you in organizing the whole judicial system of this Commonwealth—the Appellate Courts, Circuit Courts, Chancery Courts, and County Courts,—how long it would take this Convention, by resolution and amendment to perform that labor, and produce its result in any thing like an intelligent shape? It would be a most admirable theatre, I admit, for the display of those powers possessed by many in this House, to illustrate the necessity of a reform in the organic law, and to point out abuses which have crept into our system

of government and the necessity for their reformation; but we want nothing to convince us of that. Our constituents sent us here to execute their will in that particular, and the object now is to lay out the work, and carry out the reforms in accordance with their wishes. Delay and inconvenience must be the result of discussing the Constitution in the mode indicated by the gentleman from Bourbon. I think what has taken place this morning must satisfy every member of the House that under such a system, we must have amendment after amendment, and substitute upon substitute, to an extent that the House, by the hour of 1 o'clock, would be brought into such a state of confusion that it would not be able, in the course of a week's session, to tell precisely the question upon which they were called upon to vote. I will therefore briefly call the attention of the Convention to the division of labor, if we appoint the committees as indicated in the rule under consideration. I am sure that if the committee will review their own works, they will see that it is not the best division that could be made. The preamble and first article of the Constitution were to be referred to one committee of nine Delegates. The first article is merely the division of the powers of government into three several classes of magistrates; the next, that no person exercising the duties of one office shall interfere with another—and there ends the whole duties of nine Delegates. You refer this preamble and article to nine men to make report, when it is not designed to change either of them. As I remarked yesterday as to the schedule, when you take up the Constitution as we have it put together, you will find that if you confine the duties of the committees to the several articles and not to the operations of power, you will have under the head of Judicial or Legislative branch, the business of appointing coroners or sheriffs, and of appointing and commissioning militia officers. There can be then I think not much harmony in the work of these constituted committees when they shall be engaged in their labor.

In reference to the question of delay, I have already said I believe that we would save time, and expedite the work of this body, by the adoption of a plan of committees. The gentleman from Bourbon seems to think that we shall all be idle, and there will be nothing to do in this House, while the committees are at work; and he consoled himself with the idea that he could go home and attend to his business at the courts; but if he happened to be assigned on a very important committee he would be unwilling to go home. Sir, this House will have enough to employ itself from the hour of 10 o'clock until 2 o'clock, in considering and discussing the various propositions that have and may be thrown upon the table, by way of settling general questions. For instance, if it is necessary to try the judgment of the House on an elective judiciary, we can have a resolution on the subject, that may as well be discussed in the House as elsewhere. Meanwhile, the judiciary committee would be at work, predicated their labor on what, in the opinion of this House was the public sentiment, that the judiciary should be elected. They could soon give us the result of their labor in such a form that the country and the House could

see it, and take it up, and judge how the principle of an elective judiciary could be carried out with safety to the country and the people. On their report coming in, we could take it up as the Legislature do a bill, and move to amend it, add to it, and discuss it. It is no objection to me if we have a committee, to say that its influence will be felt in the House. You will have individuals—members of this body—whose duty it will be made particularly to attend to the work of their own hands—to see that it is perfect, and to prevent, as far as they can, by argument and discussion, any innovation that is calculated to render it worse, or change it entirely in feature or principle. With this explanation I shall leave it, so far as I am concerned, to the judgment of the House, to pursue what I have no doubt it will do, on all occasions, its own course in reference to the action through which it will get at its labors. As to the question of time—if this was a meeting got up to nominate a man for Governor, we have been here long enough to do it. If we had come here to take up local legislation, and to redress personal grievances, we have been here long enough to pass at least fifty or sixty divorce bills. But the amending of a constitution that has lasted for some fifty years, and the making of one that shall last, I hope, fifty years longer, is a work not to be done in haste. It requires deliberation, examination, order and system, that we may be satisfied with the results of our labor when it goes from our hands.

Mr. DIXON. I feel that it is very important that the Convention arrive at a proper decision as to the three propositions which are now before it; because on that will depend very much, our success in the progress of the business of the Convention. There are three propositions which are submitted, and I apprehend that every gentleman of the Convention is anxious to adopt that which will be best in bringing about a proper system of doing the business of the Convention. The first proposition is that which has been submitted by the committee appointed to report rules for the business of the Convention. The second is that which has been offered, I believe, by the gentleman from Nelson as a substitute; and the third, is that which has been offered by the gentleman from Bourbon, as a substitute for the whole. These are the various propositions that have been submitted. I do not see a very great difference between the proposition of the gentleman from Nelson, and that presented by the committee. They are in substance very much the same. But there is a very great difference between the proposition of the gentleman from Bourbon and that of the committee, or that of the gentleman from Nelson. I am clearly of opinion, that either the proposition reported by the committee, or that of the gentleman from Nelson, should be adopted. When I first came here, I was of the opinion myself, that the plan proposed by the gentleman from Bourbon would be the best; but in examining the course pursued by other Conventions, I satisfied myself that this plan would be wholly impracticable. I discovered that the Virginia Convention, in the first place, appointed a committee whose business it was to report the proper mode of proceeding. I discovered in the same Convention, a propo-

sition made by a distinguished member of that body, similar to the one proposed by the gentleman from Bourbon. It was voted down, I think, by a large majority of the Convention. A similar proposition was made in the New York Convention and voted down. I understand from a gentleman who has looked into the matter, that a similar proposition was made to the Tennessee Convention and adopted by it, and that after some time progressing under it, they came to the conclusion that it was a bad mode and abandoned it, and at last adopted the mode suggested by the committee or the gentleman from Nelson—that is, in spirit and substance.

I think that either the proposition reported by the committee, or that offered as a substitute by the gentleman from Nelson, should be adopted, because I am confident we shall never progress with the business of the convention unless we refer the important matters to committees. I care not what the committees may be, so they are formed on proper principles and organized with a view of preparing the business of the convention. I understand that my friend from Bourbon, whose speech I listened to with great pleasure, finds one great objection to the appointment of committees in the extraordinary influence which he apprehends they may exercise over the members of this convention. I understand the proposition he has laid down to be, that whenever a committee has reported, an individual will be scarcely heard on this floor, or if heard at all, his voice will be lost in the mighty influence exercised by the committee over the other members. On this point, I think the gentleman is entirely mistaken. What are the privileges of members of this house? When these committees have reported, are there not various modes by which we may at once avoid any decision on their report. I do not like the decision of the committee, and I may make a proposition to recommit their report, or I may propose to lay it on the table, or to refer it to another committee. Do I not take the sense of the whole house as to the propriety of laying it on the table, of referring it back, or of making any other disposition it may be thought proper to make of it? Do I not address the good sense of the house as to the propriety of the step? And is it to be said that it is to be overridden by the mere expression of the committee, that it is right and proper their report should be adopted? Surely not. I see no possible objection, so far as regards any influence which the committee may exercise. We select these committees because we have confidence in them, and with a view not only that they may suggest the best mode of preparing the subject before them, but that they may bring it before the convention in such a form as will satisfy the country. That is the object. What is the proposition of the gentleman from Bourbon? "The submission of all these matters at once to the committee of the whole, says he, will enable us to progress at once. We avoid the influence of committees in the first place, and then proceed at once to the investigation of all the great questions involved in an amendment of the constitution. And, says he, if we appoint committees and refer the business to them, what is this convention to do in their absence?" Does not the gentleman know that every possible

proposition that any gentleman may think proper to bring forward can be submitted to the committee, and when or before it is submitted that you can discuss the proposition itself. I may offer a proposition to this effect, as I did yesterday, that the judicial officers of this government ought to be elected by the people, but that they should be placed on an eminence which should secure them against popular influences; against the prejudices that might be engendered from the various causes that might arise in the election of a judge and induce him to give a decision at war with the real principles involved in the case. I offer a proposition like that, and in what form do I present it? Resolved, That the committee on such an article of the constitution be instructed to report the substance of that proposition as an amendment to the constitution. I present this by way of illustration; and does not every gentleman see that when that proposition was reported, he would have the right to arise, and take issue with the principle, and to discuss it to any extent he may desire. Every proposition that any gentleman may desire, he will have full liberty to make, presenting it in the form of instructions to any one committee, and requiring them to report an amendment engrafting in the constitution the principle contained in the resolution offered. Does not every gentleman see at once that there is no difficulty on this point? Why then the necessity of referring everything to a committee of the whole, and dispensing entirely with the committees which are usual in all parliamentary bodies, and which are necessary to the proper presentation of business. It does seem to me that we have only to look at the ordinary routine of doing business in bodies like this to satisfy ourselves at once that this plan of committees is the one which will best conduce to the proper and speedy discharge of our business. After going into committee of the whole on the constitution, does any man suppose that he is to amend it as he desires. He may make speeches, and offer propositions to his heart's content, but what will he do in the way of amendment after all. He would have to provide some committee to lick the bantling into form. You cannot get along without committees, and it is useless to attempt it, as gentlemen would find if they adopt the resolution of the gentleman from Bourbon. I thought it to be the right plan when I first came here, and intended to offer a similar proposition myself, but on reflection, I am satisfied that it will not result in forwarding the business of the convention but rather in retarding it.

Mr. LINDSEY preferred the proposition of the gentleman from Bourbon, and was opposed to the appointment of committees. He said by turning to the present Constitution it would be found that there were several articles which needed no alteration. Take as has been suggested the first article, where it is proposed that nine members of this body shall be designated to do a work which no one believes is desired. The gentleman from Breathitt (Mr. Hargis) has himself this morning presented as much labor as a committee of nine could have performed during the whole session. No one thinks of changing the plan by which the powers of the government are distributed, or the declaration that one branch of the government



shall not interfere with another, and therefore so far as a committee is organized on that subject, the whole work is already done and well done. There are several articles of the Constitution in the same position. Take the article in reference to impeachments—upon which also it is proposed to constitute a committee of nine; no one thinks of changing the present mode of impeaching officers or the present declarations of the Constitution in relation thereto, unless it should be previously determined to change the mode of electing the legislature and the judiciary, and then it would become important to change the whole Constitution on the subject of impeachment. What is to become of this committee during the time that another and an important committee is acting on a matter confided to them. Are they to sit in silence or to find other pursuits to engage them until this question is determined? So on the article in relation to the seat of government—and just here I beg leave to remark, that if there is to be a committee on that subject, I hope it will be of one, and I that member—because I am not disposed like Banquo's ghost to wander in these halls alone, while my friends Macbeth and Macduff are settling their controversy. Take the article in relation to slavery—it has been indicated here, and I think sufficiently strong, that no one contemplates the introduction of new propositions in relation to slavery. There are but two sections to the article. One is, that slavery shall exist in this Commonwealth, and the mode by which emancipation shall take place; and there is the manner in which public prosecutions shall be had against slaves. What is to become of that while discussion is going on in relation to the executive and legislative departments? We are here for some purpose, and what is it? The present Constitution points it out. We first, are to revise or re-adopt the Constitution as it now exists. If we refuse to adopt it, what next? Then we are to amend, alter, or change the present Constitution. Suppose we adopt this last course, let us see then whether we are not now under the resolution of the gentleman from Bourbon precisely where we would be after the reports of all the committees proposed were before the house. We are, and if expedition is the intention and object of this body, it ought at once to adopt that resolution as a substitute for the report of the committee on rules, and proceed to take the vote whether we will re-adopt the present Constitution. If we fail to do that, then we could proceed to amend, section by section, article by article, the present Constitution. If we take it up on that plan, see what will be the operation. The second article relates to the legislative department—the first section to the qualifications of electors. Delegates here have already presented propositions in relation to qualifications and restrictions upon the right of suffrage.—This is one of the most important questions to be settled, and at the very outset of amending this Constitution. It is to come before this body in connection with the principle of electing all the officers of the State—not only the representative but the executive and judicial officers. If we decide to adopt the principle of electing all officers, there at once the incipient step is the determination by whom they shall be elected.

And when you settle the qualification of the elector who is to elect your representative; you have settled it in regard to all other officers.—Adopt the plan proposed by the committee on rules, and you refer this subject to three distinct committees, and they will perhaps each report a distinct and different proposition. Each proposition will be subject to amendment, or the whole may be rejected and some substitute offered by any member adopted. It will be found by looking into the three leading articles of the present Constitution, that the whole work is to be done there.

So far as regards the executive, there is but little to do, and I imagine that if gentlemen will turn their attention to the present constitution, they will find there is to be but slight change under any state of the case in that article. The only changes will as directly come up under discussion on an amendment to the second article in relation to the legislative branch of the government, as they will under that referring to the executive branch. All the sections in the present constitution in relation to the executive department, are embraced under the heads of the ages and qualifications of those elected to the offices of Governor and Lieut. Governor—when these terms shall commence and when end, and their several powers and duties. And here I would remark, that under the arrangement as introduced by the committee there will be found matters in the present constitution that really do not belong to the heads under which they are placed. Take for instance, the executive branch of the government under our present constitution—many of the powers and duties appertaining to which were distributed under the head of general powers. So it will be seen at once that it will be utterly impossible, under the arrangement the committee have made for us, that the powers and duties of the several officers can be arranged in a manner in which they can be satisfactory. After the committees shall have reported we shall be precisely at the point where we are now. You take up the present constitution, and you proceed to amend, alter, or change it. The committees come in with their reports, and you proceed to act upon them, having their *projet* of a constitution in connection with the original one before you. You will have the same difficulties to meet as it is contended exist now. I think therefore that the proposition of the gentleman from Bourbon is the true and correct one.

We are not a legislative body—we are to originate nothing new here—and the preparation of the duties devolved upon us cannot be assimilated to that of a legislative body. There propositions are originated by members, and it becomes a matter of importance that they should be referred to the standing committees of the House, composed of persons of experience and skill in the formation of the course of legislation, that they may be compared with the Constitution of the land, in order that it may be seen whether they are in accordance with the provisions of that instrument. That is not the case here. We take up section by section, and any gentleman may propose to amend. Suppose there should be a dozen amendments offered, these are all acted upon, and when you have

passed through your existing Constitution, and have before you all the amendments that gentlemen choose to offer, then you have the opportunity of making a selection and of arranging them in a form perfectly to be understood by every member of the House. I regard the plan suggested by the gentleman from Bourbon as the correct one, but if that is rejected I much prefer the plan introduced by the gentleman from Nelson to that introduced by the committee; and for the reason just given, that the present Constitution embodies under different heads matters which should not be there. The resolution of the gentleman from Nelson indicates the particular duties of the committees and their arrangement in a better form than they exist under the present Constitution, but it seems to me that even there we shall be met with the difficulties I have suggested. The various committees will have their various projects, whereas, if the Convention first settled the principle—to elect all officers for example—they would have at once the settlement of the question; the delay too would be far less.

Mr. MERIWETHER. The committee have reported rules, among which is one, that requires each gentleman to confine himself to the question before the house; and I would be very glad to see such a rule adopted, if no other.—The question now pending before the Convention, is whether we shall have committees at all or not. The question pending, is between the proposition of the gentleman from Bourbon, which excludes committees, and the other propositions which recommend their formation. Now I have been taught to believe that the province of the committee of the whole, was to settle general principles, the province of sub-committees, to arrange the details. Then when we are in committee of the whole, we will debate general principles, and when we meet in sub-committee we will arrange details. For instance, sir, after the members of the sub-committees collectively here as a body in convention shall have heard the discussion of general principles, and when those principles shall have been settled, then the appropriate committees may arrange the details to carry out those general principles.

I trust the Convention will vote down the proposition of the gentleman from Bourbon, and then the question will come up between the proposition submitted by the committee, and the substitute offered by the gentleman from Nelson.

Mr. DAVIS. I would not have said a word upon the subject, if I had not been a member of the committee for drafting rules, and had not submitted to the committee a proposition similar to the one now under consideration. I presented to the committee a proposition, similar to the one offered by my colleague for which I was indebted to his kindness. I will state my objection to the report of the committee in a few words. I agree with the chairman of the committee, that the business of the committee of the whole, is to settle the great and leading principles which are to guide the action of this body, and that the office or function of sub-committees is to throw those great principles into form or shape, and to report to us practical measures for adoption by the Convention; and so of all legislative bodies. Well now, what is proposed here? Not, as my friend says, a question simply

whether any committees are to be raised or not. That is not the only question. In addition to that, there is the much more important question, shall the whole Constitution as it now exists, undergo unlimited discussion in relation to the principles contained in it, and those which gentlemen think should be embodied in the new Constitution, or be referred to sub-committees and be discussed by them in the committee rooms; or shall those leading and general principles be settled in the first instance in committee of the whole? That is the question. Now, sir, the most perfect consummation of legislative measures that I know of in the world, is to be found in the British Parliament; that is, their measures are better matured than those of any other legislative body to be found on the face of the earth. What is the uniform course that is pursued there? A subject is debated in the House of Commons in committee of the whole, and the great leading principles are there discussed, deliberated upon, decided, and established; after that has been done, the subject is referred to a sub-committee invariably, to give shape and fashion to the measures growing out of those principles thus debated. Now that is the proposition of my honorable friend, and it involves this question, whether this Convention in committee of the whole will proceed to do its proper and important office of deciding for itself the great leading principles that shall be embodied in the Constitution beforehand, and afterwards refer the different subjects thus discussed and decided upon to the appropriate committees for the purpose of being drawn up in the form of a Constitution, or whether we shall permit the important work of forming a decision upon the great leading principles of the Constitution to be done in the sub-committee rooms. I think the first mode the best. What is the proposition and its effect? Why, as I said before, every principle to be embodied in the new Constitution, every principle which any member of this Convention shall have thrown before the body for its consideration, every one which may merely be as yet nestling in the mind of any man is to be thrown by sections before the committees, and the reports of those committees taken together, will form the whole of any Constitution that we may make. Well now the question is, shall these committees go into secret conclave, pledged, perhaps themselves, against every important principle that you may propose—come before this Convention with their minds irrevocably fixed for or against those principles, or shall they first be discussed by the body—shall we have the advantage of a free and unrestricted interchange of opinion in regard to them? I prefer the latter course. What will be the effect of this proposition? Why, when the various subjects are referred to these committees, they will go into their committee rooms and there decide the principle of the various subjects entrusted to them; they will establish fixed and immutable rules for or against the principle contained in each particular proposition. They will then come in and make their report. When that is done? The reports of the committees are taken *seriatim*, referred to a committee of the whole and there debated, and precisely the same work which we now propose to go about in committee of the



whole will then remain to be performed. The question then is, whether it is better to go through the useless process of obtaining these reports, or shall we in the first instance consider the various subjects in committee of the whole?

But this is not all. After the committee of the whole has acted upon the reports of the subcommittees, and has agreed upon the great principles to be embodied in the Constitution, there must then be a general committee of compilation, or something like it, and to this must be referred the work of throwing together the result of the labor of the various committees, and reporting back to the convention a draft of a constitution, composed of the various reports of the subcommittees. This report must be again referred to the committee of the whole, and the same deliberation and discussion must be gone over again, with every opportunity for gentlemen to submit all the propositions which they might be inclined to submit if the old constitution were now taken up for consideration in accordance with the proposition of my honorable friend. Well now I think, as a matter of economy of time, certainly as a matter of deliberate, well considered action, as affording an opportunity for eliciting information by interchange of views, it may be more readily effected by his proposition than by that of the committee. There will be, by pursuing this method an opportunity afforded to every member of the convention to explain his views to the utmost extent that he can desire. But it is not the speeches of gentlemen that we want. I want to hear propositions from every member of this house upon every important principle that is to be embodied in the constitution. I want the benefit of the reason and experience and the deliberate judgment of every member, in the form of a proposition, and I will give to it such weight as in my judgment it may be entitled to; and I want this aid, I want such lights as I can obtain from the weakest and most ignoble as well as from the brightest and strongest intellect; for there is no man so weak but he may sometimes suggest wise and valuable propositions. I want all these aids in forming a new constitution to be substituted for that which has controlled the destinies of this Commonwealth so gloriously for half a century. I think that we can place ourselves upon no better platform than that which comes to us, sanctioned by the names of Breckinridge, of Innis, of Grundy.

Now a word to my honorable and honored friend from Henderson. I will tell him why in my judgment we should not be governed by the mode adopted in the Conventions of Tennessee, Virginia, and New York. Those Conventions contemplated an amendment of the existing Constitutions—not a fundamental change; not certainly those radical and important changes which have been already proposed to us. They did not contemplate such changes, they set themselves to improve and modify their respective Constitutions, not to cut them up by the roots; but it seems that this Convention has assembled with far different motives, at least on the part of some. The great principles then that are involved in such a radical change ought to be discussed in committee of the whole, and not by subcommittees. The Convention itself ought to do the work.

I have thus stated in few words the reasons which induced me to differ from the committee.

Mr. M. P. MARSHALL. I was prepared yesterday to favor the resolutions of my friend from Bourbon. They were such as commended themselves to my mind for adoption; and one great point which recommended them, was that the method of proceeding indicated by them would discipline our minds and make us more *au fait* at the business we have to do. But after reflection upon the subject, I am of opinion that it would be objectionable, inasmuch as it will throw into this house, the whole constitution in all its various parts and propositions, and instead of facilitating our deliberations, it will operate as an element of division and scatter to the four winds every thing like concentrated action upon any given subject; and the argument of the gentleman from Bourbon, drawn from the history of the British Parliament is in my opinion fallacious to this extent, that although in the Parliament of England, as I understand, they consider important questions in committee of the whole, and leave the details to be settled by select committees, it will be remembered that the subjects which engage their attention differ from those which it will be our province to consider.—There an isolated question is presented and it is proper that it should be considered in committee of the whole; but here the whole Constitution of Kentucky *en masse* is submitted to our consideration. Here it is not an isolated question. In the Parliament of England a single subject is submitted, and it is discussed in committee of the whole and sent to a select committee to be matured in its details. No such single proposition is before us, therefore the point of the gentleman's argument, I think fails to be analogous to the truth of this case.

The great objection I have to the business of this House being done by committees is one which I have no doubt has suggested itself to the mind of every man in the House. It is this, that we all have our cherished theories, that the people who have sent us here have their cherished theories, and the committees who will have these various subjects in charge, it is reasonable to believe, will be imbued with their predilections and preferences. They will deliberate carefully, consult authorities, and by every possible means endeavor to establish their own cherished doctrines. And they will be prepared to defend them against all attacks; they will be armed with authorities, and will be in a complete state of preparation to engage in debate.—The House in the meantime are not engaged in deliberation upon those subjects, they have not consulted authorities, they have not had the discipline which the members of the committee will have the advantage of. But on the contrary they are taken unawares by the return of the committee to the House with their proposition. The Committee will stand forth strong and vigorous, compact and well disciplined, against whom individuals in the house, whose minds, not less vigorous, but more crude and unprepared, cannot expect to prevail. This is the great advantage that will be possessed by the committees. It may, however, be obviated under the rules which have been reported. Suppose a committee to have an important subject under

consideration. While they are so engaged, I may move to instruct that committee to pursue a course that is consistent with my own ideas.— This will become the subject of discussion here, and our minds will be brought to deliberate on the self same subject which occupies the attention of the committee. By proceeding in this way we will prepare ourselves to meet the objections of the committee and to combat the position taken by them. This objection then being overcome, the argument of the gentleman from Bourbon (Mr. Williams) would fall to the ground, and in its stead would arise this argument, that by adopting either the rules that have been reported by the committee or the resolution of the gentleman from Nelson (Mr. C. A. Wickliffe) we shall facilitate the progress of business whilst we acquire all the advantage which the resolution of the gentleman from Bourbon presents to our consideration. We were sent here by the people, not to demolish the present Constitution; there is no danger that we shall do that, I will inform my honorable friend. We have been sent here to reform various material portions of our Constitution, but not to destroy it altogether. I can assure the gentleman there is no such radical spirit as that. Depend upon it, however much a man's mind may be carried away by ideas of radicalism here, the moderate reformer, the man who confines himself within the bounds of strict conservatism is the man who will best recommend himself to the consideration of those who sent us here. I believe there are very few, if any, in this Convention, who contemplate an entire change of the Constitution. I believe that to go into such a radical change as the gentleman seems to apprehend would be to transcend the limits of our duty. I should regard it as one of the greatest evils that could befall us, if this Convention were to determine upon so entire and complete a change in all the great principles which our Constitution embraces, because the consequence would inevitably be the rejection of our labors on the part of our constituency and the very moment that it is rejected, it will give rise to agitations which will be attended with the most disastrous consequences.— But I rose merely to make the suggestion which I have made in reference to one point in the remarks of my friend from Bourbon.

Mr. BROWN. If we were about to engage in the details of legislation, the establishment of standing committees, it seems to me, would be highly proper and necessary. But we are not here for such a purpose. We have been delegated by the people to revise the present system of government in Kentucky, and to embody general principles which are to guide and govern this great Commonwealth. Now, the question presented in the three propositions is simply this: It is in what mode shall we approach the work which lies before us. I am sure, sir, that I am anxious to get at it by the best mode. Now, sir, it seems to me that the amendment of the gentleman from Bourbon is misapprehended by some of the delegates. They seem to comprehend it as dispensing entirely with the service of committees. I do not so understand it. It does not take it out of the power of the Convention to appoint a committee whenever the services of a committee may be

deemed necessary. I cannot see how the appointment of these standing committees is to facilitate the business of the Convention. Sir, when a gentleman presents a proposition here, parliamentary courtesy requires that it should be entertained. Would it not be better that it should come up in committee of the whole and be discussed upon its general principles, and then a committee may properly have it in charge and provide the necessary details for carrying it out. Well, the proposition of the gentleman from Bourbon, as I said, does not take it out of the power of the Convention to appoint committees when the necessity arises. The gentleman from Jefferson, though in favor of the amendment submitted by the gentleman from Nelson, furnished, in my judgment, the very best argument that I have heard against his own proposition. He says the purpose of a committee is to determine upon general principles. I agree with the gentleman that such is its business and purpose. After it has done that, then let a committee be appointed to report a constitutional provision embracing those general principles. Permit me to give you an instance. A proposition is introduced here: "*Resolved*, That we are in favor of an elective Judiciary." As I said before, parliamentary courtesy requires that it should be received by the house. Is it to be sent to one of the standing committees before the sense of the house is obtained in reference to it? If you send it to a committee it comes back to you in a report from that committee, and the sense of the Convention is yet to be expressed upon it. Then, I ask, what have you gained by sending it to a committee? You are precisely where you began. The proposition comes up as at first, and all the various amendments that gentlemen may be inclined to offer are yet to be considered in committee of the whole, so that nothing whatever can be accomplished by that mode of proceeding.

The delegate from Oldham, remarked, that he was opposed to the amendment of the delegate from Bourbon, (Mr. Williams,) because it assumed that we were satisfied with the present constitution, and desired no change. I cannot so understand it. It is true, the amendment might with much propriety have assumed that the delegates and the country were satisfied with many of the principles and provisions of the constitution.

I am opposed to the amendment of the delegate from Nelson—not however for the reasons assigned by the delegate from Bourbon—because it is calculated to favor that radical and revolutionary spirit he thinks he has seen manifested here. I may belong to that class of delegates considered radical and revolutionary, but the principle I avowed before the people who sent me here, shall receive my public support as a delegate to this Convention, even at the hazard of incurring the reputation of being termed radical and revolutionary.

It does seem to me that the amendment proposed by the gentleman from Bourbon indicates the best mode of approaching the important work that lies before us. The other mode, in my humble judgment, will accomplish nothing. The house will gain nothing by it.

Mr. McHENRY. It seems to me that to adopt

the course indicated by the resolution of the gentleman from Bourbon would not facilitate our proceedings as the gentleman who has preceded me seems to suppose. He has assumed that the resolution or amendment of the gentleman from Bourbon does not do away with the necessity for committees. In order to show that this is an entire misconception, I will ask the Clerk to read that amendment.

The Secretary read the amendment accordingly.

Mr. McHENRY. Now what is the object of it? Not as the gentleman seems to have understood it—not that we shall, in committee of the whole, take up the constitution and settle the great principles which we desire to retain in the new constitution. By no means. But that we are to take it up, article by article, and section by section, and amend it, and then refer it to committee of the whole—not to be moulded into form, but that it may be accepted or rejected. The question then before the convention is, whether we shall have standing or select committees, or whether we shall take up the whole subject in committee of the whole, and then commence the work. And when we get to a troublesome place, we shall find ourselves just where we were before. After consuming a great deal of time, as we have done to day in talking, we shall probably forget what we have already done, and shall be obliged to go back and ask our Secretary to read what has been done from his minutes, as I was a few moments ago. We shall be liable to get into this condition every day and every hour.

Now, the proposition is, which mode of proceeding will you adopt? The question is between standing committees and the committee of the whole. If we adopt the latter course, gentlemen may go on and offer propositions until we have a bushel basket full, and then we shall be obliged to stop and print them, and we shall find ourselves involved in embarrassment, from which we shall not easily escape. But on the other hand, if we appoint the different committees, we may send to them those resolutions which appropriately belong to them. Why, the gentleman from Bourbon himself has given us enough to talk about for the next three weeks, and I myself have several propositions to offer. But this committee of the whole will take up and discuss the principles involved in these propositions, which are to be distributed among the various committees, and the sense of the convention may thus be obtained, and the committees will afterwards embody those great principles which have thus been settled by the convention in committee of the whole. I am decidedly of the opinion that to have standing or select committees is a mode of proceeding that is preferable to that suggested by the gentleman from Bourbon, of bringing up the whole constitution at one time before the committee of the whole, and considering it article by article, and section by section.

Mr. RUDD. The question is a very simple one, and can be easily comprehended. It is merely whether we shall do the business of the Convention by committees who shall report to us in proper form and shape the various portions of a Constitution, or whether we shall have it done

by the committee of the whole. I think that gentlemen who have given us their views here have overlooked what will be the result of having the business thrown upon the committee of the whole. We shall see forty or fifty Delegates perhaps, claiming the privilege of giving their different views upon every subject that may be brought up. Now let us make a comparison.—Here are one hundred men, each one anxious and prepared to bring forward his own proposition. Suppose nine hundred were added, making a thousand Delegates, how would this house get on with its business, if we pursue the course proposed by the gentleman from Bourbon? Why every one who reflects a moment must see that we could make no progress in that manner. We must have our committees, and the arguments which have been brought forward here against the report of the committee on rules, I think is of no weight or consequence. I trust that every man in this house has come with the determination to do the business of his constituents. If more labor be placed upon one man than upon another, let him bear it. There is no difference whatever between the proposition of the committee that was raised to report the rules and the proposition of the gentleman from Nelson, except that the committee on rules have reported a smaller number for the committees to consist of than that proposed by the gentleman from Nelson. We can work under either of those propositions. Nine men can do the work of a committee instead of fifteen. It is absurd to suppose that these committees will control the opinions of this house. The members having each his own views, will differ among themselves, and on the reports which they will make we shall have the opinions of the majority.

Let the naked question be taken whether we shall work with standing committees or by the committee of the whole. For my own part, I cannot see how we are to get along without standing committees. I believe that the labors of those committees will expedite our business. I hope that either the rules reported by the committee or the proposition of the gentleman from Nelson will be adopted. I am for beginning at the beginning of our work, and not at the end.

Mr. CLARKE. I have but one or two remarks to make, sir. After an experience and practice under the present constitution of the State, for some forty or fifty years, the people of Kentucky have determined, by majorities unprecedented, at two distinct elections, that there were certain changes and alterations to be made in that constitution. Under the present constitution, the hundred Delegates who are assembled have met for making those changes and alterations. The nature of those changes and alterations, as I understand, was discussed in every county of the State. The mode and manner of electing the judicial officers was one of the proposed changes; and there were other alterations proposed by the different candidates who offered their services to the people, as Delegates to this convention; and I apprehend that there are on this floor some seventy or eighty, perhaps ninety, who agree that the present constitution of the State of Kentucky is not so good a constitution as the Delegates here assembled can furnish to the people of the State. There are those on this

floor who maintain that the present constitution of the State is the best platform that we can stand upon, and that there are no changes necessary to be made in that instrument. The question then comes up, as we have assembled here under the authority of the people, whose voice has pronounced from one end of the Commonwealth to the other, that great, important, and radical changes ought to be made in the constitution of the State. The question comes up as to whether, having here assembled for the purpose of acceding to their will, we shall take up the present constitution—disorganized, scattered, undisciplined, and engraft upon the new one those principles that have been ratified by Delegates on this floor, or whether we shall organize by the appointment of committees, and perfect the work by committees. Now, I am not surprised that the original anti-convention men—those who have believed that the present constitution was an instrument as perfect as it could be made—should stand here and insist upon a fair and open fight. I am not surprised that gentlemen who are in favor of the present constitution of the State of Kentucky, should be opposed to the organization of those committees, to be composed of members who are in favor of particular changes which they think ought to be made. But I should be astonished, if those who have, before their constituents, when they asked for their suffrages, proposed changes in the constitution, and who believe that those changes will be of advantage in all time to come, should object to the formation of committees. Those who believe the constitution to be defective, and who believe that radical and wholesome changes can be made, will certainly be in favor of organizing committees.

I trust—and I have very little choice between the two propositions—that the proposition of the gentleman from Nelson, or the proposition of the honored chairman of the committee appointed to draft rules for this body, will be adopted. I have little preference. If I were to declare a preference at all, it would be in behalf of the proposition of the gentleman from Nelson. I had thought that five or six committees would be sufficient; it is a matter of no consequence, however, as to the number. The only question is, as to whether the party who have assembled here in favor of changes and alterations in the present constitution, shall be organized, or whether they shall not. And whether we organize under the resolution of the gentleman from Nelson, or the series of rules offered by the gentleman who is the honored chairman of the committee to prepare rules for this House, is a matter of entire indifference to me. All I ask, all I hope is, that those on this floor, who are in favor of constitutional reform, and who believe the old constitution not as perfect as we can make it—all I pray is, that that party on this floor, will permit themselves to be organized. I care not, sir, what the influence of the reports of the committees may be, if the committee's report comes strengthened by the fact, that they have well conned and well digested all questions involved in the enquiry they have been making. I care not, when they come upon the floor with their report, whether it be a committee appointed by the chair, or otherwise,

so long as the report is strengthened by that fact.

I apprehend, sir, that there is an overwhelming majority on this floor in favor of constitutional reform, and if the reports of the committees present the principles which have been sanctioned by the people at the polls, I care not how the committees have been constituted. I hope we shall have an organization of committees. I trust there is not a gentleman on the floor, who believes that reform is necessary, who will permit himself to be seduced from the faith, and aid in preventing that organization. With these remarks I am perfectly willing to await the action of the House.

Mr. HARGIS. When I came to the convention, sir, I was perfectly in favor of the appointment of standing committees. That was my intention and my proposition. After hearing the remarks of the gentleman from Bourbon last evening, when he seemed to suggest a better idea, that we could proceed in committee of the whole, and that no standing committees were necessary, I thought it would be proper, perhaps, to draw up what I conceived ought to be the two first articles of the constitution, in such form as, in my opinion, would please about nine tenths of the people of Kentucky. I had an object in doing this, I will inform the gentleman over the way. I intended to present this draft to the convention in the morning, in order to see with what sort of respect it would be treated by those gentlemen who want no standing committees. I accordingly offered it, and what was the consequence? Why, after the reading of about eight lines, the gentleman jumped up, exclaiming, O, you must not read that. Well, I thought I must submit to it all. It was not read; it was laid on the table, and I do not know what will become of it; I am utterly uninformed what the issue will be; but I do know that the resolutions which I presented, contain the two first articles of the very kind of a constitution that about nine tenths of the people of Kentucky want. I think so. Well, I thought the gentleman's remarks, last evening, entitled to some consideration, and I was willing to test his sincerity about the matter. Not that I say those gentlemen want no reforms at all. They may want some reforms for aught I know. But I am of the opinion that they are such reforms as the people of Kentucky do not desire. Almost every body understands what those reforms ought to be. But, says the gentleman, take up the old constitution, examine it article by article, and section by section, and whenever gentlemen think proper to propose a change, let it be discussed. But how are these proposed changes to be presented to the consideration of the convention, if you will not even permit propositions to be read?

I came here for the purpose, and with the intention of accomplishing the work of amending the constitution as soon as it could be done. My object is to accomplish the work as speedily as I can, and, in order to facilitate the business, it certainly appears to me that standing committees are the most appropriate. The learned gentleman from Bourbon, I am sure, has not forgotten what took place in the convention which formed the present constitution of the United States. That convention assembled early in

May, with Washington at the head of it; they sat until the last of June, and what had they done? Nothing at all. They had not the committees. At last the venerable Benjamin Franklin got up and told them, that instead of going forward, they were going back, that they had been two months in session and done nothing. Having invoked the blessing of Heaven upon the convention, he moved that there should be standing committees appointed. They were appointed, and every thing went on prosperously, every thing worked well, a constitution was made, and that instrument which has been the security of our liberty has existed from that time. We are now living under it, and have under it, grown to be one of the greatest nations in the world. If there is any precedent worthy to be followed, I think it is to be found in the proceedings of that convention. I imagine that we have as much right to take example from those proceedings, as from the proceedings of any convention that ever assembled. We should go on and appoint the standing committees as they did, and let those committees present to us the form of a new constitution, or so much of the old one as ought to be retained, with alterations of those parts where reform is necessary. When those reports are laid before the committee of the whole, gentlemen can state their objections, if they have any, and then propose amendments precisely as they can now.

In order then, to hasten the business of the Convention, and to give evidence to the country that we are willing to commence the work which we were sent here to do, in the shortest possible time, had we not better have committees? With all deference to the gentleman from Nelson, however, I think it is not necessary to have so many committees as he proposes; but at all events, if we intend to go on, and amend the Constitution of Kentucky with the least possible delay, the most appropriate mode it appears to me, is to have standing committees appointed and let them go to their work.

Mr. A. K. MARSHALL. The remarks made by the gentleman from Simpson, render it necessary for me to explain the vote which I shall give on this occasion. He has arraigned all who are opposed to the proposition of the gentleman from Nelson, as being originally opposed to all constitutional reform, or else of being seduced away from their faith. For myself, I profess to be as decidedly in favor of constitutional reform, and as warm an advocate for it as any man in this house can be. I have been said to be radical. I am not ashamed to acknowledge that I am so. Indeed I have boasted of being radical in this matter. I shall however vote for the proposition of the gentleman from Bourbon, and I do so, not because I am opposed to organization—not because I do not believe that there is a necessity on the part of the house to create committees—but because committees created by the rules which are proposed to be adopted will have conferred upon them powers which ought not, I think, be confided to any committee. If they were intended only to do what the chairman of the committee says they are intended to do, that is simply to take up and put into proper shape and form the principles that have been agreed upon and established by the Convention,

I should not object. But if this is indeed the intention of the appointment of committees either under the rules or under the resolution of the gentleman from Nelson, the language in which they have couched the resolutions seems to me essentially contradictory. These committees are directed to take the initiative in the amendments which are to be proposed.

I shall vote for the proposition of the gentleman from Bourbon, and if that fails I shall move to strike out so much of the report of the committee as relates to the powers of these standing committees, and move the proposition of the gentleman from Bourbon as a substitute for that clause.

Mr. DIXON. What is to be the disposition of the thousand propositions that will be thrown into this great maelstrom, for they will all go there, when we have resolved ourselves into the committee of the whole. What proposition shall be taken up first? Shall all be taken up at once, or each in the order in which it was offered?—Or shall we commence at the beginning of the constitution and take up each proposition as it applies, and so on until the whole are disposed of. My friend from Bourbon, for whose opinion I entertain the highest respect, and who makes the suggestion that the committee of the whole is the only possible mode in which this labor can be done through any principle of order, illustrates his proposition by a reference to the mode of proceeding in the Parliament of Great Britain. What is the mode of proceeding there? The proposition is first referred to a committee of the whole; it is discussed there, and afterwards it is referred to a committee. Now I suppose all these propositions will be referred to a committee of the whole, and at a proper time I propose to take them out of that great maelstrom, and refer them to a committee after every body has had a chance to be heard on them.

Mr. DAVIS. The plan proposed is that the present constitution should be taken up, and each clause read, and as it is read that every member who thought he had an amendment pertinent to it, and which would improve it if adopted by the convention, should have the privilege of offering it, precisely as he would to a bill in the Legislature.

Mr. DIXON. I have not misunderstood the gentleman; the principle is the same. The gentleman, in committee of the whole, offers his amendment, and it is adopted or rejected, and I apprehend that a thousand amendments offered there will be rejected. When the whole matter is reported to the House, what will be done with this proposition? When the amended constitution is reported to the House, what will be done with it, or when all the amendments adopted in committee of the whole are reported, what will be done with them? Are we to take a vote on each separate provision as reported? Suppose I propose to refer the whole matter to a committee of the House—and that seems to be considered as the parliamentary mode of proceeding in Great Britain, and which the gentleman alludes to as illustrative of the correctness of the principle he advocates—when it is referred to them, what will the committee do with it? The constitution has gone to a single committee, and ev-

ery proposition intended to amend it goes to that committee also! Does not every gentleman see the impracticability of the scheme? A thousand propositions referred to that committee!—Does not every gentleman see that if he intends his propositions to be discussed and considered by the committee, he must refer it to them, and they will decide upon all the questions which will arise before this House, upon the great question, as to how the constitution shall be framed. Is it not clear—cannot all see, that we had better have appropriate committees, that will take up each subject, with all the various propositions that would come directly before them, in reference to the particular subject matter under their advisement? Let them report back to the House the propositions they think proper to adopt, and also to be discharged from the consideration of those that they do not think proper to adopt. I think if the gentleman will reflect, he will see that there is no probability of coming to a conclusion in reference to the important question of doing the business of this convention, unless some such system is adopted. The Parliament of Great Britain never thought of forming a bill in committee of the whole—they establish a great principle there, and the whole matter is referred to a committee to report back the principle, with a well defined law for the country. My judgment is—and I have no other motive except to get the best mode—clearly in favor of adopting committees, who would settle on correct principles, and then put the constitution in correct form. Every proposition could be sent to a committee of the whole, if gentlemen desired it, and be discussed there. If committees are appointed and the gentleman desired to have his proposition discussed in committee of the whole, it would go there from the courtesy the convention would extend to it, even were it not for the admirable power that the gentleman has of charming the convention by his eloquence, which would always be an inducement to refer his proposition there. I trust the proposition either of the committee or of the gentleman from Nelson will be adopted.

The question was then taken on the substitute offered by the gentleman from Bourbon and it was rejected.

The question then recurred on the amendment of the gentleman from Nelson, (Mr. C. A. Wickliffe.)

Mr. GRAY offered the following as an additional resolution, and as an amendment to the proposition of Mr. C. A. Wickliffe.

*Resolved*, That a committee of — be appointed to report what amendments or changes are necessary to be made in the Constitution of Kentucky in relation to the mode of revising and amending the Constitution of Kentucky in relation to slaves.

Mr. C. A. WICKLIFFE accepted the amendment.

Mr. CHAMBERS offered as a substitute for both the original proposition and the amendment, a proposition to appoint six committees to whom the various articles of the Constitution, and the amendments proposed thereto should be referred. The amendment was rejected.

Mr. T. J. HOOD offered as an additional resolution, an amendment providing that a commit-

tee of — delegates be appointed to be styled the committee on the Educational Fund, whose duty it shall be to ascertain the amount of the present school fund, the character and condition of its investment, and to report the same to the Convention with such propositions as in their opinion should be incorporated in the Constitution rendering said fund inviolable, for the establishment of a permanent system of Common School Education. The amendment was adopted.

Mr. APPERSON offered an amendment obviating a conflict of jurisdiction on the part of the committees in regard to county offices, which was agreed to.

The number of members of which the committees should be composed was fixed at nine, and the amendment of the gentleman from Nelson, (Mr. C. A. Wickliffe,) as amended, was then agreed to.

The 12th, 13th, 14th, 15th, 16th, 17th, 18th, and 19th rules were passed without amendment. The 20th and 21st were verbally amended.

The 22d was so amended as to provide that "every member who shall be in the Convention when his name is called, shall give his vote.

The rules from 23 to 32 inclusive, were passed without amendment.

The 33d rule providing for a limitation of the time in which a motion to reconsider shall be made, was so modified as to provide that a Delegate voting in the majority, might move a reconsideration on the day on which a question was decided, and that if it were not made on that day, one day's notice of the intention to move a reconsideration, should be required to be given.

The rules from 34 to 47 inclusive, were passed without amendment.

The 48th rule providing that "no original proposition, proposing any amendment to the present Constitution, shall be discussed on its merits, in the Convention, until it shall have been referred to some appropriate committee," was stricken out.

The 49th rule, which provides that "no person, except the members, officers of the Convention and ladies, shall be admitted within the doors of the Hall; nor shall any person except the members and officers, be admitted upon the floor, without the permission or invitation of the presiding officer," was amended on the motion of Mr. C. A. Wickliffe, so as to give the right of admission to the floor, to the Governor of the Commonwealth, the Lieut. Governor, Judges of the Court of Appeals, and such persons as may have filled either of those offices.

The rules from 50 to 59, were passed without amendment.

On the motion of Mr. BROWN, an amendment was inserted, providing for the taking of the yeas and nays, on the call of any two Delegates.

Mr. IRWIN moved an amendment, to provide that the previous question shall bring the Convention to a direct vote upon not only "amendments reported by a committee, if any; then upon pending amendments"—but upon "amendments proposed," before voting upon the main question.

The amendment was not agreed to.

The series of rules reported by the special committee, was then adopted as amended; and on



the motion of Mr. MERIWETHER, a hundred and twenty-five copies were ordered to be printed.

#### ANOTHER CONTESTED SEAT.

Mr. GAITHER, by unanimous consent, presented a memorial of Mr. Joseph Lecompte, setting forth that he was entitled to the seat of the Delegate from Henry county, now held by Mr. Nuttall. The memorial at his request was laid on the table for the present.

On the motion of Mr. HARDIN, the *projet* of a Constitution submitted this morning by Mr. Hargis, was referred to the committee of the whole, and ordered to be printed.

The Convention then adjourned.

MONDAY, OCTOBER 8, 1849.

Prayer by the Rev. Mr. NORTON.

#### CHANGE OF THE COMMITTEES.

Mr. MERIWETHER said that on examination it would be found that the committees as at present organized by the rules, under the amendment of the gentleman from Nelson, (Mr. C. A. Wickliffe,) did not provide for nine members of the convention. That is, there would be nine delegates not embraced on any committee. He would therefore move that one member be added to each of the standing committees except the first, which would provide for every member of the convention.

This was agreed to.

Mr. HARDIN then proposed the following:

*Resolved*, That a select committee of nine delegates be appointed, whose duty it shall be to enquire into the public debt of the State, the best practicable mode, not only to prevent its future increase, but to liquidate the same by the time it shall fall due.

This resolution was agreed to.

#### STANDING COMMITTEES.

The PRESIDENT then announced the following standing committees:

No. 1. *The committee on the Executive, for the State at large.*—Messrs. Archibald Dixon, Garrett Davis, Elijah F. Nuttall, George W. Mansfield, Peter Lashbrooke, Hugh Newell, Thomas Rockhold, Ignatius A. Spaulding, and Nathan McClure.

No. 2. *The committee on the Executive and Ministerial Offices, for Counties and Districts.*—Messrs. Squire Turner, George W. Williams, Robert N. Wickliffe, John J. Thurman, Nathan Gaither, John Wheeler, Alfred M. Jackson, James Rudd, Michael L. Stoner, and Henry Washington.

No. 3. *The committee on the Militia.*—Messrs. Lucius Desha, William Johnson, James Dudley, Milford Elliott, Johnson Price, Green Forrest, James P. Hamilton, William Hendrix, Wesley J. Wright, and Andrew S. White.

No. 4. *The committee on the Legislative Department.*—Messrs. Beverly L. Clarke, John D. Morris, Thomas N. Lindsey, Willis B. Machen, Wm. R. Thompson, William Preston, James H. Garrard, Benjamin Copelin, William Cowper, and Howard Todd.

No. 5. *The committee on the Court of Appeals.*—Messrs. Chas. A. Wickliffe, Richard Apperson, Richard L. Mayes, George W. Johnston, Alfred Boyd, Henry R. D. Coleman, William N. Marshall, Henry B. Pollard, Benjamin F. Edwards, and Robert D. Maupin.

No. 6. *The committee on the Circuit Courts.*—Messrs. Ben. Hardin, Martin P. Marshall, Thomas W. Lisle, Mark E. Huston, Ira Root, William D. Mitchell, William Bradley, Richard D. Gholson, James M. Nesbitt, and John Hargis.

No. 7. *The committee on the County Courts.*—Messrs. Francis M. Bristow, William C. Marshall, James W. Stone, Charles C. Kelly, Thomas James, Vincent S. Hay, Luther Brawner, Charles Chambers, Selucius Garfield, and Thomas J. Gough.

No. 8. *The committee on Miscellaneous Provisions.*—Messrs. John W. Stevenson, John H. McHenry, Thomas P. Moore, Ninian E. Grey, James S. Chrisman, Alexander K. Marshall, Jonathan Newcum, George W. Kavanaugh, Thomas D. Brown, and John Rogers.

No. 9. *The committee on the Revision of the Constitution, and Slavery.*—Messrs. David Meriwether, John L. Ballinger, William C. Bullitt, Edward Curd, John S. Barlow, Chasteen T. Dunavan, James W. Irwin, Andrew Hood, James M. Lackey, and Jesse Coffey.

No. 10. *The committee on Education.*—Messrs. John D. Taylor, Thomas J. Hood, Philip Triplett, William K. Bowling, John T. Robinson, Silas Woodson, John L. Waller, William Chennault, Albert G. Talbott, and Larkin J. Proctor.

#### AMENDMENT OF THE RULES.

Mr. MERIWETHER asked the unanimous consent to amend the tenth rule so as to supply an omission as to the number of delegates that should constitute a quorum to do business. Consent was given, and he moved that a quorum shall consist of at least two thirds of the delegates elected. This was agreed to, and the rule was so amended.

#### THE CONTESTED SEAT.

Mr. GAITHER enquired if there had been any standing committee on elections appointed, and if not, why it had been omitted.

Mr. MERIWETHER said that when the committee on rules were appointed, they had received no intimation that there was to be any contested elections, and therefore did not provide for such a committee. He would further inform the gentleman that the usual practice had been to constitute a select committee for the purpose to which the gentleman had alluded.

Mr. GAITHER said that his impressions were different, and that it was usual in all deliberative bodies to have a standing committee on the subject. It was not constituted expressly for the consideration of contested seats, but as a channel through which all matters in reference to elections should be brought distinctly before the convention. If there was not a committee provided of that character, and if it was in order, he would move that such a committee be now provided.

The PRESIDENT said that it would be in order.



Mr. GAITHER then moved to add a standing committee, to consist of five delegates, on the subject of elections.

The motion was agreed to.

Mr. GAITHER then moved that the memorial of Mr. Joseph Lecompte, claiming the seat of Mr. Nuttall, presented by him on Saturday, be referred to the committee just provided for.

The memorial was so referred, after being read as follows:

*To the honorable, the constitutional convention of Kentucky, now assembled in the city of Frankfort.*

Your memorialist, JOSEPH LECOMPTE, a citizen of Henry county, Kentucky, claims that he is entitled to membership in your honorable body, in exclusion of Elijah F. Nuttall, Esq., who now occupies a seat upon the floor of said body, claiming to represent the county of Henry: and your memorialist shows the following causes upon which he predicates his claims.

1st. Your memorialist avers, that he was a candidate for membership in your body at the last August election in Henry county, and that your memorialist having all the legal qualification for membership, as aforesaid, and being opposed by the said Nuttall, was elected over the said Nuttall, by having a majority of all the legally qualified voters, who voted at said election, to vote for your memorialist, over said Nuttall.

2d. Your memorialist avers, that the poll-books of all the places of voting in Henry county, do, in fact, show upon their face, that your memorialist did receive a majority of the total number of votes cast at said election; and he claims in virtue thereof, that he is entitled to the seat as the delegate for Henry county.

3d. Yet, nevertheless, your memorialist avers, that the returning officer, who was entitled to certify the election of the delegate who might be elected, certified to the Secretary of State that the said Nuttall was elected; and, in virtue thereof, the said Nuttall hath taken his seat in your honorable body; when, in fact, your memorialist avers, that the said poll-books show your memorialist to have been entitled to said certificate by *ten votes*: but your memorialist avers that he is entitled to said seat for other reasons: he charges,

4th, That voters voted for said Nuttall who were not citizens of the county of Henry at the time of voting.

5th. That voters duplicated their votes for said Nuttall.

6th. That persons, who were under the age of 21 years, voted for said Nuttall.

7th. That citizens of Shelby county voted for said Nuttall.

8th. That, in these and other respects, there were two hundred illegal votes for said Nuttall.

Wherefore, your memorialist prays that the proper steps may be set on foot to ascertain the truth of the case, and that your honorable body will declare your memorialist entitled to a seat in this convention, as a member thereof, provided it shall turn out that your memorialist is, in law, entitled thereto. And your memorialist will ever pray, &c., &c.,

JOSEPH LECOMPTE.

#### APPOINTMENT OF A MESSENGER.

Mr. MERIWETHER moved that the sergeant-at-arms be authorized to employ some lad as a messenger to assist him in the discharge of his duties. It was usual to allow that officer this assistance in the legislature.

After a few words from Mr. HARDIN in favor of the motion, it was agreed to.

#### PROPOSITIONS TO AMEND.

Mr. IRWIN offered the following, which, on his motion, was referred to the committee on the legislative department, and ordered to be printed.

1. *Resolved*, That some constitutional reform and restriction should be made upon the subject of the future formation of new counties in Kentucky.

2. *Resolved*, That the house of representatives in Kentucky ought not to consist of a greater number of representatives than sixty five, nor should the senate consist of a greater number of senators than thirty.

Mr. MAYES offered the following, which, on his motion, was referred to the committee having charge of the subject of county courts, and was ordered to be printed.

1. *Resolved*, That the Legislature of Kentucky ought not to meet oftener than once in three years; and that the Governor, upon extraordinary occasions, should have power to convene that body in extra session.

2. *Resolved*, That whenever the legislature shall continue in session longer than fifty days, the pay of its members should be reduced to one dollar per day, for every day the session shall be extended beyond fifty.

3. *Resolved*, That in lieu of the present system of appointing justices of the peace, in Kentucky, each county in the State should be laid off into convenient magistrate's districts; that the qualified voters of each district should, at stated times, by vote, elect some qualified person, residing in the district, to the office of justice of the peace for such district, who should be commissioned by the Governor, and hold said office — years; and he should be eligible to re-election.

4. *Resolved*, That should any justice remove from his district, his office should thereby be vacated, and another elected in his place.

5. *Resolved*, That said justices should have and exercise all the jurisdiction now legally exercised by justices of the peace.

6. *Resolved*, That in place of the now existing county courts in Kentucky, a court should be erected and established in each county to be called — court, to consist of a judge, or judges, (the number should not exceed three,) to be elected at stated times by the votes of the qualified voters of each county, and to be commissioned by the Governor, and to hold his or their office — years. This court should have and exercise jurisdiction in all matters now properly belonging to the county courts; and appeals should be allowed to it from the decisions of the justices in the country.

Mr. THOMPSON offered the following, the first of which, on his motion, was referred to the committee on the mode of amending the constitution, and the second to the committee on the

miscellaneous provisions of the constitution, and both were ordered to be printed.

1. *Resolved*, That the mode of amending the constitution, by convention, is the correct and proper one, which has been sanctioned by experience under the old and the present constitution.

2. *Resolved*, That the committee on the miscellaneous provisions of the constitution be instructed to enquire into the expediency of adding the following section to that part of the constitution to them referred, viz: Any person who shall, after the adoption of this constitution, fight a duel, or knowingly be the bearer of a challenge to fight a duel, or send or accept a challenge for that purpose, or be an aider or abettor in fighting a duel, shall be deprived of the right to hold any office of honor or profit in this Commonwealth, and shall be deprived of the right of suffrage, and shall be punished otherwise, in such manner as the legislature may prescribe.

Mr. MERIWETHER offered the following, which, on his motion, was referred to the committee of the whole, and ordered to be printed.

1. *Resolved*, That it is expedient to provide for the election of members of the state senate for the term of four years, and members of the house of representatives for the term of two years. That the legislature shall convene but once in two years, unless for special reasons, convened by proclamation of the governor. That the members shall receive a daily compensation to be fixed by law, but that no member shall receive compensation for more than sixty days of any one session, which compensation shall not be increased so as to take effect during their continuance in office.

2. That it is expedient to provide that the governor and lieutenant governor, members of both branches of the legislature, and congress, be elected on one and the same day; and all other officers, whether executive, judicial, or ministerial, elected by the people, be elected on the corresponding day of the next succeeding year, so as to effectually separate the elections of governor, lieutenant governor, members of both branches of the legislature and congress, from that of the other executive judicial and ministerial officers: *Provided*, That the governor, lieutenant governor, senators, judges of the superior and inferior courts, and such other officers whose terms of office may exceed two years, shall be so arranged as to cause their election to be held on the day and in the year as provided for in this resolution.

3. That it is expedient to prohibit the manumission of slaves within this commonwealth, unless ample security be provided for their removal and remaining without the limits of this state. And that provision be made for the removal of all free persons of color from the state, and to prevent the future immigration of any such persons to the state.

#### THE ELECTIVE FRANCHISE.

Mr. C. A. WICKLIFFE said that if there was no other gentleman who desired to present any proposition, he would call up his resolutions, submitted the other day, on the subject of the elective franchise.

The PRESIDENT said that unless some objection should be made, he would consider it to be the sense of the convention that the resolu-

tions, referred to by the gentleman, should be now considered.

Mr. C. A. WICKLIFFE said that it had been suggested to him that the delegate from Bourbon (Mr. Davis) was not in his seat, and that, perhaps, it was not proper to consider the subject in his absence. He had offered this resolution from no desire to create discussion upon it, although it was one of those questions, when indicated in the shape of the resolutions of the gentleman from Bourbon, calculated to excite some degree of distrust in the public mind in advance of the labors of the convention. He supposed that the public sentiment of Kentucky, in reference to the right of suffrage, had been so long and so decidedly fixed, that they would not be called upon here to review the work of their predecessors. He knew of no question on which public feeling was more likely to be excited than upon these resolutions. If it was the pleasure of the convention, he was willing to postpone the consideration of the matter until the gentleman from Bourbon should return.

Mr. HARDIN concurred very much with his colleague in his opposition to the resolution of the gentleman from Bourbon, yet, as a matter of courtesy to that gentleman, he hoped it would not now be taken up.

Mr. DIXON was very anxious for the discussion of the resolution, for it embodied very nearly the principle of the one he had himself the honor to submit, but he was desirous that the discussion should be postponed until the return of the gentleman from Bourbon. That gentleman, he was satisfied, desired a discussion of this question. The gentleman had thrown down the gauntlet to his friend on the left, Mr. C. A. Wickliffe and himself, and they had taken it up very promptly he believed. He was, therefore, not disposed to have any fight whilst his friend from Bourbon was absent.

Mr. C. A. WICKLIFFE had no objection to the postponement of the subject.

Its consideration was then further postponed accordingly.

#### PRESIDENT PRO TEMPORE.

The PRESIDENT here requested Mr. DIXON to take the Chair, and preside for the residue of the day.

#### ORDERS OF THE DAY.

The consideration of the resolution of the gentleman from Boone, (Mr. Chambers), offered on the 5th inst., in reference to the order of business—being next in order,

Mr. CHAMBERS moved that they lie on the table—remarking that the action of the convention directing the formation of committees had dispensed with any necessity that existed for their adoption.

They were so disposed of.

Mr. IRWIN said that there had been a good many propositions presented to the house, of which no disposition had as yet been made. He would move therefore that they be now taken up and referred either to the standing committees or to the committee of the whole, as might be the pleasure of the convention.

This suggestion was agreed to, and under this arrangement the resolutions of Mr. Gholson, offered on the 5th inst., in reference to the ab-

olition of special pleading of the chancery courts, trial by jury, etc., were referred on his motion, to a select committee of five.

The PRESIDENT designated the following gentlemen as the select committee:

Messrs. Gholson, Clarke, Triplett, C. A. Wickliffe and Bristow.

The resolution of Mr. Dixon, proposed on the 5th inst., in reference to the election of judicial officers, was referred to the committee on circuit courts.

#### AN EXPLANATION.

Mr. CLARKE. Mr. President: Upon referring to the *Louisville Courier* of Oct. 6, I think it possible that I may not be correctly reported, or that my vote does not stand correct on the journals, and I rise to ask the attention of the convention to a brief explanation. In a letter written from this city to the *Louisville Courier*, I find the following passage:

FRANKFORT, October 5.

W. N. HALDEMAN:—

"As I informed you by telegraph yesterday, the sages from a hundred counties now assembled in the present capital of Kentucky, very summarily disposed of the *Courier* case, by refusing to reconsider the vote, and thus preventing a direct vote by the calling of the ayes and noes upon Col. Preston's resolution. I regret this—as I desired for many reasons, to know explicitly the position of every member upon the issue presented. However, the vote upon reconsidering is almost a test vote, every member voting against the reconsideration, being opposed to granting your reporter a seat, and every member, except Messrs. Nuttall, Clarke, and probably one other, who voted for the reconsideration, was in favor of granting the application."

I have merely risen for the purpose of standing right on the subject. Through courtesy to my friend from Louisville, Mr. Preston, who was desirous to take the sense of the house by a call of the ayes and noes on his proposition to admit the correspondent of the *Louisville Courier* to a seat on this floor, I made the motion to reconsider, but I afterwards voted against it. I do not know whether the journals so represent me or not, but this letter places me in the attitude of having voted for the reconsideration. I did not so vote, and I desire to make the statement here, that the repudiation may be as public as the charge.

Mr. PRESTON. My recollection accords precisely with that of the gentleman from Simpson. I regarded the motion as merely an act of courtesy extended to me so as to afford me an opportunity to call for the ayes and noes, which I had neglected to do. At the same time, if I understood anything of the gentleman's views, they were adverse to the admission of the reporter.

With these statements, the matter was dropped.

#### DESIGNATION OF THE COMMITTEES.

Mr. APPERSON, offered the following resolution with a view of more specifically designating the committees, and it was adopted.

*Resolved*, That the standing committees shall be called and known by the following names: No. 1, the committee on the executive of the state at large. No. 2, the committee on the

executive and ministerial offices of counties and districts. No. 3, the committee on the militia. No. 4, the committee on the legislative department. No. 5, the committee on the court of appeals. No. 6, the committee on the circuit courts. No. 7, the committee on the county courts. No. 8, the committee on miscellaneous provisions. No. 9, the committee on the revision of the constitution and slavery. No. 10, the committee on education. No. 11, the committee on elections.

#### SLAVERY—A SPECIAL ORDER.

Mr. TURNER believed that the resolutions he offered the other day were referred to the committee of the whole, without a time being fixed for their consideration. He did not propose to take up the whole series, at any one time, but desired to have the one relating to slavery taken up on Wednesday next. His reasons were—that there had been a committee appointed on that subject, and various resolutions submitted here in regard to it. Some proposed to allow the unrestricted importation of slaves, others to provide a constitutional restriction on the subject, while a third class were for giving to the legislature all power in regard to the importation of slaves. On these questions there was likely to be considerable diversity of opinion, and he deemed it proper before any standing committee was to act, that there should be an expression of opinion on the part of the house, as a guide to the committee, so that when it did report, its recommendations would be in accordance with the sense of the house. With that view, and as there was nothing set apart for consideration on Wednesday he moved that the resolution referred to, be made the order of the day for Wednesday.

The motion was agreed to.

The convention then adjourned.

TUESDAY, OCTOBER 9, 1849.

Prayer by the Rev. Mr. NORTON.

#### PROPOSITIONS TO AMEND.

Mr. TALBOTT submitted the following, and moved that it be referred to the committee on slavery, and printed.

1. *Resolved*, That it will be expedient to incorporate into the constitution this convention is about to form, a clause that it may be amended specifically on all subjects not involving the right of property.

2. *Resolved*, That the question of slavery, and all other questions involving the right of property, shall not be reached, except through the call of a convention.

3. *Resolved*, That no specific amendment shall be adopted, or convention called, under the constitution this convention may adopt, except upon the recommendation of at least two thirds of both branches of the legislature for two successive sessions, and afterwards sanctioned and ratified by a direct vote of the people, a majority of all the qualified electors in the State voting for the same.

Mr. NEWELL suggested to the gentleman from Boyle, that an enormous sum would be expended by so much printing, and he enquired

if it would not be sufficient to have the resolutions referred to the committee, before whom the gentleman could appear, if he desired it, to give further explanations.

Mr. TALBOTT replied, that it had been the custom to print propositions, and he asked for no deviation from the usual course.

The motion to refer and print was agreed to.

Mr. RUDD offered the following:

*Resolved*, That no city, town, or county shall hereafter, in any manner, give, loan, or sell its credit in aid of any individual association or corporation; neither shall it contract any debt but in anticipation of its regular revenue for any fiscal year, and to be paid within six months after expiration of such fiscal year; nor shall the legislature authorize any city, town, or county, to contract any such other or further debt unless it be payable in fifteen years at farthest; nor unless there be levied at the same time an annual tax upon the real and personal property situate within the corporate limits, adequate to the annual payment of the interest and the extinguishment of the debt within the time stipulated for the payment; nor shall any such law take effect until three months after the passage, nor until the same shall receive the sanction of a majority of all those who at the time are assessed, or owners of such real or personal estate by a vote to be taken after ten days notice, on a day to be named, and in a manner to be prescribed by those having control of the principal affairs of such city, town, or county; nor shall the taxes on the real or personal estate of any city, town, or county be increased, but by a law which shall in like manner receive the sanction of a majority of all those whose property is assessed as aforesaid. The legislature may, at any time after the approval of such law by the tax payers, forbid the contracting of any further debt or liability, under such law; but tax imposed by such law, in proportion to the debt or liability which may have been contracted in pursuance thereto, shall not be repealable, but be annually collected until the principal and interest of the debt contracted shall be discharged.

He asked that it be printed, for it was a proposition of some considerable importance, and that it be referred to the committee on the executive and ministerial officers for counties and districts.

The motion was agreed to.

Mr. McHENRY submitted the following:

1. *Resolved*, That if representation can be made equal and uniform, and each county in the State have separate representation, by increasing the number of representatives to one hundred and fifty, it should be done; but, if by so increasing the number of representatives, each county cannot be entitled to a separate representation, and at the same time representation be more equal than at present, then the number of representatives should be reduced to and fixed at seventy-five, and the number of Senators to twenty-five.

2. *Resolved*, That the regular session of the legislature should be limited to sixty days, unless extended by a vote of two-thirds of all the members elected to both branches thereof.

He moved that it be referred to the committee on the legislative department, and printed.

Mr. NEWELL enquired if so much printing could not be avoided. He called for a division of the question, so that the vote could be taken separately upon the motion to print, for the purpose of testing the question whether the convention was willing to print all resolutions that might be offered to it.

The question was taken, and the motion to refer and print was agreed to.

Mr. KELLY offered the following, and they were referred to the committee on the court of appeals:

*Resolved*, That commissioners shall be appointed to codify and condense the laws of this Commonwealth, and that the rules of practice in the various courts of justice be made uniform.

*Resolved*, That the court of appeals, as at present constituted, be abolished, and that the circuit judges constitute said court.

#### PRINTING OF RESOLUTIONS.

Mr. MAYES submitted the following resolution:

*Resolved*, That all resolutions, hereafter offered in this convention, shall be referred without printing, unless otherwise specially ordered.

Mr. TRIPLETT expressed the hope that that resolution would not be adopted, for the object of printing was, that members of the convention might have an opportunity to learn thoroughly what the propositions submitted were. Some of them were so situated in the house that they could not hear distinctly when the resolutions were read, and it was due to them that they should be afforded an opportunity to read if they could not hear them.

Mr. MAYES, in defence of his resolution, said that if all resolutions submitted to the house were to be printed, as a matter of course, a very large amount of expenditure, for printing alone, would accrue. But the gentleman from Daviess did not appear to have heard his resolution, or he would have perceived, that if it should be adopted, the convention could order any resolution to be printed whenever the printing was deemed necessary for the information of the delegates, and if they were not of sufficient importance, of course, the printing would not be ordered.

Mr. BULLITT said it seemed to him to be a courtesy due to any member, that his proposition should be printed, that it might be maturely considered by all the other members of the convention. Some of them could not hear all the resolutions that were read, nor could they hear all the speakers that addressed the convention, and without some such means of forming a correct judgment, they could not rightly discharge their duties to the people who had sent them there. The cost of printing such documents was a small consideration, when compared with the importance of the work in view. Unless he could have printed documents to consult, he should very often be at a loss how to vote, and he hoped, therefore, that the convention would consent to print any such document that any gentleman, as the representative of a constituency, might think proper to offer.

Mr. MERIWETHER thought that nothing would be gained by the adoption of this resolution, for it proposed that a vote should be taken

on the printing of every proposition, which was now the rule and the practice of the convention. The resolution was rejected.

#### THE COURT OF APPEALS.

Mr. C. A. WICKLIFFE said that the standing committee, on that branch of the constitution which related to the court of appeals, had directed him to make a report, which he styled No. 1, as follows:

#### ARTICLE —.

##### *Concerning the Judicial Department.*

SEC. 1. The judicial power of this Commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, and in such inferior courts as the general assembly may, from time to time, erect and establish.

SEC. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

SEC. 3. The judges of the court of appeals shall hold their offices for the term of eight years, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, which shall not be sufficient ground of impeachment, the Governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided however*, That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law.

SEC. 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business. The judges shall, by virtue of their office, be conservators of the peace throughout the State. The style of all process shall be, "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name, and by the authority of the Commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

SEC. 5. The general assembly, at its first session after the adoption of this constitution, shall divide the State into four appellate court districts—in each of which districts the qualified voters therein shall elect one judge of the court of appeals.

SEC. 6. The judges first elected shall serve as follows, to-wit: one shall serve two years; one shall serve four years; one shall serve six years, and the other shall serve eight years. The judges at the first term of the court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The judge having the shortest time to serve shall be styled the Chief Justice of Kentucky.

SEC. 7. If a vacancy shall occur in said court, by death, resignation, removal, or otherwise, the Governor shall issue a writ of election to the district in which such judge was elected, and

another judge shall be elected by that district, to serve until the expiration of the time for which the judge was elected, whose death, resignation, removal, or other cause, produced such vacancy.

SEC. 8. Any citizen of the United States, who has attained the age of thirty years, and who is a resident of the appellate district for which he may be chosen, and who has been a practising lawyer in the courts of this state for at least eight years, or whose practice at the bar, and service upon the bench of any court in this state shall, together, be equal to eight years, shall be eligible to the office of judge of the court of appeals.

SEC. 9. The court of appeals shall hold its sessions in each appellate district at such times and places as may, from time to time, be provided by law.

SEC. 10. The first election of the judges of the court of appeals shall take place on the — day of —, and every two years thereafter, in the district in which a vacancy may occur, by expiration of the term of office; and the judges of the said court shall be commissioned by the governor.

SEC. 11. There shall be elected, in each appellate district, by the qualified voters thereof, a clerk of the court of appeals for such district, who shall hold his office for the term of eight years, and who may be removed by the court of appeals for good cause, upon information by the attorney general.

SEC. 12. No person shall be eligible as clerk, unless he is a citizen of the United States, a resident of the district in which he may be elected, of the age of twenty-one years, and have, at the time of such election, a certificate of his qualifications from the judges of the court of appeals.

SEC. 13. In case of the vacancy in the office of clerk of the court of appeals in any district, for any cause, the governor shall issue a writ of election to that district, and the qualified voters thereof, shall elect a clerk for that district, to serve until the end of the term for which the clerk was elected whose vacancy is to be filled.

SEC. 14. The legislature shall provide, by law, for the mode and manner of conducting and making due returns, to the secretary of state of all elections of the judges and clerks of the court of appeals, and of determining contested elections of any of those officers.

There is (said Mr. W.) one other provision connected with this subject that attracted the attention of the committee, but we prefer before expressing any opinion upon it to wait the action of the other committees connected with the judiciary. I allude to the mode of electing these officers—whether it shall be by ballot or *viva voce*. The view of the committee was, to adopt, in reference to the election of all these officers, especially those connected with the judiciary, the ballot system; but we have not gone into that subject, preferring first to wait the action of the other committees. In obedience to the direction of the committee, I ask that the convention will order the printing of five hundred copies of the report. They desire this more than ordinary number, that they may be enabled to send out to sections of the State, where newspapers

perhaps will not reach, the views they propose shall be adopted in the constitution.

Mr. KELLY. I do not know whether it is in order to offer the resolution introduced by me a few moments since, as an amendment to the report of the committee; but if it be in order I will so offer it. I think I see also in the report of the committee, in regard to the clerk of the court, another defect. In the case of the death or the resignation of that officer, they require the writ of an election to fill the vacancy thus caused, to be issued by the governor. Suppose however, the officer should die or resign on the first day of the term, who would discharge the duties of the office? I think the report ought to provide for a *pro tempore* appointment, by the court itself, until the vacancy should be regularly filled.

The PRESIDENT said that the gentleman's resolution had been referred to the committee, and was not now in possession of the house.

Mr. C. A. WICKLIFFE. My friend from Washington can attain his object in committee of the whole, when it will be in order to take up, discuss, consider, and amend the report of the committee. I do not think this is the appropriate time to offer an amendment; certainly it was not the design of the committee to ask the consideration of this report now, before it is printed. The difficulty in reference to the clerk, to which allusion has been made by the gentleman, did not escape the attention of the committee. It is to be presumed that there will be left some power of legislation after we have terminated our labors here, to provide for the temporary discharge of the duties of the office, in case of the resignation or death of the clerk. However, that can properly be considered, when it is proper to take up the subject for amendment—that is, when it is considered in committee of the whole. I was instructed to ask the reference of the report to that committee, and not its consideration now.

Mr. KELLY. To obviate all difficulty I will withdraw my motion, being satisfied that the subject will come up more properly in committee of the whole.

Mr. HARDIN. This is a matter of great importance, and I am certain that every gentleman here would like to enter upon its discussion prepared with his views on the subject. I would suggest that a day be fixed upon for the consideration of the report.

Mr. C. A. WICKLIFFE had no objection to fix upon a day as suggested, and moved to make the consideration of the report a special order for Monday next.

The question was then taken on the motion to print 500 copies of the report, to refer it to the committee of the whole, and to make it the special order for Monday next, and it was agreed to.

#### THE DISTRIBUTION OF NEWSPAPERS.

Mr. MACHEN. There was a subject disposed of some two or three days since, in regard to which I am inclined to think the sense of the convention has, perhaps, undergone a change. It was the proposition to disseminate through the medium of the Commonwealth and Yeoman, throughout the country, information as to the proceedings of this convention. I desire that

the vote disposing of this subject may be reconsidered, and as I understand that, under the rules, it is necessary to give one day's notice of a motion for reconsideration, I will give that notice now.

Mr. GREY. If the matter is to be acted upon at all it might as well be done at once. I move therefore, to suspend the rule so that the vote on the reconsideration may be taken now.

The motion was agreed to.

Mr. MACHEN. I now make a motion to reconsider the vote laying the subject on the table. The house will recollect that the original proposition was to provide that each delegate should be furnished for circulation through the country with 60 copies of the weekly Commonwealth or Yeoman, or a certain number of copies of the daily Commonwealth, not exceeding the cost of \$30, as each might prefer. There was an amendment introduced by the gentleman from Nelson, (Mr. Hardin), limiting the amount to \$10 to each delegate, and then by a vote of the convention the whole subject was laid on the table. I am inclined to think that the convention has had perhaps, a favorable leaven operating upon it with reference to the subject, and that many members who then voted adverse to my opinion are now disposed to extend this information to the country. It was objected to when this question was before under discussion that the means proposed were entirely inadequate to the purpose proposed to be accomplished. Now we can adopt no measure to disseminate our proceedings so as to reach every individual who may be scattered over the country, but we may adopt such a mode as will result in their pretty thorough dissemination. I come from the county of Caldwell, and am pretty well acquainted with its territory and the location of the people—as I presume every gentleman here is with that of the county he represents—and I can send to the different neighborhoods, copies of the Commonwealth or Yeoman, and I doubt not the citizens in the respective portions of the county to whom they are sent, will feel a sufficient interest in the proceedings of this body, to secure for these papers a wide-spread and very general circulation in their vicinity. I apprehend that none of our citizens will complain of us for having in this way attempted to advise them of what we are doing. I understand further that the appropriation made at the last session of the legislature to defray the expenses of the convention, will amount to the sum of near \$60,000. If so, and my information may be incorrect, it does seem to me that \$3000 can in no better way be appropriated, than in the dissemination of this intelligence, and I trust that the gentlemen who have been adverse to this method of doing it, will change their views on the subject and allow the delegates to be furnished for the purpose with these newspapers.

The motion to reconsider the vote, laying the subject on the table, was then agreed to.

Mr. HARDIN. As to what the gentleman said in regard to \$60,000 being set apart for the expenses of this convention, I have not seen any law which set apart such a sum for the purpose. There was a taxation of four cents additional levied—two cents of which were for the school fund, and which would amount to \$56,000, al-



lowing for a fair increase in the value of property, but allowing for no such increase, and just standing as we were, it would amount to \$54,000. Then there was two cents more assessed upon the people, which would make about \$56,000 more. But the gentleman will bear in mind that the dividends upon slack water, which went into the sinking fund, have been taken and appropriated to the school fund, and the loss of that amount to the sinking fund will have to be made up by these extra two cents. I have examined the slack water, and take the whole of it, I do not know how much it will amount to this year, but I guess to not more than \$25,000. The receipts are, or at least are likely to be, much less than they were last year, while the expenses are much greater than last year, owing to the timbers that make the dams becoming rotten. And they will become more and more so every year, until they finally sweep away the whole system in less than ten years, unless I am a false prophet. The gentleman is mistaken—there is very little money, hardly enough to live on, coming from these two cents. After supplying what the sinking fund requires, there will be far short of \$60,000 left for us. Then an account has to be opened for the convention, and unless we are saving we shall have no money at all. It will take \$18,000 to pay the members if we should sit sixty days; and then there is \$3 a day extra for the dignity of the chair: \$10 a day for the clerk; and there is the assistant, the door-keeper, and the sergeant-at-arms \$3 or \$4 each; and there is also an assistant messenger to be had. Besides all this, there is a good deal of paper to be used; and there is to be an account for wood, and evidently a large printing account which will not be a dollar less than \$10,000. The gentleman from Nelson, my colleague, moved the printing of five hundred copies of his report. I did not see the necessity for any more than one hundred and twenty five, but I did not want to be troublesome. Now the gentleman from Caldwell proposes to expend \$3,000 more for newspapers, and he puts it on the wrong basis—the rock that a great many men have broke themselves upon—that is, the idea that their avails are equal to their expenses. I had the misfortune, and I rather consider it so than otherwise, from time to time to have had a seat in congress, and I found I could not stand the sacrifice of the loss longer than for two or four years at a time. Then I had to quit and resort again to the practice of the law to repair the loss. I have at every session expended not less than \$200 or \$300 in the purchasing of documents to send among my constituents. I took care to buy something of value, important documents, good speeches, not too much or too little, and well made. I found this to be the only way. This paper business in congress is a most idle waste of \$30 to each member.

I took with me copies of the poll book for every county in my district, and directed the little boys in the house to fold up my documents and gave them instructions to direct them from the poll book—giving A. one to-day, and B. one to-morrow, and so on. And perhaps A. would not get more than one copy during the session, for the poll book would hardly be got through with before the session was terminated. Now what

can we do here? I represent, I presume, some 2,000 constituents. If I send only the papers to A., the balance of the alphabet will be vexed, and so mad that they will not read them at all.—Suppose I send the balance, through the alphabet, to my whole constituency. While perhaps each one would get a paper, they would not get more than one through the whole session. Will they get information through this source, of what we are doing here? They would each just get an account of what we do here on one day. There is scarcely a town in Kentucky where they do not have a printing press—doing a little job work, and publishing a little paper, perhaps not larger than my two hands. They will all publish our proceedings, and so will all the leading papers in the state—the Louisville Journal, Democrat, Courier, Chronicle, the Commonwealth, Yeoman, and God knows how many papers—all will publish them, and they will be read. I have never been a Gen. South in this house—I mention him with all reverence, for he is dead—who was always considered sitting on the strong box—but we are proposing to lay out I know not how many thousands. If the motion of the gentleman from Woodford should prevail, to print 2500 copies of the debates, that would amount to \$7,500, and the present motion would make another \$3,000—making \$10,500 in all. And then if we go on and print all the reports and propositions made here, it would amount by the end of the session to \$15,000 or \$20,000. If I thought that any useful information could be diffused thereby, I would not care, but I declare most solemnly, that I cannot see that there is.—I suppose that in the course of the debates many valuable speeches will be made here—I do not expect to make any myself, but I see some of the ablest men in the house preparing to make them—and they will be the best things to be distributed, for the benefit of the people, as they will give a full view of each side of a question. As for the Daily Commonwealth, I do not consider it worth a cent or half a cent—I would not give a cent for ten millions of them.

Mr. MACHEN. I beg to state to the gentleman last up, that my little experience in Frankfort, in attempting to serve my constituents, justifies me in the supposition, that I shall have need of all the remuneration they give me, without appropriating any part of it for extending to them information. It may suit gentlemen, who have political aspirations for the future, to expend their individual means, in order to extend light to their constituents. I happen not to have those aspirations, and I do not believe that my constituents will require any individual sacrifices on my part, in giving to them information which they have a right to demand at the hands of this body. If I am correct in my estimate of the proceeds of the two cent tax, there will be ample for the purposes of this convention, and more than sufficient. There will be a surplus to go into the sinking fund, in order to relieve the embarrassments which our internal improvement system has drawn us into. The difference between the gentleman's estimate of the two cent appropriation and my own, is not very material. I have supposed that at least sixty thousand dollars would be raised under that appropriation, and the gentleman estimates it at fifty-six thou-



sand. There will be, at all events, enough from this source to dispense this information, and I think that we can make no better application of three thousand dollars, than by devoting it to this purpose.

Mr. HARDIN. The gentleman is entirely mistaken, if he supposes that I have any aspirations. My friend from Caldwell, I have no doubt, is actuated by very laudable motives in advocating this proposition, but I do not think he will make many friends by the distribution of papers. Indeed I think he will make ten enemies for one friend. I have had occasion to examine the subject of our revenue several times, and no longer ago than yesterday, being in the second Auditor's office, I made an investigation, the result of which proves to me, that if there is no increase in the value of property, fifty-four thousand dollars will be all that can be raised under the two cent tax. If property should increase a little in value, there may be fifty-six thousand dollars raised. There will be a great deficiency in the sinking fund, and that deficiency must be made up in some way or other. It will take at least thirty-five thousand, to pay the expenses of this convention, if we observe as much economy as we can. I suppose that we shall sit about seventy days, and probably when we submit our work to the people, we shall not adjourn finally; but meet again after the people shall have determined to ratify or reject our work. If they ratify it, there will be a necessity for some action to be taken, in order to put the government in motion. If on the other hand, the people reject the new constitution, on account of some defect, it will be necessary to meet, in order to remedy that defect. We had better not be too profuse with this little remnant of appropriation.

The gentleman is entirely mistaken if he supposes that I can spare two or three hundred dollars for the purchase of newspapers to distribute among my constituents.

Mr. HARGIS. Since this matter was laid upon the table, I have almost come to the conclusion myself, that I would vote for some appropriation, perhaps to the extent of one thousand dollars for the purchase of newspapers, to be distributed. But I had a conversation with one of the public printers, (Mr. Hodges,) this morning, who said to me that he was very glad we did not order the thousand dollars worth, as it would be of no advantage to them. Having thought the matter all over, inasmuch as one thousand dollars worth would go but a little way, when distributed among the people, I came to the conclusion that I would not vote for the proposition if it should come up again. I accordingly purchased about forty papers, which I am now sending off. I think that for all the good we can do by making an appropriation of this kind, we had better not incur the expenditure. Not that I would oppose the dissemination of knowledge or information, but I think that information will be more readily extended to the people, by taking a different method. I shall certainly vote against any such appropriation.

Mr. T. J. HOOD. I am pleased that the gentleman from Caldwell, upon reflection, has concluded to move a reconsideration of the vote in

this case, and am particularly gratified in having this proposition brought before this body in such close proximity with another measure just disposed of. A few moments ago, a resolution was offered by my friend in front of me, (Mr. Mayes,) dispensing with the printing of that multitude of resolutions, daily accumulating on the secretary's table, for the benefit of this body, except such as it may otherwise direct. Now, many of these resolutions present questions of great importance, and well worthy the serious consideration of every gentleman. Yet from the character and length of some of them, the suspicion may reasonably be indulged that the good people of *Buncombe* were not wholly lost sight of in drafting them. The object of that resolution was to curtail expenses, as the daily papers, laid upon our tables would furnish the same information. Still it was voted down. Now I am inclined to favor every proposition tending to retrenchment and reform, but they must not be partial in their bearing. We should not print alone for our own information or benefit, and withhold all intelligence of our proceedings from those who sent us here. For what purpose, sir, have we here assembled? Nothing less than to alter, amend, or remodel the organic law of the State—the constitution which will give tone and character to the very government under which they live—and they, as being so deeply interested in our deliberations, have a right to be informed of our reasonings and conclusions, and to see with what fidelity we redeem the pledges made, when candidates before them. When this proposition was up a few days since, gentlemen became alarmed at the expense to be incurred. We shall now see whether their ideas of retrenchment shall operate alone to withhold intelligence from the people as to our proceedings, whilst they themselves are unaffected by them. In order to ascertain this, I call for the ayes and nays.

Mr. MACHEN. I wish to make a single remark in reference to the observation of the gentleman from Morgan and Breathitt. The gentleman says, that his mind has undergone a change upon this subject. It seems to me, when I look at the documents that are before us, that I can readily see why it is that his mind has undergone a change; and his constituents, I imagine, will come to the same conclusion. They will think that there has been enough of printing at his suggestion for one session at least. I refer to the document presented by that gentleman.

Mr. HARGIS. The gentleman from Caldwell will excuse me, when I say that I think he is mistaken in saying that the document, presented by me, was printed upon my motion.

The yeas and nays were then taken upon the motion to reconsider, with the following result: yeas 53, nays 40.

Mr. MITCHELL said, if in order, I will now move to strike out ten and insert thirty. I regard ten dollars as altogether insufficient for the object proposed. Unless the sum be enlarged so as to furnish a sufficient number of papers for distribution to those distant parts where newspapers do not commonly reach, it will be altogether a useless expenditure. But it does seem to me, that if the appropriation be made large enough to accomplish that object, much good

may be done. It is the case, I believe, in many counties that there are neighborhoods where newspapers do not reach. Those neighborhoods are within the knowledge of gentlemen on this floor, and by using that knowledge, and sending the newspapers into those neighborhoods, we shall have the means of extending information upon the important subjects which are agitated here, and enable the people to form their judgments respecting them.

The PRESIDENT. That motion is not in order. It is not in order to renew a motion that has already been made and determined.

Mr. WM. JOHNSON. I will move then to strike out ten, and insert thirty one.

The PRESIDENT. It is perfectly in order to move to amend, by striking out and inserting a new number.

Mr. MACHEN. I will ask the chair if the first step will not be a reconsideration of the vote by which ten dollars was substituted for thirty.

The PRESIDENT. That would be the regular order of proceeding. Some gentleman, who voted with the majority, should move a reconsideration of that vote.

Mr. BARLOW. I voted with the majority, and in order to test the question, I will move a reconsideration of the vote by which that amendment was adopted.

Mr. HARDIN called for the yeas and nays upon that motion, and being taken, they were, yeas 40, nays 52.

The question then recurred upon the adoption of the resolution as heretofore amended.

Mr. MAYES. The original resolution proposes, or its object seems to be, to give to the people of the state correct information in reference to the action of the delegates to this convention during its session. The resolution, if adopted in its amended form, will give to each one of us some five copies of a daily paper, or in lieu of a daily, some twenty or twenty five copies of a weekly paper. Now my friend from Nelson represents some two thousand constituents, and the purpose of making the appropriation, is to keep our constituents apprised of the proceedings of the convention. That, as I understand it, is the object; that they shall be informed of every thing which transpires here; that they shall be put in possession of the reasons why we are in favor of a given proposition, or why we oppose it. Well, say that I take for the benefit of my constituents five copies of the daily Commonwealth, and send those five copies to the county of Graves. How am I, with only these five copies of the paper, to supply information to the seventeen hundred voters of that county? That the purpose may be accomplished, I must send to each person every day; for if I send to this man to-day, and to that to-morrow, there is in reality no information conveyed; because each man would have but a disjointed portion of our proceedings.

If any feasible plan can be adopted by which this information can be spread throughout the country, I shall be in favor of it; for I am the last man to withhold useful information. But I think, that the expenditure, as proposed, would be worse than useless. I believe it would utterly fail to accomplish the purpose intended.—

These are some of the reasons why I vote against it; not because I am opposed to giving information to the people. I should be glad to put them in possession of full information. But as the gentleman from Nelson very justly observes, if you attempt to impart information at all, you should make it extend impartially to all. If I send a paper to one man and send none to his neighbor, the latter will be offended, for he will conceive that he has as much right to receive information as the other.

I can see no reason why delegates should change the opinion they expressed the other day in regard to passing this resolution. No reason has been advanced, and the more I have heard gentlemen talk on the subject, the more I am satisfied that the appropriation of a thousand dollars would be worse than useless.

Mr. ROOT. I would simply say to all those gentlemen who are in favor of a reformation of the constitution, that I hope they will vote for this resolution, however limited it may be in its character. Sir, the elections were scarcely over before the secret enemies of all reform were endeavoring to impose upon the more ignorant portion of our fellow citizens, by leading them to believe that no reform could be effected by the convention, and they are now preparing the public mind to condemn in advance whatever may be done by the convention. It is worse than useless for us to deliberate here, for one, two, or three months, bringing whatever wisdom there may be in the convention to bear upon the question of reform, while the enemies of reform are deceiving the great body of the people, and preparing them to condemn unheard whatever we may do. I am therefore, in favor of circulating this information. It is true, it is but little information that this resolution will disseminate, but it may be like leaven thrown into the public mind, which will produce its proper effect. Suppose I send twenty copies of a weekly newspaper into my neighborhood. The people at their usual gatherings will obtain the information which it is intended to convey; and they will be enabled thereby, to some extent, to meet the arguments of the enemy. They will be put in possession of the reasons by which we are governed, and when we place before them, at our return home, that which we shall have prepared for their adoption, the work will be well nigh accomplished; and it will be ratified by a triumphant vote. But if instead of doing this, you permit the evil disposed to pour into the ears of the people their vile fabrications, they will be filled with apprehension and they will not be prepared to sanction your work.

Sir, let us provide that the antidote go with the poison. The thing most feared by the enemies of reform, is that light shall be thrown out—shall be communicated to the people. Hence you find that every one who has been heretofore opposed to constitutional reform, is now for putting out the light, whilst all the friends of reform and of the people, are for circulating light. It is the light that has been circulated, which has brought this august assemblage of the people together. It is light that strengthens their hearts and their understandings, and which will enable them to receive the labors of the convention as they should be received.

I repeat, sir, I hope that every friend of constitutional reform will give his vote to disseminate this little pittance of light among his neighbors.

Mr. HARDIN. I am not going to make a speech Mr. President, but simply to protest against the opinion advanced by the gentleman from Campbell, that it is those who were opposed to the call of the convention, who are now endeavoring to prevent the dissemination of light, and to prevent the accomplishment of any good. I do not know at what time my friend over the way became a convert to that doctrine; but I will say to him as was said once in the United States Senate by a distinguished southern senator: "Before you say a thing is so, you should know that it is so." I opposed this appropriation on the ground that I do not believe it will do any good at all.

Mr. MAYES. I do not know that any portion of the delegates of this convention, are in favor of withholding light from the people, nor did I suppose that it ever entered the mind of any delegate, that those who oppose the passage of the resolution, appropriating a thousand dollars for the purpose of sending these newspapers through the country, were opposed to constitutional reform. For myself, I can say in regard to this subject, that I was an original convention man. I have been for it from the beginning, and am for it still; and as I remarked before, if I could see any good that would result from appropriating this money, in the way that is proposed, I would vote for it. But as I can see no good that is likely to result from it, I shall vote against it.

Mr. ROGERS. I only rise to say, that I have opposed no appropriation at all, that was intended to convey information throughout the country. And in reference to being a convention man, I will inform gentlemen, that I have been a convention man from the very beginning; and one of the reforms which I have been most in favor of, is economy. On the score of economy, then, believing that this appropriation can do no good, I shall vote against it.

Mr. TURNER. I have uniformly voted against incurring a large expense for printing and distributing papers; and my reason for doing so is, that the printing that is to be done hereafter is, I think, of much more importance. When we finish the constitution which we are about to make, I want to print a great many copies of it, together with the old constitution, and send them out to the people, that they may compare the one with the other, and make choice between them. My impression is, that we have a tolerably good constitution already, though I am for making a great many changes in it. Still we have done very well under the old one, and I wish the people to make a comparison, and say which they will prefer. Every principle embodied in the new constitution, ought to be compared with those of the old one, that the people may vote understandingly.

It is important that we should avoid incurring expense for printing, that may be dispensed with, in view of having this necessary item of expense, which will not be inconsiderable, to be incurred hereafter. Our printing bills will otherwise run up to an enormous amount. Will it not be more important that we should lay before

the people the final result of our labors, than that we should give them ten dollars worth of the Commonwealth and the Yeoman? And, after all, how many individuals can you supply with that ten dollars worth? I tell gentlemen I have had some little experience in this business. On one occasion, previous to an election, I wrote letters to about twenty individuals, in different parts of the county, urging them to exert themselves a little for me, as my business would not admit of my personal attendance.— But I found, that by selecting individuals in this manner, I gave offence to others, and, in short, I made three enemies where I gained one friend. And if we send out papers in this way, we shall give offence to every man in the neighborhood, except the one to whom the paper is sent. And, when the appropriation is narrowed down to the sum of ten dollars, it will be found to be too limited to do any good. And there is another item which we shall have to pay: that is, a postage of three cents upon each paper, while the paper itself costs but two. So that in any point of view in which I can look at the matter, it seems to me to be highly objectionable. In the first place, it will do little or no good, if not positive harm; and in the next place, it will exhaust our means and prevent us from doing an important service hereafter, to enable them to vote understandingly upon the issue of our labors.

Mr. MACHEN. The expense to be incurred for postage is certainly erroneously stated by the gentleman from Madison. Put it at the highest price, and it is only one cent upon each newspaper, when sent by individuals. This I understand to be the post office law. But the intention was that the names of those to whom papers were to be sent, should be left with the publishers, and that the papers should go from the publishing office without this additional tax upon the sender.

Mr. GHOLSON. I certainly do not rise for the purpose of animadverting particularly upon the remarks of any one gentleman, or upon any thing in particular, that has been said. While all manifest a willingness that the people should be supplied with information, none suggest a better mode than that which they object to. Are we to be told that because this mode is not so good as might by possibility be devised, we are therefore to have none at all? Why do not its opposers present to us another? Do the members of this convention desire to keep their light hidden under a bushel? Are they unwilling that their constituents should know what they are doing here? Certainly not. No one will place himself in that dilemma. Then I call upon gentlemen to furnish us a plan for disseminating light among the people. I believe there is no one in the state who does not desire to be particularly informed of what is said and done here. It is due to the people that they should be informed. We are consuming daily and hourly their money, and shall we be told that we are not to give an account of our stewardship. Much has been said about being opposed to reform. I call upon those gentlemen, who assert that they are in favor of a reform, to place before the people, the means of refuting this calumny. And what other means

so effective for doing this as disseminating the debates of this convention.

I admit that the sum of a thousand dollars is insignificant, and I shall vote against it. When nothing better than that can be done, I should prefer to pay the ten dollars myself. I was in favor of voting a hundred papers instead of sixty; but if you reduce it to ten dollars, I shall advise every one to vote against it, and pay the amount out of his own funds. It is altogether too insignificant a sum to do any good. If a reasonable number of papers were distributed, the people might be put in possession of the necessary information, but the present number is totally inadequate, and I shall feel constrained to vote against it altogether.

Mr. THOMPSON. I trust the gentleman from Ballard will not vote against this appropriation, because if the distribution of a large number will do any good, the distribution of a few will do some good. It has been intimated that those opposed to the original resolution wished to withhold light from the people. I have no such motive as that. When the constitution shall be formed, I am in favor of sending a copy to each voter in the State, so that he may be enabled to form an opinion regarding it. We have heard in this hall, that a large portion of the delegates in this convention are in favor of civil revolution. What do we propose to do? What do a majority of the people of Kentucky ask at our hands? It is to place in their hands the election of the remainder of the officers of government, beyond those which they now have.

I for one hope that those in favor of the original resolution for taking thirty dollars worth of the newspapers, will not vote against the amendment of the gentleman from Nelson, because if thirty dollars will do good, ten dollars worth appropriated in the same way will do some good. But the best plan, I think, for giving the people information is, when we have finished our work, to have a copy transmitted to each voter: and I fear not for the result of our labors when the people come to vote.

Mr. HARGIS. I would not trouble the convention with a single remark, were it not that in consequence of the remarks of the gentleman from Campbell, I would appear to stand in an attitude opposed to reform. As has been well remarked, gentlemen ought, before they make an assertion, to be well assured of its truth. I have opposed this appropriation from the beginning. I was opposed to so small and pitiful a provision for the dissemination of knowledge; because, in fact, and in truth, I believed it would be of no avail, while it would cost the state a considerable sum, and that it would create more dissatisfaction among the people than if we had not sent a paper among them at all. Suppose we distribute three thousand dollars worth. Who would get them? Why, the reading men, and great numbers would not be taken from the post office at all. And it is reasonable to suppose that those who are reading and enquiring men, will get the information at all events, without entailing this expense upon the state.

The gentleman is mistaken if he supposes I am not for reform. I want to send out a new constitution, from the beginning to the very last

letter of it; and I want to embody in that constitution the reforms which the people of Kentucky require. And I not only want a new constitution, but I want that constitution submitted to the people of Kentucky, and while their vote is being taken let this convention adjourn, and if our labor does not please them, let the convention again meet and revise their work.

The gentleman from Ballard says, that none of us have proposed a better plan of giving information to the people. If the gentleman wishes his speeches published and sent forth throughout the state, or throughout the U. S., he can do it without burthening the state with the expense. The proceedings of this body will hereafter be of more interest to the people than they are at present. I have no doubt there will be speeches made, that will be of the very deepest interest. There will be speeches made in relation to slavery, in relation to the right of suffrage, in relation to the election of the judiciary and other subjects of equal importance, which will be well worthy of being published and disseminated, and well worthy of the public attention. I would rather see these published and distributed at the public expense than that a few copies of a daily paper should be irregularly distributed; which will convey no other information than the ordinary routine of business here, with the disjointed remarks of delegates upon various subjects.

The question being taken upon the adoption of the resolution, it was, upon a division, decided in the affirmative. Ayes 47. Noes 33.

#### COMMITTEE ON ELECTIONS.

The PRESIDENT. I will take this occasion to appoint the committee on elections.

They are, Messrs. Root, Huston, Ballinger, A. K. Marshall, and Garrard.

#### CONTESTED SEAT.

Mr. NUTTALL. If I am in order, I would like to make a few remarks to the convention, concerning the application of the claimant for my seat. I would like to know whether his petition has been presented to the committee.

The PRESIDENT. It has been referred, and the subject is now before the committee.

Mr. NUTTALL. I do not know whether this is the proper occasion to say anything in regard to this subject, but as it appears that there is not much business now before the convention, I would be glad, if it would meet with the approbation of the body, to make a few statements.

SEVERAL DELEGATES. "Leave, Leave."

The PRESIDENT. The gentleman can be heard, unanimous leave being granted, although it is totally out of order, there being no motion before the convention.

Mr. HARDIN. The gentleman is certainly entitled to be heard.

Mr. C. A. WICKLIFFE. If the gentleman desires to be within the rules of order, he can move to instruct the committee, and then he will be entitled to address the convention.

Mr. NUTTALL. I would like to know whether the committee possesses the power to send for persons and papers.

The PRESIDENT. That power results necessarily from the appointment of the committee.

Mr. NUTTALL. I should like to have the committee instructed upon one branch of the question, and in order to elucidate my meaning, with permission, I will make a few remarks to the convention.

The first Monday succeeding the August election, my competitor notified me that he would contest my right to a seat here, upon the ground of illegal votes having been polled for me in that election. I sent him word back by the gentleman who served the notice, that if his friends would pay up their bets, I would run the election over again, and desired to know whether he intended to prosecute the contest in good faith. From that day until the opening of the convention, I heard nothing of the contest. No notice was given me that any depositions, or that any preliminary steps would be taken to contest my right to a seat here.

Now, surely sir, the committee ought to be instructed, not that I am afraid to meet my competitor on that ground, but not to go into that branch of the controversy, because I know that this convention cannot well spare me, and if they go into that investigation, I shall have to be absent about three-fourths of my time.

As to the other branch of the controversy, I pledge myself to the convention that I will occupy no seat here that the majority of my constituents refuse to give me. And further, that there is an apparent majority for my competitor upon the poll books, there can be no rational doubt; and that one of two things is as certain as that the sun shines in the firmament of Heaven, and that is, either that the officers of election for the county of Henry have been guilty of wilful corruption in giving my certificate of election to me, or that there has been most damnable forgery perpetrated upon the poll books. I will prove beyond a doubt to the convention by all the judges of election, that from twenty four to twenty five votes have been forged upon the poll book. I will prove by the clerk of election that those votes were never recorded. I will prove by the voters themselves, that they never cast their votes. If I do not prove this, I am willing to be set down by every gentleman on this floor, as a dishonorable man.

The PRESIDENT. There is no question before the convention.

Mr. NUTTALL. I am now through, sir.

Mr. HARDIN. I do not know any thing of the nature of the contest as between my honorable friend and his competitor, but from the experience I have had in contested elections, I am convinced that the gentleman who has the seat has a right to be heard upon that or upon any other point. The gentleman contesting the seat has no right to speak without special permission. I will, therefore, move that Mr. Lecompte be permitted to be heard also.

Mr. C. A. WICKLIFFE. I think that very proper, and shall vote for it whenever the committee shall have made an issue by their report.

Mr. HARDIN. There may be some incidental point upon which it will be necessary for Mr. Lecompte to make some explanation.

Mr. IRWIN. I will simply suggest that the motion should be amended so that he may be heard, either by himself or counsel.

Mr. HARDIN. I would remark that I never

saw a lawyer introduced in the case of a contested election.

The PRESIDENT. The question is upon allowing the contestant the right to be heard upon any point in connection with the contest.

The motion was agreed to.

The convention then adjourned.

WEDNESDAY, OCTOBER 10, 1849.

Prayer by the Rev. Mr. NORTON.

PROPOSITIONS TO AMEND.

Mr. JAMES submitted the following, which on his motion, was referred to the committee on the legislative department, and ordered to be printed:

1. *Resolved*, That it is expedient to direct the general assembly to provide, by law, for the mode and manner in which the survivor of a duel, and his estate, shall be rendered responsible to, and be charged with, a compensation for the wife and children of the deceased whom he has slain.

2. *Resolved*, That no lottery should be authorized by this state, and the selling or buying of lottery tickets within this state should be prohibited.

Mr. TRIPLETT offered the following, and on his motion it was referred to the committee on the executive department for the state at large, and ordered to be printed:

*Resolved*, That whenever the governor shall remit a fine or forfeiture, or grant a reprieve or pardon, he shall enter his reasons for doing so on the records of the secretary of state, in a separate book; and on the requisition of either house of the general assembly, the same shall be laid before them, and published if they deem proper.

Mr. GRAY submitted the following, and on his motion it was referred to the committee on the revision of the constitution and slavery, and ordered to be printed:

*Resolved*, That the mode of revising and amending the constitution ought to be as follows:

Any specific amendment, or amendments, to the constitution may be proposed in the senate or house of representatives, and, if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment, or amendments, shall be entered on the journals, with the yeas and nays taken thereon, and published for three months previous to the next succeeding election for representatives to the legislature, in at least one newspaper of each county, if any be published therein, and shall be submitted to the people, at said election, in such manner as the legislature may prescribe; and, if the people shall approve such amendment, or amendments, or any of them, by a majority of all the electors of the state qualified to vote for members of the legislature, such amendment, or amendments, so approved, shall be referred to the legislature chosen at said election; and if, in said legislature, such proposed amendment, or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the

legislature to again submit such proposed amendment, or amendments, or such of them as may have been agreed to, as aforesaid, by the two legislatures, to the people at the next election for judicial officers, or members of the legislature; and if the people, at said second election, shall approve and ratify such amendment, or amendments, or any of them, by a majority of all the electors of the state qualified to vote for members of the legislature, such amendment, or amendments, so approved and ratified, shall become part of the constitution: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment, or amendments, shall be submitted to the people oftener than once in — years: *And, provided further*, That the article of the constitution concerning slaves, this article, and the portion which provides that no man's property shall be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him, shall never be amended or changed without the concurrence of two thirds of all the members elected to each house of the general assembly, at two successive sessions, and a majority of all the electors of the state, qualified to vote for members of the legislature, at two successive elections.

Mr. PRESTON offered the following, and on his motion it was referred to the committee on miscellaneous provisions, and ordered to be printed:

*Resolved*, That it be referred to the committee on the miscellaneous provisions of the constitution, to inquire into the expediency of amending the 16th section of the 6th article of the present constitution of Kentucky, so that:

1st. All judicial officers and all ministerial or executive officers, whose duties and powers are confined to counties, who may be elected under the new constitution, shall be chosen by ballot.

2d. In all elections by the people of governor, lieutenant governor, members of the general assembly, and officers whose duties relate to the state at large, and in all elections by the legislature, the votes shall be personally and publicly given *viva voce*.

Mr. KAVANAUGH offered the following, and on his motion it was referred to the committee on the county courts, and ordered to be printed:

1. *Resolved*, That provision should be made in the constitution for a court of probate in each county of the State, to consist of a sole judge, with a jurisdiction defined in the constitution and laws: *Provided, however*, That such jurisdiction shall, in no case, in the trial of civil causes, exceed the sum of — dollars.

2. *Resolved*, That the number of justices of the peace for each county of the State should be in proportion to the number of qualified voters in such county, which proportion should be prescribed in the constitution; and that the jurisdiction of justices of the peace ought not to exceed that now given by the laws of the State: *Provided, however*, That each county seat of the State ought to have at least two justices.

3. *Resolved*, That the county courts, as now established, should be abolished, and that the

justices collectively of each county, constitute a board of county commissioners; and, as such, to have no other power nor jurisdiction than such as relates to the county revenue and its application, roads, passways, ware-houses, ferries, and mills, and to be regulated and governed in such jurisdiction in such manner as may be prescribed by law.

Mr. DUNAVAN offered the following, and on his motion it was referred, and ordered to be printed:

*Resolved*, That the appropriate committee enquire into the expediency of adopting in the constitution a provision requiring the fiscal agent of the state, after the return to his office of the commissioners' books of the revenue tax, to make an estimate of the probable expenditure of the government for that year, and then to assess an ad valorem tax on the amount of property listed for taxation sufficient to meet that expenditure.

Mr. BOWLING offered the following, and on his motion it was referred to the committee on the legislative department, and ordered to be printed:

1. *Resolved*, That it is right and just that all property should be taxed according to its value; that value to be ascertained in such manner as the legislature shall direct, so that the same shall be equal and uniform throughout the commonwealth. No one species of property from which a tax may be collected ought to be taxed higher than any other species of property of equal value—but that the legislature ought to have power to tax merchants, pedlers and privileges, in such manner as they may, from time to time, direct.

2. *Resolved*, That no article manufactured of the produce of this commonwealth ought to be taxed, otherwise than to pay inspection fees.

Mr. HAMILTON offered the following, and moved that it be referred to the committee on the legislative department:

1. *Resolved*, That within five years after the adoption of this constitution, the legislature shall appoint not less than three, nor more than five persons, learned in the law, who shall revise, digest, arrange and publish the laws, civil and criminal, so as to have but one law on any one subject, and to be in plain english, in such manner as the legislature may direct; and a like revision every ten years thereafter.

2. *Resolved*, That every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title.

3. *Resolved*, That no law shall be revised or amended by reference to its title; but, in such case, the act revised, or section amended, shall be re-enacted and published at length; and all other laws on the same subject shall be repealed.

Mr. BRISTOW offered the following, as an additional resolution, and suggested that they should be referred to a special committee, having charge of the subject:

*Resolved*, That the legislature, at its first session after the adoption of the new constitution, shall provide for the appointment of three commissioners, whose duty it shall be to revise, reform, simplify, and abridge, the rules and practice, pleadings, forms and proceedings, of the courts of record of this state, and report thereon



to the legislature, subject to their adoption and modification, from time to time.

Mr. HAMILTON accepted the amendment, and the suggestion to refer.

The propositions were accordingly referred to a special committee, and ordered to be printed.

Mr. McCLURE offered the following, and, on his motion, it was referred to the committee on the executive for the state at large, and ordered to be printed:

*Resolved*, That the committee on executive offices shall enquire into the propriety of changing, or so amending the existing constitution, that when the governor of this commonwealth shall die, refuse to qualify, move, or resign, in that event a new election shall be had for governor, instead of the mode pointed out in the existing constitution of filling his vacancy.

Mr. LINDSEY offered the following, and on his motion it was referred to the committee on the legislative department:

*Resolved*, That the committee on the legislative department be instructed to enquire and report on the propriety of inserting the following, as sections in the new constitution:—

"The ancient mode of trial by jury, in all criminal or penal prosecutions on behalf of the commonwealth, shall be held sacred, and the rights thereof remain inviolate; except the legislature may define the causes for which the commonwealth may challenge jurors, and allow challenges in her behalf without cause shown, not exceeding five in number—and may also allow three-fourths of the jury to render a verdict. And in civil causes, the legislature may lessen the number of jurors to seven, and allow five to render a verdict.

"The rights of bearing arms in self defence shall not be prohibited by the legislature; but the legislature may prohibit, by law, the wearing of concealed weapons in time of peace, and when not worn in self defence."

Mr. GARRARD offered the following, and it was agreed to:

*Resolved*, That the second Auditor be requested to transmit to this convention a tabular statement, showing the number of white males over twenty one years of age in each county in this State for the year 1849.

Mr. THOMPSON offered the following, and it was agreed to:

*Resolved*, That the power of the legislature to contract debts ought to be restricted, and the committee on the public debt of the State be instructed to enquire into the expediency of so amending the constitution as to place the above restriction upon the legislative authority.

#### CORRECTIONS.

Mr. TALBOTT, by consent, substituted the following for his third resolution submitted yesterday, in which some errors were found:

*Resolved*, That no specific amendment shall be adopted or convention called, under the constitution this convention may adopt, except upon the recommendation of at least two-thirds of both branches of the legislature for two successive sessions—and afterwards sanctioned and ratified by a direct vote of the people, a majority of all the qualified electors in the State voting for the same.

Mr. C. A. WICKLIFFE. I desire this opportunity to correct what I conceive to be probably a natural misconception of the remark I made on the proposition of my colleague (Mr. Hardin) yesterday, on the motion to permit Mr. Lecompte to take a seat in this body, and be heard at any time he may think proper on any motion that may be made from time to time by the committee on the subject of his election. In the language employed in the short note made of the subject, I am made to acquiesce in that course.

My objection was, that I was unwilling to permit an individual to take his seat in the legislature, or in any body organized as this is, until after the committee who had the subject under consideration had examined and reported upon the facts. I interposed an objection to the order giving him the privilege of being heard in this body on any incidental question that might arise on the motion of the committee or of any member of the convention. The house however thought proper to give him that privilege, by a vote, but not with my vote or consent. I did not think it right then in regard to the body itself, nor do I think it right in reference to the sitting member. I barely wish to correct any misapprehension that I acquiesced in voting for that resolution.

#### SLAVERY.

Mr. MERIWETHER, from the committee on the revision of the constitution and slavery, made the following report:

#### ARTICLE SEVENTH.

SEC. 1. The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners or without paying their owners previous to such emancipation a full equivalent in money for the slaves so emancipated, nor shall they exercise any other or greater power over the after born children of slave mothers than over the slaves then in being.

SEC. 2. They shall have no power to prevent emigrants to this state from bringing with them, nor citizens thereof who may derive title by marriage, descent or devise, from bringing to this state such persons as are deemed slaves by the laws of any one of the United States, or any territory thereof, so long as any person of the same age or description shall be continued in slavery by the laws of this state.

SEC. 3. They shall pass laws to permit the owners of slaves to emancipate them saving the rights of creditors and preventing them from becoming a charge to any county in this commonwealth. But they shall have no power to pass any law authorising the emancipation of any slave or slaves, without a provision for their removal from, and against their return to, this state.

SEC. 4. They shall have full power to prevent slaves being brought into this state as merchandise.

SEC. 5. They shall have full power to prevent any slaves being brought into this state from a foreign country, and to prevent those from being brought into this state, who have been, since the first day of January, one thousand seven hundred and eighty nine, or may hereafter be imported into any of the United States from a foreign country.



Sec. 6. They shall have full power to pass such laws as may be necessary to oblige the owners of slaves to abstain from all injuries to them, extending to life or limb and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

Sec. 7. They shall pass laws providing that whenever a slave or slaves are executed, a full equivalent in money shall be paid the owner out of a fund to be raised by a special tax on slaves levied for that purpose, and providing that when any slave or slaves shall be executed for the destruction of property, a pro rata distribution of the value paid for said slave or slaves shall be made between the owner of such slave or slaves and the owner of the property destroyed.

Sec. 8. They shall have power to provide by law, for the removal of all free negroes and mulattos now in this state.

Sec. 9. They shall pass laws providing that any free negro or mulatto hereafter emigrating to, or being emancipated in, and refusing to leave this state, or having left, shall return and settle within this state, shall be deemed guilty of felony and punished by confinement in the penitentiary thereof.

Sec. 10. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary, but the proceedings in such prosecutions shall be regulated by law: except, that the general assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

Mr. MERIWETHER moved that the report be referred to the committee of the whole and printed, and made the special order for Monday week, the 22d instant.

The motion was agreed to.

The PRESIDENT announced the special order, being the resolutions of Mr. Turner in relation to the importation of slaves, set down by order of the convention for consideration to-day.

Mr. TURNER. I did not anticipate so early a report from the standing committee on the slavery question, when I moved a few days ago, to refer the resolutions I had the honor of introducing here, to a committee of the whole, to be the subject of consideration to-day. I suggested at the time, that probably there would be considerable diversity of opinion, as to the propriety of inhibiting the further importation of slaves—whether there should be a constitutional or a statutory provision on the subject—and that probably a considerable number of members were opposed to any provision at all in regard to it. I had desired that these propositions should be somewhat discussed before the committee reported, but as they have made their report, I consider it premature perhaps to take up my resolutions and enter upon their discussion, before that report is taken up for consideration. I do not therefore, think it proper to interfere with the motion of the chairman of the committee—and I suppose he made it under the instructions of his committee—to postpone the consideration of the matter until Monday week. I cannot concur in the report of that committee, and at the proper time I hope to be enabled with the assistance of other gentlemen who agree with

me in opinion, to show that there are propositions in that report that we ought not to adopt. I understand, that according to the report the gentleman has made, there is never to be in this commonwealth the power of arresting the bringing in of slaves into the state for the use of the individual who may bring them.

Mr. MERIWETHER. If the gentleman will pardon me, there is no such provision in the present constitution.

Mr. TURNER. I do not understand it as a direct prohibition, but in substance it does so prohibit. I want no equivocation on the subject. I want the constitution expressly to prohibit it, or to recognize the power of the legislative part of the government to do so; for I think I shall be able to show, that it is against the interests of this commonwealth, that slaves should be brought here—that it is against our pecuniary interests, the light of the age in which we live, and the rights of humanity. I move that the resolutions I had the honor to present be made the order of the day, in connection with the report of the committee on slavery, for Monday week.

Mr. MERIWETHER. By a little modification of his motion, the gentlemen will get at the object he desires. If he will move to postpone the consideration of his resolutions, and to make them the special order for Monday week, they will come up at the same time with the report of the committee. In regard to the point dwelt on by the gentleman, we have copied exactly the provisions of the old constitution on the subject.

Mr. TURNER. I noticed that the provisions of the old constitution have been copied by the committee, and for myself, I never experienced any difficulty in declaring that the legislature had power to prohibit the importation of slaves. But if you go to one-third of the members in the legislature last winter, they will tell you that they voted to modify the law of 1833, because it was unconstitutional, and that idea weakened the force and effect of the law very much. Although the supreme court has decided that it is constitutional, yet a large portion of the intelligence of the country doubts it, and for that reason I prefer that if we do not prohibit the importation of slaves by the constitution itself, we shall have a provision, clear and unequivocal, that the legislature shall have the power to do so. All I desire in regard to the order of business is, that my resolution shall come up for consideration at the same time as the report of the committee.

Mr. IRWIN. As one of the committee on the subject of slavery, I wish merely to remark that I do not agree with this report. I like the amendment proposed, and am willing to incorporate the law of 1833 into the constitution of the state. I have always been opposed to the repeal of that law, because I saw that it worked very well, and I am satisfied that its incorporation into the constitution, would satisfy a large and respectable portion of the people of the country. I think it is unnecessary that slaves should be brought into the commonwealth for the use of our citizens, and for the purpose of preventing any cavil as to the power of the legislature over the question, I desire to see the prohibition incorporated into the constitution. I

am perhaps far less inclined to do any thing on this subject than any gentleman here, from the great interest my county has in this question. There is about \$1,600,000 in property of this description in Logan, and yet in that county there are many gentlemen, large slave owners, who desire to see this principle incorporated in the constitution.

The PRESIDENT stated that the proper form of the motion, was first that the committee of the whole be discharged from the further consideration of the resolution.

Mr. TURNER would submit it to the pleasure of the convention, whether his resolution should be considered at this time or not. As for himself, he would as soon say what little he had to say now as at any other time.

The convention then—the question being taken—resolved to go into committee of the whole, on the 6th resolution offered by Mr. Turner.

Mr. BARLOW was called to the chair, and the resolution was read as follows:

6. *Resolved*, That no persons shall henceforth be slaves within this commonwealth, except such as are now so, and the descendants of the females of them, and such as may be brought to this State by *bona fide* emigrants and the descendants of the females of them, and such as citizens of Kentucky shall derive title to out of the State by marriage, devise, or descent, and the descendants of the females of them.

Mr. TURNER. Mr. President: when I made the motion some days ago, to go into committee of the whole, I had not the resolutions that I had the honor to introduce, before me, and I supposed that the whole subject of slavery was embraced in the one resolution. I find, however, that there is a preceding resolution rather conducive to the one just read, or at least connected with the same subject matter; and as I believe that there is considerable liberty of debate allowed under the rules of the convention, in committee of the whole, I will take the liberty of reading it in connection with the one read by the secretary:

5. *Resolved*, That the general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners. They shall pass laws to permit the owners to emancipate them, saving the rights of creditors: *Provided*, The persons emancipated shall be sent out of the United States at the expense of the person who emancipates them, and be sold into bondage for the benefit of the public treasury, in case of their return to Kentucky.

It will be perceived that in this resolution, a portion of the old constitution—the clause which gives the power to emancipate by making just and previous provision to the owners—is omitted. I am opposed to taking the property of an individual, which he has acquired under the sanction of the law and the constitution, at all, unless with his free will and consent. I do not believe that it is consistent with the principles of our government to do so. The very first principle of the government of the United States, and of the State of Kentucky, and indeed one of the grounds assigned in the declaration of independence, as a cause of separation from the mother country, was that private property should be secured against the exactions of government. It has been the practice for ages past, in the gov-

ernment of England, in times of great exigency, to seize upon the property of individuals—to take it without compensation being made to them, or to leave them dependent wholly upon the will of the government, whether it should be done or not. Soldiers have been quartered on private individuals without compensation being made, and private property taken in various ways, under the ancient institutions of the country from which we derive all, or at least the greater portion, of our institutions. I therefore have regarded this principle of the right of property, as asserted in the declaration of independence, in the constitution of the United States, and in that of Kentucky; and I look to it as lying at the very foundation of our government, and as a moral principle which ought not to be violated under any circumstances, or in any way or shape. But still, if you are to make compensation it might be said, why not leave that clause in the constitution? If you take the property to use in time of war, or of great necessity, when the government of the country could not progress, and sustain our rights and liberties, then the principle of taking private property without the consent of the owner, or making him previous compensation therefor, would properly apply. But that is not the case in relation to slave property. I will not go into this question very extensively, as I think the opinion of the country is settled in regard to it. According to the Auditor's report of the last year, there was within a fraction of \$61,000,000 of this property in Kentucky, and according to an estimate by the most distinguished emancipationist in Kentucky, it would take \$50 per head to remove the slaves to Africa. This upon 200,000 slaves, the number I understand in Kentucky, would cost \$10,000,000.—And further, upon these sums the interest would be about \$4,200,000 per annum, a sum that it is not probable, and indeed it is almost impossible, that any legislature which shall ever sit in Kentucky, will levy upon the people in the way of tax, to pay interest upon a debt, with a prospect that the debt itself was to be perpetual.—That would be setting at liberty the slaves of the country, and enslaving the white race. I am for doing justice to both;—it is as necessary for the one as the other. I believe that the slaves in Kentucky are in a better condition now, than any in which you could place them—that they are in a better condition than the laboring population of any part of the globe—and I do not believe it will benefit them to send them to a foreign country, or to sell them to the south or any where else. But if it would benefit them, the question is, whether you would enslave the white men for the purpose—for you might as well do so as to impose upon them a tax of \$4,200,000 a year, in addition to the taxation now necessary to carry on the government and pay the interest on the public debt. Besides I think that almost every plan of emancipation that has been proposed to the country, has been one of a compulsive character, and this I think entirely impracticable. Among the many distinguished and talented men of the country, who have written and spoken on this subject, there are scarcely two who agree as to the plan of emancipation.—There is no better test as to whether a proposition is right and practicable, than to ascertain

whether its advocates agree. But as the opinion of the country has settled down against any of these plans of emancipation, I will not trouble the committee with any further remarks on this branch of the subject.

I suppose that some will call me an emancipationist, because I am going to occupy some of the grounds taken by the convention which met here on the 25th of April. I am not to be scared by names, for I have been against the importation of slaves for years. I believe that when you, Mr. Chairman, and myself were associated together in relation to this subject, and advocated the doctrine I am now advocating—that it is not for the interest of Kentucky to import more slaves. I know that the statute of 1833 has not been enforced to the extent it ought to have been, and that many slaves have been brought into the state notwithstanding its provisions, and for that reason, I am for incorporating it into the constitution. When in the legislature, I introduced a proposition similar to the one now under consideration, and it passed through the representative branch—that no persons should be slaves in Kentucky except such as were then slaves, and the descendants of such as were brought in by their masters, or by marriage, descent, or devise. This leaves the prohibition one against bringing in slaves here for merchandize, or for the use of individuals, and what is the effect of it? It is a proposition which will work of itself, and render it unnecessary to go to the commonwealth's attorney, or any other officer of the government in order to have it executed. And while I am as much against the increase of free negroes amongst us as any man in Kentucky, and believe it to be a curse to both races, yet I understand, that under the proposition which I advocate, any negro brought here in opposition to the laws, will be no slave. What will be the effect? No man in his senses will ever run the risk of bringing a slave here. If he does the negro can sue for his freedom. There would never be a slave imported into the state under that provision.

It may be said that this is occupying emancipation ground. If I do occupy such ground, it is the same as that occupied by the venerable commonwealth of Virginia, from which many in this house are descended, and who is looked up to as one of the strongest in the number of pro-slavery states. As early as 1777, she adopted in her statutory provisions a similar inhibition against the importation of slaves. The state of South Carolina, with Mr. Calhoun, the great ultra pro-slavery leader at the head, has a similar provision in her laws. The constitution of the slave state of Mississippi prohibits the bringing in of slaves there as merchandize, and gives to the legislature the power of putting the same inhibition on all importations into the state, except in the cases of slaves brought by immigrants, after the year 1845. I think when a Kentuckian only occupies the ground taken by the venerable state of Virginia, and the states of South Carolina and Mississippi, he can hardly be charged with not being a pro-slavery man.

The resolutions will show to you that I am willing that a man shall bring slaves with him if

he comes here to reside; or if his relatives out of the state devise them to him, that he may go and get them. Or, if one of our young men marries in another state, and his wife has her domestic slaves—those with whom she is acquainted, and desires on coming into a foreign country to have around her some person to look upon, whose face she has seen before—I am willing that she shall bring them. But I am against the traffic in human blood in every shape and manner in which it can be brought here.

I think, rather than have the constitution open on this subject, we should incorporate this proposition in regard to emancipation into it. What will be the effect of leaving the matter open?—We see it in what has been the effect of the discussions during the last year upon the people.—Every time that you agitate the slave question, either in the legislature or during an electioneering canvass on the stump, you weaken the bonds of slavery, render the slave restless and insolent, and eventually, by deceiving him in his ignorance, cause him to suffer the loss of life, or be subjected to great cruelty. Would it not be better then, to put the prohibition in the constitution, than to suffer the question again to be agitated at the polls? In my part of the state, you can scarcely travel through the country that you will not see slaves who, although formerly, before the great discussions of last year, were peaceable and quiet, have now forfeited all their claims to good character, and have gone to jail or been sent abroad for insolence; thinking they were entitled to their liberty, they have rebelled, and have been sent to jail and probably punished with stripes, and rendered liable to be hung. Look at the scenes witnessed up the country here on divers occasions, and I think that a few months ago a similar scene occurred in the counties towards the Green River country. I believe that these scenes occurred through the agitation of this question, the consequent delusion of the slaves, and their mistaken belief that they were to be free. Therefore, I think the question ought to be tied up in the constitution, so that we may hear nothing of slavery or no slavery in future. Let it be a settled question as to the opinion of the country, whether slaves shall be brought here or not, or whether they shall have their freedom on any condition, in future, other than the will of the owner.

I differ from the proposition reported by the committee. I know it is not properly before us, but I believe that in committee of the whole, we are in committee of the whole world, and at liberty to discuss almost every thing. One of the propositions of the committee is, that the slavery question is to be thrown altogether into the legislature—and another is in regard to free negroes. Now I do not understand that under the constitution of the United States we have any power over those negroes already free. They are *quasi* citizens of this commonwealth, of this country, enjoying privileges recognized by the constitution of the United States, and we have no power to compel them, after they have obtained their freedom, to leave the commonwealth. That question has already been passed upon indirectly under a law in Delaware, providing for getting rid of their free negroes, and their trans-

portation to Liberia. The proposition of the committee relative to those liberated hereafter by the free will of the owner of them, is that laws shall be passed compelling them to leave the commonwealth. I think the provision should be that they ought not to be free until they do leave the state. I would go further and say that if they came back here, or even their descendants came back here—though I should regret it very much—that we should impose the penalty on them of being sold into bondage, and that the proceeds should go into the public treasury. I wish to make the prohibition against free negroes as stringent and extended in its operation as is possible. I wish in this matter to go to the verge of our power under the federal constitution. I believe that if there is a curse alike to the white and the black race, it is in having free negroes where there are vicious white men. They have none of the motives to raise themselves up and attain a higher state of morals and education that a white man has—and shut out from office and all the privileges of political life, they necessarily become a degraded race. They are made use of by vicious, wicked white men, for purposes, where the negro cannot be a witness against them. The white man can go and whisper in the free negro's ears, corrupt his morals, and induce him to steal, and yet he cannot be a witness against him, although he receives what he gets from the negro, and profits by it. You cannot show me one free negro out of fifty that is in equal condition, morally or physically, with him who has a master that treats him well. I shall therefore, at the proper time move to amend the proposition of the committee on the subject, for I do not think it gives us the proper security against an increase of the free negro population.

There is about sixty-one million of dollars worth of slave property in Kentucky, which produce less than three per cent. profit on the capital invested, or about half as much as the moneyed capital would yield. But suppose the nett profit to be three per cent., it is a proposition that is susceptible of demonstration, that it is not our interest to increase this property. I have made a little calculation which I will submit to the committee, and I believe, if there be any error in it, it will be found to be on the side of making slave labor more valuable than it really is, and by that calculation I cannot make the profit to be more than three per cent. There are about two hundred thousand slaves in Kentucky. Of these, about three fourths are superannuated, sick, women in a condition not profitable for labor, and infants unable to work, who yield no net profit. Show me the man that has forty or fifty slaves upon his estate, and if there are ten out of that number, who are valuable and available, it is as much as you can expect. But my calculation allows you to have three fourths, that are barely able to maintain themselves, to pay for their own clothing, fuel, house room, and doctor's bills. Is there any gentleman here, who has a large number of slaves, who will say that they are more profitable than that? I do not believe there is one. Well then, we have the one fourth left. This leaves fifty thousand laborers; and I put the value of their labor at sixty dollars each, per annum. This will produce three

millions of dollars annually. But from this you must deduct at least twenty dollars per head for raiment, food, house room, and doctor's bills, and that amounts to a million of dollars. Is this deduction too little? Is there any individual here who will say that a grown, working negro does not cost his master, leaving out of the question what he steals from him and sells at the nearest town—is there any one that will say that an average expense of twenty dollars for this class of slaves, is too small an estimate. This then will make a million of dollars, and there will be only a profit of two millions left. You must also deduct about five per cent. from the value of all the slaves, for deaths: which leaves the net profit on the capital of sixty-one millions of dollars about one million, six hundred, ninety-five thousand, which is less than three per cent., or about half as much as the moneyed capital would yield; and this valuation is a very liberal one for the slavery importation side of the question—as every one must acknowledge, who has had any experience in the matter.—This estimate, is at least a fair one, applied to the part of the country where I live, and I believe that slave property is as well managed there, as it is any where. It is true the man may have upon his farm only such slaves as are able to work.—He may have no women or children among them, and he will, in such case, make a little more profit. But if you take the whole slave property together, the average will be as I have stated.

Well then, in a pecuniary point of view, as a mere calculation of dollars and cents, if I am right in my estimate, it is not our interest to invest more capital in slave property. It is against the interest of the commonwealth to do it; manifestly so, if I am right, or any where near right. Well, that is a considerable point gained; but there are considerations in connexion with this part of the subject, that have an important bearing upon it, according to my view of the matter. That white labor is the cheapest I have no doubt. I have never entertained a doubt on that point. I have never entertained a doubt that it is the interest of the great slave holding community of this state, to sell their slaves. If they were not attached to them, and if they did not dislike seeing those who have grown up with them and their children, driven into a bondage more galling, more oppressive, where their raiment and food would not be equal to what they now enjoy, and where, owing to the great amount of slave population, their restrictions would be greater, it would be of decided advantage to the owners of slaves here to dispose of those slaves and invest their capital in some other way.

It is the working portion of this Commonwealth, those who have to work their way up from small beginnings in order to gain a position for themselves and their families, it is this class of the community, who are interested in retaining the institution of slavery in this state; because the slaves keep out a pauper population; the emptying of the jails and the poor houses of Europe, the renegades from all parts of the earth, who come here and compete with the whole population in point of labor. Do not understand me as saying one word against that class of foreigners who ordinarily come here, because very few of those whom I have men-

tioned, the renegades of other countries, ever come to Kentucky under the purifying process of keeping negroes. In that respect they have a happy influence. The better class of foreigners come here, while the dregs of the emigrant population will be found in the cities. You will see them there in thousands, such men as make it hardly safe to walk the streets, unless you have your pocket-book secured. But nine out of ten of those who come here, I am willing to take by the hand whenever they declare their intention of renouncing their allegiance to a foreign government, and avow their attachment to our institutions and declare that they intend to live under them. What is the evidence of its being the interest of the owners of slaves to dispose of that sort of property? Because slave labor is the dearest. Why is it that your shoe and boot makers go all the way to Lynn and purchase the fabrics of free labor? Because they can be procured for one third the price, and after paying the expense of transportation they can undersell your citizens. Why is it that you obtain your cotton and woollen fabrics more cheaply abroad than you do at home? Why is it that even in the interior of the state, where I live, at a distance of a hundred miles from Cincinnati, you can send to that city and buy furniture and cabinet work and carry it round by the Kentucky river, a distance of a hundred and fifty miles, and all this at one third less cost than you can get it for at home? It is because our vocation is different; it is agricultural.

These with a thousand other considerations, convince me that free labor is cheaper than slave labor, and that it is the working portion of the community alone that is interested in keeping up this institution. We all know that the institution of slavery is the best in the world for keeping society from becoming fixed and settled. Look at those who were originally overseers in Virginia and Kentucky, at their first settlement. They have many of them become the proprietors of the very estates upon which they were at first employed as overseers. And their descendants now fill the halls of legislation and the courts of judicature of the country, whilst the descendants of the original proprietors have descended to a different level in the scale of society. Such revolutions in the condition of individuals do not take place half so often, where the institution of slavery does not exist where it is not recognized. Go to New York and to Massachusetts, and you will find many estates that have descended in the same families while the poor laborer is the poor laborer still. It is true, there are exceptions, but not the same number of exceptions as under our institutions. So you will see, though I am against extending this institution or increasing it, it has a wholesome effect in some respects, while it has in other respects a highly injurious effect. I believe that they, who are raised up where the institution of slavery exists, with some exceptions, have been uniformly distinguished. Who has ever seen such a constellation of great men as the Southern states have produced, since we have achieved our liberties? Look at the great men of Virginia, South Carolina, and of Kentucky, and where are the men who are worthy to be compared with them, in the free states of the

north. We have had it is true, an Adams or two, a Webster, and a Wright, but they are few and far between. But you will find them in the great south. And sir, there is a nobleness of spirit, a feeling above littleness, a greatness of soul that grows up where the institution of slavery exists, that is scarcely to be found in any other country. One says it would be better that we should have more slaves, because there are not enough to perform the labors of the country, when the institution ceases. If you drive them out we shall be overwhelmed with a white population. For my own part I want a great deal of room. Look at some portions of the north where the population is huddled together in such a manner, that although perhaps, in their habits and customs they may be equal with us, the pestilence wherever it prevails is more fatal amongst them than with us. They are swept off in greater numbers than in those portions of the country where the population is sparse. And sir, if you bring in a dense population here, why as a matter of course, you decrease the prospect of the free laboring man to obtain high wages, the competition will be so great. I do not think it is the interest of slaveholders here, that they should emancipate rather than keep their slaves, because three per cent. is better than nothing. If you take them away altogether you sink sixty one millions of dollars worth of property, you sink one million eight hundred thousand dollars of net profits annually, that are derived from it, and I take it that we have the same right to the offspring that we have to the original property. It is all secured by the same law and by the same constitution, according to every principle that is right, proper, and just. I am, therefore, not for emancipation in any shape or in any manner, except permissive emancipation.

But there is another reason why slave property is not going to remain as valuable as it is.—Every man who lives on the border of the commonwealth next to Virginia, where slave property is secured by want of facility to travel, knows that slaves in the interior, even when forty, fifty, or a hundred miles distant from the other frontier, are less valuable on account of the facilities which they possess for escape, and on account of the interposition of the meddlesome abolitionists. Shall we then, as a matter of pecuniary interest, go on investing our capital in the purchase of this description of property, which is constantly becoming less secure and less profitable? Now, I make use of one observation which probably some gentleman may take exception to. I say there is no man living, that sees in the hand of Providence what I see, that does not perceive that there is a power at work above us, that is above all human institutions, and one that will yet prevail, even in Virginia, Maryland, and Kentucky. Yes, there is a power at work, which is above all human power, and one which we cannot resist.

I do not say that I desire this; but that it is coming—that it is as steadily marching upon us as we are marching forward to the grave, and that we do not know when it will come, is perfectly certain from the evidences around us; and should we go on investing our capital in this property we shall find this to be the case. Why

sir, in the state of Maryland, there is already a great diminution in the value of that kind of property. I do not say that there is a positive diminution in the state of Virginia, but it ceases to increase to the extent that it did formerly.—The shadow upon the sun dial is advancing sufficiently to show that this is not growing or increasing in that state; at all events, that the increase is not so great as in time past. And the same thing has already commenced in Kentucky; and this proceeds from the power which we cannot resist. We may tie it up—I desire that it should be restricted by whatever legislation we may adopt upon that subject—but when the Deity has sent forth his fiat that this institution is to cease, it will cease, and no human effort can arrest it. I do not believe that the institution of slavery is going to exist for all time. I am convinced from the evidences around me, that it will not, and I cannot see how we can benefit the slaves, or better their condition by any thing we can do. I have been unable to come to any other conclusion, and I have given the subject a careful examination. But that it is an institution that is not destined to endure, I think is most certain. We need not be afraid that this slave population will not increase, so as to keep up their numbers; though they do not increase in the same proportion as formerly. In 1831, there were one hundred and forty thousand and ten slaves in Kentucky. In 1848, there were one hundred and ninety-two thousand, four hundred and seventy, and I suppose there are about two hundred thousand now. There was an increase of the number of slaves during the seventeen years between 1831 and 1848, of fifty-two thousand, four hundred and sixty; consequently, an increase of the amount of capital of one hundred and forty thousand dollars. The increase has kept up in a reasonable ratio with the increase of the white population. And I think that those who believe that slavery will exist always, and do desire to have it exist here, ought to be content with this increase.

It is said, why prevent the poor man from owning this description of property, why prevent him from buying slaves where he can procure them cheapest? I do not think that the price of slaves will be increased by prohibiting bringing them into the state. The price is regulated very much by the price of our commodities in the south.

Well sir, as to the wealth of the country; under the statute of 1833, though it has not been very much enforced, let us see how the wealth of the country has run up. The taxable property in the state in 1831 was one hundred and twelve millions two hundred and eighty five thousand seven hundred and eighty dollars. In 1848, it amounted to two hundred and seventy two millions eight hundred and forty seven thousand six hundred and ninety six, an increase in seventeen years of about one hundred and fifty per cent. It is true, there have been some few subjects added to the taxable property in that period. The money capital has been made taxable property, and they have made some portions of the stock of the country taxable. But in 1831, the cash capital was exceedingly scarce, exchanges were against us; the merchants who went to the north had to pay something like five

per cent. for funds that they could use in Philadelphia and New York. That was a heavy tax upon the country. Well what has been the influence of this wholesome law? Instead of bringing in slaves from Virginia and elsewhere, money has been brought into the country, and the effect is, that Kentucky, though a very young state, has become one of the moneyed states.—Exchanges are now in our favor, instead of being against us. We are not obliged every time we go out of the state for the purpose of purchasing an article that may be needed in our families, to purchase exchanges at a premium of five per cent. And this is so much added to the property of the state. And it is in this way that we have made this property more valuable than slave property, which brings but three per cent., and it is by getting clear of this difference in exchanges that Kentucky has become wealthy and powerful.

Now put this provision in the constitution, let it appear that this traffic is to cease so far as the investment of capital and the bringing in of slaves is concerned, and Kentucky will rise up and be still more powerful. But increase the number of your slaves and the product of your property will be less and less. A man who has three or four able bodied slaves may make them profitable, but when a man has forty or fifty, if he makes any thing, it is but a small pittance upon the capital invested. Increase them, and the product of their labor will be less and less.

Well, what kind of slaves do we get? You see almost every slave state, except probably Texas and Arkansas, are making negro raising a business to obtain a living by. It may be said that wheat is the staple production of Virginia; but I say that negroes are the staple production in reality. As to Tennessee, I am told that there was not a man elected to the legislature who was not pledged to support a measure against bringing in any more slaves into the state. Now what kind of slaves shall we get here? Shall we get those fine, honest servants, that we want to entrust with our property, or shall we get these scape-gallowses, rogues, and rascals forced upon us, not only ready to steal and burn our property, but to contaminate those we have already. It seems to me sir, that this will be the inevitable effect of opening the door for the admission of negroes, to be brought here in droves, and in chains. Gentlemen may say they do not think so, but when the fact stares them in the face they cannot resist it.

For myself, what few slaves I have, and those that are owned among my friends and relatives, why sir, they are endeared to me, and it ought to be so with every man. I feel that they are human beings, and that their morals should be attended to, and that they should not be made to associate with rogues and rascals. It appears to me to be in the nature of a punishment to the slaves to sell them. I do not want my slaves who have grown up with my children, and that have become attached to my family to be associated with these scape-gallowses and to be corrupted by them any more than I want the laboring white population to be mingled with the offscourings of Europe that are brought in here. Suppose we bring into this commonwealth twenty thousand of this kind of slaves, with their morals de-



stroyed, and distribute them among our slaves, the whole amount you have, and those you bring in, would not sell to any man who appreciates morals as he ought, for the amount which those would bring which we have already.

The whole civilized world has turned its back upon the African slave trade; even Portugal is now coming into civilization and christianity upon this subject, if I may be allowed the expression; she is placing herself by the side of England, and of France, and of all the enlightened nations of the earth. And what is there in the African slave trade, that is worse than to go into another state and to bring slaves from thence, tearing mothers from their children, separating husbands from their wives, without any offence charged against them; driving them along in chains as if they were beasts of prey? Is it not a scene that human nature revolts at the sight of? Is it not a scene that no man, unless he is determined to engage in this traffic, can look upon without feelings, deep and powerful? But what is there in the African slave trade, which makes it more excusable? There, by the laws of war, as practiced among those barbarians, prisoners are brought in and sold as slaves.—Well, the captor has a right to the life of his prisoner, according to their laws of warfare.—He may kill him if he pleases. I am no apologist for this; but it is inflicting upon him a weaker punishment. There is suffering, to be sure, upon the passage; and there is suffering experienced by those whom we send out to Africa, but when they arrive here they get the benefit of civilization; they are placed in a more elevated scale than they occupied before. But nearly all of christendom—and the residue is coming in—have denounced this traffic, and put those who are engaged in it upon a footing with those who are guilty of the worst crimes that can be committed against humanity. They refuse them an honorable death, but hang them as robbers and pirates, and the committers of high treason. The slaves that are already civilized and christianized, do not derive these advantages. It is true, I believe, they are treated as well in Kentucky as in any state, which is the only point of view you can put it in, that will in any way or in any manner excuse us. And I suppose that in Virginia, where negroes are grown up for the purpose of sale, there is very little difference in the manner of treating them.

As this subject has been taken up a little out of its order, in consequence of the report of the committee coming in when I did not expect it, I have probably detained the committee longer than I ought to have done. But I will ask the committee one question before I stop. How would any gentleman here feel, if we were in the minority, and another race of people was to come, and without any offence or injury being committed against them by us—without any complaint, take the wife of one of these honorable delegates, and tie her in his presence, or his daughter, or his son, and chain them to a hundred other individuals who had committed no offence against God or man, and take them away where they could never be recovered? If there is any man who could look upon a scene of this kind—because they are human beings and have souls as we have—without feelings of the deep-

est remorse, I can only say that he is differently organized from me. I say that the state of Kentucky ought to be magnanimous, chivalrous, just, and humane; that our great constitutional charter should have affixed upon its face, upon its very front, an expression for posterity and for other states and nations to read that we do not believe in such a traffic, and that we set our faces against it in every way, and in every shape.

Mr. MERIWETHER. It will be recollected by the convention, that I suggested the propriety of postponing this matter, and making it the special order of the day for the day fixed upon for the consideration of the report of the committee. This suggestion, however, did not seem to meet the approbation of the gentleman from Madison. He has thought proper to proceed to-day, and feeling it incumbent upon me to show that the gentleman did misapprehend the report of the committee, and feeling a deep regret that he did not wait until he had examined that report, I will proceed to make a few remarks in answer to the gentleman.

I had the honor of a seat in this hall, as representative from the county of Jefferson, when the act of 1833 was passed, and voted for it. Had I been here at the last session of the legislature, I should have voted against its repeal. But I do object to placing the provisions of that act in the constitution; because it is evident to every member here, that if we do so we shall cause a heavy vote to be cast against that constitution, when it shall be submitted to the people.

We know that a large number of the delegates in this hall were members of the last legislature, and voted for the repeal of that law.—The repeal was carried, and it is but fair to presume that they reflected the will of their constituents. And will you incorporate in the constitution a provision that must inevitably cause a large and heavy vote to be cast against it?

I listened with a great deal of pleasure to many of the remarks of the gentleman from Madison. I listened, however, to other portions of his argument with rather different feelings. I imagined at one time that I was hearing the emancipation candidate who chased me through the county of Jefferson last summer. Indeed one friend suggested, why, is that Thomasson; another, no, it is Breckinridge from Fayette. If this convention will tolerate an anecdote, I will give them one in illustration of my feelings in reference to a portion of the gentleman's argument. There was a young man, who was for the first time empannelled upon a jury, and the case to be tried was for stealing a calf. When the plaintiff had got through his side of the case the young man hunched the juror next him, and remarked, "what a scoundrel the defendant must have been to steal his neighbor's calf." The defendant's counsel introduced his testimony, and then the young man said, "why I was entirely wrong, it is the plaintiff that has been trying to steal the defendant's calf." His friend said to him, "wait until you hear the speeches of the lawyers." The plaintiff's counsel addressed the jury. "I am wrong again," said the youth; "the defendant is the thief." The counsel for the defence then addressed the jury. "I am still wrong," said the young man. "Wait,"



said the experienced juror, "till you hear the charge of the judge." After the jury had retired, the old juror remarked, "well, Tom, what do you think of the case now?" "By —, I don't believe the calf belonged to either of them." That was precisely my case. First, I thought I was listening to a pro-slavery man; afterwards I thought I was listening to an emancipationist, and finally I came to the conclusion that I was listening to neither one nor the other.

The gentleman objects to the report of the committee, because he says that he is unwilling that emancipation should take place in Kentucky, even if the owners should be paid for their negroes. I beg leave to differ with the gentleman there. If it should ever become so palpably necessary for us to get clear of this description of property as to make the owners willing that emancipation should take place, and the people willing to pay for them, I am in favor of empowering the legislature to do so. It never will be done till the necessity becomes so palpable that there is no alternative left to them.

But, sir, if you should strike out the provision of the constitution which now exists, and which the committee have retained, do you not add to the strength and force of the arguments of the emancipationists? They will say, you have deprived us of the power of accomplishing the object, even at the expense of paying for the slaves. They will say to you, you have left us no alternative. But when the necessity shall arrive and shall have become so palpable that we must extricate slavery at some price, not having it in our power to get clear of the evil by paying for them, we must actually extricate them by death itself. Will not this, I ask, be a powerful argument in the mouth of the abolitionist? Will he not rouse the feelings of the community, and induce them not only to vote against the constitution, but rouse them so as to prevent such a provision from being contained in any other constitution that might be made?

But the gentleman wishes a provision to be inserted, which will make every slave that is brought into the state, free upon his arrival, except he be brought by an immigrant, or unless the title to such slave be derived by marriage, descent, or devise. What effect would this have? Why every man who lived in a neighboring state, who wished to manumit, and thus get clear of an old and unprofitable slave, would only have to bring him over into Kentucky, and then the slave would be free, and would remain here as a curse upon us. You will put it in the power of residents of other states to flood our country with a black population, to be made free, by sending them here without requiring bond and security for their maintenance and good behavior from the state whence they are brought.— Again, you enable every free negro who may choose to do so, to come into this state. A free negro resident in Ohio, or any other free state, has only to get some abolitionist to pass for his master, and then he may come into this state and reside here. I would fain hope at least that the gentleman wished to produce no such result as this.

The gentleman has gone into some statistical details, estimates I think he termed them, to show you that slave labor was not profitable. I

will give the gentleman a few official returns, which I think will convince him that his estimates are wrong. We will take the last year. The increased value of taxable property was eighteen millions of dollars, speaking in round numbers. That may be taken as the increased wealth of the state. Now the State of Ohio, with a population nearly three times as great has had no such increase of wealth. The actual increase in the value of taxable property in the State of Ohio, which, as I before remarked, has three times the population and labor that produces wealth that we have, was but about eleven millions. The increased wealth of Indiana about four millions. Take Indiana and Ohio added together and they have about four times the labor, and yet the increased wealth of Kentucky has been greater than that of both those states, with Illinois thrown into the bargain. These facts are taken from the official returns.

But the gentleman says that white labor is cheaper than black. That may be true. Why is it so? It is because white labor in the free States is cheaper than black labor is here. The gentleman, I trust, will not maintain that white here is cheaper than black labor; and I ask if he wishes to reduce the value of white labor here, and put it upon a par with the labor of those free States? If he wishes to keep its value up, and slavery has that effect, why prevent the increase of slaves?

But the gentleman spoke of the horrors of the slave trade. He did it eloquently, and I agree with him in every sentence that he uttered upon the subject. But when he assumes the position that there is no difference between the African slave trade and the trade between the States, then I take issue with him. Is there no difference between subjecting a free man to slavery, and the removal of a slave, or a change of masters, when he has been accustomed to slavery all his life?— Can the gentleman see no difference? If he cannot, I imagine that I can distinctly see a difference. I will go as far as any individual to suppress the slave trade with Africa, and the slave trade between the States too. But the gentleman is mistaken, when he supposes that the report of the committee does not provide for this. It provides expressly that the legislature shall have power to pass laws to prohibit their being brought here as merchandise. They are not to be brought here in droves, chained together, as the gentleman remarked. They are to be brought here only by immigrants, who come to reside in the State, or when the title to such slaves is acquired by marriage, descent, or devise; or an individual may go out of the State and bring them in for his own use, if the legislature should see fit to permit this to be done. With these brief remarks, I will move that the committee rise, that the further discussion of this subject may be deferred until the day which has been fixed for the consideration of the report of the committee.

Mr. NUTTALL moved to amend the sixth resolution by inserting the following:

"Or that shall be brought into the state by bona fide purchasers for their own use."

Mr. NUTTALL. I shall make but few remarks on this proposition. If we wish to get clear of the much vexed questions that will

arise from giving the legislature power to pass laws enabling the owners of slaves to emancipate them in this country, my proposition will save all the trouble and all the danger that will arise from adjudication in cases upon reserved rights, which will necessarily spring up when a free negro who has gone out of the state returns and asserts his rights here as a free man. I am not for giving any man the power to manumit his slaves in Kentucky. If he becomes so pious and as my friend would have it, so Godly given that he cannot consistently with his conscience live in the state in which he was born or which he has made the home of his adoption, and cannot hold slaves, let him leave the state; let him and his slaves together leave the commonwealth. Now what will be the result? A man frees his slaves, and he gives bonds that he will provide for their leaving the state of Kentucky, and actually does furnish the means to transport them into a foreign state, to Africa, or to Liberia. Well sir, the very moment the manumitted slave gets to Africa, or to Liberia, and is not satisfied with his lot, and chooses to come back, if he is a free man *ipso facto*, no qualification that we can attach to our enactment, will prohibit him from coming back into this state as a free man. But when he goes out of the state, and is not freed until he gets beyond the territorial jurisdiction of the commonwealth, then we may impose restrictions, so as to prevent him from coming back. Sir, I do not myself, look forward, I will say in reply to the gentleman from Madison, to the time when this commonwealth of old Kentucky ever will be a non-slaveholding state. I hope it never may be. And if the gentleman can see the finger of God, working out some great moral, religious, or sublime problem with regard to the slave question, why, sir, it is more than I can, and if I had such a vision as the gentleman has to perceive all these glorious things to be attainable, I would not attempt to thrust myself between God Almighty and the subject; because, sir, if He has determined that slavery shall cease to exist, all the restrictions on earth can never prevent or stay His purpose. The state of Kentucky has for all time to come to be either a frontier slavery, or a frontier non-slavery state, and the great question which her citizens have to determine is, whether she will separate from her old connections, her associates, those who are bone of her bone and flesh of her flesh, those who have been brought up with the same institutions, the same customs—whether she will forsake all these and unite herself with men who are foreign to us in interest, in purposes, and in all the associations of life. Kentucky, sir, will be ready for emancipation when she is ready to cut loose all her feelings for the South when she is willing to see the cotton fields of the south, sink back into their original quagmires and cane breaks—when she is willing to see the sugar plantations of the south return to the original forest. Then will Kentucky be ready for emancipation; then will she be ready to unite with our northern friends, and not till then.

I am, upon principle, opposed to establishing a slavery in this country; and against the incorporation of the law of 1833 into this constitution, I most solemnly protest. The gentle-

man is very willing, if a man is so fortunate as to be a distinguished gentleman, like himself, to raise up a distinguished son, who goes into a foreign state, and by a matrimonial alliance, acquires the ownership of five hundred slaves—the gentleman is very willing, I say, that all these should be brought into Kentucky. But if a poor devil like me, who had nothing to recommend him but his person, were to go into Virginia to marry, what sort of a chance would he have to acquire property in slaves? If you compel us to bow down to the slavocracy, we shall never have money enough on God Almighty's earth to buy a slave, for I am not over fond of work, and none of my kin is so fortunate, I believe, as to possess slaves; so that I have no chance of acquiring them by inheritance, and if I cannot acquire them by marriage, how can I get them? The Lord Almighty knows, for it seems there is no chance for the poor. Now, my rule would be about this: the rich have enough of the good things of this world—do let the poor have a chance. And I tell the gentleman from Madison, in language which he will understand, after the submission of the constitution to the people, that even the old county of Henry—though I do not know, as yet, that I have the honor to represent the people of that county—had it not been for the law of 1833, never would have been a convention county. If you send out the constitution with this provision, it will be rejected by forty thousand votes. The laboring men of Kentucky, the poor men, the men who never can expect to acquire slaves by marriage, or by descent, will see that it is a slavocracy, a tariff upon their labor, that they will not stand. It is a protection that no state can give in its fundamental law. I myself will vote against the constitution, if it should contain such a provision. I want to own slaves, and I want the privilege of buying them where I can get them cheapest, though I do not want to see them introduced in droves. I think I have as much of the milk of human kindness as any man, and I abhor the mere slave dealer, the trafficker in human blood, as much as any man in the world. Sir, we have not enough, or we have too many. Let us get clear of the whole concern, and have a free state out and out, or let every one have the chance to get slaves where he can for the best price, and of whom he pleases.

We must be either for emancipation or against it. There is no middle ground on the subject—and I was very much like my friend from Jefferson in regard to the member from Madison—I thought him here in disguise; but I know him too well to have any opinion of him of that sort. I give it as my opinion, that the best way to get rid of any future difficulty on the subject is to allow no man to emancipate his slaves in Kentucky. If he wants to get rid of his slaves, let him act upon the proposition I made the emancipationists. If you beat us, we will leave the good old Commonwealth of Kentucky, but if we beat you, then you shall leave it. I think now, that one of those two things ought to take place. We have beaten them, and a large majority of the people are with us, and now let them leave us.

Mr. TURNER said he would detain the com-

mittee but for a moment. So far as concerns the gentleman from Henry, and his fear of the finger of his maker, I will not put any more weight on him. The finger of a gentleman from his county is upon him, so strong now, that I think it would be cruel to put any more on him, until that is removed. The gentleman from Jefferson appears to think that I or somebody else—I do not know whether it was any one who was going to murder or assassinate the gentleman or not—had something against his person. I am very sorry that any gentleman here should think I had anything against his person.

Mr. MERIWETHER. The gentleman will pardon me but he seems not to have understood the purport of my remarks. I said that some gentleman asked me whether it was Mr. Thomasson, my opponent, who was speaking, or another gentleman who canvassed Fayette in favor of emancipation, and was then rejected.

Mr. TURNER. Very well, I do not wish to permit the power of emancipation, even by paying for the slaves, and if the gentleman advocates the proposition that it shall be left open, I ask him upon whom he would impose the tax for the purpose. Would he tax those poor men who do not own slaves to pay for their emancipation? We have no right to tax those poor men who own no slaves to pay for ours. Would he then have those who owned and brought slaves here, pay for their emancipation? What would that amount to? Why, to a man's putting his hand in his right pocket to replenish his left.—They would only pay themselves. Every man, particularly in this convention, will at once say that it would be cruel and unjust to tax the great body of the people who own no slaves, to purchase emancipation. I consider myself a stronger pro-slavery man than the gentleman from Jefferson, for I have never advocated emancipation in any form. The gentleman says he voted for the law to exclude the importation of slaves. Where then, is the difference between myself and any pro-slavery man here? There is none. No gentleman in this convention is more decided than I am, against the taking of a man's property, or using its proceeds by the government, without compensating him for it. I am also against bringing any more slaves here. I do not believe it is for the interest of Kentucky, or that humanity or christianity tolerates it, or that there is any view of the subject, which will justify it, that any human being may take, according to my perception. I do not wish those who differ with me in opinion to think that I imagine they are inhuman. They have different light from me. Every man must act under his own light, and I intend to act on that which has been given to me. But my teachings of the rights and duties of humanity lead me to think that the traffic ought to be restricted.

The gentleman from Jefferson says that under my proposition, they would send here superannuated slaves to be freed. My proposition is only in outline, to elicit debate, and I supposed that a gentleman so distinguished as the gentleman from Jefferson, at the head of a committee, could draft a provision that would effectually prohibit this traffic, and this apprehended sending here of superannuated slaves. I was aston-

ished too, at the gentleman's idea, that a free negro in Ohio would be brought into slavery and become a free negro in Kentucky! I supposed the gentleman to be a little farther along, a little smarter—I wish not to be personal, but the idea of a man in the state of Ohio, acknowledging himself to be a slave, and the abolitionists bringing him here and selling him, and then he getting his freedom, is one so absurd, that it never for one moment entered my mind. I am in favor of a constitutional provision declaring that no more slaves shall be imported into this state, or if a majority is not in favor of that, I desire that the question shall be divested of all the doubts which involve the clause on the subject in the old constitution.

Mr. MERIWETHER. The gentleman did not, I apprehend, comprehend the argument which I made, in supposing a case. I did not suppose that a free negro, wishing to emigrate to Kentucky, would come with an abolitionist, and permit himself to be sold. The gentleman's resolution does not provide for such a case. It is not necessary to sell the negro, but an abolitionist may come with him to Kentucky, or a resident in Kentucky goes to Indiana, and bringing the negro here, treats and claims him as his slave, and by the operation of the gentleman's proposition, the negro would be made free, and hence would have a right to remain here. I go as far as the gentleman, against taxing either the slaveholder or the non-slaveholder, for the purpose of manumitting the slaves of the state. The committee, I believe not a member of it, advocate no such provision, but thought it expedient to retain the provision of the old constitution without alteration, so that if any necessity should arise, which should become so imperative as to force us to get rid of our slaves, we might do so by devising some means of payment therefor. I again renew the motion that the committee rise and report the resolutions to the house, with a view of then moving that they be referred to the committee of the whole, and made a special order for Monday week.

Mr. DIXON. I am anxious at the proper time, to make some remarks upon the proposition contained in the resolutions submitted by the gentleman from Madison. I differ from that gentleman entirely in regard to the propriety of inserting in the constitution, the proposition he has submitted to the convention, and I desire at a proper time to give my reasons to the convention. I do not know that they will have any influence here, still I hold it is a duty to myself, and my constituents, that I should give my views on the important questions involved in the resolutions. I think the motion or the gentleman from Jefferson, to rise and report, is one altogether proper and right, and I hope it will be adopted.

Mr. C. A. WICKLIFE suggested that the discussion had better continue at once, until the day when gentlemen come to vote upon it, when their minds would be fully made up on the subject. He moved therefore, that the committee rise and report progress, and ask leave to sit again. The subject then could be taken up tomorrow, or if not, on the next day.

The motion prevailed, and the committee,

through their chairman, reported progress, and obtained leave to sit again.

Mr. McHENRY said that he noticed from the remarks of the gentleman from Madison, that another resolution of that gentleman, in reference to the same subject of slavery, had not been referred to the committee of the whole. He moved to refer the whole series to the committee of the whole.

This motion was agreed to.

#### QUALIFIED VOTERS—AUDITOR'S REPORT.

The PRESIDENT said that he had been presented by the Auditor, with a list of the qualified voters in each county of the state, in pursuance of a resolution passed this morning.

Mr. GARRARD moved the printing of 125 copies of the report, for the use of the members.

This motion was agreed to.

And then the convention adjourned.

THURSDAY, OCTOBER 11, 1849.

#### PROPOSITIONS TO AMEND.

Mr. BARLOW offered the following resolution, which was agreed to:

*Resolved*, That the committee on the miscellaneous provisions of the constitution, be instructed to enquire into the propriety and expediency of making a provision in the new constitution about to be made, which will enable citizens of any of the United States, emigrating to this state, to exercise the elective franchise at an earlier period after such emigration than is now provided in the present constitution.

Mr. CHRISMAN offered the following, which was referred to the committee on miscellaneous provisions, and ordered to be printed:

*Resolved*, That the committee on miscellaneous provisions be instructed to enquire into the expediency of adopting in the constitution a provision declaring any collector of the revenue tax, or other disbursing officer of the government, or any officer thereof, who may have the charge or custody of the government funds, or any attorney or lawyer, or other collector, who may fail or refuse to pay over any money collected by him in his official capacity, ineligible to any office under said constitution, until they shall first have obtained a full acquittance and discharge.

Mr. HAY offered the following, and it was referred to the committee on the revision of the constitution and slavery, and ordered to be printed:

1. *Resolved*, That the specific mode of amending the constitution, by submitting to the voters of the state one clause at a time, is the correct and best mode.

2d. That, in lieu of the mode pointed out in the old constitution for calling a convention, the following should be adopted: The legislature, whenever two thirds of both houses concur, may propose amendments to the new constitution, which proposed amendment shall be entered at large on the journals; and such proposed amendment shall be submitted to the people at the next general election, and if it shall appear that a

majority of all the qualified voters of this commonwealth have voted in favor of the proposed amendment, the same shall be adopted at the next session of the legislature as part of the constitution.

3. That if more than one amendment is proposed at one time, each amendment shall be distinctly stated, so that the votes may be taken on each proposed amendment separately.

#### LECTURES IN THE HALL.

Mr. HARDIN offered the following, which was agreed to:

*Resolved*, That James D. Nourse, of Bardstown, have the use of the hall of this convention, at any time of an evening that he may choose, to deliver a series of lectures on the philosophy of history and society, especially with reference to the sources and progress of modern democracy: *Provided*, the convention or the committees are not then using the hall.

#### SLAVERY.

On the motion of Mr. BARLOW the convention resolved itself into committee of the whole, Mr. BARLOW in the chair, and resumed the consideration of Mr. TURNER'S resolutions, which were undisposed of when the committee rose yesterday.

The CHAIRMAN stated the question pending before the committee, and said that the gentleman from Nelson (Mr. C. A. Wickliffe) was entitled to the floor.

Mr. C. A. WICKLIFFE had not intended by the motion he made yesterday to entitle himself to the floor, nor had he given any intimation that he intended to participate in this discussion at all. He supposed that the gentleman from Henderson was entitled to the floor.

Mr. DIXON. I did not intend to address the committee on the resolutions submitted by the gentleman from Madison, at the present time.—I remarked yesterday, that I did not think this was the proper time to discuss that question, and I am still of that opinion, and have determined to postpone the making of any remarks which I may have to submit, until the time when the amendment to the constitution reported by the committee, shall come up for consideration. At that time I may submit some remarks on the principle contained in the amendments proposed, and also in reply to the remarks made yesterday by the gentleman from Madison. I do not design to address the committee to-day.

Mr. C. A. WICKLIFFE. As no gentleman seems disposed to address the committee, I desire that we shall proceed to vote on the amendment. If no one is ready to speak, all must be ready to vote, for I believe our minds are pretty well made up in regard to the question.

Mr. TURNER. As the gentleman from Henderson has indicated a desire to be heard hereafter, on these resolutions, and as no one seems ready now to speak on them, I move that the committee rise and report them to the house, that they may be referred to the same committee of the whole, to which the report of the committee was referred.

Mr. C. A. WICKLIFFE. It strikes me that the course proper for us to pursue in regard

to this subject, would be to proceed with the discussion of the abstract question of slavery now. It is a topic which seems to be involved in the resolutions, as well as in the gentleman's speech of yesterday, and when we have terminated the discussion, we can take up and vote on the amendment proposed. I thought that was the course understood and indicated yesterday by the vote of the house. The present proposition, I understand to be, that the committee shall rise and report the resolutions to the house; but there is an amendment to the resolutions pending, and I do not know whether such a motion is strictly in order until the committee have disposed of the motion to amend. If no other gentleman designs to offer an amendment to the resolutions, it was my purpose, after the committee had disposed of the amendment of the gentleman from Henry, (Mr. Nuttall) to move to strike out these resolutions from the series introduced by the gentleman, with a view of taking a vote of the committee and reporting the result to the house, and if it was its pleasure then to postpone further discussion upon them, it could do so, for it would then be in order. I think the members of this house, considering the discussions which took place throughout every county and town in the state during the last summer, on this question of slavery—whether it be more useful or profitable than any other description of labor or property—the policy of interfering with it by the action of this convention, and disturbing the relation between master and slave—should regard these as questions which our constituents have settled for us. And if the papers told truly, they informed us that there was returned to this body, no; one favorable to the emancipation of slave property. I think therefore, that a discussion upon the abstract question; the right or wrong, the good or evil of slavery—the comparison of profits between servile and free labor—is one that belongs to the region north of Mason and Dixon's line, and not to the meridian of Kentucky, now, and within this hall. These were my opinions before the resolutions were discussed yesterday, and they have been strengthened by that discussion, however able upon the points touched. However, as the subject has been mooted, I desire that these resolutions shall be retained by the committee—that the committee shall express its sense upon them—and then, if any more discussion is necessary, it will properly come up when the report of the committee shall be under consideration.

Mr. TURNER. I do not wish to be troublesome on this subject, but some of the remarks of the gentleman make it necessary that I should notice them. Now, I came here avowing the same sentiments that I did at home. I am as much opposed to emancipation as the gentleman from Nelson, and I claim to be as sincere in my views as he can possibly be. I am utterly opposed to emancipation in every mode and aspect in which it has ever been proposed in Kentucky, and one of my resolutions is more ultra upon the subject, than any proposed by the committee, or any gentleman here, for it inhibits the emancipation of slaves compulsorily, even after compensation has been made. But in the region of country in which I live, and indeed, throughout Kentucky, it has been a question a

great many years, whether the further importation of slaves was beneficial or not, and whether there was not as many here now as was profitable; and I suppose it to be as legitimate a topic of consideration here as before the people. There is not a single sentiment in my resolutions, or any sentiment avowed by me yesterday, which I have not avowed before my constituents, and which they do not fully understand. I am considered the most ultra pro-slavery man in my county, and the whole power of the emancipation interest there was wielded against me, to a greater extent probably than against any other candidate before the people. I come here to sustain the sentiments which I avowed at home. I maintain the inviolability of the slave property of the people of Kentucky, and at the same time my light leads me to believe that there is no necessity for its increase. And this also, is what I understand the people of the county from which I came, to believe.

It is a matter of indifference to me personally, whether this resolution shall be acted upon today or not. I have said most of what I expected to say, except that I may desire to reply briefly to the gentleman from Jefferson, which I had not time to do yesterday. I had intended to wait, before I should do this, until I heard the remarks of the gentleman from Henderson, as he has declared his opposition to the resolutions which I have introduced. There is one remark of the gentleman from Jefferson, to which, I perceive from reading the report of the proceedings of yesterday, I did not reply. This is, that the importation of more slaves would be beneficial to those persons who now owned none. Now, I have always believed that the more people, whether white or black, brought into a state to labor, would, by increasing the competition, lessen the value thereof. But I am not going to discuss that question now, my only desire is, that I may be put right before the convention and the people. I repeat, there is not a member of this house, who will go farther than myself in sustaining the institution of slavery. I do not believe that we would be justified under any consideration in interfering with the rights of the slaveholders of Kentucky. They have vested their capital in slave property under the sanction of the constitution and the laws of Kentucky, and I am opposed to taking it from them, even if it is proposed to compensate them for the loss. They purchased or invested their property, and they only have the right to dispose of it.

I believed before this debate came on that there was not a majority here in favor of the 6th resolution, and I so informed the people of my county last summer, while avowing myself in favor of incorporating the provision in the constitution. I have brought forward this resolution to ascertain what the majority were in favor of—whether of incorporating the provision into the constitution, or of giving the legislature the power over the subject. And really I thought it but right to ascertain upon which of these propositions the majority did agree, before the standing committee reported. As I said to my constituents before I left home, I suppose the majority here will go for leaving the power in the hands of the legislature, but for myself, I am pledged to go for inserting a prohibition

against the further importation of slaves into this Commonwealth, in the constitution itself. I have said all I desired.

The CHAIR. Does the gentleman move to rise and report?

Mr. TURNER. It seems to me that it would be more respectful to those who wish to speak on this question, as well as to myself, that further opportunity should be given to discuss the question. I have no objection to its being laid on the table, to be called up when any gentleman desires to speak upon it.

Mr. DIXON. It is a matter of very little consequence to me, whether I debate these resolutions or not—in fact, were I to consult my own feelings and inclinations, I believe I should not debate them. I listened with a good deal of attention to the speech of the gentleman from Madison yesterday, and the views taken by him upon some abstract propositions connected with the subject of slavery, I thought demanded an answer and reply. I do not know what impressions the opinions advanced by him, as respects the institution of slavery itself, are designed to make on the public mind. I understand him to have laid down as a proposition, that slavery is a great evil, and that to permit the people of Kentucky to purchase for their own use, slaves out of the state, would be not only a great evil, but an outrage upon all the great principles of humanity. The resolutions of the gentleman I understand, propose that no citizen of the state of Kentucky shall purchase slaves out of the state for his own use. The legitimate course of the debate would be on that point alone, yet gentlemen in the discussion here, have taken a wide range, and discussed all the great principles connected with slavery—all the benefits which result to our civil institutions from the existence of slavery—and all the evils which are consequent upon it. I could not tell from hearing the speech of the gentleman, whether in his opinion—though he emphatically declared it to be an evil—slavery was really an evil or a blessing. I do not mean to say that in my judgment slavery is a blessing, or that, in my opinion, slavery as it exists in Kentucky is an evil. This is a question which I mean to discuss at a proper time—not abstractedly, but in reference to the condition of society as it now exists in the commonwealth of Kentucky. I would, if I had the power, make all mankind free. I would have no such thing as slavery or inequality. I would have equal rights measured out to all; but in the formation of civil institutions for the government of man, we are to look at the condition of things as they are—we are to adapt the laws to the condition of those to be governed. It is a question of grave importance, whether or not slavery as it exists in Kentucky, is not better for the slave and the master—and this is the great question, the only question, which can have any particular interest in this debate. I shall attempt to show that slavery is not a curse as it exists now in Kentucky, but that it is a blessing. I do not mean to say, as I remarked before, that it would not be better, if there was no such thing as slavery on the face of the earth. I do mean to say that as slavery exists in Kentucky—in view of all the circumstances around it—in view of the

wretched condition of the slave, his relation to his master, the peculiar organization of the two races, the utter impossibility that the one can rise to an equality in the scale of morality and dignity with the other, the fact that the slave, whether you call him a freeman or not, is still but a slave, the wretched offcast slave—I say it becomes a question of grave importance to Kentucky, whether it is not a blessing alike to the slave and the white man, that he is a slave.—These are the questions which arise and present themselves, from a view of the condition of this commonwealth, and it was my intention at the proper time, to enter upon their discussion. I do not think it the proper time now. As I remarked before, I have no particular anxiety to discuss the question at all, nor do I know that I shall, yet I have thought it due to the country, and respectful to the gentleman from Madison, that his remarks should be replied to, and for that reason I was anxious that the resolutions introduced by that gentleman should take the course indicated by him.

Mr. TURNER. I do not wish to be troublesome, but this is a sensitive matter to the country, and I desire that my position shall be fully understood in regard to it. Those who will read my speech of yesterday will find there is not a word in it, against the condition of the slave in Kentucky, or even a suggestion that his condition could be improved in any way. I occupy the same position as the gentleman himself—that you cannot improve the condition of the slave in Kentucky in any way, and that the institution of slavery as it here exists is better for the white and the black man than any thing this convention or the legislature can devise. I do not go as far as the gentleman, and he is mistaken in supposing that I said that slavery as an original institution is an evil—though I will now say that I agree with him, that if we were forming a new commonwealth where no slavery existed, it would be better to get along without it. I agree with him in that, though I did not make the avowal yesterday. As an original question, if there never was a slave in the world, I would not introduce slavery into society, but I also believe that as it exists in Kentucky with the peculiar circumstances surrounding it, it is a benefit to both races. That is my position. I am opposed to bringing any more slaves here, because I do not believe that it is profitable or desirable in any way; and that is the only point on which I differ from the gentleman from Henderson.

Mr. CLARKE. I barely intend to indicate to the committee, my intention at the proper time to offer a proposition on the subject of the importation of slaves, variant from that reported by the standing committee, and that offered by the gentleman from Madison. It has been claimed, and during the recent contest between the different candidates for delegates to this convention, in many sections of the state, it has been urged that the act of 1833 was a concession to abolitionism in this state. I myself have heard gentlemen who are emancipationists in principle, and who had the candor to avow their principles before the people, declare that the act of 1833 was a concession to the spirit of emancipation in this state. During the last



session of the state legislature, as I see by an examination of their acts, there was a modification of the law of 1833 adopted, and in the passage of that modification, it seems to me that the sense of the people was clearly and fairly indicated. And if we are to give any respect whatever to the opinion of the people, as expressed by their representatives last winter, and as expressed in the elections of last August, when the candidates for delegates were before them, if I am not mistaken, it is the sense of the people of this state, that there should be no restriction upon the citizen who may desire to import another slave into the state for his own use. I would go farther than the amendment to the act of 1833, passed at the last session of the legislature, for it is not broad enough for me. It requires the party importing a slave, to take a certain oath, that he was brought into the state for his own use, and that he will not dispose of him for five years. I would not go so far as to say that I am in favor of importing slaves into the state for the purpose of merchandize, but I would go so far as to say that the citizens of this state should not be restricted in the exercise of the right to bring slaves here. And I would propose to limit the time they should hold the slave, before they had a right to sell him, to twelve months rather than five years. Indeed if I know my own feelings, and what I believe is the sense of those I represent here, I prefer that there should be no restriction around the subject at all. The fifteen slave states of the Union compose one great family, dependent one upon the other, so far as the perpetuity of the institution of slavery is concerned, and I would prefer that there should be no restriction thrown around the citizen at all, but that he should be left free to exercise his own dictates in this matter. You cannot generate by legislative action, a moral principle in the bosom of man, by which he will be governed, and if there are those among us disposed to traffic in human blood, they will find means to do it, I care not what constitutional or legislative restrictions there may be.

At a proper time, I shall propose as a substitute for the 5th section of the report of the committee, that every citizen of this state shall be allowed to bring slaves into the state for his own use. And when I make this proposition, I trust that I shall be prepared to sustain it, at least so far as those I have the honor to represent on this floor, are concerned.

Now one more remark and I am through. It was suggested by the gentleman from Madison yesterday, that the states of South Carolina and Virginia had both passed laws prohibiting the importation of slaves within their territories. I have not examined the statutes of South Carolina, but I think it possible that my friend is mistaken on that subject. I am aware that during the canvass in the State of Tennessee the past summer, the question was put, and discussed liberally by all the candidates for both branches of the Legislature, and perhaps by the candidates for Congress, as to the propriety of passing a law which would prohibit the importation of slaves from other States into Tennessee. I beg leave to state to the committee that I am perfectly familiar with all the facts and circum-

stances connected with that move in Tennessee. During the last winter, the few emancipationists in this State had produced an excitement that alarmed the whole south. Kentucky now occupies a frontier position—the same position now on the subject of slavery that she occupied in times past and gone by, in reference to the dangers that might be apprehended from the incursions of the savages. She was then a frontier state, and still is, so far as the institution of slavery is concerned. The broad Ohio, rolling its waves from almost the southern extremity of the State to its eastern border, separates Kentucky from the free states, and her members of congress and the members of congress from every slave state in the union, felt that when that great natural barrier, the line of separation, between the slave and the free states was struck down, there was danger. They felt that there was scarcely a slave state in the union that would not go by the board in less than twenty years, if Kentucky abandoned her old friends who had stood by her in every emergency, and allied herself to those who had warred on her institutions from the beginning of the abolition agitation to the present day. Hence, a meeting of the members of congress from the slave states, was suggested by the members of congress from this state; and it was there suggested that the distinguished and leading men in each slave state in the union should be written to, and be urged to get up an excitement, if you please, upon the subject of prohibiting the importation of slaves from one state into another. And for what purpose? For no other than to prevent the emancipation of slaves in Kentucky, as every gentleman here can see. Hence, the move that was made in the state of Tennessee, upon the subject of a law to prohibit the importation of slaves into that state. We were aware that there was not money enough in Kentucky to purchase the liberation of the slaves of Kentucky, and that our people well enough knew the fact; and we were aware also, that when the balance of the slave states of this union had declared by their legislative action, that our slaves should not be purchased by their citizens, that it would operate as a terror upon those in favor of emancipation in Kentucky and put down the emancipation party. That was the motive.

I am not unwilling to declare here, before the state and the world, that I believe that slavery, as it exists in the slave states of this union, elevates the character of the white race, its dignity, and its morals, and I trust that we shall frame a constitution that will perpetuate slavery in this state for all time to come. When the proper time shall arrive, I desire to offer as a substitute for the 5th section of the report of the committee, a section that shall embody the principle that every citizen in this state shall have a right to import slaves into this state for his own use, and upon that proposition I desire to be heard.

Mr. STEVENSON. I have no desire to take part in the debate at this time, and I think that courtesy to the gentlemen who intend to do so as well as the nature of the subject itself, dictates that this matter should be postponed, and that it should come up with the resolutions reported by the committee on the revision of the constitution and slavery. I had designed to offer an amend-



ment to the report of the committee, but I shall be saved that trouble, because my resolution would have comprehended what my distinguished friend from Simpson has intimated to the house he shall do himself. I have no disposition at this time to enter into the abstract question of slavery. That I may do so hereafter, will depend very much upon the character which this debate may take. I have discussed already before my constituents, this law of 1833, and the question as to whether it should go into the constitution. It was a question that was made before the people, between the gentleman who opposed me in the canvass and myself; and the difference between us was upon that question alone. I am opposed to the law of 1833 going into the constitution; but while I avow this sentiment, I am not in favor of the slave traffic. I am not in favor of traffic in human blood.

I am opposed to the fifth resolution of the series of the gentleman from Madison, and I desire at the proper time to give my views upon the subject. I desire, with the gentleman from Simpson, that the citizens of this commonwealth should enjoy equal rights. I desire that every one should have the right to import slaves for his own use. And as I have declared heretofore when I had the honor of a seat in the legislature, I am not in favor of allowing the capricious will of the legislature to determine whether A. B. shall be permitted to bring in slaves, and a similar permission be refused to C. D. This is one of those inequalities of rights to the existence of which I am utterly opposed, and it is a point which I desire to discuss when my honorable friend from Simpson offers his resolution as an amendment to the report of the committee. When we give to the legislature the right to say whether a man shall bring slaves here for his own use or not, we give to them the right to judge of the expediency of importing slaves, and it will be owing altogether, not to the justice of the application, but to the particular phase and color which the legislature may wear at the time when the application is made.

I desire, in framing a constitution, to provide for equality of rights, as far as it can be done. I am led away, however, from the purpose for which I rose, which was to ask that the question be postponed, not only out of respect to the gentleman from Madison, but also through deference to the committee who have made a report upon the subject. I hope, then, that the committee will rise, and that the further discussion of the subject will be postponed until the day fixed for the consideration of the report of the committee.

Mr. TALBOTT. Much has been said here, and elsewhere, on this very exciting and important question. I concur with the gentleman that perhaps this is not the most proper time to enter into the discussion of it. What is said and done here is not only to affect us, but our posterity. Not only to affect us as a state, but to affect our sister states—not only to interest us at this time, but will interest us in all time to come.

I came here not for the purpose of inflicting upon this house frequent and long speeches. I came here, inexperienced as I am in the deliberations of a body like this, with a view, with the

expectation, and with the desire to listen and learn. But sir, when I see a delegate like the gentleman from Madison, rise in his place, and under all the peculiar circumstances that are thrown around this particular question, declare to this body, and through this body to the world, such sentiments as he has expressed, I should feel that I was criminal, I should feel that I ought to be held responsible at the bar of my own conscience, that I ought to be held responsible by my constituents, that I ought to be held responsible at the bar of my God, on the great day of accounts, if I were to stand here with the feelings which I have, and the principles which I have advocated, and allow to pass unnoticed and uncontradicted, sentiments such as I heard expressed by that gentleman yesterday. We all know that it is impossible for this or any other assembly, to attempt to any time, or in any place, or under any circumstances to discuss these questions, either as original questions, or questions of expediency, without producing the most thrilling and the deepest excitement. I agree with the gentleman from Kenton, that this question had better be deferred, and I am willing for one to vote that it shall be deferred. But I rose to say a word in reference to the remarks made by the gentleman from Madison yesterday, in which he says that he considers slavery wrong in the abstract; that it is right for us to hold slaves, but that the principle is wrong—that the finger of God is not only upon it, but the will and law of God are positively and unequivocally against it. Now sir, if this be true, there is not a man here, not a christian man in the world who can enjoy his religion and hold slaves for one single moment. Sir, this is laying the axe at the root of the tree.

You may talk to me as much as you please about the expediency of slavery, about the profits and losses of slavery, about the convenience, or the luxuries of slavery, and every good that might possibly grow out of it; but if it is contrary to the will of my God, a sin, a great moral evil, and detrimental to the best interests of my country, I for one am willing to consecrate myself with all I possess to the principle; and to do or die, so long as I live, will be my watch-word, so help me God. Sir, I never will so long as my heart beats, preach one principle and practice another. If slavery is wrong in the abstract, radically wrong, where is the man, the christian man, the man who loves truth and justice in the world, who would for a moment be its advocate? I am ready to enter upon the discussion of the subject, and indeed I came here for the purpose of making a speech upon it to-day; but I am willing to wait until the day that is fixed for the consideration of the report of the committee, and then I hope that the house will do me the favor to hear me. Allow me to say to the gentleman from Madison, however, who speaks of the finger of God controlling this matter, that perhaps he is mistaken, he may however have received some new revelation on the subject. I merely wish to state to the gentleman, that I hold slavery to be neither a sin nor a moral evil, nor detrimental to the best interests of the State, and that I hold myself responsible to prove it, and when the opportunity occurs, I will prove it, not from any new revela-

tion, but from the old fashioned Bible. I therefore waive all farther remarks for the present.

Mr. C. A. WICKLIFFE. The disposition of the subject which I indicated, was predicated on the idea that it was not desirable to discuss the abstract question of slavery at the present time. But it seems that, in homely phrase, my friend from Madison has waked up a snake in this assembly; especially since we are told from the other side of the house that we are to have a sermon on the subject. I am willing to listen to gentlemen on this question, but I do not contemplate participating myself in any debate upon it. The gentleman can give such direction to his own resolutions as he may think proper, and if he desires that they shall come up in committee of the whole, together with the report of the select committee, it will only be necessary to allow the subject to pass by until the time fixed upon for the consideration of that report.

Mr. TALBOTT. I think it is due to the honorable gentleman from Madison that this matter be laid over. But I thought it proper to state what were my intentions, that nobody might be deceived, and that it might not, when it comes up unexpectedly. But I think it is due to every gentleman, when important principles are about to be controverted, to give time that he may be prepared for the discussion. I am, therefore, in favor of postponing the further consideration of this subject until next Monday week.

Mr. TURNER. I am afraid that I may be considered troublesome, but I am so little experienced in matters of this kind that it appears I have got myself into a hornet's nest sure enough. I have failed to make myself understood; but I can tell the gentleman that I am in no wise terrified by any thing that has occurred. If gentlemen would understand me and understand themselves they would do a great deal better. There is not a gentleman who has made a remark upon any thing that I have said, except the two gentlemen on my left, who understand what I said yesterday—not one. I would recommend gentlemen, before they come here to answer a speech that has been made, to understand what was spoken. I never said that the finger of the Deity was against the institution of slavery. Never. I said that the hand of Deity was causing slavery to recede in Maryland, in Virginia, and in Missouri; that it was, at all events, not increasing with the increase of the white population, and that every thing we could do would not be able to prevent this. But that the Deity was against the whole institution, I never intimated or intended to intimate. But there is one thing I intended to intimate. I am not as well read in the gospel as I ought to be, and not so well, doubtless, as some gentlemen here; but I do not understand the teachings of the gospel as justifying this institution as it stands, and I never will advocate what I do not believe. I believe that the gospel applies to a state of things that does not exist at present. I believe in leaving to Cæsar the things that belong to Cæsar. The mission of the Apostles and Patriarchs of old was of a spiritual character. It related to things of another world.—They did not come here to interfere with the things of Tiberius or of Cæsar. They came not

to interfere with temporal prosperity, and it does not appear to me that any argument, in justification of the institution of slavery, as it now exists, is to be found in the sacred writings.—Still, I believe slavery, as it exists in the state of Kentucky, is a good institution. I do not intend to attack it. Let gentlemen read the speech that I delivered yesterday, and they will not find in it any such sentiments as the gentleman over the way has attributed to me. And I must correct the gentleman from Henderson (Mr. Dixon,) as well as the gentleman from Nelson, (Mr. C. A. Wickliffe.) I did not mean to assert that the institution of slavery was an evil.

Mr. DIXON. I certainly so understood the gentleman.

Mr. TURNER. I said nothing of that kind. On the contrary, I attempted to maintain that it was a benefit to both races as it exists here, but I do not think it is profitable or desirable in any point of view to increase the number of slaves by importing them from other states. They have a prohibition against the importation of slaves into other states, and we shall only get the demoralized and debased portion, and this is not the description of slaves that I should wish to see mixed with our black population. I do not think it would be profitable because the more you introduce, the more competition there would be against free white labor, and the greater difficulty for white men to get employment.

Mr. BULLITT. Having been a member of the committee, which has made the report on the subject of slavery, and having concurred with that report, I shall stand prepared to defend it whenever it is called up for discussion; and I shall be opposed to the incorporation of the provisions of the act of 1833 into the new constitution. I differ from my honorable friend from Henderson. I am prepared to maintain that slavery is neither a moral nor a social evil, but a positive advantage to the white population and no injury to the black. Slavery must be viewed in two aspects. Treated as property, no discrimination should be made between that and other kinds of property. I shall not trouble the house at present with any further remarks; but whenever the report comes up I shall be prepared fully to explain my views.

Mr. TALBOTT. One more remark. The gentleman from Madison this morning denied that he made the assertion that the finger of God was against the institution of slavery. I certainly understood the gentleman yesterday as making that declaration, but he has the right to make his own explanation, and if he repudiates such a sentiment, I am willing to receive the gentleman's explanation. But I think that the gentleman has substantially reaffirmed the same sentiment, for he now says that the bible does not recognize slavery; consequently, as the bible is the revealed will of God, that will is opposed to slavery. Now I stand pledged before this house to prove that slavery has existed in every age of the world since the flood, and that it is justified and approved by the scriptures themselves.

Mr. TAYLOR. It is written that the apostle Peter, in the language of admonition to the church, said: "Be ready always to give an answer to every man that asketh you, a reason of the hope that is

in you, with meekness and fear." And yesterday, just about the time that I had screwed my courage up to give this answer, my friend from Nelson made a remark which somewhat let me down. And that was, that this act of 1833 had not been much discussed in the election of delegates to this convention.

Mr. C. A. WICKLIFFE. I can only say that if the gentleman had been better acquainted with me he would have understood the remark as being entirely ironical.

Mr. TAYLOR. I mean nothing offensive to the honorable gentleman. A man cannot always help his thoughts, but he may forbear expressing them. But when the gentleman from Nelson remarked yesterday, that this act of 1833 had not been discussed much for the last six months, I thought that if my friend Thomas S. Page, the second auditor, (and he is great in figures) should be directed to inform the house how much the discussion of that act has cost this commonwealth, it would be found to be, if estimated by its cost, the most valuable act that has ever slept upon the statute book of Kentucky, for 16 long continuous years. Have gentlemen forgotten the history of the convention movement in this proud and glorious old commonwealth of ours? Have they forgotten that the representatives of the people—and I say it with mortification and shame—when they passed the act authorizing the sense of the people of Kentucky to be taken on the propriety of calling a convention to amend the existing constitution, made a pledge and threw it out to the journeying winds, that this question of slavery was not to be agitated, and that in asking for reform they did not intend to interfere with the relations which existed between master and slave.

Among the most ardent advocates of reform in that portion of Kentucky which I have the honor to represent, was the humble and unobtrusive individual who is now addressing you. I have fought the good fight; I have kept the faith. What I mean is, that I lived up to the pledge given by those who sent forth the manifesto which I mentioned a moment since, and never during the discussion of that question, but on one occasion, did I allude to this question of slavery, and then I struck it gently as a lover strikes his mistress with a blossom. The good fight, as I said, was fought; the faith was kept; and out of 136,000 voters, 102,000 votes were cast in favor of a convention. Even the friends of constitutional reform looked at each other with perfect surprise, at the idea of the immense majority that they had obtained, and just like two conjurers they could not look at each other without a smile at the result. It was a glorious triumph which we were called upon to carry out and to secure. Our emancipation friends, where were they? I mean prior to the vote of which I have just spoken. Sir, not the tap of an emancipation drum, not the rallying sound of an emancipation bugle, not the challenge of a single emancipation sentinel was heard, as the friends of constitutional reform in solid phalanx were marching on without faltering. The battle, as I have said, was fought, a triumph was achieved, and victory perched upon our banners; and as Shakspeare says in Richard III, "Our

bruised arms,"—and not much bruised either,—“were hung up for monuments; and our stern alarms,”—if there were any in the contest,—“were changed to merry meetings.” Thus far I have travelled in the record of this history, and now I am coming to another point to which I wish to call attention. Did you ever sir, in midsummer, about night-fall, look upon a clover-field and see the fire-flies rising out of it? Just so when the people had determined to have constitutional reform, were our emancipation friends seen springing up and giving light and hope to each other. If I may use a strong expression, they had been until this triumph lying low and keeping dark. But when they found that the people were determined upon constitutional reform, then for the first time, to use a French expression, they began to fraternise. Or to use a school-master's word, they began to coalesce.

Sir, the pledge which had been given by the friends of the convention, as I said, has been faithfully kept. They did not in any wise agitate this question of slavery. They have made no allusion to the tenure or the right by which the master held his slave. Sir, there was a sort of implied pledge on the part of our emancipation friends, that they did not mean to agitate this question, and for two whole years while these battles were being fought, never was the click of their rifles or the tap of their drum heard; but when the friends of constitutional reform were triumphant, they began to fraternize, to coalesce. Then, for the first time, the emancipation party, as such, was formed. Do gentlemen recollect—let memory run back—what they first demanded—such a demand as could only proceed from the arrogance and insolence of power—that there should be incorporated in the constitution some sort of system of prospective emancipation? And I could not but fancy under the zeal and ardor with which it was pursued, that the time was not far distant when the slave population of this state, amounting to sixty millions of dollars in value, with their masters were to make a grand exodus from this commonwealth. They fired and fell back. I will show you exactly the position to which they fell back. They fell back, sir, under the protection and cover of this act of 1833. They fell back under the protection of another battery which is to be unmasked in this house ere long. I mean that of specific amendments to the constitution—the open clause. How do you know they fell back on the law of 1833? There is a paper in Kentucky, or at least there was—I do not know whether it is now in existence—I do not know but the council fires of our emancipation friends have been put out, and that they are disbanded—but they had adopted a paper called the *Louisville Examiner*, as the organ of their views, motives, and sentiments; and some times the curtain was lifted a little too high, and we had a view of the *modus operandi* and of the *quo modo* by which they were to direct public sentiment and achieve the glorious triumph for their party, which their fancy had painted. Well sir, this is the first legislative body in which I ever had a seat. It is the most novel situation in which I was ever placed, and if I had the moral courage I would resign this evening and go home. Permit me to read

one extract, that we may see whether or not I have been indeed telling the truth. Let us see if the emancipation party have not fired and fallen back for protection upon the act of 1833. Here is a letter dated at the residence of my friend from Boyle—"Danville, Ky., March 19, 1849." Letter writers are leaky vessels. They sometimes let out secrets of the cabinet. But I tell you there is more light in this letter than the friends of emancipation wot of or desire. Let us see how the letter reads:

"The meeting above described was adjourned in perfect order—no undue excitement was produced. Opponents treated the meeting with respect, and there was less excitement than is often produced by the most ordinary political and transient topics. We trust the friends of emancipation will every where be encouraged to hold similar meetings. It wants but moral courage and prudence to do so with perfect success and public approbation. All has already been gained in this country that is desirable—a pledge on the part of each candidate for delegate to the convention, (three in number,) that he is in favor of the incorporation of the law of 1833 in the new constitution, and of a provision allowing specific additions or amendments to be made to the constitution by the legislature and the people, not excluding emancipation.

"These two articles in the new constitution being obtained, we have gained all for the present that we need desire—the rest will follow in due time. That it is perfectly in the power of the emancipationists to effect these two all-important provisions in the new constitution, there is not the shadow of a doubt, if they will use their influence aright. They ought not, unless where success is quite certain, to run candidates of their own, but to hold the balance of power between contending candidates, and to vote for that man who will go farther for their cause, unless his good faith may be suspected, or there exist other strong objections to him.

"If *'we are wise as serpents and harmless as doves,'* we can hold the balance of power in the convention. Our opponents can be brought to terms: if not, a pro-slavery constitution can be rejected by a popular vote.

"The present aspect of public opinion and feeling gives us every reason to hope. All that is wanted, is moral courage and efficient action. Let every friend of emancipation in the state who can, attend the convention at Frankfort.

"I should have stated that the meeting here was composed of all parties both in religion and politics.

Yours, &c., X. V.

"P. S. Since the above was written a candidate for delegate from this county for the convention, in favor of emancipation, has been announced. This movement, in my humble judgment, is injudicious and will not meet the approbation of the emancipationists of the county. The course above recommended, is the true course and the only one that holds out a reasonable prospect of success. If there be any county where a friend of emancipation has a good or reasonable prospect of being elected, a candidate ought undoubtedly to be presented. But surely it is worse than folly, to run one where we are certain of defeat, and where our influence and votes, if wisely used and cast, will se-

cure us all we ought at present to want—an *entering wedge* to rive "the crooked and gnarled oak," which now overshadows our fair state with the pestiferous shade and blight of a curse, the greatest that a nation can produce."

"An entering wedge." Sir, as I said a while ago, a man cannot help his thoughts, but he may forbear their expression. I thought of the old hymn, which with a little alteration might read thus:

Ye slavery men come view the ground,  
Where you must shortly lie.—(Laughter.)

If I had no other motive, and there were no other strong super-inducing reason why I should vote against the amendment of the gentleman from Madison, I should want no other than that couched so strongly in this letter. They want it as an entering wedge. They want the act of 1833 incorporated into the constitution, only because it is the best they can procure; only because it is a sort of constitutional spring-board, by which they may hereafter vault into a position by which they will carry the question of emancipation altogether. Sir, I am a pro-slavery man. I am not willing to yield a single inch, to the emancipation party in any form whatever, and I never intend to vote for the incorporation of the spirit or principle of the act of 1833 into the new constitution, for the reason that the party call it an entering wedge, to rid this country of what they call a great moral and political evil. Well, I take issue with them upon that. But I am not going to discuss that question now, nor do I intend to discuss the act of 1833, as to its constitutionality or otherwise. This I will leave for a more fitting opportunity, if an opportunity should occur, and I can summon up courage to address the convention.

Sir, this act of 1833, as it is called, the spirit of which is sought to be incorporated in the constitution, slept, as I have said, upon the statute book, from 1833 to 1848. It was then repealed. Why do I use the term slept? Members of the legislature can answer that question. I will tell you the reason why I use the term. There was a continuous legislative dispensation from the operation of that act, and this certainly ought to be taken into consideration, when my friend Mr. Page comes to count the cost. There was a most catholic feeling on the part of the legislature, for granting a dispensation to every man who came before them in a lachrymose manner and asked for it. And year after year slaves were brought into Kentucky. I consider the act of 1833 to have been altogether inoperative, so far as any good effects were to flow from it, but if the people, through their representatives, could keep the act in existence from 1833 up to 1848, I can see no good in incorporating it into the constitution, except to gratify our emancipation friends, and to drive in a little the entering wedge to the accomplishment of their purposes.

There was one remark made by the gentleman from Madison, that struck me with a great deal of force, and it was this, that slave property in Kentucky was decreasing in value—sir, I suppose, like a lady's waist, growing "small by degrees and beautifully less." If it be so, and if the gentleman's statistics prove it to be a fixed fact, then I maintain that there

is no necessity for the existence of the act of 1833 at all, and certainly no necessity for its incorporation in the new constitution. If the institution is in fact under the finger of providence, receding in Maryland, Virginia, and Missouri, and the other slave states of this Union, I am willing to leave it to the direction of providence. I am willing to trust that being who is said to be all-wise, and all-just from necessity rather than election.

The remarks of the gentleman from Madison reminded me forcibly of an old woman who had the misfortune to have her horse run off with the buggy in which she was riding. Fortunately, she escaped unhurt. When her friends were collected around the tea table and congratulating her upon her escape, one asked if she had not been greatly alarmed. "Why," said she, "I trusted in Providence 'till the breeching broke; and after that, I did not know what to do." I am beginning to doubt the sincerity of the gentleman from Madison when he says that he relies upon Providence. I begin to think he trusts more to legislative and constitutional breeching than he does to any thing else.

I said a while ago, that when the time should come and I could have courage enough to address the convention, I would like to be heard upon this point, that slavery, as it is asserted by our emancipation friends, is a great social and political evil. There has been a continual cry in this commonwealth about free labor being cheap, and that numbers constitute political wealth. I do not believe it. Continual fault has been found by our emancipation friends throughout this broad commonwealth, with the social condition of the people of Kentucky.—Sir, there are around us and among us evidences of the elements of greatness and content. For my own part, I am content with Kentucky as she is. I would not swap her off for ten of the brightest and most glorious commonwealths, throwing in our emancipation exemplar Ohio, into the bargain. Do you recollect what the preacher said, after he had exhausted his fancy in accumulating figures of speech descriptive of Heaven, after speaking of it as the residence of just men made perfect, after speaking of it as the place where it is said that the

"Smile of the Lord is the feast of the soul,"

taking a still more upward flight, as a finale to all his figures, he said, it is a Kentucky of a place. Sir, there is a great deal of truth in that figure.

I do hope and trust, therefore, that this act of 1833, the spirit of it at least, will not be incorporated in the constitution. The people have rebuked its incorporation in any way, and if I want any reflex of public opinion on the subject, if gentlemen are still like Bunyan, in doubting castle, there was one vote given at the heel of the last session, which ought to satisfy their doubts. That vote was for the repeal of the act of 1833. It was a declaration of the people that the relation between master and slave should not in anywise be disturbed. I would say to the gentleman from Madison, and I say it in no spirit of disrespect *obsta principiis*, resist things at the beginning. When I see gentlemen endeavoring to incorporate the act of 1833 in the constitution—I say to the pro-slavery party that

the wolf is on their walk and it is the province of wise men at least to beware.

Mr. MERIWETHER. I should not have said a word but for the remarks of the gentleman from Madison. He thinks, sir, that the committee should have waited and heard discussions on his resolutions before they made their report. With due deference, I beg leave to differ with the gentleman. Why should we wait? His resolutions assert abstract principles, and the report of the committee goes into matters of detail. Are we to wait and hear discussions here, and then report the opinions of the convention? No, sir, we are to report the individual and collective opinions of the committee. Why wait for discussion? This question of slavery has been discussed in all its bearings throughout the State of Kentucky. We could expect to elicit no new light on the subject by waiting for discussion. Therefore, it was thought expedient to make the report when the committee had come to a conclusion, and not to wait for an expression of opinion on the part of the house.

One other word to my friends from Madison and Simpson as to the fifth section. My friend from Madison wishes the report of the committee changed so as to incorporate the law of 1833. My friend from Simpson wishes it so changed as to prohibit the passage of any such law. They both profess to be friends of constitutional reform. Are they not aware that this new constitution must lose strength by the incorporation of the law of 1833, or by the denial of power to the legislature. If you incorporate the principle of the law of 1833 in the constitution, you at once throw the vote of those opposed to the law against the constitution. If you deny the legislature the power of passing such a law, you throw the votes of all the friends of that law against the constitution. And is it desirable to do this? Why not leave it as it stands at present? Why not leave it to the decisions of the courts, and not throw this great weight against the adoption of the constitution which will inevitably be the case if either of the suggestions of the gentlemen be adopted.

I will conclude by remarking that I cannot see how you can bring up the discussion of the gentleman's resolutions with the report of the committee. Although both should be made the special order of the day for the same day, one must have precedence over the other. If you now make the gentleman's resolutions the special order of the day for Monday week next, you give the report of the committee precedence, and that report must come up to the exclusion of the resolutions. They may be under discussion, it is true, but they cannot give rise to any action until the report shall have been acted upon.—Then, why not go on with the discussion of the resolutions until the day fixed for the consideration of the report of the committee.

Mr. CLARKE. My honorable friend from Jefferson I think begs the question. He seems to suppose that if the amendment, proposed by the gentleman from Madison, be adopted, it will array the pro-slavery men in the state against the constitution. Well, that is true, sir. He then argues that if the proposition that I intend to submit be adopted, it will array the emancipationists against the constitution.

Mr. MERIWETHER. The gentleman misapprehends me. I said the friends of the law and the emancipationists.

Mr. CLARKE. Yes sir, it will array the friends of the law of 1833 and the emancipationists against the constitution. That will be the result as the gentleman supposes. I am perfectly satisfied, though a vote upon my proposition will test that question, that there is no gentleman on this floor, who does not desire fairly, honestly, and faithfully to represent the will and feelings of those who sent him here. When the vote shall be taken on my proposition, if there should be a majority in favor of withholding from the Legislature the power to prohibit citizens of this State from bringing slaves into the State, I shall believe that there is in the State a will, reflected by delegates here, in favor of the principle that I propose. I am not willing to confer upon the Legislature the power to legislate upon the subject of slavery at all. I believe there is nothing more dangerous to the future peace and tranquility of this proud old commonwealth, than to confer upon the legislative department of the government for all time to come, the power to legislate upon the subject of slavery. What has been the effect, sir, as I suggested in the few remarks that I had the honor to submit for the consideration of the committee a few mornings ago, of the act of 1833? That act was regarded as a concession to abolitionism; and there has not, according to my recollection, since the passage of that act in 1833 down to its repeal in 1848, been one solitary session of the Legislature of the State in which the subject of slavery has not been either directly or indirectly discussed. We have had from 1833 to 1848 an experience of years as to the propriety of the principle incorporated in that act. We have had practical experience upon the subject of that act, its consequences on the prosperity, the well-being, the tranquility of the State, and I think sir that from the bare fact that the people last winter in the exercise of their sovereign will and power, returned to both branches of the Legislature of the State an overwhelming majority for the repeal of the law of 1833, we may arrive at the conclusion that a majority of the people of the State are in favor of allowing her citizens to import slaves for their own use. What better wedge, I ask in the language of the gentleman over the way, do the emancipationists want than that the constitution should confer upon the legislative department of this government the power perpetually to agitate the subject of slavery.

And upon principle, sir, there will be but a shade of difference between leaving the question open for legislative discussion and legislative action, and the incorporation of the open clause principle in the new Constitution. As I remarked before, I do not now propose to discuss this question, but there are innumerable reasons why this convention should withhold from the legislature the power to take any future action upon the subject of slavery. When the proper time shall have arrived, and I shall be permitted to have the honor to offer the amendment that I propose to offer, then I desire a patient and calm consideration on the part of this convention, of such arguments as I shall submit in favor of a

clause that shall prohibit the legislature from acting upon the subject of slavery.

Mr. TURNER. I ask leave to say a word or two before the subject is postponed. So far as it respects the article which has been read here by the gentleman from Mason, it is one that I used all last summer myself, at least I used it as long as I was engaged in my canvass, and I used it for the purpose of warning pro-slavery men that they should be upon their guard against electing any man who was in favor of the open clause. I read that and other similar publications to the voters, to show that there was a purpose on the part of the emancipationists to divide up the two parties, in order to make an opening, and see if they could not get some individual who was a little soft, who would go a little secretly in favor of the open clause. I was considered the ultra pro-slavery man of the county which I represent. The emancipationists met here on the 25th of April last, and said that they were in favor of putting the principle of the act of 1833 in the constitution, but the county of Madison did not think she was bound to abandon her principles which she had advocated since 1833, merely because the emancipationists had taken them up. Out of fifty votes given in both branches of the legislature by members from the county of Madison, only three have ever been cast in opposition to this law of 1833. And before this question of emancipation was opened, the county of Madison always seemed to indicate that she was in favor of putting the provisions of that law in the constitution, and I was in favor of doing so myself. But I agree with my friend on my left, that this matter of slavery should be shut up in the Constitution, that it should not be agitated in the legislature, for that I consider near akin to the open clause itself. It should not be agitated, because, to disturb this species of property, injures its usefulness and value.

Now, I do not suppose that the gentleman from Mason intended to intimate that I had, in the views which I supported, any connection with the emancipationists. There are pro-slavery men here who are in favor of the open clause, which is greatly worse than incorporating the act of 1833; for I do not think that statute would produce any injury at all; on the contrary, I think it would be a benefit; but there are gentlemen whose opinions are entitled to as much attention as my own, who think it would be right to leave it open. It was urged upon me that inasmuch as the convention would not touch the subject of slavery, but would adopt the principle in favor of the open clause, I ought not to go against it in the canvass, and ought not here. But I told them that I was in favor of shutting it up for a period, longer than any man in my county was in favor of, and should endeavor to put it beyond the reach of any legislation for twenty or twenty-five years; that it should not even be brought up again for discussion before the people for that time. And now with my ultra views on this subject, because I think we had better not import any more slaves gentlemen seem to think that I have some kindred feelings with the emancipationists. Really, the condition I have gotten into here reminds me of a little passage between myself and Squire



Wilcoxon. We were introduced to each other by the title of Squire, and he thought we were both squires by trade. I asked him how Jackson's administration was getting along. "Really," he said, "we have not got into a predicament to show our circumstance." But really I think I have got into a predicament to show *my* circumstance, but if they will give me fair play I do not care. The gentleman from Mason has taken hold of me, and the gentleman from Jefferson was about to do so. The gentleman from Boyle has not read my speech, and did not hear it well, and I was obliged to listen to a long speech in consequence of his misapprehending my position. Now sir, when I am properly understood, the gentlemen have not got the vantage ground of me. I am a pro-slavery man, but I think we have got enough of it. It is said we may have too much of a good thing. I admit that the slaves we have now are beneficial to us, and it is desirable to improve them, not to contaminate them by mixing them up with rogues and rascals. My county, I believe, is not for bringing in any more, and she is not willing to yield her principles, merely because the emancipationists have adopted the law of 1833.

Now I do not wish to use any language that would seem to be indecorous, but the proceedings of the emancipationists remind me of a circumstance that occurred some years ago.—One Barby Diggs came to me to get me to bring a suit upon a contract for land. I took his bond and told him to come again in two weeks. At the end of that time he returned, and having examined the papers in the mean time, I told him that he had no chance to get clear of the contract. He was very much disappointed. Said he, "can't you bedevil them?" "O yes, if that is what you want, but I shall charge you a pretty large fee." He very readily agreed to pay it, but wanted me to wait until the business was over. I told him no, he might play the bedeviling game on me. Now as for this matter of the open clause, I understand the emancipationists to say, if you will give us that we will ere long bedevil you till you agree to give up your slaves. Now sir, I throw myself into the breach at that point. I am against allowing them to play Barby Diggs on us in any way or shape, and I will vote side by side with the gentleman from Mason, and other pro-slavery men. There are some individuals who have got up to the highest notch, and are about to turn us out of the church here. I am here by the direction of the people of Madison, by the authority of twenty-six or seven hundred people of the commonwealth, and am not to be ousted by any man who may constitute himself priest or preceptor. I am here in obedience to the voice of the free-citizens of Madison, and I intend to advocate their principles fearlessly, let what will come. I came here through fire and brimstone, more perhaps than any one who has a seat upon this floor, and I will not bow to the emancipationists in any shape or manner.

Mr. NUTTALL here called attention to his amendment to the 6th resolution of the gentleman from Madison, and insisted that a vote should be taken upon it.

Mr. GARFIELD. I rise to express the opinion that the resolution, of the gentleman from

Madison should not be laid on the table as suggested by some here. There are a couple of life rary gems in embryo here, twin brothers, that I would like to see developed to this house.—The first is the political, philosophical axiom that slavery is a moral blessing to both the slave and his master, and a political blessing to the commonwealth. The second is, the divine axiom that the Being who descended from heaven to free mankind from the shackles of sin came also to assist in riveting the shackles of human despotism. I hope a full and fair opportunity will be granted for the development of both these principles, so entirely new and strange as they are. And although we all may have come here to carry out the wishes and principles of our constituents, yet if members of this convention will be benefitted by the discussion of principles of this character, I hope that the committee will grant them an opportunity.

Mr. ROOT. I would not rise to speak but I should feel I had not discharged my duty, if upon the further discussion of this question, I should not endeavor to make the voice of a respectable portion of the state heard in relation to it. My constituency feel a deep solicitude and interest in the principles of the law of 1833. There was nothing said about emancipation or abolitionism when that law was placed on the statute book, and while it remained there quietly, there was no agitation in my part of the state. It strikes me that this question ought to be settled on wise and proper principles. It ought to be settled by a concession on the part of the ultra pro slavery men on the one hand, and as the gentleman says that the emancipationists require the principle of the law of 1833 to be incorporated into the constitution, there ought to be some concessions on both sides. The emancipation party in Kentucky is not only respectable, numerous, and intellectual, but its voice must and will be heard. It is impossible to stifle the principles embraced, and laid down by the emancipation party in this state, and it would be unwise to endeavor to stifle discussion, and to put a padlock upon the lips of the intellectual gentlemen who are in favor of some system looking to ultimate emancipation in this state. In my section of the country, no man believes in incorporating the gradual emancipation system in the constitution; but there are divers men, some of our most distinguished men, and slaveholders too, who look forward to the period when Kentucky shall be indeed redeemed and disenthralled by the irresistible genius of universal emancipation. It matters not whether it comes in ten, fifteen, twenty or a thousand years, they desire that our policy shall look forward to the period when Kentucky shall be redeemed—when she shall possess within her borders a numerous body of free laborers—and when we shall be in fact a free state. I desire to be heard upon some branch at least of the principles of the law of 1833. I come here as the representative of about two thousand voters—I know the feelings and opinions of those whom I represent—and is this too much to ask? Are we who have stood by the law of 1833, we who have battled for it for ten, fifteen, or twenty years, to recede from this position and in short is the policy and principles contain-



ed in that law, now to be abandoned because a little junto of immediate emancipationists or abolitionists choose to occupy ground that nearly the entire state has occupied for sixteen years? Are we to be driven from any position because our enemies get upon our platform? Are we desirous to make Kentucky the great slave mart of the United States, because the immediate emancipationists choose to get on the platform on which we stood fairly, fully, and quietly, until the last legislature chose to lay violent hands on that sacred law. The policy of changing the law was equivocal. The contest that was fought on this floor showed it to be of doubtful import, and the vote by which it was repealed exhibited the fact that there was a strong and powerful minority in favor of that law. This powerful minority will come up in judgment against the men who, uninstructed, disturbed the policy of the great commonwealth of Kentucky. Upon this point, therefore, I think that there is no friend of the law of 1833, who has anything to fear. I can bring up an array of great names, the very foremost in this country, who have stood up and advocated the law of 1833, and who were not backward in asserting these principles. Let then every friend of the ancient and settled policy of the state come up, and I believe not even the most ultra of the pro slavery men, will attempt to overthrow the new constitution, because it has the principles of the law of 1833 engrafted upon it. Does the law disturb any settled policy under the constitution and laws of the state? Does it unhinge any man's claims to slave property, or render it less secure? I maintain that it will render slave property more valuable, and that the repeal of the law will bring an influx of slaves here, and make the state the great slave mart of the Union—to the disgrace of the proud and chivalrous sons of old Kentucky, whose blood has been spilled upon a hundred battle fields in defence of the rights of man. I desire that this question may be postponed, so that the voice of the country may come up here and not be stifled on a question of such momentous importance. I move that the committee rise and report progress.

The motion was agreed to, and the committee rose and reported progress, and leave was granted for it to sit again.

And then the convention adjourned.

FRIDAY, OCTOBER 12, 1849.

Prayer by the Rev. THOS. N. RALSTON, of the Methodist church.

#### PROPOSITIONS TO AMEND.

Mr. WILLIAMS offered the following resolutions:

1. *Resolved*, That the committee on miscellaneous provisions be instructed to report an amendment to the present constitution, which shall provide, that while the ancient mode of trial by jury be kept inviolate, the commonwealth shall in all criminal prosecutions, have the right of peremptory challenge to the same extent that shall be given to the accused.

2. *Resolved*, That said committee also report an amendment, which shall give to the citizen

the right to carry arms for self defence, reserving to the legislature the power to pass laws for the punishment of those who carry concealed weapons.

Mr. WILLIAMS. I have offered these resolutions, with a view to instruct the committee to make a report in favor of the instructions contained in the resolutions. To my mind these propositions are of such weight that it seems to me it would be useless to address arguments to the convention in their favor. It strikes me sir, that there is a very great defect in our system of criminal prosecutions, in regard to the manner in which jurors are selected, and that under the present mode of selecting jurors, in a trial of criminals, especially those charged with murder, and who are men of much property, there is a very great difficulty in convicting them. And in my judgment, the difficulty lies in the mode in which jurors are selected, and in the fact that the accused has the right to challenge peremptorily the number of 22 jurors, while the commonwealth is denied the right even to challenge a single juror.

With reference to the second resolution which relates to the article in our present constitution, which provides that citizens shall carry arms for self-defence, permit me to say that in my opinion, that article has prevented the legislature from passing any law to punish individuals for carrying concealed weapons. Now while I am willing that every citizen should carry arms for self-defence, it seems utterly wrong that every individual, who chooses, should carry a pistol or a bowie knife concealed, and go unpunished, and the resolution proposes to instruct the committee to insert some provision in the constitution, which, while it shall allow the citizen to carry arms for self-defence, shall give to the legislature the power to punish those who carry concealed weapons.

Mr. C. A. WICKLIFFE. I believe this is the first resolution that has been presented to require this house to vote positive instructions to a committee in the exercise of its duties. If it is the purpose of the mover of the proposition to have the subject investigated, scrutinized, and examined in all its bearings upon our personal rights, and the rights of the citizen, I have no objection that it shall take that course. I am not prepared myself, at this time, to give my vote, positively instructing the committee thus to change the rights which pertain to the citizens of this commonwealth—I allude to the rights pertaining to the accused, and the rights of the commonwealth in a contest between the commonwealth and a citizen charged with a criminal offence. I am not prepared at once to give my vote that there shall be such a radical change on this question, and I therefore hope that the gentleman will let the subject go before the committee for their examination, without positive instruction. However, if the question is pressed in the shape of an instruction designed to elicit the judgment of the house, I for one desire to interpose the expression of my opinion against the adoption of any such principle in the constitution.

Mr. HARDIN. I would suggest that the form of the resolutions is too peremptory, and requires a vote at once on as important a princi-

ple as can be brought before us. To enquire is one thing, but to instruct is to give a vote to change the most important part of the criminal jurisprudence of the country. I hope my friend will alter his resolutions so as simply to direct the committee to enquire into the expediency of reporting the provision. The committee on the circuit courts have that matter before them, and will consider it again this evening. It is worthy of consideration, for a great evil does result where the accused has a right to challenge twenty, and the commonwealth has no peremptory challenge. Our committee are enquiring into it, and I hope some of the other standing committees will also do so. This resolution is compulsory now, and if we are to give a vote on it, I hope it will not be done to-day.

Mr. WILLIAMS. I do not insist on its going to the committee in the form of a positive instruction. I had not supposed there would be any objection to that form, but I will so modify the resolution as that the committee be instructed to enquire into the expediency of reporting an amendment.

The resolution was so modified.

Mr. NUTTALL. I have an amendment which I desire to have made to the resolutions. I want that committee to enquire into the fact whether the commonwealth shall not have the right to change the venue. The accused has frequently that right; and whenever it occurs that the commonwealth cannot have a trial, from the fact that every man in the county has formed his opinion for or against the accused, and that no jury can be found to try him, I desire that the commonwealth shall have the right to remove the case to some distant county, where a man shall finally be tried, and from the fact that he has committed so aggravated an offence that every man has formed an opinion, he shall not go unwhipt of justice. I throw out the suggestion that the committee may take it under consideration, and if they do not, I will bring it in some tangible form before the convention.

The resolutions were then agreed to.

Mr. IRWIN offered the following resolutions, viz:

*Resolved*, That in the reorganization of the government of this commonwealth, it will be expedient to divide each county into a convenient number of civil districts, to be designated first, second, third, &c., and that each district shall be entitled to two magistrates and one constable, to be elected by its qualified voters.

*Resolved*, That the revenue of the commonwealth ought not to be collected by the sheriff, but that a new officer for that purpose ought to be created, to be styled the revenue collector, and that this officer should be elected by the magistrates of the county.

Mr. IRWIN. I understand that the committee on the county courts has adopted much the same principle as that contained in the first resolution, and I simply wish to refer that resolution without being printed to the committee on the county courts. I notice that in Tennessee, the collection of the revenue is given to a collector and not to a sheriff. It seems that the sheriff, being elected by the people, seldom pays any money over into the treasury, and it seems necessary that it should be collected by an officer

elected for the purpose. I therefore propose to refer these resolutions to the committee on the county courts.

They were so referred accordingly.

Mr. HOOD offered the following, which was referred to the committee on the executive for the state at large.

*Resolved*, That the committee on the executive for the state at large, be instructed to inquire into the expediency of so qualifying and restricting the executive power to grant pardons and reprieves, &c., as to prevent its improvident exercise, under false or partial representations to the governor, by the friends of the convict or otherwise.

Mr. NESBITT offered the following, which was referred to the committee on the county courts.

*Resolved*, That in lieu of the county courts, there shall be elected in each county a probate judge, who shall discharge the duties of the county court, and the county court clerk, and for compensation shall have the fees of the clerk of the county court, and no other.

*Resolved*, That the latter office be abolished.

#### SLAVERY.

The convention then resolved itself into committee of the whole, Mr. BARLOW in the Chair, and resumed the consideration of Mr. Turner's resolutions which were undisposed of when the committee rose yesterday.

The CHAIR awarded the floor to Mr. Root, but that gentleman waived the right, saying that he would take some other occasion to address the committee, as the discussion should progress.

The question was on the amendment of Mr. Nuttall to the sixth resolution, proposing to allow any citizen of Kentucky, to import from another state a slave for his own use.

The question was then taken, and the amendment was adopted.

The PRESIDENT. Mr. chairman: I understand that the 6th resolution is intended to test the sense of the convention upon the propriety of incorporating into the constitution the principles there indicated; and in order that it may be done at once, I will now move to strike out of the resolution all after the word "*Resolved*." I am satisfied in my own mind that we shall not be able to put in this constitution, with any hope of its adoption, any such provision. I am equally satisfied in my own mind, that we shall not be able to put in the constitution any such provision as that indicated by the gentleman from Simpson, (Mr. Clarke,) yesterday, and that all we can do is to agree upon some general principle, and allow the legislature to exercise a sound discretion upon the subject. When our constitution was framed in 1798, we had the following provision in relation to slavery:

"The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated." And in connection with that subject, in the 12th section of the general provisions of the constitution, we have this further provision, "nor shall any man's property be taken or

applied to public use, without the consent of his representatives, and without just compensation being previously made to him."

The convention then based, by these two provisions, the foundations of the government on substantial justice, and put it beyond the popular will to take a man's property under the pretence of use without giving him a full and fair compensation. The first proposition, to clear it from all doubt and equivocation, they applied directly to slaves, in which they recognized property. In the further proposition they applied the principle to all property, leaving it to the legislature to control the laws of this government, but forbidding them to invade the rights of property. I trust when we come to form this constitution, that we shall follow that example—that we will reiterate those provisions—that we will take it from the power of the legislature to invade private rights, and that we will re-affirm the principles adopted by those who have gone before us, that private property is not to be invaded, under any pretence, without a fair and just compensation. We have in the present constitution, a further provision as follows:

"They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from becoming a charge to any county in this commonwealth. They shall have full power to prevent slaves being brought into this state as merchandize."

Under the latter clause of that provision the act of 1833 was passed, prohibiting the importation of slaves, and the constitutionality of that act was sustained by our appellate tribunals.—But in truth it fell almost a dead letter on the statute book. Kentucky was not the best market for slaves. There were more profitable markets—they have not been brought here except under peculiar circumstances; and Kentucky never has been a market for slaves, where they have been made a subject matter of merchandize.—And while we have the more profitable business of cotton planting, and sugar making in the southern states, Kentucky never will be a market for slaves. It is said that the act of 1833 was a concession to the emancipationists, and to some extent it was, for those who then desired emancipation in Kentucky desired to go further. They were content however with the act of 1833, and the subject was dropped in the legislature for several years. Our citizens upon the Tennessee line, however, became dissatisfied with it. Living upon almost an imaginary line, and desiring to make exchanges between one another—the citizens of Kentucky and Tennessee—they found inconveniences arising. The slaves on one side married the slaves on the other, and it became desirable, for the convenience of families, that there should be exchanges, and they from time to time petitioned the legislature to repeal this law, and to grant special laws, until leave was granted to all who asked, and though the law of 1833 existed upon the statute book it

was no prevention, or if it was a prevention it was evaded by permission of the legislature, or by the act of the citizen.

I voted for the act of 1833, and I voted, too, against its repeal. I should have been content to have had it remain on the statute book, as the indication of the sense of the legislature that they discountenanced the bringing in of slaves here as merchandize; but it was the fate of this law, like all other laws that are against the sense of a large minority of the people, that it did not give peace upon the subject. That was the case, for the agitation continued and was repeated, session after session, and the representatives of the people continued, from time to time, to violate what I consider a great principle in legislation—that is, that the law should bear equally and uniformly on all the citizens, and that it should not be a prevention to one, while the legislature gave an exception and license to another. And it is better for a majority to yield the law that gives to a large portion of the citizens dissatisfaction, and is a cause of continued agitation, than to hold it at that expense, when, too, they are unable to enforce it, and when the representatives of the people yield to particular exceptions, year after year. It was modified or repealed at the last session of the legislature.—The minority that for years had been dissatisfied with it and agitated its repeal and procured licenses to violate it, had made themselves the majority.

The repeal of that law has been seized upon by those who favor emancipation in the state of Kentucky, as one step in advance upon the subject of emancipation, and they now seek to place it in the constitution. I do not charge the gentleman from Madison with being an emancipationist, although in this work he is doing their business, and has taken their steps in advance. Suppose that it should be the sense of this convention that slaves should not be brought into Kentucky as merchandize, would they, in view of that powerful, active, and decided minority that is agitated upon this subject, who have procured license from year to year to violate this law, and finally made themselves a majority, and repealed it, be acting wisely and discreetly to place such a provision in the constitution they are about to adopt, and thus add to the officeholders, and the spirit of emancipation which now threatens it, that additional force to procure its rejection by the people? for I take it for granted that whatever constitution we shall agree upon we shall present to the people for their affirmation, before we put it into operation.

Mr. Chairman, in forming a constitution as in passing laws, it is the part of wisdom to apply them to the sentiments, the feelings, and the disposition of the people, whose organic law is to be formed, or to the principles upon which the state expects her people to be governed. And though the philosopher in his closet may say this principle or that principle, this law or that law, would be better, we, in applying a constitution to the wants, and necessities, and feelings of the people, are bound to consult them. Therefore, in forming a constitution, upon this very identical subject, it is important that we should look at the sentiments

long entertained, and firmly fixed, of the citizens of Kentucky; and what is against those feelings and sentiments is impracticable. And I say to the gentleman from Madison, it is impracticable to put his proposition into the constitution, with the sentiments of the people of Kentucky in relation to this matter staring him in the face. It is a consideration for us all, not only in regard to this subject, but upon others, that are to come before us.

Now I do not intend to go into the question, the abstract question, whether slavery is an unmitigated curse, or evil, or whether it is an absolute blessing to society. We are not in a condition to judge that question, for we are not clear from the influences which it casts around us. If there was no slavery in Kentucky, and we were debating whether we would have slavery, this question would be proper, and the lights of history, the experience of other nations, and if you will, the sanctions of religion, might fairly be invoked and brought into play, in the consideration of the subject. Slavery exists—it has been sanctioned by law, and by our organic constitution—it is in our midst—and we are to make a constitution in view of those facts. We are not at liberty then, to entertain this question. Though not a religious man, I have examined this subject so far forth as to satisfy my own conscience, that there is no sin in holding slaves under the constitution of Kentucky. And my reading of the gospel, and understanding of the mission of the Savior of the world is, that it was not against governments and the existing order of things, as found among the nations of the earth when the tidings were proclaimed, but against the sin of fallen man and for his reformation. Servitude, in one form or another, has existed in society from the earliest light that history gives us; and from the condition of society, and the light the history of the past is calculated to shed on the future, it will exist in all time to come. We are served in certain capacities and conditions by our slaves. The good people of Massachusetts are served by white people in the same menial offices, that we are served by our slaves. Massachusetts has about the same population as Kentucky, yet look at the difference in the number of poor sustained by public charity in each state. Taking the number in the county of Jefferson, as an average for each county in the state, we have some three thousand. Look at the statistics as returned by the state of Massachusetts, and it would be found that they had twenty-eight thousand! A wide difference. Here the master takes care of the aged and infirm, and we have a provision in the present constitution, that the legislature shall have the power of enforcing the discharge of the duties of humanity upon the master. I think it would be easy to calculate, when we look at the history of the crowded population of the old world, and compare it with the history of population in the slave states, that the mass of human misery, of crime, and degradation, is far greater, in those states with crowded white population, than it ever was or ever will be in the slave states. I believe that white labor, as it increases, becomes cheaper than slave labor, and I believe the capitalist employs but the best, and leaves the most deficient to charity,

the cold hand of public charity, and that Massachusetts, with her 28,000 poor, as compared with Kentucky, so far as regards those who serve and those who do not serve, has a greater mass of human misery, degradation, and crime than we have in Kentucky, or ever can have under the existing order of things. So that looking at things as they are, and as in all human probability, they will be, we shall have no cause to reproach ourselves on the ground of humanity, or as having failed to advance the interests of society if we suffer this institution to remain as it has existed.

Mr. Chairman: There is an obligation resting upon every owner of a slave, that all sensible, correct feeling men, well understand. The slaves are born under our roof, reared with our children, and work in the same field and at the same labor that we do. They are parts of the same household, and if they are manumitted where are they to go? Some gentlemen would send them to the coast of Africa. I have looked into the matter, and I have satisfied my own mind and judgment that it is impossible to send them there. There is no country then to receive them—they have not the wisdom and knowledge and capacity to govern themselves—and further, we have not the means to send them there. I do not intend to detain the convention with the history and the facts that have brought my mind to this conclusion, for no doubt every gentleman here, has examined the subject for himself. Are they then to be free among us? I have satisfied my mind that these two races of people never can mingle and become one. Free them, and they become the Lazzaroni of the state. They will crowd to the cities—they will visit the country only on marauding parties—and they will become idle, vicious, and ungovernable. Look at those portions of Philadelphia and New York and other eastern cities where the free negroes congregate. Look at the records of their courts of criminal justice and you will find that they are embraced as idle, vicious, ungovernable, and in the annals of crime, a per cent. over that of the white race, of more than a hundred in crime. You may once in a while find an exception of one who is industrious, who accumulates property, but he never becomes an American. He is not one of the people, and can never aspire to an equality in our social relations. He never can, and if we free the two hundred thousand slaves that exist in Kentucky, it will be more difficult to govern them, than it is now. Instead of being productive of wealth, as they are now, they will be destructive of wealth. They will not be advanced in morality, but they will be advanced in crime. They will not be advanced in happiness, but they will be advanced in misery and in degradation. This is what has taken place in other states, and as sure as you withdraw the hand of the master from the slave here, as surely will the same thing take place among us.

We are to make a constitution for that people as well as for ourselves. They are now our slaves. The right of the owner is shielded by the constitution under which we live, and guarded by the same spirit of right, that guarded private property from the inroads of the public interest with the consent of the legislature and full

compensation. You can enter into the feelings and the spirit of the man who, if we were clear of slavery, would vote against its introduction, but I think that those who entertain that feeling and that spirit and would overturn the institution as it now exists, have not looked along the whole line of circumstances that surround it. Do you thereby advance the happiness of your slave? I think not. You secure his degradation, and you make it more difficult to govern and to rule him. Though you place him on the footing of a free man, you cannot elevate him to the condition of the white man. It is an impossibility of nature, and we must have the distinction of races, the animosity, and the hatred, until the day comes, that one race shall expel the other. And when that day comes, it will not be a peaceable expulsion.

In forming a constitution we are to form it with reference to the existing state of things, and for the government of the people as they are, and I have satisfied my own mind that it is better for the slave and better for the white man, that while they remain in Kentucky they should remain in the condition of master and slave.

Those who hurl their anathemas against slavery from other states, do not understand our condition, the difficulties we have to encounter, and the obligations we are under in relation to this species of property, and are not capable of judging it. They have, therefore, no effect on my firm conviction on the subject, that it is better for both races that the relation between them in this state should remain as it is now.

I think, sir, we are not prepared to take what I have referred to as the step in advance. And though I do not charge the gentleman from Madison with being with these emancipationists, yet he is aiding and assisting them in this move. I think that many persons have acceded to the insertion of the act of 1833 in the constitution without due and proper reflection. Nothing is to be gained by it, and positive injury is to be the result in the work we have now undertaken. If we were to put its provisions in the constitution of Kentucky, we would be aiding and assisting in the emancipation movement. It would be holding out to them encouragement without doing any thing, and with almost a certainty, in my judgment, that we should thereby secure the rejection of our labors. There was an implied pledge on the part of those who passed the law to call a convention, in the address they made to the people of Kentucky, that we would not interfere with this subject, that it was not the design and intention of those who advocated constitutional reform in Kentucky to interfere with the relations of master and slave. And as the gentleman from Mason said yesterday, the voice of the emancipationist was not heard in the land until we had passed the Rubicon, until the convention was called. I am not sure that it was not raised, or assisted and carried forward by those who desired a rejection of the constitution, and hoped to fall back upon that instrument as it now exists. There is but one change that I would make in this constitution in relation to slavery. I would fulfill faithfully the pledge held out, and under which I believe the convention was called, that we would not interfere between the rights of the master

and slave; and I would, in addition, prevent the emancipation of slaves to remain here. I would vote for that, because I think it is within the spirit of that pledge and the spirit of our system. I believe, from my knowledge and experience, that the emancipation of the slave is no advantage to the slave himself, while it is an absolute injury to the slave property, its owners, and to society at large. And the present constitution intends, in the emancipation of the slave, to guard the public from the support of him. It has the very principle that I would carry out, and it is the feeling I entertain upon the subject. In Kentucky, by the present constitution, we give every man the right to emancipate his slaves; and, by another provision, guarded the public and individuals against wrong and injury from the exercise of that right. I would throw a further guard over the public in relation to their emancipation, and prevent their remaining in the commonwealth of Kentucky to the injury of the slave property and of the citizens at large. And with that change, I think I should be willing that the present constitution should stand as it is, and that our pledge would be redeemed. I am satisfied that we cannot emancipate the slaves and send them to Liberia—and that we ought not, under the obligations which we owe to the slave himself, to drive him out against his will—because we would thereby make his condition worse.

I believe the principle that private property should not be taken without the consent of the representatives of the people, and without full compensation being first made, is a great fundamental one that should never be violated.—When you teach the citizen to violate that great principle, you have undermined the principle that sustains all good governments.

If you set the example of violating this principle you but lead to the formation of bands of robbers, and set them an example of taking by force without a just right, that property which has been acquired under the sanction of the constitution and the laws—that is, the fruits of a man's labor—as well his lands as his household goods. It is under that principle asserted in our government more than any other, that the enterprize and the activity of her people have carried us forward in the progress of wealth, faster than any other government in the world. We have asserted in our constitution that it is beyond the power of the government itself to take from us the fruits of our labor—and every man feels that he is thus protected. The emancipationists would violate that principle. When we shall violate it in one instance, it will be but the first step towards other and greater violations. The day may come without the sacrifice of that principle when there will be a call for a division of estates, and when that call comes, we will come with a stronger voice and appeal to the selfishness of our nature, than does the subject of emancipation. Now it is only to take away the rights of a portion of our fellow citizens, in which alone they are interested, but when the demand comes for a division of estates in a popular government, where the voice of the majority is to rule, the example you have set of violating and breaking down this great princi-

ple, will add to the force and power of selfishness in guiding on those who are to participate in and to divide the profits of such a division. And then, what becomes of the fruits of a long and industrious life in the accumulation of comforts for a man's use in his old age or for the setting out of his children? You will have taken away the stimulus that induce the industrious to accumulation, because when you have once broken down this great principle, no one can tell when these interested bands may rise and call for plunder. It is said that the first step in crime is the one that weakens the conscience and is followed with pain and remorse, but that a few steps more, and all pain and remorse is gone, and the adventurer is fairly started on a career of crime. It is the first step in breaking down the great foundations of justice in a community—the invasion of private right, that distracts the people and undermines the foundations upon which we must stand in the formation of a government.

I think no good can come from this discussion, as to the abstract right or the positive evils or the positive blessings of this institution. It is our duty in framing a constitution to see that it conforms to the existing state of things, and therefore I am against incorporating the act of 1833 in the constitution—or as I have before said, of taking the step in advance. I wish to retain in any new constitution the same great principle in relation to slavery and private property, that was adopted in the present constitution.

The gentleman from Madison says we are not able to pay for emancipation—that we are not able to pay even the interest on the debt that would thus be created. That many may be all very true, but this government, this state, I trust is to exist for centuries, and how this thing may be hereafter no man can tell. There is a time when slavery will cease. The Indian has receded before the Saxon, and still recedes. He is of an inferior race and lives by hunting, and as civilization marches on he gives place, and this I understand is according to the great laws of the ruler of the universe. In the march of population when white labor becomes cheaper and crowded, slave labor will yield to it. And the day will come when thus depreciated in value, and some country to which they may be sent is found, it may be the desire of those who shall come after us, to free their slaves, and to do it without a resort to revolution. And when that day shall come, I wish them to act as in their judgment is right, but I also desire to indicate to them in this constitution that the foundation of this government is laid in justice, and that property acquired under its sanction is not to be invaded without compensation to the owner. I am not one of those who propose to provide in this constitution for the perpetuity of slavery. I recognize the principle that every people have a right to form their own government, and to change, alter, or modify it, as they may deem the interests of society to require; and whenever those who may come after us shall desire so to do, I shall rest content that they, in their judgment, shall do what they deem right upon this and upon all other subjects. Therefore, I do not expect in this constitution to make slavery

perpetual, and beyond the reach of those who shall come after us.

I desire to secure in it the rights of property, and to secure the people against injury from an accumulation of free negroes among us. And I desire, also, to let every man in the community who has slaves, whenever touched, either by religion or philanthropy, to manumit them at his pleasure, saving the commonwealth and the good people thereof from all injury or danger from setting them free; and I believe that can be efficaciously done only by their removal from the commonwealth. Now we have a maxim in law, the English of which is, see that you use your own rights so as not to interfere with the rights and property of others.—This is a very good rule, and a very good maxim. Now, if I have a right in property, in using that right, I am under obligations so to use it as not to interfere with my neighbors. If I own one hundred or one thousand slaves, I have the right of manumitting them. I do not wish to interfere with that right, but to prevent the exercise of it in a way that would injure the property of my neighbor or of the country at large; and I think we have the right to so limit and restrain it. And, hence, I would prohibit the emancipation of slaves, and the permitting them to remain in the state. There is no difficulty about it in my mind. We take private property for various uses after paying for it. We take slaves where they have been guilty of crime, and execute them for the same crimes for which we execute the white man. It is a public use of the property, and we remunerate the owner of him and take him. I do not wish the private interest of the owner to be stimulated to evade the public justice of the country by withholding him compensation when his property is used.

Mr. Chairman, I will indulge in a few remarks in connection with one branch of the subject of the slave trade, without intending to go into the slave trade as carried on upon the seas. I have stated that the bringing in of slaves to Kentucky as merchandise has never been practised to any extent, and never will be while there is a better market for them; but it strikes me that gentlemen who are so horror stricken with the trade as it exists in the United States, have stopped short of the mark, if they intend to prohibit it at all. They do but half their work unless they prohibit the sale of slaves and the carrying of them out of Kentucky. It is as much a separation of the husband from the wife, the parent from the child, and the slave from his country, where you sell a Kentucky slave to a Virginia planter, as where you purchase him in another state and bring him here. As the gentleman from Mason said, there can be no great crime in bringing him to Kentucky from another place, but it may be a much worse crime to take him from this state to another. In relation to this slave trade about which so much noise is made, as it exists in the slave states of the country, its horrors have been greatly exaggerated. Go into the interior of Kentucky; there are but few slaves sold out of the state, and they are mostly those whose bad and ungovernable disposition is such, that the master can no longer control them. The proportion of the white popu-



lation that for bad conduct is sold into slavery elsewhere. I refer gentlemen to the counties in which they live and their experience upon this subject. The trade so far as sending abroad is concerned rarely reaches any other than the dissolute, the idle, and the unruly; and then, not in a greater proportion than our white population flee their country when they have lost their characters.

I think that we who have come here under the pledges held out to the people, who voted to call this convention, and who have chosen its delegates should regard it as our bounden duty to leave this thing where we found it. We cannot put in the constitution the proposition of the gentleman from Madison, nor do I think we can put in that of the gentleman from Simpson.—The great constitutional reforms that we desire and which the people of Kentucky have called for, if we intend them to be sanctioned by the people, will prevent either of those propositions from being incorporated in the constitution.—We have got to make up our minds as to what the people want and desire, and as to what will be the effect of each proposition. If I had pledged myself upon this act of 1833 and the open clause, I would have had a high road to this convention; but knowing the condition of the country, and the obligation the delegate would be under to consult the interests and feelings and wishes of the whole state, I was unwilling, and refused to make a pledge on the subject, and I had difficulties in the way. And though we may have difficulties in the way in relation to the constitution that we may make, if we come together in the right spirit of concession, to carry out what the people of Kentucky designed in calling this convention, I doubt not we shall unite and frame an instrument that will be acceptable to them.

Mr. Chairman, I will add no more, for I have no doubt that every delegate has made up his mind, and I do not expect that any one will forbear giving his full and free views upon the subject. And it is right and proper that he should do so. I call upon those who favor constitutional reform, to look steadily at the difficulties to be encountered if we incorporate the proposition of either one gentleman or the other in the constitution. Something is to be left to the legislature of the country, the representatives of the people. I only desire to lay the foundation of this government in justice and wisdom, leaving the representatives of the people to carry it out.

Mr. DIXON. When the gentleman from Madison, yesterday, rose in his place, and announced to this convention that he was an ultra pro-slavery man, I thought it altogether just to him, that whatever misunderstanding I might have come to from listening to his remarks, delivered on Wednesday, should be corrected. I very promptly stated to the gentleman that I retracted any remarks which had been made by me calculated to do him injustice on that point. The gentleman, I have no doubt at all, is in feeling a pro-slavery man, but that is not the question he has offered to us to settle or discuss in this convention. His motives and feelings, he says, are with us; and for my own part, I have charity enough to allow that such is the fact. But the great question is, what is the tendency

of the proposition he has submitted, and what are its effects upon the slaveholding interests of Kentucky; and upon that question I design submitting a few remarks before I have taken my seat.

The gentleman's proposition in substance is, that a citizen of Kentucky shall not purchase slaves out of the State for his own use.

Mr. Chairman, there are three classes of persons in the State of Kentucky, and in the United States, who are the advocates of the proposition of the gentleman from Madison. There is a powerful party outside of Kentucky who are the advocates of his proposition. There are a great many persons in Kentucky who are pro-slavery men, and the advocates of his proposition. There are in the State of Kentucky a great many gentlemen who are of the emancipation party, and the advocates of his proposition. The gentleman from Madison belongs to that class of the people of Kentucky, who, although pro-slavery men, believe it to be right and proper that the measure he presents to the house should be incorporated in the constitution of the State. The gentleman is influenced by one motive, such as he describes to this convention; the other gentlemen are influenced by different motives, such as will finally result in the emancipation of the slave. There is a powerful party, not in Kentucky, looking most anxiously to the deliberations of this body, and who are most anxious that there should be some lodgment in the constitution on which they may build their hopes of ultimately bringing the state to emancipation. There is a powerful party in the state looking anxiously to the deliberations of this body, and trusting to see some provision in the constitution which will be, to use the language of my friend from Mason, the entering wedge for a great system of emancipation. This is the classification of parties.

Under the constitution of the United States, those who live outside of Kentucky and who inhabit what we call the free states, are under the most solemn obligations, whenever slaves belonging to Kentucky, or any other state, shall take refuge within their limits, to return them safely to their owners, or to aid and assist at least, in surrendering them up to those entitled to their services. There is a party in the United States who regard that great principle in the constitution as null and void, and who consider they have a right to set themselves up in violation of it, and nullify it. That party is denominated the abolition party, and they are uniting with all parties who seek the emancipation of the slaves within the limits of the slave states.—I do not mean to say that the emancipationists of Kentucky are in any respect abolitionists, because I can clearly perceive that a difference exists in principle; but I do mean to say that the results of the action of those who term themselves emancipationists, and those who proclaim themselves abolitionists, are in effect the same; I do mean to charge on the gentleman from Madison, that this proposition of his, is one of a great series, which if carried into full effect will finally result in the emancipation of all the slaves in this state. All are acting together, and all their measures are tending to the same result.

Let us for a moment examine this great question, and see whether such is not the fact. An effort is making to abolish slavery in the District of Columbia. Why is it? It is that there may be a place of refuge for the slaves to flee to, from the service of their masters; that there may be a place where the constitution of the United States imposes no obligations upon the citizens to surrender any slave who has escaped from his owners. There is an effort in the Congress of the United States to abolish slavery, so far as it may exist within such places within the limits of the slave states, over which Congress may exercise exclusive jurisdiction—within the limits of all docks, and arsenals, and places of that description. What is the object of it? It is to provide a place of refuge for the slave when he shall flee from his owner. There is a party to be found within the limits of every free state utterly opposed to passing any laws, or to the enforcement of any laws, by which the slave shall be restored to the possession of his owner. Did we not see but a short time since, the state of Ohio repealing all laws, the object of which was, to assist the master in reclaiming his runaway slaves? Do we not in addition to all this, see that the very courts have set themselves up within the limits of these free states to assist in the escape of the slave from his master. But a short time since, one of the courts in the state of New York decided, that if the owner of a slave used any force whatever in his attempt to recover him, it should be regarded as a forfeiture of the slave. And if the owner of a slave, exercising his sound discretion, should place him within the precincts of a jail for greater safety, it should be regarded as the forfeiture of his right to the slave. All this was done to break down the institution of slavery within the limits of the slave states. That is the object and design. Now what does all this tend to? In the first place, the runaway slave from Kentucky, finds a refuge in those places, in which it is declared by act of Congress, that slavery shall no longer exist; and secondly, in the protection of those who are determined, in violation of the constitution of the United States, to aid the slaves in escaping from their masters.

And you find, sir, that even the people themselves, under the sanction of law, formed themselves into bands for the purpose of enabling slaves to escape. Now, all these things are calculated to weaken the tenure by which slave property is held, and to render that kind of property less secure. This is the course pursued by those outside of the limits of Kentucky.—Now let us come to the state itself and see what is the course that gentlemen, anxious for the emancipation of the slaves, are pursuing. First, there are those who are for emancipating the slaves without making any compensation to their owners. This is rather a startling proposition, and I say it with all due deference to the great mind who conceived it. That emancipation should take place upon the slave's attaining a certain age, and that he should then be hired out for three years, and that the proceeds of his labor should be applied to his transportation to such place as might be chosen as his future home. It is a very great question—I mean the question which the distinguished gentleman from Louis-

ville has argued with great ability as to the power of the State of Kentucky to take from her citizens—for I take it for granted, the right of property in slaves is the same as the right to any other sort of property—to take from her citizens the property that is secured to them under the sanction of the constitution of the state. The first great question is, as to the power of the government of the state to do this. Does that power exist? Is it within the power of the state to take the property of her citizens and appropriate it to the public use without making any compensation for it? This is the great and important question. Sir, what is the relation which exists in Kentucky between the master and the slave? How does it exist? Was it not an agreement among those who formed the old constitution under which we are now living, that the master should enjoy the labor of his slave? And if there be this solemn agreement existing between the sovereign power of Kentucky and the citizens of Kentucky, can that agreement be violated? The gentleman from Louisville read from the constitution in reference to this great question; I will barely call the attention of this convention again to it:

"No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives and without just compensation being previously made to him."

That is the great point; nor shall any man's property be taken for public use without his consent, or without compensation being made to him. What is the manifest interpretation of this? Is it not an agreement between the sovereign power of Kentucky and the people of the State? What is that agreement? That the people shall not be deprived of their property, without compensation being made to them.—Now, if this be so, what is the tendency of the proposition of the gentleman, or at least the argument of the gentleman? It is, that this solemn agreement shall be disregarded. But admitting that you have the power to violate this agreement, ought such a power to be exercised? I deny that we have the power to pass any law, whether in convention or in the legislature, by which the solemn contract contained in the constitution, securing the rights of property to the citizen shall be violated. What is the language of the constitution of the United States?

"No state shall pass any law impairing the obligation of a contract."

This is the emphatic language of the constitution of the United States; not that no legislature shall do so, but no state shall. What do we propose now to do? To pass a law violating the solemn contract between a sovereign State and its citizens. I beg to refer gentlemen to a judicial decision given by that illustrious man, chief justice Marshall, and I apprehend that after referring to it, there can scarcely be a doubt remaining on the mind of any gentlemen here, that the state of Kentucky has not the power to take from the citizen the property that is vested in him under the constitution; and it is upon this point that I differ from my honorable friend from Louisville. The case to which I refer is that of *Fletcher vs. Peck*.

Sir, we are citizens of two great sovereignties.

We are not only citizens of Kentucky but we are citizens of the United States. Kentucky is a sovereignty, but she is not an absolute sovereignty. She is laboring under disabilities, and one of those disabilities is, that she cannot pass a law impairing any contract. And that is the ground upon which the former chief justice of the United States—I mean chief justice Marshall—places this great question. In a case growing out of a suit for lands in the state of Georgia, in which land had been granted by the state to a citizen of that state, when the party held under a grant from the governor of the state which was issued in pursuance of an act of the Assembly, but which was abrogated by a subsequent act of the Assembly, chief justice Marshall, in pronouncing the decision of the court, used this language. "The sovereign power of a state is not precluded from making a contract with a citizen of the state; and having made such contract, is not the sovereign power of the state under the same disability to violate that contract that the citizen is placed under?" The conclusion at which he arrived was, that the disability in both cases was the same and that it was out of the power of the state of Georgia, after she had granted lands to a citizen of the state to divest the citizen of his title. Now this is the great question presented here. Has the state the power to divest the citizen of his right to property which is guaranteed to him by the constitution of the state? I maintain boldly that she has not the power. In the first place I do not believe that the power exists, and in the second place, I believe that it would be a fraud upon the citizen if attempted to be exercised. The citizen rests upon the guarantee of the right of property that is contained in the constitution, and if the state seizes upon his property and converts it to the public use, it at once sinks the character of the government to the level of dishonesty. But there is another great question. If the power does exist, would it be right and proper that it be exercised? What do you propose to do? To strike out a great principle which lies at the foundation of free government, that principle which has agitated the whole of Europe, which agitated England to its foundation and elicited the great charter of the people's rights, called *magna charta*, that great principle which lies at the foundation of the liberties of this country. It was the determination of England on the one hand to seize the property of her subjects unlawfully, and the resistance of the colonists on the other, that led to the establishment of our free institutions. It is a principle that has been consecrated by blood, and which never will be forfeited by those who desire to preserve their freedom. It is a principle that is incorporated in the constitution of the United States, and one which enters into the organization of all the state governments of this Union. What will be the consequence of abrogating this principle? What will be the consequence of permitting it to be understood, that Kentucky in her sovereign capacity can take away the property of her citizens? Let this once be proclaimed abroad throughout the free states—let it be understood that the refuse of the population of every country on the face of the earth, may come here, and help to swell the

majority whose vote may take away the property of the citizen—let it go to the pauper population of Ireland and of Germany, and all other countries where misery walks abroad unprotected, and here they will come, form themselves into voters and employ their votes to deprive the honest citizen of the property that he has gathered by a long life of toil. This will be the result of striking out of the constitution this sacred guarantee that a man's property shall not be taken away from him, without compensation first being made to him. Let us examine a little further this project of emancipation. I maintain that it cannot be done. Yet there are others who hold that it can. Let us trace it a little further. All the slaves are to be made free, and after having served for three years, are to be sent to Liberia, and the expense of their removal to be defrayed from the products of those three year's labor. What in the name of heaven will become of them then? From eight to ten thousand negroes sent from the state of Kentucky to a distant shore, without the means of providing for themselves when they arrive there! And all this in the name of humanity, of justice, of liberty! They are to be torn from their families, the husbands separated from their wives, the parent from the children, all the associations of life broken up, thrown upon a distant shore without any means of support except six months provisions. What will become of them when those six months have expired? Ten thousand people sent to a foreign country, the wild and the vicious, the weak and impotent, the old and dying, the lazy and the idle, the vagabond and the pauper, mingled together in one common mass, what will be their condition when you have got them there? Will they have houses to shelter them? None. Lands to cultivate? None. Implements of husbandry? None, nothing but six month's provision, and after that, starvation, ruin, desolation staring them in the face, meeting them at the very threshold of their new home. This is the plan of those who are the advocates of this system of emancipation. Sir, it cannot be done. It will not, ought not to be done.

But again, let us examine another plan. It is that of a distinguished gentleman of Kentucky, who proclaimed it as the firm conviction of his judgment that this system of keeping the negro race in bondage ought not to be continued. That humanity and religion call aloud for its suppression. What is his plan? Why, that all, after arriving at a particular age, shall be free, and unless taken from the State before that time they shall be transported to Liberia.

Do the teachings of humanity instruct you that it would be right to sever the relation which exists between me and my servants, and between them and all that is dear to them? Yet all this, the gentleman says, is consistent with his ideas of religion and humanity. Sir, it is utterly impracticable. It would be a violation of all the great principles of humanity, and the country itself, unless it sink far below the standard of religion and humanity, which I have attributed to it, will never sanction such a proceeding. All these plans may be regarded as impracticable, and have been abandoned. And what have we next? A convention assembled in Frankfort for the

purpose of devising some new mode of emancipation. And what is the plan that was proposed there? Why give us some principle in the constitution by which all further importation of slaves into the state shall be prevented. And let not gentlemen, who are in favor of that proposition in this convention, suppose that I attribute to them any participation in the designs of the emancipationists. But concede to them the open clause and the gentleman's proposition, and the question will be agitated at all times hereafter; you will weaken the tenure by which slaves are held, and induce the master to fly with his slaves to a place where he will be more secure in the enjoyment of his property. And a further result will be, that we shall have no slaves brought into Kentucky. The effect will be, as every body must at once perceive, that no one would think of removing to Kentucky, except from those states where it has been determined that slavery shall no longer exist. Virginians and Carolinians will not come here. The only person that will come, will be those who are in the habit of agitating the question of emancipation, and they will continue to agitate until the people become alarmed, and some will leave the state, while the rest will be anxious to get rid of a species of property that is held by an uncertain tenure.

In regard to the plan of the gentleman from Madison, do we not see that it is one of a series, the tendency of which is, toward the final emancipation of all the slaves? He says, let no man be permitted to go abroad and purchase slaves, and bring them into this State, for his own use. I am as much opposed to dealing in human flesh as any man can be, but there is a solemn obligation resting upon me, as well as upon every man, to aid in carrying out the laws of the country. The gentleman's proposition is, that we shall not bring slaves into Kentucky from any foreign state, for our own use.—Now you will see at once the effect of this, if it has any effect.

According to the position assumed by the gentleman from Madison, another effect of engrafting into the constitution his proposition, would be to enhance the value of the slaves already in the State, and of securing to a few the monopoly of slave labor. Admitting this to be correct, it is clear that the tendency of the gentleman's measure would be to excite in the mind of the non-slaveholder, a prejudice against those for whose benefit alone the institution of slavery would seem to have been established, and to array him with those who are interested in bringing about a system of emancipation. But the effect of the principle would not stop here. It would be disregarded by a large portion of the people of the State. Those who chose to go to Virginia and Maryland and purchase slaves for their own use would not be held responsible, for no law can or will be enforced to which the public sentiment of the country is opposed. It is true that the conscientious portion of the community would not violate it, but the unscrupulous would not hesitate to do so. Many good and honest citizens who wish to purchase slaves for their own use, would not act in contravention of the constitution, and would prefer purchasing from those who have them in market,

where they would be left by the negro traders, men who purchase for speculation and without regard to the character of the slaves. The vilest description of slaves, those who had been guilty of crimes probably, would be brought into Kentucky, because they could be purchased at a low rate by the speculator with the prospect of obtaining a high price here. Allow the honest farmer, who wishes to go abroad and purchase slaves for his own use, to do so, and the case will be far different. He will be cautious in the selection he makes, and will bring in only such as have good characters for honesty and industry.

Those who call themselves emancipationists ought to understand what that effect is. They wish to incorporate into the constitution of Kentucky what is called the open clause. I am not for giving them any such advantage. Give us, say they, an entering wedge, and when you do that we will split the timber in such a way as will suit our own views. I am not for giving them that advantage. The gentleman's proposition then, taken in connection with open clause, if it amounts to any thing, will have a tendency to lead to emancipation.—I feel bound then, to oppose it at the very threshold. I shall oppose it here and every where. If the gentleman wishes to place it upon the statute book, let him place it there. I do not want it here—it is one of that series of plans which are expected to result in emancipation.

Sir, I do not mean to say here or elsewhere, that I am the advocate of perpetual slavery. As I remarked yesterday, I would to God that it were possible for all mankind to be free. If in my power, I would break the shackles that bind the most low and contemptible being that crawls on the face of the earth. But we must look at the condition of society in Kentucky, as it is. Sir, you cannot dignify the African race by emancipating them, you cannot raise them to your own level, you cannot give them the civil rights of freemen, you cannot elect them to fill the civil offices of the government. You cannot bring your manumitted slave to your fire-side and to your table, you cannot introduce him to the social circle with your family, you cannot allow him to enjoy with you those privileges which fall alike to the humblest and the most exalted of your own race, and when you proclaim that the shackles of the slave are broken, when you have said to him, "you are free," what is the advantage that you confer upon him? Is it to breathe the pure air of heaven, is it to drink from the limpid stream which is free to all, is it to walk abroad and proclaim his new-born liberty? Sir, when you fail to give him the civil rights of freemen, degradation follows him wherever he goes. He sinks in the scale of humanity far below the slave who now excites the sympathies of gentlemen. Cut him off from all the privileges of a participation in the affairs of government, and you take away from him the inducement to be honest, you drive him to a violation of the law; he becomes a robber and a vagabond; he becomes a man of crime. This will be his condition; it cannot be avoided.—What then are we to do with him? If we convey him from the State, will his condition then be improved? Here he has house and raiment; here he has no wants that are not supplied. Sir,

he is a happy man, infinitely better off than the miserable, wretched vagabonds, the pauper population of other States and countries, whom you call free. Will the gentleman tell me that the system of laws which is to sink him below the brute and deprive him of all the privileges that belong to freemen, which will shut him out from human society and render him a robber and a man of blood, is the proper system? Will he not rather tell me that the system of laws which bind the master to the slave and the slave to the master, is much better than any theory of government that the visionary minds of the emancipationists have or can devise? Sir, there is no doubt in my mind as to what would be the effect of such a theory. It would be ruin to the slave, and ruin to the master. That sir would be the ultimate and certain result. My own opinion is, that in view of the relation which exists in Kentucky between master and slave, considering the abhorrence on the part of the white population at establishing an equality between themselves and the blacks, it is better that the institution should be continued. Contrast the condition of our slaves with that of the pauper population in other countries. Here, the master protects his slaves; there, the man exists in a state of destitution, and is unprotected, his wants unrelieved except by the cold charities which the law metes out to him in stinted and parsimonious portions. Go to the populous cities, and there in the midst of profusion, wretchedness and misery stare you in the face. Magnificent palaces present themselves to the eye, while the needy mendicant goes unrelieved by the lordly occupant. What is it to him who revels in those palaces, and enjoys the wealth of a John Jacob Astor, that thousands of his fellow creatures perish with hunger? It is by oppression, that a great system of aristocracy is created. It is reared upon the ruin of the miserable population who are falling prostrate at the feet of power. Cast your eyes upon the wretched and starving population of Ireland, and do you not hear the wretched and suffering child crying to the mother, "give me but three grains of corn." Are such scenes witnessed in Kentucky? Where is the pauper who does not meet with the sympathies of those around him? Where is the man, who is suffering with want, who is not relieved? Rarely does an instance of real want present itself under the benevolent system of our government.—Such cases do not exist. We are the happiest people on the face of the earth, and we are the proudest people on the face of the earth. I will not say that we are the most chivalrous people, but I will say, that in this respect we are not surpassed.

There is no reason, in my judgment, why the relation between master and slave should be severed. I do not think it ever will be. It ought not to be until a plan can be devised, by which the condition of the slave can be improved, and no injustice done to the master. I would give up my slaves willingly, if such a plan could be devised, but I shall not yield them up under the false systems of philanthropy and humanity which the wild fanaticism of those who call themselves emancipationists propose. I have no right to murder my slave. I have no right to do him wrong. The principles of philanthropy,

of religion, and of law, forbid it. And I utterly abhor and detest the system of philanthropy which proposes the sacrifice of the slave for the benefit of the white man. And yet these gentlemen tell me, that humanity and religion require the sacrifice. I should not like to be the priest of such an oracle, nor would I be the priest to preside at the altar of such a sacrifice.

Mr. IRWIN. I shall detain the committee but a very few moments, for I am sure that there is no gentleman who attempts to address the committee, who requires more of the indulgence of the house. As I am not much in the habit of public speaking, my rising to do so is attended with some degree of nervousness.

I should not on to-day have said a single word if it had not been for the remarks, which fell from our honorable President, and if I am to fall in this contest, I would prefer to fall by his hand rather than by that of a more ignoble foe. He insinuated that those who are in favor of the law of 1833, to some extent were attaching themselves to the emancipation party in the state, and that the object of that attachment, was to bring about the defeat of the constitution which we are about to make. Now I have ever opposed this convention, and upon no other ground in the world than that I believed that this question of emancipation would be brought up. But this is not only a great question in Kentucky, but it is becoming a paramount question every where, and it seems to me, that the movement, not only here but throughout the whole Union is calculated to build up a great party which is to operate upon the future elections in this country. Have we not seen lately one of the most distinguished personages in the United States, permitting himself to be a candidate for the Presidency of this Union, surely with no hope of success, but that he might form a nucleus around which the free soil party or abolitionists of the north might gather. Have you not seen very lately a distinguished Senator in Missouri taking the same ground, not now "solitary and alone." And again, we have seen a distinguished Senator from Kentucky, whom I have ever admired and for whom I have voted, and for whose success I have felt a deeper interest than for that of any other politician, coming forward and attaching his name to the emancipation movement in our own state. And I fear that I may live to see the day when these distinguished Senators will be found fighting under the same banner. I believe that the emancipation movement in Kentucky has been mainly brought about by a union of the emancipationists and the democracy with the office seekers. It is true, the emancipationists of this country never opened their mouths upon the subject until it was decided that this convention should be called; but the very moment the call of the convention was decided upon, they did open their mouths, and had unfortunately the sanction of the name of the distinguished individual I have alluded to. But even with his potent name and influence they have failed to elect one single delegate to this convention.

What, you may ask me, was the object of the democratic party in attaching themselves to the emancipation party? I do not say they did so for the purpose of advancing the interest of the

emancipation party, but mainly for the purpose of advancing their own interest. They knew very well, that unless they could create new issues, they never could get a majority, but from the time of calling the convention up to its meeting, the democracy have determined to seize upon all the popular points and principles to be inserted in the new constitution, to give themselves the ascendancy. The son of a very distinguished gentleman has said that whiggery and democracy were demolished, that those parties never could again exist in these United States. I firmly believe the remark to be true. Will not the democracy and emancipationists unite, and if they do so unite, may they not engraft principles in the new constitution which may cause it to be rejected. This discussion has arisen upon a single proposition. What is that proposition? That the principle of the law of 1833 shall be engrafted upon the new constitution, and the gentleman from Louisville, our distinguished President, has voted for the passage of that law in 1833, that he regarded it as correct in principle. And now forsooth, he is willing to abandon it. Why? Not because it is bad in principle, but because the popular will has been indicated by the last legislature, and he yields to popular will rather than to his own convictions of right and wrong. Does he abandon it then to become the leader of the pro-slavery party in Kentucky? Perhaps it does not become me to say that he desires to become the leader of the pro-slavery party, but new issues are to be seized upon, which will advance the interests of the party of which the gentleman is a distinguished member.

I think gentlemen have lashed themselves into a great fury upon a proposition simply to engraft the principle of the law of 1833. But with due deference to the gentlemen, their arguments have had but little to do with it. It seems to me that the question is simply, will the engrafting of the principle of the law of 1833 upon the new constitution, advance the interest of the emancipationists. If I believed it would, I would be the last man to sanction it. But I do not believe it. That law has been upon the statute book for sixteen years, and has the emancipation party accomplished anything? Have they succeeded in electing a single delegate to this convention? They have not. Then why not incorporate the principle of the law of 1833, since it has not advanced their interest? There have been immense changes in reference to this matter. The people of the part of the country which I in part represent, have been uniformly in favor of the repeal of that law, and the people in the north part of the state have been opposed to such repeal. The gentleman says he voted against its repeal, but he objects to the incorporation of its principle into the new constitution, not because the principle is bad, but because public sentiment has changed. I think the gentleman is mistaken if he supposes that public sentiment has changed. How will the incorporation of that principle be an entering wedge by which the interest of the emancipation party will be subserved?

The present slave population in Kentucky amounts to about two hundred thousand—the

annual increase of which alone amounts to about six thousand. I venture to predict that this natural increase will, in twenty years, increase the slave population in Kentucky to three hundred and fifty thousand. And I ask, will not that be an increase of the slave population quite as large as the gentleman desires? Do gentlemen wish to bring in more slaves? Why? Is it that every gentleman shall have an opportunity to have a slave for his own use? The gentleman from Henry remarked that unless they were the sons of nabobs, there was no use in going to Virginia to get them. I would say to gentlemen, that in many instances, it would be better if none of us had one. I regard them as no blessing. From the speeches of gentlemen, you would suppose there was some proposition to bring about gradual emancipation. There surely is nothing of that sort proposed. When this constitution goes before the people, if the law of 1833 shall be incorporated in it, it will be seized upon by the demagogues of the country, and it will be represented by them that we have formed a constitution which will deprive the people of the privilege of purchasing negroes out of the State for their own use, when in truth and in fact there are slaves enough in Kentucky for all practical purposes. I honestly believe that if this principle be incorporated in the constitution, the emancipation party, seeing their position, that Kentucky is bound to adhere to the south and to southern institutions, you will never hear one word of complaint in reference to this proposition again. So far from producing disturbance or disquietude, I firmly and honestly believe it will give peace and happiness and quiet to the whole country.

There have been some singular positions taken by the gentleman from Henderson, and I will make a single remark in reference to one or two of them. He very benevolently desires that foreigners shall have equal privileges with natives in the exercise of the elective franchise. This may be right. He would make no invidious distinctions, as proposed by the resolution of the gentleman from Bourbon (Mr. Davis,) but I infer from his argument that if the negroes may be permitted to be brought in, the consequence of which is the foreigners will be kept out. This is a very strange position. By what logic can he reconcile it? Again, he says you cannot elevate the negro—you cannot bring him to your fire sides—you can't make him Governor—he has no incentives to be an honest man, and he has no incentive to work. Yet his argument is in favor of bringing in more of this unfortunate race, a consequence of which will be that foreigners will be kept out, against whom no such disabilities obtain. This is not the time to discuss which would be the best policy, to bring in more negroes or foreigners. That will be a contest more appropriate to the gentleman from Bourbon and Macduff himself. But it seems to me that if the gentleman from Henderson shall be able to reconcile the principles which he has asserted to day, he will be compelled to vote for the resolution of the gentleman from Bourbon. For myself, when the proper time arrives, I shall vote for the incorporation of the principle of the law of 1833. I did so in committee, and did not agree with the report of the committee



on slavery, in some of its most important provisions. I was for incorporating the 7th section of the present constitution, exactly as it is with the exception that free negroes shall be sent out of the commonwealth, believing that that principle and the law of 1833 would give universal satisfaction.

In conclusion, it is my determination to adhere to the south and to southern institutions, whatever change may be produced by party changes in Kentucky or elsewhere. I regard the preservation of the Union itself as being dependent upon the maintenance of southern interests and southern institutions.

Mr. DIXON. The gentleman says he does not see how I can reconcile the two propositions—the one contained in the resolution which I had the honor to offer on the subject of naturalized citizens, and the proposition which I make here, that it would be wrong for a bare majority to take away a man's property. I do not intend to assert that a bare majority ought to have the right to take away a man's property. I do not mean to admit that principle; nor do I mean to admit the principle, that the citizens of Kentucky, together with naturalized foreigners have the right by their votes, to take away the property of citizens. I would give to naturalized citizens the same rights that are enjoyed by the natural born citizens; but I would deny, in both cases, the right of a mere majority to deprive the citizen of his property.

Mr. NUTTALL moved that the committee rise and report progress.

The motion was agreed to and leave was granted to sit again.

The convention then adjourned.

#### SATURDAY, OCTOBER 13, 1849.

Prayer by the Rev. GEORGE W. BRUSH.

#### PROPOSITIONS TO AMEND.

Mr. C. A. WICKLIFFE offered the following:

*Resolved*, That the committee on the miscellaneous provisions of the constitution be instructed to inquire into the expediency of authorizing and requiring the legislature to change the punishment, now prescribed by law, for felonies, other than murder or rape, committed by persons of color, to that of expatriation, or to the forfeiture of liberty and sale into bondage.

Mr. C. A. WICKLIFFE. I desire to submit a resolution of inquiry in relation to free negroes to one of the committees. I think, from what we have heard expressed here, that all sides would be very glad to get clear of them from Kentucky. I have devoted some reflection to the subject and to the various expedients suggested to attain that object, as well as its connection with our relations as a state arising under the federal constitution. I propose, as a subject of inquiry, for the committee on miscellaneous provisions, the propriety of substituting, in lieu of the punishment now imposed on that class of people for crimes other than murder, the penalty of exportation, or of being sold again into bondage. I think it is worthy of inquiry; and it strikes me, if it has no other effect, it will at

least have the tendency of keeping this class of persons out of the state; and it may be the means of inducing others to leave it voluntarily. It is a subject worthy of inquiry, and I offer it in that shape.

The resolution was agreed to.

Mr. BROWN offered the following, which was agreed to:

*Resolved*, That the committee on education be requested to prepare and report a clause or provision for the new, or amended, constitution, securing the present school fund, together with the proceeds under an act of the late legislature, entitled "an act for the benefit of common schools," as a permanent and perpetual school fund, applying the interest of said fund, inviolably, to the establishment and encouragement of common schools throughout the state, and prohibiting the passage of any law by the legislature, authorizing the use of said fund for any other purpose than the use and encouragement of common schools.

#### SLAVERY.

The convention resolved itself into committee of the whole, Mr. BARLOW in the chair, and resumed the consideration of Mr. Turner's resolutions which were undisposed of when the committee rose yesterday.

Mr. NUTTALL was entitled to the floor and he spoke as follows:

The opinions of this convention, as indicated by this discussion, seem to be divided into three classes. The gentleman from Madison, who I have no doubt will have some followers here, desires to incorporate into the constitution the law of 1833. The proposition which I had the honor to introduce is directly antagonistical to his. It proposes to allow the citizen of Kentucky, who in good faith goes to a foreign state and buys a slave for his own use, to bring him here. There is another class of pro-slavery men on this floor who entertain a different opinion from both of us; and that is, that we should leave the clause in the present constitution as it now stands, with a small emendation to the effect that persons in this state shall have the power to emancipate their slaves, providing at the same time for sending them beyond the limits of the commonwealth.

The motion of the honorable President of this body, if it prevails, effectually destroys the proposition of the gentleman from Madison as well as my own, and leaves open for discussion, the proposition to which he referred so ably in his remarks. I am not tenacious of any opinion that I entertain on this subject. I am not satisfied myself, that I am right. But I believe for all wise purposes, that in all probability, the proposition which I had the honor to introduce, is the best for the country; though as I before remarked, I am not certain of the fact. The great object of this convention in my opinion should be to build up a constitution, that will be most acceptable to the people of Kentucky, and that will tend to quiet agitation upon every subject embraced in it. There is danger, I confess, great danger, that the friends of constitutional reform, in elaborating and framing an organic law for the people of the commonwealth, will do too much, will run too far into detail.

With regard to the organic law of Kentucky, and the reformatations that we should make, there are almost as many opinions in the country as there are faces. There is no earthly doubt of this, and there is great danger that the friends of reform will burthen the result of their labors with too much matter, and that when we submit it to the people for their judgment and verdict upon it, we shall have multiplied so many objectors to it, that if they coalesce the constitution is sure to be rejected.

I am entirely satisfied that if the gentleman from Madison succeeds in engrafting upon any constitution we may frame, the law of 1833, it will fall. That such will certainly be its fate, I have no doubt. I never did, I never can bring myself to question the motive of any gentleman on this floor. I think they came here as pure minded and as clear of guile as I came myself, and I have no doubt that his conduct on this occasion is superinduced by an ardent patriotism and devotion to the best interests of his country. But the question is not, what good purpose the incorporation of that clause will subserve, but whether it will secure certainly for the constitution, when framed with that clause in it, the approval of the judgment and the sober understanding of the people of this commonwealth. That is the question—whether it will have that effect, or whether it will have a contrary one. I oppose the principle involved in the provision, and even if it was abstractly right, it is one to which I would never subscribe. What is it? It is, that slavery, as it now exists in Kentucky, and to the extent to which it exists, is well enough, is right, and he is not disposed to interfere with it; that it is the source of great wealth; that it aids in the agriculture of the country, and adds to the revenue of the government; but that all those who are blessed with this description of property now, are to retain possession of it, and it is not to be increased by artificial means hereafter. Now, upon two grounds, I am in favor of a different plan. I oppose, and shall ever oppose while I entertain the views I do, the principle of conferring especial immunities upon one class of citizens. And you might as well do it at once, by legislative enactment, as to say that what the citizen now possesses he shall retain, and throw around it the additional safeguard, that no man shall hereafter hold that description of property unless he becomes able to purchase it from those who now enjoy it, and who indeed may be unwilling to sell it. Such is the effect if you prohibit the citizen from going elsewhere to get this description of property, at the best possible price—of whom he chooses. I oppose it upon another ground. It will be recollected that five black men in Kentucky are equal to three white men in another state. They may say as much as they please outside of the commonwealth of Kentucky, and in the non-slaveholding states, upon this subject, but if five of our black men amount to as much as three of their white men, I am perfectly satisfied. And with regard to our future strength and weight in the councils of the nation, if you consult the future growth, and strength, and greatness of the commonwealth of Kentucky, every avenue that can be opened for the introduction of this property, save for the purpose of

merchandise, ought to be opened for this object. Are gentlemen willing, when they have seen this great struggle arising all around us in the non-slaveholding states, to consult merely their own wishes, their feelings, and views, when thereby we weaken our future growth and strength? I think that this is a strong reason why the law of 1833 should never be incorporated in the organic law of this state.

Now if it was there incorporated, does the gentleman suppose, for a single moment, that it will quiet agitation upon the slave question and upon the question of emancipation? It will not do it. My reading has taught me it is always best to defend the outposts, and never be driven to the defence of the citadel while we have a chance to meet the enemy at the threshold. And if our political adversaries have come and placed themselves on what is said to be the platform adopted by the original convention men, I can only say that, for one, whenever I see my enemy ranging himself under my standard, I begin to doubt whether I am sailing under the right kind of colors.

Now my proposition, which will, in effect, be destroyed, if that of the honorable President of the convention succeeds, I think will not only secure to these men the rights they now enjoy under the constitution of Kentucky, but will quiet agitation. What will the emancipationists have to gain by further agitation? What can they do on this subject? They can do nothing unless they are willing to take the high and responsible ground, when the majority of their countrymen, in one of the most triumphant votes that has ever been given on any subject, have voted them down, of continuing to agitate the same question. Are they still going on to agitate the subject? Are they about to assume the character of those incendiaries who are willing, at all times and under all circumstances, to light the torch of civil war here, which will result in the burning of our houses, and in the bedewing of our hearth-stones with the blood of our wives and children? It is right and proper that every man in the commonwealth of Kentucky—no matter what his creed, faith, or notions in religion or politics on this subject may be—when the majority have voted him down, should, as a good citizen, submit to their decision.

Now for myself, I have set out with the determination never to yield one single inch to any spirit of fanaticism; because whenever you concede them any ground, they will be sure to desire to go one step further and occupy a more prominent position. My proposition is intrinsically right in itself. It secures to all grades, and conditions in life, if they have the means of purchasing this kind of property, the right to do so whenever they choose. In a mood of merriment which often comes over me, and perhaps too often for my own good, I happened the other day to refer to the fact that some gentlemen were exceedingly lucky, but that the class in which I was born and raised, and in which I hope to die, have never been so fortunate. We make no calculation, as I remarked on that occasion, to have any of this kind of property come down to us by descent, by gift, and least of all, by marriage. If some gentlemen are so fortunate, or rather unfortunate as to have the opportunity of

marrying some four or five times, and every time marrying negroes by the acre, it has not yet, and I trust in God it never will fall to my lot. Of all things on the earth, a mercenary marriage is the most detestable in the sight of God and the holy angels that cluster around the throne of Heaven. I certainly do not expect to acquire property in this way.

Now if a man who pursues agriculture, a working man—after he has made money enough and when he and his helpmate have clambered up the hill of life and are ready to descend on the other side—should desire to buy some one to wait upon him in his old age, is it not right that he should have the privilege of doing it at the cheapest possible rate? I know a great many hard working men in this state, my neighbors—and I have as good neighbors as any gentleman on this floor—who have expressed such a desire, and it is but right they should have the privilege of its gratification.

Now let me ask the slaveholders of this body, why it is that you see the non-slaveholder clinging around the institution of slavery in this country? There are various reasons why. They know from experience that somehow or other—but from what cause, perhaps I cannot tell—the character of a non-slaveholding man in a slave holding country, is elevated to the highest pitch and that he stands on the platform of universal equality with his neighbors, whether he owns slaves or not.

I recollect, during last summer to have seen a manifesto from the city of Louisville, the headquarters of abolitionism and emancipation—which was thrown out like a gilded bait to catch the non-slaveholding interest of the country—laying it down as an undeniable proposition that slavery was a curse to any country, and at the same time classifying the counties in the state, showing that the whole of it existed in but some eighteen or twenty counties, and that those on the frontiers had scarcely any slaves in them. They had two objects. Now it occurred to me that if slavery was this blighting mildew, if it was this mill stone which hung round our necks, they should have referred to the further fact, more undeniable even than any thing they have laid down, that right in the centre of Kentucky, we have the richest, the most intelligent, and the most patriotic people—not excluding our frontier brethren—on the face of the globe. And here where we have more slaves than in any other part of Kentucky, by ten to one, if it is such a curse, how does it happen, that under that curse, under that blighting curse, which blasts and pollutes every thing that it touches, we have the most enlightened, the richest, and the most cultivated people upon the face of God Almighty's earth. Yes, here, surrounded with this curse, this vast curse, this mountain, that would crush any other people and bear them down on the face of the earth, how does all this happen?

I can throw my recollection back to the period when from the town of New Castle to Shelbyville, there was scarcely a log cabin for the wayfarer to stop and slake his thirst. Now, there runs a continuous lane from my town to Shelbyville, and if a lady were riding by herself, she could not break herself a switch. On the

one side the traveler sees the wheat-fields in harvest time groaning under the weight of their heavy yield, and on the other, the green pastures with their thousands of cattle. And all this right in the midst of this curse of slavery! It is all a mistake—slavery does not, will not, and cannot produce such a moral or physical degradation as gentlemen seem to imagine.

Well, as I said, I believe that my proposition is correct, but I am not fastidious upon the subject. I have asserted that slavery is not an evil, and I want rather more of it. If it is the thing I think it is, and if it works out such wonders in this country, as I perceive it does, I am willing to have rather more of it. And gentlemen may pass laws either inviting this agitation or putting an end to it; but if every man here was an emancipationist, they could not, if they were so disposed, incorporate a clause in the constitution taking from me my right of ownership in the slaves. Let us try this question. I do conceive that the present constitution of Kentucky conferred upon the citizen unlimited and unrestricted rights, either as to time or any thing else, in his slave property. If that is the fact, then how could this convention, without impairing the obligations of contract, incorporate any clause in the constitution that would authorize the legislature to take the property of the slave owner without paying him a just compensation, or even then without his consent? Are there not many banks chartered in the commonwealth of Kentucky whose charters extend beyond the sitting of this convention or the period previous to the adoption of any constitution which we may frame, and is there any gentleman here who will attempt to assert that this convention has a right to say to those banks that their charters shall now expire, and that it shall depend upon the legislature, whether they shall be renewed? A gentleman gives me his note payable three years after date, and it falls due two years after this convention has adopted a constitution. Can this convention say that the bond shall be null and void? Would it not conflict with the provision of the federal constitution declaring that the state has no power to impair the obligation of contracts? I buy a negro from one of my neighbors. He conveys him to me by a bill of sale, and vests in me all the rights of property that incorporations can have vested in them by charter, or that you can vest in the obligee of a note by writing your obligation to him. And can your constitution set my negro free without my consent, whether it pays me or not? Would it not impair an obligation and seek to vitiate and render null by constitutional enactment, a vested right in me? Is not all this true?

Now I have given my views upon this question, and I shall not seek to elaborate them any further. I would like to know one thing before I sit down—perhaps I ought to leave the enquiry to other gentlemen on this floor—but I should like to know from my friend from Logan, when and how it was Mr. Clay became the great leader of the democratic party? Now, I never have said, in all my life, one word against the personal character of Mr. Clay, or made any vile or false accusation against him. I have looked upon him as one of the most stupendous intellects

the world ever produced—as an orator, never equalled, and as a great man who has scarcely ever been surpassed. I have never admired but one kind of aristocracy, and that is of mind, and I have always been ready to render at all times homage where homage is due. The gentleman from Logan, who tried his hand in one county and could not quite come it, and went to another county and now has come into this convention, I think has attempted to reach over or around the shoulders of an old friend to stab his old political enemies. If such is his intention, I yield to him all the honor and pleasure of such a triumph. I myself have never in my life thrust around the side of my friend to stab or wound an enemy. It may be, and I think it is, true, that “Old Bullion,” in his old age and dotage, is seeking himself to become the great free-soil leader, and competes for that honor with both Mr. Clay and Mr. Van Buren. Mr. Clay, defeated, writes his bulletin on the field of battle, and seeks the north for the restoration of his health. Mr. Van Buren artfully pretends to be seeking to heal the breach in the democratic party in New York, and yet, as I think, is all the while artfully tearing it asunder. Old Bullion, soldier as he is, and has been, standing alone among southern men, comes out and proclaims free-soilism, returns to Missouri, rolls up his sleeve and enters the thickest of the fight. I think it will be found that Old Bullion will head the great free-soil and whig party, with my friend from Logan right at their heels, in 1852. I know that the emancipationists of Kentucky say, and I suppose they will do it, that when this constitution is submitted to the people, they will unite with my friend from Logan, and others, to break it down. It is a great pity, I think, that this should be the case with so popular a gentleman, who, after trying it in one county and failing, can go to another county and come it after all. It was with great difficulty that I could come it at all. [Laughter.] Well, though he did do this thing, I think it a great misfortune to this convention that any anti-convention men were elected to this body at all—and I am afraid there are too many of them.

But let us unite and make the very best constitution that we possibly can. For myself, I am going to take the views of the elders of this church—of those men who understand this subject better than I do. I have my projects, and I have presented them for the consideration of this convention. If they vote them down it will be a matter of no regret to me. I want them but to do right, and when they satisfy me that they are doing right, I am going right along with them, hand in hand and shoulder to shoulder.

Mr. TALBOT. On a former occasion I promised at some proper time to give my views upon a particular branch of the great subject of slavery, and I rise this morning, in obedience to that promise, for the purpose of redeeming that pledge. I do not indulge the hope that I shall deliver myself in a very happy and felicitous manner, nor do I expect to charm the members of this body by my eloquence, by my oratory, or by my rhetoric. But I intend to deliver my views in as brief and comprehensible manner as is possible. I do not expect, upon this or upon any occasion, to shed any light upon this or any oth-

er subject, and I rise not so much for the purpose of enlightening this assembly, upon this grave and important subject, as for the purpose of assigning a reason for occupying the position I do upon this subject.

I will now proceed to the investigation of this subject in a moral and religious point of view—I mean the question of slavery. And the first thing that will be necessary, will be to define, clearly and distinctly, the question to be proved, and the point at issue. And here permit me to remark that I will not attempt to prove, or to investigate the question, whether slavery as it exists in this state, or in any other state, is right or wrong, but whether slavery is right or wrong, consistent or inconsistent with the law of God, in this or any other country, or in this or any other age?—whether it is right for any individual, at this or any other time, under existing or any other circumstances, to hold property in man? That, sir, is the question.—And here I ask, what is the ground assumed by the opposition? I do this in order that we may have the true issue before us, in a manner so clear that no gentleman can misunderstand it. And as the delegate from Madison repudiates the sentiments which I understood him to have expressed, and which was the foundation of what I then said, and what I am now about to say—that slavery was wrong, and that the finger of God was upon and against it—I beg leave, to read a paragraph from what purports to be an address to the Presbyterians of Kentucky, for the instruction and emancipation of their slaves—by a committee of the Synod of Kentucky—and published in the Examiner, a paper which I believe is endorsed and patronized by the emancipation party, throughout the state. It reads as follows:

“We all admit that the system of slavery, which exists among us, is not right. Why then do we assist in perpetuating it? Why do we make no serious efforts to terminate it? Is it not because our perception of its sinfulness is very feeble and indistinct, while our perception of the difficulties of instructing and emancipating our slaves is strong and clear? As long as we believe that slavery, as it exists among us, is a *light evil* in the sight of God, so long will we feel inclined to pronounce every plan that can be devised for its termination, inexpedient or impracticable. Before, then, we unfold our plan, we wish to examine the system, and try it by the principles which religion teaches. If it shall not be thus proved to be an abomination in the sight of a just and holy God, we shall not solicit your concurrence in any plan for its abolition. But if, when fairly examined, it shall be seen to be a thing which God abhors, we may surely expect that no trifling amount of trouble or loss, will deter you from lending your efforts to its extermination.

“Slavery is not the same all the world over, and to ascertain its character in any particular state or country, we must examine the constituents and effects of the kind of slavery which there exists. The system as it exists among us, and is constituted by our laws, consists of three distinct parts—a deprivation of the right of property, a deprivation of personal liberty, and a deprivation of personal security. In all its

'parts it is, manifestly, a violation of the laws of God, as revealed by the light of nature, as well as the light of revelation.'

It will be seen at once sir, that the ground assumed here is, that slavery is wrong in its institution and evil in its tendencies—a thing which God abhors—a sin in his sight, and in all its parts a violation of his law, a great moral evil, and as a matter of course, in all its tendencies and consequences, ruinous to the best interests of a state. If this be true sir, no man has a right to hold property in another, and no christian man should do it. I am a pro-slavery man sir, but convince me of the truth of this assumption, and I would at once renounce it all, and I would not let the sun go down upon my sin. I would give up my slaves, join the emancipationists, and help to pay for the balance. I would throw myself into the fight, and do battle for God and liberty. And what I am most surprised at is, that men who profess to believe all this, do not practice what they preach. If they would sir, they could then say to us with an uplifted front, "go and do likewise," or come and "go along with us and we will do thee good." But let us see if these things be so. Let us see if under the laws of God, as revealed in the Old and New Testaments, and as recorded in our old-fashioned family Bibles, a man may not own property in man—whether he may not, with money purchase slaves as we do here, and hold them forever, or for life, and still live in favor with God, or without committing a sin in his sight.

Just here sir, before I proceed farther in this investigation, I will remark, that as to the sinfulness of slavery, if any gentleman here or elsewhere, now or at any other time, will show me, in our old-fashioned family Bible, a solitary chapter, paragraph, or verse, which says that one man shall not purchase and own property in man, or that slavery in this form is a sin and abhorrent in the sight of God, I will give up the question. But if there is no law to be shown, there is none to violate; then there is no transgression, and consequently no sin—for there must be transgression before sin. This sir, I think settles the question as to the sin of slavery.

But let us look farther into a different branch of the subject. Let us see, if we can, when and how, and by what authority, slavery was first instituted. Turn sir, to the 9th chapter of Genesis, 24th verse, which reads as follows:

"24. And Noah awoke from his wine, and knew what his younger son had done with him.

"25. And he said, cursed be Canaan; a servant of servants shall he be unto his brethren.

"26. And he said, blessed be the Lord God of Shem, and Canaan shall be his servant.

"27. God shall enlarge Japhet, and he shall dwell in the tents of Shem; and Canaan shall be his servant."

This sir, is the prophetic denunciation of Noah, on one branch of his family, spoken by the immediate inspiration of God, and has been fulfilled, and is now being fulfilled, as I think will be proven in the sequel, as clearly as history, reason, and revelation can go to prove any thing. Before I inquire into what the denunciation is, the first question arises, was Noah au-

thorized to pronounce it. And here sir, I beg to read from Matthew Henry's notes on these verses:

"The spirit of prophecy comes upon him, and like the dying Jacob, he tells his sons 'what should befall them.' ch. 49, v. 25.

And again sir, I beg leave to read from Bishop Newton, another standard work in all the churches:

"In consequence of this different behavior of his three sons, Noah as a patriarch was enlightened, and as the father of a family, who is to reward or punish his children, was empowered to foretell the different fortunes of their families; for this prophecy relates not so much to themselves, as to their posterity, the people and the nations descended from them. He was not prompted by wine or resentment, for neither the one nor the other could infuse the knowledge of futurity, or inspire him with the prescience of events, which happened hundreds, nay thousands of years afterwards. But God, willing to manifest his superintendence and government of the world, endued Noah with the spirit of prophecy, and enabled him in some measure, to disclose the purposes of his providence toward the future race of mankind."

From both of these authorities it appears, that Noah spoke, not as some have supposed, from the vindictive feelings of a drunken old man, but by the immediate inspiration of God. If this is true, then; what he said was right and proper, not contrary to, but in strict conformity with, the will of God. None, I presume will deny that the curse here pronounced was personal servitude, or slavery. Then sir, we have the curse of slavery pronounced on some one by the authority of God, and the question now is upon whom was it pronounced? And here sir, I beg leave to read from Newton on the prophecies, page 15:

"The curse of servitude pronounced upon Canaan, and so likewise the promise of blessing and enlargement made to Shem and Japheth, are by no means to be confined to their own persons, but extend to their whole race; as afterwards the prophecies concerning Ishmael, and those concerning Esau and Jacob, and those relating to the twelve patriarchs, were not so properly verified in themselves as in their posterity, and thither we must look for their full and perfect completion."

\* \* \* \* \*

"Hitherto we have explained the prophecy according to the present copies of our bible; but if we were to correct the text, as we should any ancient classic author in a like case, the whole perhaps might be made easier and plain-er. *Ham the father of Canaan* is mentioned in the preceding part of the story; and how then came the person of a sudden to be changed into *Canaan*? The Arabic version in these three verses hath *the father of Canaan* instead of *Canaan*. Some copies of the Septuagint likewise have *Ham* instead of *Canaan*, as if *Canaan* was a corruption of the text. Vatablus and others by *Canaan* understand *the father of Canaan*, which was expressed twice before. And if we regard the metre, this line "*Cursed be Canaan*," is much shorter than the rest, as if something

'was deficient. May we not suppose therefore, (without taking such liberties as Father Houbigant hath with the Hebrew text,) that the copyist by mistake wrote only *Canaan* instead of *Ham the father of Canaan*, and that the whole passage was originally thus? *And Ham the father of Canaan saw the nakedness of his father, and told his two brethren without. And Noah awoke from his wine, and knew what his younger son had done unto him. And he said, Cursed be Ham the father of Canaan; a servant of servants shall he be unto his brethren. And he said, Blessed be the Lord God of Shem; and Ham the father of Canaan shall be servant to them. God shall enlarge Japheth; and he shall dwell in the tents of Shem; and Ham the father of Canaan shall be servant to them.*"

From this it appears that the curse was not only upon Ham, but upon his posterity to the latest generations. The next question then is, who was Ham and his posterity to the latest generations to serve? It appears from the very face of the decree itself, that they were to be servants of servants to their brethren Shem and Japheth. But Newton, page 15, goes to show that they were not only to serve Shem and Japheth, but their children to the latest generation. And now, sir, let us see the fulfilment of this prophecy. And here I read from Newton, page 19, 20:

"Ham at first subdued some of the posterity of Shem, as Canaan sometimes conquered Japheth; the Carthaginians, who were originally Canaanites, did particularly in Spain and Italy; but in time they were to be subdued, and become servants to Shem and Japheth; and the change of their fortune from good to bad would render the curse still more visible. Egypt was the land of Ham, as is often called in Scripture; and for many years it was a great and flourishing kingdom; but it was subdued by the Persians, who descended from Shem, and afterwards by the Grecians, who descended from Japheth; and from that time to this it hath constantly been in subjection to some or other of the posterity of Shem or Japheth. The whole continent of Africa was peopled principally by the children of Ham: and for how many ages have the better parts of that country lain under the dominion of the Romans, and then of the Saracens, and now of the Turks? in what wickedness, ignorance, barbarity, slavery, misery, live most of the inhabitants? and of the poor negroes how many hundreds every year are sold and bought like beasts in the market, and are conveyed from one quarter of the world to do the work of beasts in another?"

"Nothing can be more complete than the execution of the sentence upon Ham as well as upon Canaan."

I quote the following from page 20:

"God prefers Shem to his elder brother Japheth, as Jacob was afterwards preferred to Esau, and David to his elder brothers, to show that the order of grace is not always the same as the order of nature. The Lord being called the God of Shem particularly, it is plainly intimated that the Lord would be his God in a particular manner. And accordingly the church

of God was among the posterity of Shem for several generations; and of "them (Rom. ix. 5,) as concerning the flesh Christ came."

But still Japheth was not dismissed without a promise. (Gen. ix. 47,) "God shall enlarge Japheth, and he shall dwell in the tents of Shem; and Canaan shall be servant to them," or their servant."

"So it is said here "God shall enlarge Japheth," and the name of Japheth signifies enlargement. Was Japheth then more enlarged than the rest? Yes he was both in territory and in children. The territories of Japheth's posterity were indeed very large, for besides all Europe, great and extensive as it is, they possessed the lesser Asia, Media, part of Armenia, Iberia, Albania, and those vast regions towards the north, which anciently the Scythians inhabited, and now the Tartars inhabit; and it is not improbable that the new world was peopled by some of his northern descendants passing thither by the straits of Anian."

I will now read from Keith on the Evidence of the truth of the Christian Religion, as follows:

"Not only do the different countries and cities which form the subjects of prophecy exhibit to this day their predicted fate, but there is also a prophecy recorded as delivered in an age coeval with the deluge, when the members of a single family included the whole of the human race—the fulfilment of which is conspicuous even at the present time."

"But whatever was the occasion on which it was delivered, the truth of the prophecy must be tried by its completion:—"Cursed be Canaan; a servant of servants shall he be unto his brethren. Blessed be the Lord God of Shem, and Canaan shall be his servant. God shall enlarge Japheth, and he shall dwell in the tents of Shem, and Canaan shall be his servant."

"The historical part of scripture, by its describing so particularly the respective settlements of the descendants of Noah, "after their generations in their nations," affords to this day the means of trying the truth of the prediction, and of ascertaining whether the prophetic character, as given by the patriarch of the post-diluvian world, be still applicable to the inhabitants of the different regions of the earth which were peopled by the posterity of Shem, of Ham, and of Japheth. The Isles of the Gentiles, or the countries beyond the Mediterranean, to which they passed by sea, viz: those of Europe, were divided by the sons of Japheth. The descendants of Ham inhabited Africa and the southwestern parts of Asia. The families of the Canaanites were spread abroad. The border of the Canaanites was from Sidon. The city of Tyre was called the daughter of Sidon; and Carthage, the most celebrated city of Africa, was peopled from Tyre. And the dwellings of the sons of Shem were unto the east, or Asia. The particular allotment, or portion of each, "after their families, after their tongues, in their countries, and in their nations," is distinctly specified. And although the different nations descended from any one of the sons of Noah have intermingled with each other, and undergone many revolutions, yet the three great divisions



‘of the world have remained distinct, as separately peopled and possessed by the posterity of each of the sons of Noah. On this subject the earliest commentators are agreed before the existence of those facts which give to the prophecy its fullest illustration. The facts themselves by which the prediction is verified are so notorious and so applicable, that the most brief and simple statement will suffice. Before the propagation of christianity, which first spoke peace to earth, taught a law of universal love, and called all men brethren, slavery everywhere prevailed, and the greater part of the human race, throughout all the world, were born to slavery, and unredeemed for life. Man can now boast of nobler birthright. But, though long banished from almost all Europe, slavery still lingers in Africa. That country is distinguished above every other as the land of slavery. Slaves at home, and transported for slavery, the poor Africans, the descendants of Ham, are the servants of servants, or slaves to others. Yet so unlikely was this fact to have been foreseen by man, that for centuries after the close of the Old Testament history, the inhabitants of Africa disputed with the Romans the empire of the world. But Hannibal, who was once almost master of Rome and of Europe, was forced to yield to, and to own the fate of Carthage.’

I have here read from Bishop Newton, Matthew Henry, and Keith, men of high standing, much piety, and great learning, and who had no interest in telling a lie, or publishing that which they did not believe. They have all testified, positively and unequivocally, that the prophecy was by inspiration of God that the denunciation upon Ham was personal servitude or slavery, and that it has been, and is now being fulfilled, literally and certainly, not only upon Ham but his posterity, and that the promise of blessing to Shem and the promise of enlargement made to Japheth have also been, and now are being fulfilled, just as certainly and as literally as the curse upon Ham. Sir, they all testify clearly, explicitly, and positively, the place where, the time when, and the manner in which, the curse was inflicted, the blessing enjoyed, and the prophecy fulfilled upon them and their whole posterity up to the present time. This, sir, should give, to this part of God’s word, a just claim on every man for his faith. This prophecy and its literal fulfillment should command the confidence and credence of every man who loves the truth and who takes no pleasure in unrighteousness. Now sir, what next? Some are ready perhaps to say that “this may do pretty well; but can you show that Ham was black or that the present African race are the descendants of Ham?” I think if you will hear me a moment this will at least seem to be the reasonable inference. Now read the 9th chapter of Genesis, 18th, 19th, and 20th verses, and you will find what has been already stated, that Noah had three sons, Shem, Ham, and Japheth, and by them was all the earth over spread; and from the context and all history it appears they divided the then known world as follows: Shem went into Asia, Japheth into Europe, and Ham into Africa. Africa is frequently called the land of Ham in the sacred scriptures. Now sir, we have the fountains let us see if we can follow the

streams. You know then the blessing was to Shem—of him and through him concerning the flesh was salvation or the Saviour to come.

I here call again the attention of the house to the extracts which I read from Newton, page 20, in which he states, that nothing can be more complete than the execution of the sentence upon Ham as well as upon Canaan—(alluding to the curse pronounced by Noah). And now let us see the promise made to Shem and Japheth, from which it appears, that God preferred Shem to his elder brother Japheth—as he did Jacob to Esau—and from Shem, as concerning the flesh, Christ came, (Rom. 9, 5.) Now, sir, the question is, do you believe this? Do you believe, as concerning the flesh, Christ came through Shem? This, sir, is an important question, and has much to do in helping us to form a correct conclusion in the investigation of this great subject. Do you then believe it, sir? If you do, why, let me ask do you believe it? Surely it is not because Christ said it himself—for, said he, If I bear witness of myself, my witness will be of no avail; there is another that beareth witness of me. Search the scriptures, said he, to the unbelieving Jews, for in them you think you have eternal life, and they are they which testify of me. I need not then ask you, sir, if you believe Jesus Christ, the son of God, concerning the flesh, is the son of Shem. This, sir, we all acknowledge. This we all believe. But why do we believe it, is the great question in this investigation.

Is it not, sir, from reason, revelation, and history? Is it not from the numerous prophecies made in ages past concerning him, and their wonderful and literal fulfilment? Is it not from reason, revelation, and history, that you have been forced to this conclusion? I ask you, sir, if it is not from reason, the revelation and word of God, as recorded by Moses, declared by the prophets, and preached by the apostles, that you have been driven, irresistably, to this conclusion? If so, sir, I would ask you if it was not the same spirit of prophecy that proclaimed the one, that declared the other? If it was not the same historian that recorded the one, who wrote the other? And if, sir, it is not the same reason that understands the one that comprehends the other? Where then, sir, is the difference? It seems to me there is none. The conclusion is inevitable. If you believe that Adam existed, you must believe that Noah existed. If you believe that Noah existed, you must believe that Moses, and John, and Jesus existed. And if you believe that Jesus existed, you must believe that he was the son of Shem. And if you believe that Jesus was the son of Shem, you must believe that we are the sons of Japheth, and if you believe we are the sons of Japheth, you must believe that the Africans are the sons of Ham, for we have the same witness, the same testimony, the same revelation to show, the same record to read, the same reason to understand the one that we have to show, to read, and to understand the other.

The conclusion therefore, is clear, and the question established, that God did, for purposes unrevealed, and unknown to man, doom Ham and his posterity to the latest generation, to personal servitude or slavery, and that too, to his

brethren, Shem and Japheth, whose children we are, and their posterity. If this be true, what follows? Why, in vain may we talk about slavery, or the abolition of slavery? In vain may we talk about slavery in this state or in that state. In vain may we talk about slavery in this form or that form. It will all be idle. If God has decreed, it will be so. What is man, that he can resist the decrees of Jehovah? We may change its place, but we cannot break down the institution. It has existed in every age of the world since the flood, as I have shown. And it has been incorporated with every dispensation of religion, Patriarchal, Jewish, and Christian, as I will now proceed to show. First then sir, I will refer you to the 14th Gen. 14th verse, and you will find that Abraham the father of the faithful and the friend of God, had 318 servants born in his own house, reared by his own hand, and subject to his absolute control, in war as well as in peace. This sir, does not look as if slavery was a sin. Go a little further, and what do we find? We find Sarah his wife, the brightest, the purest, and best of women, fit emblem of the blessed virgin, associated with Abraham in this matter. This still does not look as if slavery was a sin. Go still further, and we find the angel of the living God, talking to Hagar, who had run away from her mistress Sarah, Abram's wife. And what does the angel of the Lord say to Hagar? Does he tell her to run away from her mistress? Does he tell her that slavery is a sin, a thing abhorrent to God, a great moral evil, and that she should not be held in bondage? No sir, no such advice was given, no such principles were inculcated. He told her to go back to her mistress, and submit to her will. Just here, sir, I would like to indulge the idea for one moment, as to what would have been the advice and the conduct of a northern abolitionist on such an occasion—but I will forbear. But this, Mr. Chairman, does not still look as if slavery was such a great outrage against God and religion.

[Here Mr. T. remarked, that feeling very much indisposed, having been so for several days, he would be obliged to waive the further discussion of the subject for the present. He had made all his points, and the elaboration of them he should perhaps ask the indulgence of the committee for another opportunity to present.]

Mr. CLARKE moved that the committee rise and report progress, and ask leave to sit again.

The motion prevailed, and the committee accordingly rose and reported progress.

The question being on granting leave to sit again.

Mr. C. A. WICKLIFFE proposed to give the committee leave to sit again on Monday week. On Monday the report of the committee on the court of appeals, would, under an order of the committee, come up for consideration, and he was exceedingly anxious it should be then taken up, progressed in, and as he hoped, finished during the coming week. It was possible he might be called away from the house for two or three days the week after, and he could not very well leave until he knew what disposition had been made of the report of the committee of which he was chairman.

Mr. CLARKE. I submit to the consideration

of the house whether it is not better, as we have taken up this subject of slavery, that we should progress with its discussion until it shall have been gone through with. If we waited until the report of the committee on slavery was taken up we should have to go over the very same ground, that has been traveled over for the last three or four days, before we could take any ultimate action on the report. Let the discussion now proceed, and terminate, and when the report of the committee does come up, we shall be ready for decisive action.

Mr. C. A. WICKLIFFE. I do not desire to discuss it myself, but it is not yet 12 o'clock, and I perceive indications on the part of several gentlemen around me of a desire to do so. I do not feel disposed to withdraw the proposition I have made, that the committee have leave to sit again on Monday week. In the meantime we can make some progress in another branch of the subject, and one which is not less important.

Mr. HARDIN. The committee on the circuit courts and the committee on the county courts also, have been in session for some time, and there is a prospect I believe of harmonious action in regard to the organization of those courts. I give notice, therefore, that on Wednesday next, if the subject be not sooner disposed of, I shall move that the convention refuse leave to the committee to sit again, and that the resolutions be laid upon the table. I am getting very tired of this discussion.

Mr. TURNER. I am not anxious that my resolutions should be debated to the exclusion of other business.

Mr. HARDIN. My desire is not to prevent the discussion of the gentleman's resolutions, but simply to make an order of business for Wednesday.

Mr. TURNER. A great deal of matter has been introduced for the purpose perhaps of getting up a little ephemeral popularity—which has no connection with the subject. All that I desire is to have an opportunity to reply to the arguments which have been advanced against my proposition.

Mr. CLARKE. However much I may be opposed to the principles contained in the proposition of the gentleman from Madison, nevertheless as far as I understand parliamentary rules, and the rules of decorum, it is due to the gentleman that he should be heard in defence of his proposition, and in reply to the arguments that have been adduced against it.

If the proposition indicated by the gentleman from Shelby should prevail, I do not know what the condition of other gentlemen in this convention would be, but as far as I am concerned it would be rather an awkward one. When I indicated the other day that I intended to offer a substitute for the fifth resolution, I accompanied the intimation with some declarations of sentiments, which have since been animadverted upon; and it is due to myself, and to those whom I represent on this floor that I should be heard in defence of those sentiments. Therefore I trust the house will entertain the motion that I first made, that the committee have leave to sit again.

The subject of slavery is one which deeply interests the whole of the people of this state; and not the people of this state only, but the

whole of the people of this union have been excited more or less upon the subject. It is a subject, sir, that ought to be discussed; and so far as the proposition which I have indicated is concerned, I desire to discuss it; and I hope, therefore, that the committee will have leave to sit again on Monday next.

The question being taken first on the motion of the gentleman from Nelson, that the committee have leave to sit again on Monday week, it was, upon a division, negatived; ayes 21, nays 49.

The question then being upon the motion of the gentleman from Simpson, that the committee have leave to sit again, it was agreed to.

The convention then adjourned.

#### MONDAY, OCTOBER 15, 1849.]

Prayer by the Rev. Mr. LANCASTER, of the Catholic church.

#### REPORT FROM A COMMITTEE.

Mr. TURNER, from the committee on the executive and ministerial offices, for counties and districts, made the following report:

#### ARTICLE —.

SEC. 1. There shall be elected a commonwealth's attorney for each circuit, and a circuit court clerk for each county, whose term of office shall be the same as that of the circuit judges; a county court attorney, clerk, surveyor, coroner, and jailer, for each county, whose term of office shall be the same as that of the presiding judge of the county court.

SEC. 2. No person shall be eligible to the offices mentioned in this article who is not, at the time, twenty four years old, a citizen of the United States, and who has not resided two years next preceding the election, in the state, and one year in the county or district in which he offers his services. No person shall be eligible to the office of commonwealth or county attorney, unless he shall have been a licensed practicing attorney for two years. No person shall be elected clerk unless he shall have procured from the court of appeals a certificate that he has been examined by their clerk, under their supervision, and that he is qualified for the office for which he is a candidate. But the office of sheriff or constable may be filled by persons who have attained the age of twenty one years.

SEC. 3. The commonwealth's attorney and circuit court clerk shall be elected at the same time, and in the same manner as the circuit judge. The county attorney, clerk, surveyor, coroner, and jailer, shall be elected at the same time, and in the same manner, as the presiding judge of the county court.

SEC. 4. Sheriffs shall be elected in each county, at the same time and manner that associate judges of the county court are elected, whose term of office shall be two years, and they shall be re-eligible for a second term; but no sheriff, or deputy, who qualified under him, shall, after the expiration of the second term, be re-eligible for the succeeding term.

SEC. 5. A constable shall be elected in every justice's district, who shall be chosen at the

same time, in the same manner, and for the same term, that justices of the peace are elected. He may execute the duties of his office in any part of the county in which he resides.

SEC. 6. Officers for towns and cities shall be elected for such terms, and in such manner, and with such qualifications, as may be prescribed by law.

SEC. 7. Vacancies in offices under this article, shall be filled, until the next ensuing election, in such manner as the legislature may provide.

SEC. 8. All officers provided for in this article, shall reside in their respective counties or districts, during their continuance in office.

SEC. 9. Clerks shall be removable by the appellate court, only for breach of good behavior; which court shall be judges of law and fact. Other officers, whose removal from office is not provided for in this constitution, shall be removed in such manner as shall be prescribed by law.

SEC. 10. When a new county shall be erected, officers for the same, to serve until the next stated election, shall be elected or appointed in such way, and at such times, as the legislature may prescribe.

SEC. 11. Clerks, sheriffs, surveyors, coroners, and jailers, shall, before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as shall be prescribed by law.

SEC. 12. The legislature may provide for the appointment of such other county or district ministerial and executive officers as shall, from time to time, be necessary and proper.

Mr. TURNER. The report is the result of the deliberations of a majority of the committee of which I have the honor to be chairman. I did not myself nor did other members of the committee concur in all these provisions. I think that there are several little officers that might as well be appointed without the trouble of going through an election; but in this, one member, and there were probably others, did not concur, because they believed that the people ought to have unlimited power, without any restriction as to age or anything else, to select their officers. It will be seen that the report is rather incidental, and runs into both circuit and county courts, and it will not therefore, be expedient for us to act upon it, until the reports of those two other committees should come in. I move therefore, that it be printed and sent to the committee of the whole, and I will at some future day, fix upon a time for taking it up.

It was referred and ordered to be printed accordingly.

#### RESOLUTIONS OF INQUIRY.

Mr. JAMES offered the following, and it was agreed to:

*Resolved*, That the committee on miscellaneous provisions be instructed to inquire into the expediency and propriety of amending the constitution, so as to prohibit the legislature from passing any law which shall suspend or alter any of the legal or equitable remedies for the collection of debts and the enforcement of contracts, so as to operate retrospectively.

Mr. W. N. MARSHALL offered the following, and it was agreed to:

*Resolved*, That the committee on miscellaneous provisions be instructed to inquire into the propriety of incorporating into the new constitution, a clause exempting from execution, to each *bona fide* occupant of land, a homestead of from fifty to one hundred acres, not to exceed in value, the sum of \$500, and not to affect any debt created before the new constitution goes into operation.

## CHANGE OF REFERENCE.

Mr. RUDD called the attention of the convention to the fact, that some days ago he offered a resolution concerning cities, towns, and counties, which was referred to the committee on the legislative department. He had since ascertained that that committee thought it did not come within their province; and hence he now moved that the committee on the legislative department be discharged from the further consideration of the subject, and that it be referred to the select committee on the public debt, of which the gentleman from Nelson (Mr. Hardin,) was chairman.

The motion was agreed to.

## SLAVERY.

Mr. DIXON offered the following:

WHEREAS, The right of the citizen to be secure in his person and property is not only guaranteed by all free governments, but lies at the very foundation of them: and whereas, the powers derived to this convention immediately and collectively are directly from the people, and although not expressed are implied, and that among these is the power so to change the existing constitution of the state as to afford a more ample protection to the civil and religious rights of the citizen, but not to destroy them: and whereas, the slaves of the citizens of this commonwealth are property, both those that are now *in esse* and those hereafter born of mothers who may be slaves at the time of such birth. Therefore,

*Resolved*, That this convention has not the power or right, by any principle it may incorporate into the constitution of the state, to deprive the citizen of his property without his consent, unless it be for the public good, and only then by making to him a just compensation therefor.

Mr. DIXON. My object in offering this resolution, is to call directly the attention of the convention to the great and important principle that is embodied in it; I mean the right of a bare majority of this convention, either as it is now constituted, or in any other form in which that majority can possibly constitute itself, to take from the citizen the property which belongs to him, without making any compensation therefor. That is the great question which I want to present for the consideration of the convention, and of the people of Kentucky; and it is a question upon which doubts are entertained by many persons, which doubts ought to be set at rest by the action of the convention. I hold it to be a principle that cannot be controverted, that every citizen has rights in every well organized community, under a free government, which he cannot be deprived of unless by revolution or by actual force. I maintain that the obligation on the part of the government,

and on the part of the governed is mutual; that whilst the governed have a right to demand protection, the government has a right to demand obedience. It is a mutual agreement that cannot be violated by either party. The citizen cannot violate it, nor can the government violate it. The principle embraced in the resolution, lies at the very foundation of society, that the right of the citizen—the right which is secured to him, which is admitted to belong to him, the right of property and of liberty—cannot be taken away from him by the government. That right I say, lies at the foundation of society, and is independent of the organic law of the country, is independent of municipal regulations, of statute law, or of any thing which may have been agreed upon by the state for the governance of her citizens. It is an original element, which lies at the foundation of all society.

I desire more particularly to explain my views on the subject, by reading from the first volume of Blackstone's commentaries, a passage which clearly points out and sustains the principle, which is essential in this resolution.

"Though society had not its formal beginning from any convention of individuals, actuated by their wants and their fears; yet it is the sense of their weakness and imperfection that keeps mankind together, that demonstrates the necessity of this union, and that therefore is the solid and natural foundation, as well as the cement of civil society. And this is what we mean by the original contract of society, which, though perhaps in no instance it has ever been formally expressed at the first institution of a state, yet in nature and reason must always be understood and implied in the very act of associating together: namely, that the whole should protect all its parts, and that every part should pay obedience to the will of the whole; or, in other words, that the community should guard the rights of each individual member, and that (in return for this protection) each individual should submit to the laws of the community; without which submission of all it was impossible that protection could be certainly extended to any."

There is the sum and substance of the whole thing. This is the commencement of society, that the whole should protect all its parts, and that the parts should pay obedience to the whole.

Here was a mutual compact existing before this convention was formed. When it was determined to send delegates to this convention to form an organic law for the state, this principle lay at the very bottom of the action of the people; that the government should protect the rights of individuals, whilst individuals are bound to render obedience to the government. The great principle embraced in the resolution which I have offered is, that it is the right of the citizens of every free government, to be secure in their persons and property, and that this right lies at the very foundation of society itself, and constitutes the very elements of it; that this convention has been assembled with powers delegated from the people themselves, and that those powers, though not expressed, are nevertheless limited in their character, and that the convention is expected to protect those great

rights, which lie at the foundation of society and not destroy them.

Then I assert another proposition, that slaves are property, as well those now in existence, as those who may be born hereafter of mothers, who at the time of birth are slaves; and I maintain that a bare majority of the convention, nay that the whole of the convention has not power to take from the citizen his property, without his consent, or without making him compensation for it. Not that the legislature shall not have power, but this convention, this assemblage of the sovereign of the state, is limited in its power, is controlled by the great principle which lies at the foundation of society—by that great principle, which when it is lost sight of, sinks the people into the condition of slaves.

I have presented this resolution, because I desire to call the attention of the people of Kentucky to it. I have proposed it, because I am myself utterly opposed to surrendering into the hands of this convention, or any other convention hereafter to be assembled, the right to seize upon private property and appropriate it as the convention may think proper, without regard to the public good. And finally, when the public good demands it, I insist upon it that it cannot be taken unless compensation be made for it.

I do not mean to discuss the question now, nor do I know that I shall discuss it at all. I will move, however, that the resolution be printed and that it be referred to the committee of the whole, because it contains an important principle, with the view of giving to my honorable friends who may wish to discuss the question, an opportunity of turning their attention particularly to it.

Mr. TURNER. I do not know that the resolution should be printed and referred to the committee of the whole. I suppose every member of the convention is in favor of the proposition contained in the resolution. I do not think there can be a doubt on the part of any delegate as regards the correctness of the sentiments laid down in it. It is a proposition, I think, about which there can be no doubt, either on the part of members of the convention or of those who sent us here.

Mr. TALBOTT. I hope the gentleman from Madison will withdraw his opposition to the printing of the resolution. I do not believe there is a subject in the world the discussion of which is so well calculated to enlighten the convention and the country as that contained in the resolution of the gentleman from Henderson. I want to obtain information in regard to it. I know there are thousands, and tens of thousands of people in this state, who dispute the proposition, and I want light upon the subject. I do hope the resolution will be referred to the committee of the whole.

Mr. HARDIN. I understand the resolution to be nothing more nor less than this, that the convention has not the power, under any state of things, to emancipate the slaves. For one, I maintain that they have this power.

Mr. DIXON. The gentleman will see that he is mistaken, if he will examine the resolution. It asserts this principle, that it is in the power of this convention, to take the property of the

citizen, when the public good requires it, but that it must compensate the owner therefor.

Mr. HARDIN. The real meaning is, that we have not the power to emancipate the slaves that we have now in existence, nor to emancipate them in prospective. We have that power if we pay the owner for his property. I agree with the gentleman from Henderson, that it should not be done. I will not consent to do it; but we have the power to do it. We have the power to do any thing that a nation can do, unless forbid by the constitution of the United States and the laws of Congress made in pursuance of it, and treaties made by the United States in pursuance of the treaty-making power.—There is no restraint upon us except so far as regards these, and if it were not for the constitution of the United States, we might declare any gentleman of this convention King or Emperor to-morrow, and he would be King or Emperor until the people saw fit to dethrone him, which I suppose they would do very quickly. Well, can we not set the negroes free if we choose? I should think so, compensation or no compensation, those now in existence, or those hereafter to be born. But I deny the policy of doing so. I agree with the gentleman. I am against setting them free, but I do not want to pass a resolution declaring that we have not the power to do it. I hope the resolution will be deferred, and when we come to the time for action on the subject I would give all such resolutions a handsome go-bye, by laying them upon the table and refusing to act upon them. That is what I should call a handsome berth for them, and I hope it will be given to them. It is well to correct the views of all the gentlemen of this convention in regard to this subject; but I do not think it would be expedient to take any action upon it.

While I am up I will only further remark, that we came here with a view of making three or four essential changes in our organic law.—One is, to take the appointing power from the executive and give it to the people; and another is, to destroy the life tenure of office, because the holders of office for life, or during good behavior, are virtually under no responsibility whatever, the tenure of their office being in the nature of a life estate; for, as Jefferson well said, "they never resign, and scarcely ever die."—Another object is, to make the holders of office more immediately responsible to the people; and another object—one which I had particularly in view, though I don't know how it is with other gentlemen—was to prevent the state from contracting any more of those enormous debts which we have been in the habit of doing.—And when we have done this, we shall have attained the great object for which we have assembled. I hope we shall do it in the best possible way. I recollect hearing an anecdote, thirty years ago, of a poor man going to buy a hundred acres of land from a land speculator, who declared that he had an excellent title, and produced, as the evidence of his title, a record against the unknown heirs of A., and a record against the unknown heirs of B., and was proceeding to produce other evidences of title of the same character, when the buyer said, "no doubt your title is a good one, but there is so

much of it, I shall never be able to read it," and he declined making the purchase. Now, I cannot agree with the gentleman that we ought to declare that we have not the power to make such disposition of this subject as we please. There is a wide difference between having the power, and considering it expedient to exercise it. We may incorporate, if we choose, the law of 1833 into the new constitution, but it shall not be done with my consent, and I presume there are not twenty delegates in this house who desire that it shall be done. We have ample power, but we are not going to exercise it. I hope that the convention will give to this resolution the destination which my honorable friend proposes, and that we shall hear the sentiments of delegates upon the subjects embraced in it. But I want to adopt no negative declaration as to our power.

Mr. PRESTON. If I rightly understood the resolution, it does not bear the interpretation which the gentleman from Nelson puts upon it. I was very glad to see the resolution introduced by the gentleman from Henderson. It embodies, in effect, the same idea which is contained in a part of the report of the committee, and which will naturally come up for consideration in the report itself. I understand the resolution as asserting two principles. One is, the declaration that we came here under an implied understanding, that we would not violate the rights of persons or of property, and with the implied understanding between the people who elected the delegates to this convention and those delegates, that the rights of property should remain undisturbed.

There is another principle asserted in the resolution, and it is, that this convention has no power whatever to pass a *post nati* law, or any constitutional provision for freeing the children to be born hereafter, descendants of the slaves. I do not believe that this house is willing to accord to the proposition that the state of Kentucky has the right to exercise such a power. I do not believe myself that we are in a state of revolution. I do not believe myself that full and plenary power is possessed by this house. I do not believe that we came here with all the powers of sovereignty. I do not believe, but if this house consisted of one hundred and fifty delegates instead of one hundred, we could come here as a legally constituted convention. I believe we were called here in accordance with the provisions of the constitution, which provides for its amendment, which stipulates that it should be done in a certain manner, and that when we do come together for that purpose, we are not in a state of revolution, not at liberty to carry power to the extreme limit which the gentleman from Nelson seems to think; but that we do come here for the purpose of carrying out the views of the people, under the implied obligation which is set forth in the resolution of the gentleman from Henderson.

There was no principle more strongly argued than the one which asserted that there should be a provision inserted in the constitution which we are about to form, which would provide for the future emancipation of slaves. They declared that we should insert in the constitution, either a provision that would permit the eman-

cipation of the slaves now, or a provision for their gradual emancipation. I do not know whether any gentleman in this convention entertains such an opinion. I understand there are one or two who do; but I know that twelve or fifteen thousand votes were cast in the state, asserting that they believed in the existence of the right to do so. There are as many as fifteen thousand persons in the state then, who do not think that such a provision will be altogether useless, and who would consequently be opposed to inserting in the constitution a provision declaring that the slaves should not be manumitted, without a compensation being paid to their owners. I recollect reading with a great deal of interest the speech of a distinguished gentleman of this state (Judge Underwood,) regarding the emancipation of the slaves, in which he advanced the opinion that we should insert such a feature. But he afterwards receded somewhat from that position. We know, however, this fact, that some twelve or fifteen thousand of the people of this state believe that such a feature should be inserted. I do not believe that it can be justly done. I agree with the gentleman from Nelson, and I believe there is no man within the sound of my voice who will maintain that private property, other than slaves, can be taken without compensation; but we all know that there has been one constant clamor from the north asserting that slaves are not property. I have heard it asserted in Louisville that man could have no property in man. I have found an opinion prevailing throughout the country to a great extent to the same effect. The whole mind of the country in fact is directed to this question. It may not be the case in this house, but a difference of opinion does prevail in the country, and the question should therefore be met; it should be considered and determined. What do they say? That slaves are not like other property, but that they are property *sui generis*. The State of New York passed anti-slavery laws, and I have yet to learn, that she had no right to pass such laws, though she did it under no constitutional sanction. Her example was followed by other states, and if we let this constitution go out without some such provision, may it not be subject to judicial enquiry whether subsequent action of the legislature can control this property.

In February last, in conversations with pro-slavery men, they declared that the present constitution contained a guarantee for the continuance of slavery in reference to existing slaves; but they seemed to yield the point that it would be just and proper, and no invasion of right if a provision were inserted for the emancipation of those who are not now *in esse*. As the matter was discussed, the question began to assume a different aspect, the people began to regard the increase of slave property in the same light as the increase of real estate; and they began to be of opinion that the convention had no more right to declare that the offspring of slaves should be free, than they had to declare that the profits of real estate, or of stocks should not belong to the owners of such property. I know there are individuals who are averse to the discussion which the emancipationists have raised in Kentucky. I know it is a prevalent opinion



that you can no more take away the future born children of slaves from their owners, than you can the existing slaves. But we are a transient body, we shall pass away, and if we adjourn without the expression of our opinion, all traces of the opinions we entertain will pass away with us. They will endure only so long as the minds which entertain them. I agree therefore with the gentleman from Henderson, that we should leave an imperishable record of the great truth, that the great barriers which are thrown around other property apply equally to our slaves; and the expression should go forth to the country, that it not only applies to slaves now in existence, but that it equally applies to those who shall be born of slaves hereafter. I see no inutility about it. On the contrary, I see great utility. I have heard other matters that are certainly not so pertinent, discussed with much ability in this house. I do not regard it as useless; I regard it as a cardinal hinge on which the decision of this question is to turn hereafter. There is no gentleman within the sound of my voice, but will recollect that when this point was pressed by the emancipationists it was the greatest difficulty presented.

I certainly have shown no disposition to trespass on the patience of the house. Among the youngest members in it, I shall never speak unless when I consider there is a great and important principle at issue. I have great respect for the opinions of the gentleman from Nelson, but I have perceived within the last week, that there have been questions discussed, that are of less importance than this. It will naturally come up in the report of the committee on Slavery, a report to which I have many objections. That report provides that the free negroes, who are at present within the state, are to be torn from their homes, and sent away, as I believe against law and right. By adopting this, we adopt a provision that involves in it inhumanity; one which involves a proposition that every one who advocated the pro-slavery cause found the strongest he could use, for I maintain that there is no argument that the people listen to with more sympathy than the declaration that by the contemplated scheme of emancipation, if they could carry it out, a hundred thousand human beings would be torn from their homes and landed upon a distant and inhospitable shore. If there was one argument which pressed harder than another, against the emancipation party, it was this. I myself feel a deep and vivid interest in it. I believe the principle is a cardinal one, and I believe it should be distinctly understood and declared by this house, that private property shall not be taken, without full compensation being made to the owner. I think we ought to assert the principle distinctly, and that we should declare that it extends to slaves, and not only to the slaves who are now *in esse*, but to the descendants of those slaves. That is the principle, as I understand it, for which the gentleman from Henderson contends. So far as power to act upon the subject is concerned, I do not understand the resolution of the gentleman as doing more than conveying the idea, that there is an implied understanding that the right to private property shall not be violated, and that understanding becomes a motive so

strong as to govern the exercise of power by this convention, that they will not violate that class of property, but that they will provide for its future protection. If I understand the gentleman aright I will support him in it.

Mr. DIXON. The gentleman certainly understands my position, at least in part. I assert two propositions; first, that according to the original contract between the members of society, the whole have a right to govern the individual members of the society; but they have a right to do it on this condition, that they do not violate the rights of individual members of the society. That is one proposition which I assert. The next proposition is this; that the powers of this convention, a body which is the representative of that society, and whose powers are derived from that society, are limited by the implied understanding existing betwixt the members of that society, which constituted this body, to the extent that this body would not violate the original understanding betwixt the members of the society and the community composed thereof. It was, that the whole might govern the individual members, but with the express understanding that they should not deprive the individual members of those rights to which they were entitled. Therefore the resolution goes to the extent that the power does not exist in this convention, because whatever powers it possesses, the resolution insists upon it, are derivative, and that we ought not to transcend those powers. The powers possessed by this convention therefore, do not go to the extent of violating that principle, and if we assert it here by any act of ours, it will be in violation of what I believe to be the original contract between the people and their representatives. That is the proposition, that it is not in the power of the convention to take away private property without compensation being made therefor; that slaves are private property, and that the rule applies as well to them as to any other property, and applies as well to future born slaves, as to slaves at present in existence.

Mr. PRESTON. I understand the main part of the gentleman's resolution. Its practical bearing as I conceive is, to have an expression of this convention that they will not, in the constitution which we are about to form violate either the right of property in slaves, as it now exists, or the right of property in those hereafter to be born.

The reason why I rose to make any remark, is that I hope the resolution will come up for consideration at the time the gentleman has indicated. If the whole house, as the gentleman from Madison says, is willing to accord to this proposition, let them do it now, and the object will have been achieved. And if any gentlemen entertain different sentiments, I would like to give them an opportunity to be heard, the last perhaps, that they will have for many years to come. I hope therefore, the resolution will be allowed to take the direction indicated by the gentleman.

Mr. TURNER. I withdraw my objection.

Mr. C. A. WICKLIFFE. If this were a proposition to insert in the constitution a clause, declaring that the legislature shall not exercise the power of emancipating the issue of future born

slaves, I should have no hesitation in yielding it my unqualified and ready support, but if I understand the resolution in connection with this preamble, it asserts a principle to which I cannot yield my assent so readily as the gentleman from Madison has done. It is intended to assert the principle, not only that this convention has not the power, but consequently no other convention which can be assembled by the people of Kentucky will ever have the right to exercise the power to provide any means or mode of emancipation of the slaves in this commonwealth, either those now in existence or those hereafter to be born.

I am perfectly willing, as I remarked before, if it be thought desirable to insert in the constitution a declarative clause denying the power of the legislature to act upon the subject, that it shall be done. I am willing to place that which is already to my mind, sufficiently plain in the existing constitution, beyond cavil or doubt, in the one which we may substitute for it. But sir, I cannot yield, understanding the resolution with its preamble, to the proposition that there exists no power in the people of Kentucky, to declare now, or hereafter, that slavery shall be discontinued, because if the position of the gentleman be true, there cannot be exercised any power of the sovereign people of Kentucky in any shape except by civil and violent revolution, to secure the means of adopting that which our fathers thought they did possess when they formed the existing constitution, that is a system of emancipation, to take place at some convenient time without injury to the rights of private individuals.

Yielding my full assent to the position that slaves are property, and entitled to the same protection which is guaranteed to other property under the organic law, the enquiry necessarily arises, how came slaves to be considered property? Was it by constitutional provision and organic law, speaking it into existence by the authority of the people, exercised in their convention, and carried out by legislation.—The property in slaves is guaranteed by constitutional law, no matter how originally acquired; and the same power (the people,) which gave the constitutional guaranty, if they elect to do so, may withdraw that guaranty in any re-construction of the government which they may choose to make. I do not say it would be just to do so; but they have the power to do so; and the constitution of the United States does not inhibit the people of a state from the exercise of such a power. Is it contended that the same people have not the power now, or they shall not hereafter exercise it in the same manner? They have the same sovereignty, and the same power to declare what shall and what shall not be property within this commonwealth. The rights of property depend upon law, and its security is the protection which the constitution and laws give to it. If you acquire property in slaves by your organic law, I cannot yield myself to the principle that the same power which spoke the law into existence cannot retrace its steps at the proper time.

Now these are the reasons why I cannot yield my assent to the proposition. I am prepared to go as far as any man to say that the Legislature

shall not have the power to emancipate existing slaves or their future increase. But I am not prepared to say that if the people of Kentucky choose, assembled in this hall, or in any future convention which they may organize, in their sovereign capacity, to adopt some system of emancipation, they have not an unquestionable right to do so. I am indifferent what course the resolution takes.

Mr. TRIPLETT. This is a mere abstract resolution, and while there are probably nine tenths—one gentleman says four fifths—but I think I may safely assert there are nine tenths of the delegates in this convention who will agree to the proposition that both slaves that are now in existence, and those *post nati* must continue to be slaves so long as it is the will and pleasure of the people of Kentucky that they shall be so. I deny the capacity of this house to put a limitation upon its own power. Why? Simply because by admitting that, you admit that you can put a limitation upon the powers of the people from whom the members of this house derive their power. Pass this resolution, and put into the constitution a declaration that this convention has not the power to do this or that, and you thereby declare that the people themselves have not the power. Now where do you land? It is the unanimous intention of the convention, I believe, that the new constitution, when formed, shall be placed before the people for their ratification, and they will ratify it, and it then becomes the act of the people. I ask you then, this plain question: have not succeeding generations the same power that this generation has? and if they should change their opinion, how are they ever to express that change, provided you put this declaration in the constitution? You come to this plain proposition at last, that if there is no method of amending the constitution, to arrive at their object, you throw them upon something ulterior and beyond it—you throw them upon revolution. I am a pro-slavery man—meaning just what I say. I am for slavery for the sake of slavery, and I will here avow, that if there were now no slaves in Kentucky, and they were in other states as slaves, I for one would say bring them here. If they are a blessing, I want our portion of that blessing; and I believe that they are a blessing, a moral blessing—whether a religious blessing or not I do not exactly know, and therefore do not intend to give an opinion on the subject. I believe religion has little to do with the question. I am a pro-slavery man for the sake of slavery, but how do I know that my children will be of the same opinion? And while I lay down the proposition and maintain it side by side with the gentleman from Henderson, I cannot go so far as to say that my descendants shall not be free to follow their own inclinations. I cannot deny to them the same right to determine for themselves this question, that I claim for myself now.

You put into the constitution a declaration such as this, if they want to remedy it you throw them upon revolution. That is one reason why I am opposed to its insertion. But there is another. I ask if it is good policy when it seems to be the unanimous opinion of the house, and when as I believe, there are but three or four, in fact,

in the convention in favor of emancipation—but fifteen or twenty in the convention who regard slavery as wrong in the abstract, including all the terms you choose to apply to it. One thinks it wrong morally, another religiously, and another politically. Why combine all these elements together and show its strength abroad? There is no necessity for this. Divide and conquer! Why amalgamate all this mass? Why combine those who differ with us upon the abstract proposition? To say the least, it is bad policy; because the expression of opinion, whether given by your reporters and going out into the State, or put into the constitution, let it be as it may, will have a powerful influence in Kentucky. And I do not want an opinion, when formed and expressed here, to be so formed that the people of Kentucky or the people out of Kentucky may see that upon this great question of slavery there is a great difference of opinion in this house.

Upon the single question of slavery, there is very little, if any, difference in this house, but upon the abstract proposition, whether we have the right to prevent emancipation by future generations, I am inclined to think there will be great diversity of opinion. The emancipationists in Kentucky, and out of it, will claim every one of those who differ with the gentleman from Henderson, who is seldom wrong: they will class every one in this house who differs with him on this question, as being, to some extent, an emancipationist. I am not very certain that I can agree with the whole of the proposition myself.

Our constituents, throughout the state of Kentucky, have 'sworn the peace' against the emancipationists, and they have required us to take from them bonds that they will never hereafter disturb the peace and harmony of the state, by their tampering with this property or agitating this question. And we are here now to say what those bonds shall be. You may put the penalty as high as you choose, but do not put in, as a condition to the bond, a mere matter of opinion. Nine-tenths of the people are now with us, and they may turn round and say, "that is not the penalty we required you to take;" and it may prevent the people of Kentucky from sanctioning that bond.

I rose hastily and more for the purpose of begging that the resolution might be allowed to take such direction as was indicated by the mover, that we may see whether he will abide by all the propositions contained in it. I know that he is supported by the celebrated case from Georgia, in four fifths of the ground he intends to occupy; but as to whether he will be supported in the whole ground, there will probably be a great diversity of opinion. Wherefore then press the subject, for every man who does not agree with the legal proposition, will be compelled to vote against it. I do not say I shall be of the number, because I have not had time to examine the subject calmly and deliberately. I desire, however, with the gentleman from Henderson, to seal up the mouths of the abolitionists. I will go as far as he will to do this, but I do not want to vote for an abstract legal proposition, with all of which I cannot agree.

Mr. BULLITT. I wish to correct the gentleman's misapprehension of the report of the com-

mittee on slavery as regards free negroes. There is nothing compulsory in that report. It is a simple proposition to authorize the legislature to remove them at a future time, if they should see fit. I conceive it is important that they should have that power, because the time may arrive—and it is hoped and believed that we are going to make a constitution that will stand the test of time—when the subject will present a different aspect from that which it now presents. It may be for the good of both races, it may be consistent with humanity and good policy to transport them to Africa. I wish the convention not to be led into error by the remarks which the gentleman has made, but to recollect that they are not compelled by this report, but that simply power is given to do it, if it is considered best. And I, for one, have full confidence in the legislature of the state of Kentucky, that they will never exercise the power in a spirit of cruelty and oppression. I am as much opposed to this forcible emancipation, to driving them out to die on the sands of Africa, as the gentleman can be; and when the report comes up, I shall stand ready to defend it. I merely rose to take issue with the gentleman from Nelson upon what I conceive to be a great and radical mistake on his part, in saying that slaves became property under our organic law. Upon this point I take issue confidently. What was the first organic law which established this institution? The decree of the Almighty himself, as recorded in the sacred book. I will refer the gentleman to the passage where the Almighty declares that the Hebrew slaves should be emancipated at the end of every seven years, and that all prisoners of war should be held in perpetual bondage. Has the gentleman overlooked his bible, that he goes to organic law. Well, then, I ask, is there any organic law in the United States to establish slavery? I deny the assertion, and call for the proof. Slaves were brought into this country like all other property. But if the gentleman can lay his hand upon any organic law that establishes slavery, I should be glad to be informed where it is. They were brought here like all other property, like every thing that has been made the subject of property, and he will find, laws without number, recognizing that species of property, but none establishing it? It did not require the recognition of any organic law. It is precisely like all other property, and was so regarded in all countries to which it went. If it had not been property, when the first ship load came to Virginia, were there not lawyers there who would have taken out writs of *habeas corpus* and manumitted the slaves? Yes, sir; but that was never thought of. It is a new idea altogether, one that has sprung up in this modern age to make a distinction between slaves and other property. They were property like every thing else; and if there was any property on the face of the earth, more particularly recognized than any other, it was that property. Let the gentleman examine the bible, and show me where there is a greater sanction given to any property.

But it seems to have become the fashion of the day, without examination, to point this out as a moral, social, and political evil. I did not intend to trouble the house on this subject, but when I heard so extraordinary a position ad-

vanced by one of the ablest men of the state, a man of great legal ability, I thought it time at least to enter my protest. And as I am upon the subject, I take the position that it is neither a moral nor a social evil. I might be inclined to favor emancipation, however, if I could see a mode pointed out by which the African could be rendered more happy. I am firmly persuaded that the negro slave of Kentucky is in a more happy condition than he ever has been, or can be placed in, in any part of the world. We all know that he is far better off than he was when serving as a slave, in the country whence he came. He is in a much better condition than the free negro now in this country; in a far better condition than the emancipated negro in Jamaica and St. Domingo. Then, being satisfied it is doing no injustice to the slave, I say it is neither a moral nor a social evil, but a decided political blessing. How do you make it a moral evil? In the northern states, the time is rapidly approaching, when the white man and the white woman must work for their mere subsistence and clothing. There, the employer pays in money, or perhaps in trade. If he misbehaves he is turned off without a recommendation, and is left to shift for himself in the best manner he can. Now let us draw a comparison. Here, the slave receives his food and clothing, and is well taken care of. If he misbehaves, he is corrected in a humane manner, and is coerced to do his duty. Where then is the difference but in name? If one of those hirelings at the north gets sick, he is sent to the hospital, he is left to the cold charities of a public institution. Here, if the master have not sufficient humanity, the law compels him to give his slave medical aid. Where then I ask, is the difference? The slave occupies here precisely the same attitude as the hireling there. Being then, as I conceive, neither a moral nor a social evil, I say it is a political blessing. I am speaking of it now, as applicable to Kentucky. The free states do not, and will not raise hemp and tobacco. Kentucky and Missouri have the monopoly of this great article, hemp. This, as long as slavery remains, must be the case. The southern market will always keep our slaves down to a healthy point. The emancipation which has taken place in the West Indies is destroying the tropical products. They will necessarily be increased in this country. With the growth of our navy, and our mercantile marine, will increase the demand for hemp. Take away slaves, and you destroy the production of that valuable article, which is bound to make the rich lands of Kentucky and Missouri still more valuable. But examine the subject in another point of view. What is the great evil which is bearing down all Europe at this time? An excessive population.

Do we not know that slaves keep out an excessive population. They keep it out in this way. In a slave country, the low and worthless cannot find employment. Those foreigners or abolitionists from the north, who are so worthless and degraded that they would be willing to black my shoes, or to wait on me, cannot find employment here. They are compelled to go to the free states, while only those whom we desire to have among us find any inducement to come. The mechan-

ic, the man of intelligence and of character, whether native born or foreigner, finds it better for him to come here than to go to the free states. I would refer you to Louisville where there are foreigners of the better and more industrious class. There you may find foreigners who are among the best horticulturists in the country, and the land is raised in value in consequence of their labors, from fifty to a hundred dollars per acre. Our slavery system invites this description of emigrants, while it keeps out the worthless and the abandoned. If foreign nations are disposed to send their paupers to us, slavery necessarily keeps them out of our state. While, at the same time, if the south is true to itself, we shall never be burthened with a redundant slave population. Perhaps the greatest evil to be feared from an excessive population is, that in time it must destroy republican institutions themselves. When we become two hundred millions of people, when the northern states become crowded to starvation, is it not as certain as that the sun rises and sets, that when this vast body, this living mass, thrown off from Europe, arrives here they will not only destroy republican governments, but destroy itself. Hence must arise an armed despotism, in order to protect property. Look at France, whose people at this time, after having waded through seas of blood for the last fifty years, have at last established a republic, where every man, black, white, or yellow, of twenty one years of age, is entitled to vote. They elected a convention, and in less than thirty days after their meeting their lives were in danger and they had to call in the aid of from sixty to a hundred thousand troops!

That is one of the results of an excessive population, yet forsooth the institution of slavery—an institution which has the effect of preventing an excessive population, is pronounced to be a great moral and social evil. Every man who is opposed to slavery, promises great good to the country by destroying this institution—the only one that can secure, for a long period of years, the safety of our government. I believe the time will arrive, in how long, no human foresight can tell, when the northern republics will be destroyed by a redundant population, and despotisms will prevail. But that time, if it does arrive, will be more distant in this country. Kentucky, and some few other middle states, have peculiar advantages by opening the markets of the south, to keep out a redundant and useless population. And such population being kept out, she will remain to the end of time in a happy condition.

Mr. HARDIN. I regret extremely to say a word upon this subject, but I feel compelled to do so. The only proposition that I intended to assert was this, that it was in the power of the convention to do anything and everything that the people could do in the formation of their government, unless restricted by the constitution of the United States, by acts of the congress of the United States, or by treaties of the United States made in pursuance of the treaty making power. Except so far as restricted, we have every power that the people have in the organization of the government. We cannot make a monarchy, because the constitution of the United States guarantees a republican government, and requires that a republican form of

government shall prevail in every state. We are obliged, of course, to conform to this requisition in the constitution of the United States. There are a great many things that are entirely restricted to the states, in the constitution of the United States, and there are a great many powers that are concurrent, to be exercised by the congress of the United States, and by the legislative power of the several states. But whenever congress acts upon those powers, that are concurrent, then the states cannot act in contravention of that action of congress.

If I understand the proposition of the gentleman from Henderson, it is this, that the convention cannot adopt any rule or regulation, or organic principle of government, to set negroes free that are now in slavery, or those that may be born hereafter of mothers who are in slavery. That is, he disclaims the power of this convention, or of any other, that may be hereafter assembled for hundreds of years to come, if we should so long exist as a government, to pass any rule or regulation for the emancipation of slaves without making compensation to the owners of such slaves. What is the power of the legislature? The legislature can do any thing and every thing that a sovereign people can do, unless forbid by the constitution of the United States or by the constitution of Kentucky.

Why was it then, that the framers of the constitution of 1799 put in this provision: "That the general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners previous to such emancipation, a full equivalent in money for the slaves so emancipated." Do you not see, sir, that the very powers are prohibited to the legislature, which the gentleman now asserts this convention cannot exercise? Why did the convention of 1799 put such a provision in that constitution? Because without it the legislature would have had the power from the very nature of government.

While I am up I will make one or two remarks further, though a little out of the issue. Indeed nine-tenths of the debate upon any question is out of the issue. I agree with the gentleman from Henderson. I would not exercise the power, and I disagree with the gentleman from Campbell, I would not put the law of 1833 in by any means. I always opposed that law as senator in the state legislature. I opposed it upon several grounds. One was, that I thought it a violation of the constitution of the United States; because the constitution of the United States contains a provision for the regulation of commerce with foreign nations, and among the several states and with the Indian tribes. I have taken it for granted that if a horse was an article of commerce in Virginia and Kentucky, Virginia could not prevent the introduction of horses there; and if a hog was an article of commerce, Virginia could not prevent us from driving hogs across the Big Sandy river; and if negroes are articles of commerce, I know of no prohibition against their introduction where they are so regarded. That was the reason why I opposed the law of 1833, for several sessions, and it passed at last by a compromise.

The gentleman last up, from Jefferson, and the gentleman up the other day, from Boyle, in-

quire by what right we hold our slaves. The gentleman from Boyle then goes back to the bible, and referred to the punishment inflicted upon Cain for killing his brother Abel, as the origin of slavery.

Mr. TALBOTT. The gentleman is mistaken. I never alluded to Cain and Abel.

Mr. HARDIN. Well, I understood it to come from either him or the gentleman from Jefferson. I know the gentleman from Boyle broke down this side of the flood, and I do not hear very well. [Laughter.] However, the Bible or the Testament does not authorize slavery; it only recognizes it as in existence—that is so far as I know. I am not very well acquainted with the Bible, though I do read it occasionally, and particularly the books of Job and Isaiah, which I consider the most eloquent I ever read, except the 23d chapter of Matthew, where it takes hold of those it calls pharisees, hypocrites and scribes, and says: "Wo unto ye scribes and pharisees," &c.

The gentleman from Jefferson, (Mr. Bullitt,) last up, I think does not understand the manner in which slavery was originally brought into this country, or else I do not. Slavery exists in Africa now, as it did in Europe two thousand years ago. The conqueror claims and exercises the right of making subjects of the conquered, of making slaves of them, or of putting them to death. And the slaves that were bought, and are now bought on the coast of Africa, are not bought by the men who brought them here, so that freemen are made slaves—they are in fact bought from slave owners. And that trade in slavery keeps up a continual and perpetual war between the countries there, and even between towns in sight of each other. That was the argument Wilberforce urged in the British parliament, why the slave trade should be put down. And Africa was in a state of war, a little predatory kind of war, beginning south of the Orange river, in about 35 degrees, and running clear to the southern part of the great desert of Sahara, and clear across the African continent. They did attempt to put it down, and Great Britain now has vessels on the African coast to catch slaves, and America has, and France also has, but it does not answer the purpose. There is a large slave market through the desert, in Africa itself, in Morocco, Tripoli, and Tunis, and Egypt, as well as a slave trade through Madagascar and along there to the north. And there is no way to put it down, other than to make war upon it, to go to the Emperor of Morocco, the Beys of Tripoli and Tunis and to the Governor, whoever he may be of Egypt, and to Brazil, and tell them that the trade must stop. I wish to God that it was stopped. Was it asked by what right they held negroes in Virginia? They were bought as slaves, and from the owners of slaves on the coast of Africa, beginning at about the Bight of Berrin and going south to the Orange river. They were bought as slaves from those who owned them, and had a right to own them. The same right existed at that day as it exists in this. That is the ground upon which we hold them, and our constitution and laws recognize it on that ground. In the name of God, have I the right to hold you in slavery without some great natural principle, just as if it grew up by acci-

dent? It was not established or authorized by the laws of either Kentucky or Virginia, but by the slave merchant who bought them from the slave merchant in Africa and brought them here.

The gentleman from Jefferson who spoke some time ago does not seem to understand our powers. What powers have we? Have we not as much in this convention as if we heretofore had been a territory, and were now, for the first time, making a government. Why certainly—just as much. In our new territory in California, they are now attempting, by convention, to make a new government, and have we not as much power here as they possess; they made a constitution here in '92, and have we not as much power as our predecessors had then? We have. Have we not as much power as the people of Ohio, Indiana, Illinois, Missouri, or any other state? Just as much. But, says the gentleman, the exercise of the full plenitude of power here would be a state of revolution. I am not to be alarmed at that raw head and bloody bones cry of revolution. I have heard it often, and have never attached any importance to it. We come here to make our government just as we please—and how shall we do it. We can adopt the present constitution as it now stands; we can alter and change it as we please, or make a new one out and out. I do not care if we are in a state of revolution, still we retain that power, and I shall not be driven under the bed like a cross child by this raw head and bloody bones outcry. I, for one, would not exercise the power, and I have no idea of setting my negroes free at all. I pity their condition as much as any man in the country, and I shall do all that I can, as a master, to make their situation a happy one, and I hope that every other man will do the same. They fare better than I do, and every man's negroes should fare as well as is consistent with the policy of keeping them in slavery. But here they are, 200,000 of them in Kentucky. Turn them loose, and I would not live a month in the country. We cannot intermarry with, or give them any right, civil, political, or social, that we enjoy. We can give them every religious right we have, and that is all we can do. Turn loose the 200,000 negroes free among us, and what will become of them? Will you hunt them away to another state? No; they would not move ten miles from home; and in that they would act sensibly, for if they did they would be caught up and sold. They would have no encouragement to work, none at all, and would at most work out one day as a matter of appearance, and then steal during the other six.

I would not give up the slaveholding people of Kentucky for any people on earth. I recollect when a boy of reading Mr. Burke's and Lord North's arguments in the British Parliament, in reference to the course to be pursued towards the American colonies—and when Lord North in recapitulating the means and powers of the government, finally went into a comparison between the British soldier and the American, and said that one of the former could whip ten of the latter, ten a hundred, a hundred a thousand, and a thousand a hundred thousand, and denounced us as slaveholders. I never can forget the answer: "Where no slavery is tolerated, there the people look upon liberty as a political right, but

where slavery is tolerated, there they look upon it as a high personal privilege, and will die before they give it up." And I believe in that doctrine, and if the whole of Europe was to invade us, I have no doubt that the last gun for liberty would be fired in a slaveholding state. It is a generous, a manly population, and any law that goes to alarm or drive out the slave owners, brings in a people in their stead not very agreeable to my taste. We should have, as they do at the north, the outpouring of Europe, and all the vagabonds, rascallions, and miserable beings of the world let loose upon us. And are we to exchange the generous slaveholder for this class of people? I would not exchange one for a hundred of them. I believe we have now in Kentucky the best population to be found anywhere, from the rising to the setting of the sun, and from pole to pole. This is the language of a Kentuckian, and of a Native American. I do protest against any restriction upon our powers. We have the power, but I do not want to exercise it—God knows I do not. The gentleman's proposition does assert that we have no power, and I say that we have.

Mr. M. P. MARSHALL. I feel obliged to the gentleman from Henderson for introducing his resolution. There are two considerations which operate upon my mind, and make it an important matter that this resolution, in its real meaning and intent, should be discussed in this house. We have been in session two weeks, and we have indulged in a course of erratic debate, and upon any question that had any affinity whatever to the absorbing topic of slavery. We have had it brought upon us in all its various guises, until the house has become so dis-tempered, irritable, and sensitive, in regard to the subject, that it seems to me it is almost incapable of looking at any thing that can, by a forced construction, be made to affiliate with slavery. I apprehend this is a state of feeling exceedingly unfortunate for the wise results that are expected by the people at our hands. Most exceedingly unfortunate will it be to the great abstract principles, which in their consequences are important to us and to our generation forever, should it be decided by being viewed from a promontory which does not give the mind the ability to arrive at just conclusions. And among the subjects of the greatest importance for the discussion of this house and the information of the people at large, I class the resolution which the gentleman from Henderson has offered, and for which I tender him my most sincere thanks.

The PRESIDENT announced the arrival of the hour of twelve, when by the direction of the house, the orders of the day were to be considered.

Upon motion the order was dispensed with, that the gentleman might continue his remarks.

Mr. M. P. MARSHALL. I am sincerely obliged to the house for the compliment they have thought proper to pay me, and I shall not trespass long upon their patience, because my remarks will be confined to the legitimate subject under consideration. I will read the resolution offered by the gentleman from Henderson without the preamble.

"Resolved, That this convention has not the power or right, by any principle it may in-



'corporate into the constitution of the state, to deprive the citizen of his property without his consent.'

I have read the resolution thus far, and I ask is there a principle contained in it, that is not absolutely essential to society itself, and without which can society exist at all? The necessity for society has originated society. The necessity which mankind labored under to have such established institutions as would secure their property and liberty has originated society. It was not the wild and licentious idea of liberty that originated society—it was that the liberty which is in a manner enjoyed by mankind without society, should be so framed and regulated as to be consistent with order and with property. It was that order and freedom should be made to exist in some system of laws denominated a social compact. Necessity, the mother of wisdom, urged mankind into this association, and the standard principle of that association is declared to be property and order. Property is but an element of personal liberty. In a social compact there can be no such thing as liberty without property being sacred and inviolate. It then becomes a standard principle of a social compact, that the right of property shall be sacred; and in order to that end, it is necessary that we should give up some of our liberty when it comes in conflict with this society. That position, I am very well convinced, will not be impugned by either of my friends from Nelson, to whom I listened with great pleasure.

The principle then being conceded, it shows that there are such standard principles necessary for the maintenance of social order, and that each disregard of those principles dissipates social order and destroys the very object man had in view, when urged by necessity to adopt a social compact. Then one of these standard principles must be taken into consideration here, in view of the powers of this convention. Has this convention a sovereign right to overturn the social compact which binds mankind together? They have no right to anything that will infringe on the standard principle upon which this social compact is based; and whenever they do usurp that power, just then do they do what seems to have excited the risibility of my friend from Nelson—just then do they enter upon the confines of a revolutionary proceeding. And although to the gentleman this term revolution seems a bug-bear and a scare-crow—yet with all the respect I entertain for him and his abilities, a respect which I entertain second to no man in the house, I must differ with him in that position. What does this resolution declare but a standard principle of society, one without which society cannot exist, and which, if this body undertakes to trample under foot, they undertake to do that which never entered into the minds of the people who sent them here. What is it—*Resolved*, 'That this convention has not the power or right, by any principle it may incorporate into the constitution of the state, to deprive the citizen of his property without his consent.' A standard principle, without which society cannot exist—and the invasion of which will create a sensation throughout this land, I think highly honorable to the people whom we represent. Let

us see for a moment the consequences of a position antagonistic to this. Does the gentleman, or either of them, from Nelson, regard it as the right of this house to take away private property without the consent of, or compensation to, the owner? When you establish that principle, do you not perceive you have established and declared the right to divide our lands, and to do every thing not inconsistent with the constitution of the United States, in regard to the obligations of contract. If you have the right to emancipate a slave without consent and without pay, then you have the same right over every other species of property that it has been the pleasure of God to give us. I can perceive no difference. And if you reject this resolution and adopt the opinion of the gentleman from Nelson, do you not incorporate in the constitution the idea that the sovereignty of the people is to unite to take from the weak and give to the strong. You take from the rich and give to the poor, and you break down those standard principles upon which the temple of society is based. Vote against this resolution, and adopt that of the gentleman from Nelson, and that is the position the members of this convention will be bound to occupy. This is a position I am not prepared for. You have no power to do so, You have only power to perfect into detail the great object of a social compact, and to carry out the object of association.

This social compact is exhibited in different parts of the world under different phases. The manner of carrying out the object of society varies in a monarchy, a despotism, and in a democratic government. These are mere illustrations of power which are to be exercised in harmonious consistency with the great standard principle of a social compact. We happily have succeeded in achieving for ourselves the proud institutions of self government. What we have to do now is to carry out into detail the great design upon which the social compact is based, and we have not the least right to break down the barriers of the standard principle in the social compact. If we take the Autocrat of Russia as representing the extensive empire over which he presides, and he should strike at the rights of property, society would cease to exist, the end of all social order would be determined, and the result would be that the nation would not be so prosperous as it is. The manner of carrying out this idea of a social compact in the various countries of the world was always governed by the circumstances around those countries. The circumstances under which the august power of Great Britain is exercised, makes her adopt a certain mode of carrying out the social compact. And so with regard to all nations of the earth, including ourselves. We are here to adopt a mode and system, and while in that condition we are asked to reject a resolution embodying the basis of society. Am I understood?

Well sir, "this convention has not the power or right, by any principle it may incorporate into the constitution of the state, to deprive the citizen of his property without his consent, unless it be for the public good, and only then by making to him a just compensation therefor." The first position I assume to be adapted to the

second, and only makes it practicable or rather only illustrates it by a detail of its practical operation. Your object is not to take away private property except for the public good, and it is not reasonable that you should have a contrary imputation cast upon you. Then you may be answered on the subject of emancipation, that it is only suggested by the idea of public good. On this subject I wish to say but very little. I stand here fully convinced of the untenability of any such scheme as an emancipation of the slaves of Kentucky at this time. I stand here determined to give expression to any opinion which I may here entertain. I stand here elected by an intelligent constituency, who entertain the views in regard to the practical untenability of emancipation that I do, and who entertain the view in regard to the abstract question of slavery that I do, and who also entertain the views that I do in regard to justice. I believe that if it was an original question whether slavery should now be introduced among us—the subject being disembarassed of the jealousy which has naturally arisen from it by the course the agitation has taken, and various other reasons—then, on this floor I say, I would never introduce slavery into Kentucky. But viewing Kentucky as being already a slave state, as having within her borders that species of property, which citizens were induced to obtain at the expense of their money by the encouragement of the whole people of the state, the question presents a different aspect entirely to the consideration of my mind. The people of this state induced the slave holder to purchase and bring into the state, his slaves. It has been guaranteed under the constitution of 1792, and the convention of 1798, that slave property should be as sacred as any property which a man could hold in this state. They have been induced to purchase it by the non-slaveholders, for by a reference to slavery statistics it will be seen that though slavery has increased, still the non-slaveholding population has increased in the ratio of 110 to some 25 or 30 of the slaveholding. And nothing protects the resolution, according to the position assumed by my friend from Nelson, but the mere vote of these 110, and their attachment to it. Nothing prevents it but a wholesome public sentiment, and the traditional recollection in the hearts of the people, that if there is any wrong in the holding of the slaves, it is not on the side of the slaveholder, but rather the fault of the institutions of the country which perhaps encouraged him to obtain them. And justice, when submitted to the proper tribunal, is never silent. And hence the dread and jealousy the people entertained that this principle of justice might be disturbed, has secured the return of not a single emancipationist here. Nothing else but a sound public sentiment on the subject of slavery has made this house what it is. Yet if you do not adopt this resolution, you will jar that public sentiment, and you will make people think that there is something in view of this convention, to do the majority the wrong of disturbing this element of justice.

Apart from the proper title to the slave, we hold our title to our slaves under the constitution of 1792, and under none other. That constitution was made while we were in a state of so-

ciety, when we owned slaves, the result of the relations of law which existed at the time that constitution was made. I would ask any gentleman whether it comports with his idea of law and right, that the convention of 1792 in forming this constitution had a right to free all the slaves in Kentucky without compensation or without consent? It is a proposition perfectly inconsistent with any idea of justice, or with any state of society. Did the convention of 1792 have the right to proclaim all the slaves of Kentucky free? If they had not, why? Because it would be inconsistent with the principles on which society is based—those principles which are always harmonious with justice.

The resolution declares that the property of the citizen shall not be taken without his consent unless for the public good, "and only then by making to him a just compensation therefor." Now, if as time rolls on, slavery becomes so mischievous in the bosom of Kentucky that the people are perfectly convinced that it ought not to exist, and having found the means of abolishing it without allowing the slaves to remain among us—who can doubt their right in the exercise of the sovereignty of the country, to rid themselves of what they may then consider to be a great evil? Say that experience has changed the mind of gentlemen here, or that a resort to her bibles or to other sources, has convinced them of the evil tendency the institution has exerted, and that public sentiment has arrived at a full conviction that it ought to be got rid of, would they not have a right to do so? Is it not an element of sovereignty to be able to protect yourselves? It is one of the most necessary for self-preservation, and any attempt to interdict it by constitutional provision would be a dead letter, whenever circumstances arose requiring its exercise. And that time would arrive when public sentiment became generally and heartily satisfied that slavery was mischievous, and a political and moral evil to the body politic of Kentucky. Then what will they do? But two things present themselves to my mind. One is very doubtful indeed—the other is in no doubt. I have no doubt if such is the sentiment of the country, that slavery is an evil too great to be borne—admitting it to be true, even those who do not believe it—still if time convinces them of their error—they will agree to be taxed and give a just compensation. They will inquire into the humanity of the matter, and a system of emancipation will be adopted where the two elements, justice to the master, and humanity to the slave, will be reconciled and combined. That state of things cannot exist unless brought forth by the operation of moral and physical causes. The physical cause must be acted upon by the moral cause, and the moral cause must be governed by justice and the nature of things, and when that time comes, slavery ceases to exist in Kentucky. That state of things does not exist now. There are times in society, when subjects are agitated of great importance to the people—that then prejudices become so excited, that the question does not receive from them an impartial consideration—yet there was a still calm voice in the bosom of every man, which, when those prejudices and extraneous considerations ceased to operate, would be heard. And when-

ever that still small voice does decide in favor of the emancipation of the slaves, then the most perturbed mind will acquiesce in it, and slavery here ceases forever.

I have never entertained an opinion which would go to interfere with the rights, or of the claims of the slave to humane consideration. I am here to vote, and will vote against any proposition that will even indicate a tendency to emancipate the slaves. I am here and will vote for every proposition that will go to lessen the number of free negroes in the state. I am here, and will vote to tax slave property, and I am a slaveholder myself, that will have a tendency to make the slaves less mischievous and troublesome to the country than they are now, and to prevent them from fleeing away from us. All these positions I entertain in this body. I am here to go as far as any one to protect that property, and to make the institution of a character that it will be sustained by the public sentiment. I am here, declaring that it is the offspring of law, and that it exists and is based upon public sentiment, and the only way to perpetuate it, is by adapting it to that sentiment. The result of the laxity of discipline on the part of the master, is, that the slave population is becoming mischievous to a very great extent, and thereby an imposition on the non-slaveholding portion of the community. This should cease. The time will come when these people who own no slaves will feel sensitive under this burthen, and enquire why it is they are compelled to bear all their evils. I am willing to go all lengths to obviate this condition of things, so that even in such a matter public sentiment shall be fully satisfied. I have said all that is necessary and all that I expected.

The convention then went into committee of the whole, Mr. BARLOW in the chair, on the resolutions of Mr. TURNER in relation to slavery.

The CHAIR awarded the floor to Mr. CLARKE, who waived it to Mr. TALBOTT, that gentleman expressing a desire now to finish the remarks he was compelled by an attack of illness to forego on Saturday.

Mr. TALBOTT rose and spoke as follows: I arise this morning to conclude the remarks which, from indisposition, I was compelled to discontinue on Saturday. At that time I had just concluded the proof, as to how, and when, and by what authority, the institution of slavery was first established; showing clearly, as I think, from the context and the proof then adduced, that God did, by the prophetic denunciation of Noah, doom Ham and his posterity to the latest generations, to personal servitude or slavery to his brethren, Shem and Japheth, and to their posterity, as appears in the 9th chapter of Genesis, from 24th to 28th verses. The question then was, as to the institution, and the question now is, as to the privilege and practice of slavery. And my object, on the present occasion, will be to show, if I can, whether there is any law, either in the old or new testament scriptures, allowing or forbidding the privilege or practice of slavery to the Patriarch, the Jew, or the Christian; to show whether slavery is compatible or incompatible, consistent or inconsistent, contrary to, or in conformity with, the will or law of God, as revealed in either or both testaments; whether a man

has a right to purchase, own, and hold property in slaves, at any time, or under any circumstances, without committing a sin in the sight of God, and incurring his righteous displeasure. We will then, sir, see what was the practice of the wisest and best men in the patriarchal age. And I refer you, first then, to the 14th chapter of Genesis, 14th verse, which reads:

"And when Abram heard that his brother was taken captive, he armed his trained servants, born in his own house, three hundred and eighteen, and pursued them unto Dan."

From which you see that Abraham, the father of the faithful, and the friend of God, had three hundred and eighteen servants, raised in his own house, reared by his own hand, and subject to his own absolute control, in war as well as in peace—a privilege much greater than any in our country either exercise or enjoy. And, so far from being considered a curse in those days, one of the strongest arguments by Eleazer, when urging Rebekah to marry Isaac, the son of Abraham, was, that the Lord had greatly blessed his master with houses and lands, and silver and gold, and men servants, and maid servants; and all, said Eleazer, that my master hath, he has given to his son Isaac. Rebekah could not have been an abolitionist, or have believed slavery to be a sin, for she very readily agreed to take Isaac with all his slaves.

If you will turn now to the 20th chapter of Exodus, 17th verse, you will find slavery is put, by God himself, in the same category with all other property: "Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his man servant, nor his maid servant, nor his ox, nor his ass, nor any thing that is thy neighbors." Here, sir, you see the right clearly acknowledged by the law itself, that your neighbor has to his servant, and you are positively forbid to covet them, just as you are, to covet his ox, his ass, or any other property that is your neighbors.

Turn now, sir, to the 21st Exodus, 20th and 21st verses, and you will find slavery positively affirmed to be money: "If a man smite his servant or his maid with a rod, and he die under his hand, he shall be surely punished. Notwithstanding, if he continue a day or two, he shall not be punished, because he is his money." This, sir, does not seem as if the people, in those days believed slavery a great sin, or that a man has no right, under the laws, at least of that dispensation, to purchase and hold slaves.

Turn now, sir, and read the 17th chapter of Genesis, 12th, 13th, and 14th verses, and you will find slavery incorporated with the institution of circumcision:

"And he that is eight days old, shall be circumcised among you, every man child in your generations; he that is born in the house or bought with money from any stranger, which is not of thy seed."

"He that is born in thy house, and he that is bought with thy money, must needs be circumcised: and my covenant shall be in your flesh for an everlasting covenant."

Turn now, sir, to the 12th chapter of Exodus, 43d, 44th, and 45th verses, and you will see slavery incorporated with the institution of the passover:

"And the Lord said unto Moses and Aaron, this is the ordinance of the passover: there shall no stranger eat thereof:

"But every man's servant that is bought for money, when thou hast circumcised him, then shall he eat thereof.

"A foreigner and a hired servant shall not eat thereof."

Now, sir, here are two instances, where, under the express direction of God, slavery has been recognized and incorporated with two distinct institutions—and, in one, the bondman, to the express and positive exclusion of the hired servant.

We have now seen the practice of slavery, and let us see if we can find the *privilege*.

Turn then sir, to the 21st chapter of Exodus, from the 1st to the 7th verse, and you will find, the children of maid servants went with their mothers.

"2. If thou buy a Hebrew servant, six years he shall serve: and in the seventh he shall go out free for nothing.

"3. If he came in by himself, he shall go out by himself: if he were married, then his wife shall go out with him.

"4. If his master have given him a wife, and she have borne him sons or daughters, the wife and her children shall be her master's, and he shall go out by himself.

"5. And if the servant shall plainly say, I love my master, my wife, and my children; I will not go out free:

"6. Then his master shall bring him unto the judges: he shall also bring him to the door, or unto the door-post: and his master shall bore his ear through with an awl: and he shall serve him for ever."

Turn then, sir, to the 25th chapter of Leviticus and read from 39th to 47th verses.

"39. And if thy brother that dwelleth by thee be waxen poor, and be sold unto thee; thou shalt not compel him to serve as a bond-servant:

"40. But as a hired servant, and as a sojourner he shall be with thee, and shall serve thee unto the year of jubilee:

"41. And then shall he depart from thee, both he and his children with him, and shall return unto his own family, and unto the possession of his fathers shall he return.

"42. For they are my servants which I brought forth out of the land of Egypt; they shall not be sold as bond-men.

"43. Thou shalt not rule over him with rigour, but shalt fear thy God.

"44. Both thy bond-men, and thy bond-maids, which thou shalt have, shall be of the heathen that are round about you; of them shall ye buy bond-men and bond-maids.

"45. Moreover, of the children of the strangers that do sojourn among you, of them shall ye buy, and of their families that are with you, which they begat in your land: and they shall be your possession.

"46. And ye shall take them as an inheritance for your children after you, to inherit them for a possession; they shall be your bond-men for ever; but over your brethren the children of Israel, ye shall not rule one over another with rigour."

I presume now, sir, after reading these verses, that no one under the influence of right reason, will pretend to say that the Jews, under this law, had no right to purchase, and own, and hold slaves—the Hebrew, till the year of jubilee, and the heathen and stranger forever, or for life, and to entail them upon their families as an inheritance. All admit, that under this law, the Jews had a right to own slaves, bondmen and bond-maids. Some say the Jews had a right to hold them for life, and transmit them to their children, but that we have no such right, the law having been long since cancelled or repealed. If it has, I do not know when or where, or how, or by what authority; but if it ever has, it devolves upon the opposition to show it. Here is a perfect right until a better one can be shown. I believe it is a principle universally acknowledged, and one established in all our courts, that in every suit of ejectment, the complainant has to prove his title good before he can recover, whether the occupant has any right or not. And it does seem to me sir, unless the emancipationists can show some law equal in dignity and authority, some express statute of Jehovah, or some act of the creature by which this express privilege granted, has been, either by operation of law, abrogated, or by statute repealed, they should forever after hold their peace. But more of this sir, after a little. Others say, the privilege here granted to purchase slaves or bond-men, and hold them forever, means, and never meant anything more than that they might buy them and hold them, till the year of jubilee. That forever and jubilee mean one and the same thing, or that they are synonymous terms. This idea sir, I think will prove to be very absurd if you will look for a moment to the 29th verse of this same chapter. Let us read:

"29. And if a man sell a dwelling house in a walled city, then he may redeem it within a whole year after it is sold; within a full year may he redeem it.

"30. And if it be not redeemed within the space of a full year, then the house that is in the walled city shall be established forever to him that bought it, throughout his generation: it shall not go out in the jubilee."

And what do we find here sir. Not that jubilee and forever are synonymous, or mean one and the same thing, but the contrary. It expressly declares that if a house in a walled city be sold, it may be redeemed within a whole year, but if not redeemed within a year, it shall positively be the property of the purchaser forever—it shall not go out in the jubilee, so that I think the question, that jubilee and forever, in this connection, are not synonymous, and do not mean one and the same thing, should now be considered as settled. But, to prove still more clearly, and if possible, that the bondmen here named, purchased of the heathen and the stranger, did not go out in the jubilee, but were to continue the property of the masters forever, I beg leave to read from Matthew Henry's note on these verses, which reads as follow:

"That they might purchase bondmen from the heathen nations round-about them or of those strangers who sojourned amongst them, (except of those seven nations who were to be

'destroyed)—and might claim a dominion over them, and entail them to their families as an inheritance. *For the year of jubilee should give no discharge to them.*"

Again, you discover one thing very plainly here from this 39th verse of Leviticus, that no Israelite or Jew was to be made bondman or slave for life, and why? Because it was of *Shem*, through the Jews, concerning the flesh, Christ or the Saviour was to come, as he did, and as was shown in the remarks concluded on Saturday. And hence the importance that no Jew should be sold as a bond servant forever, or for life, as in this way the nation would have lost its identity, as they would have been sent, in this condition all over the world, as the Africans, the descendants of Ham have been; and mixing as slaves with the descendants of Ham, in every age of the world, they would have so amalgamated as to destroy the identity of both nations, which would have defeated the intention of the God of heaven, to-wit: to keep the line of three distinct races of beings—to show in all time to come the exact fulfillment of the prophetic denunciation of Noah, in 9th Genesis, not only of the curse of Ham, but the blessing of Shem and enlargement of Japheth, which never could have been done if God had made common slaves, or slaves in common of the children of more than one of them; and hence the prophecy concerning each was different, and has been executed, and can and will continue to be, just as it has been under this arrangement in all time to come, or the setting up of a new dispensation. This is God's purpose, and this is his plan, as appears from the evidence adduced, for reasons unrevealed and unknown to us. Read again the 46th verse. Now you see here is a positive law, granting the privilege in so many words, to buy and hold slaves for life, or forever. But notice sir, it tells who you are to make slaves for life. Now, sir, there is a very important question just here, one which I think may shed some light on this subject, and it is this, sir. Do you believe the provision in the 39th verse of this chapter, that no Israelite or Jew was to be made a bondman for life, that they were to serve six years, and go out in the seventh? I ask, sir, do you believe this? If you do, sir, you are bound to believe the provision contained in the other, to-wit: that they might buy bondmen of the heathen and strangers, who were to be slaves forever, and be transmitted from generation to generation, or until at least the setting up of a new dispensation, for the law that establishes the one grants the other. Sir, this view is clear to my mind, and the conclusion inevitable, to-wit: that the prophecy of Noah was of God, and its fulfillment of God—and that the curse of Ham was slavery to the latest generations.

Now this certainly settles the question, and I will so consider it, unless some more authoritative law is found to inhibit it; for here is the privilege to purchase, to hold, and transmit to your families after you.

But 'tis said that the New Testament is against it. Let us see if this be true.

Paul, in his letter to 1 Corinthians, 7th chapter, 20th, 21st, 22d, 23d and 24th verses, says:

"20. Let every man abide in the same calling wherein he was called.

"21. Art thou called *being* a servant? care not for it; but if thou mayest be made free, use it rather.

"22. For he that is called in the Lord, *being* a servant, is the Lord's freeman: likewise also he that is called, *being* free, is Christ's servant.

"23. Ye are bought with a price; be not ye the servants of men.

"24. Brethren, let every man, wherein he is called, therein abide with God."

Again: Paul, in his epistle to the Ephesians, 6th chapter, 5th, 6th, 7th, 8th, and 9th verses, says:

"5. Servants, be obedient to them that are your masters according to the flesh, with fear and trembling, in singleness of your heart, as unto Christ;

"6. Not with eye-service, as men-pleasers; but as the servants of Christ, doing the will of God from the heart;

"7. With good will doing service, as to the Lord, and not to men;

"8. Knowing that whatsoever good thing any man doeth, the same shall he receive of the Lord, whether he be bond or free.

"9. And, ye masters, do the same things unto them, forbearing threatening: knowing that your Master also is in heaven; neither is there respect of persons with him."

Again: Paul, in his epistle to the Colossians, 3rd chapter, 22nd, 23rd, 24th, and 25th verses, says:

"22. Servants, obey in all things *your* masters according to the flesh; not with eye-service, as men-pleasers; but in singleness of heart, fearing God.

"23. And whatsoever ye do, do it heartily, as to the Lord, and not unto men;

"24. Knowing that of the Lord ye shall receive the reward of the inheritance: for ye serve the Lord Christ.

"25. But he that doeth wrong, shall receive for the wrong which he hath done: and there is no respect of persons."

Again: Paul, in his first epistle to Timothy, 6th chapter, 1st and 2nd verses, says:

"1. Let as many servants as are under the yoke count their own masters worthy of all honour, that the name of God and his doctrine be not blasphemed.

"2. And they that have believing masters, let them not despise them, because they are brethren; but rather do them service, because they are faithful and beloved, partakers of the benefit. These things teach and exhort."

Again: Paul, in his epistle to Titus, 2nd chapter, 9th and 10th verses, says:

"9. Exhort servants to be obedient unto their own masters, and to please them well in all things; not answering again;

"10. Not purloining, but shewing all good fidelity; that they may adorn the doctrine of God our Saviour in all things."

Again: Paul, in his first epistle to Peter, 2nd chapter, 18th, 19th, and 20th verses, says:

"18. Servants, be subject to *your* masters with all fear; not only to the good and gentle, but also to the froward.

"19. For this is thank-worthy, if a man for

'conscience toward God endure grief, suffering wrongfully.

"20. For what glory is it, if, when ye be buffeted for your faults, ye shall take it patiently? but if, when ye do well, and suffer for it, ye take it patiently, this is acceptable with God."

Why did Paul send Onesimus home to his master, stating that he hoped he who had hitherto been an unprofitable servant, would now be profitable? Why did he not say to Philemon that slavery was wrong, that it was a sin, that it was a thing which God abhorred, a corroding cancer on the body politic, and would certainly destroy it if it was not healed? Why, I ask, if slavery be the evil complained of in the article read from the Examiner, did Paul not tell Philemon that he had best set Onesimus free, and turn abolitionist. Why, I ask again, sir, if slavery be, in "all its parts" evil, and in all its tendencies, consequences, and effects ruinous, and in itself contrary alike to the laws of nature, reason, and revelation, is it that our Saviour did not condemn and abolish it. His mission was love, his object to condemn sin, and redeem men from its bondage. He did it in every other, why not in this? Was it because the sin of slavery was too small a matter? Oh no. Why, if what the emancipationists say be true, it is the greatest sin in the world. What sir, take your equal, and *vi et armis*, drive him off into the lanes, and ditches, and gutters, and dens, and hog wallows, and chains, and drag, and drive, and whip, and cut, and beat, and rob him of his liberty and his property; why 'tis the worst sin in the world. Why then sir, did not the blessed Redeemer condemn it; and do it in a manner not to be mistaken? Was it because his sympathy was not as great as that of the abolitionists, or his love of truth and justice weaker? Sir, his mission was love, love to each, and love to all. If he loved all alike, why then would he leave any in bondage who were entitled to their freedom, when his great, governing principle was, "render unto Cæsar the things that are Cæsar's; and unto God the things that are God's." Sir, if slavery be the thing assumed, the course pursued by our Savior is wholly irreconcilable, to my mind, with his mission, his life, his death, his resurrection, his religion, or his attributes. He came to do the will of his father, and if slavery be a thing that God abhors, it seems to me, sir, he would certainly have abolished it, especially as it would have been an end so easily accomplished by one who said "let there be light, and there was light." But it is said by some, but I think falsely said, that he could not have established his kingdom if he had interfered with the domestic institutions of that day; and that from motives of policy, or fear, he did not do it though his head, his heart, his father, his religion, and all was against it. Sir, did you ever hear such an infamous and blasphemous sentiment! The king of glory, actuated by a principle of fear, or governed by motives of policy! He who spake as never man spake! He who in the beginning was with God, and was God! He by whom, and for whom, all things were made, and without whom was not any thing made that was made, governed in a great question like this by a principle of policy, to

the neglect and total abandonment of all justice, mercy, and truth! It is too bad. Sir, to impute such a motive to such a being, on such a subject, is infamous; it is blasphemous in the extreme. I know men, sir—I speak nothing invidiously—who have said—and I have heard of their expressing the sentiment—teach them to believe that God and religion tolerated and established slavery, and they would renounce it, and forever after go against it, and the principles it inculcates. Sir, this shows that the object such an one would have in ascertaining the will of God, would not be to execute and carry it out, but to see how far he can make it subserve his own peculiar views. But, sir, convince me that God the Father, God the Son, and God the Spirit, all in one, would for thousands and thousands of years, in every age, and under every dispensation of religion, and amongst all nations, permit an institution so outrageous as the one of slavery is represented to be by our opponents. I confess it would shake my faith. Sir, I do not, I cannot believe it.

Now, sir, I have gone through, in my crude way, with this whole subject, and I have shown, I think, that God did ordain and establish slavery by the prophetic denunciations of Noah and his son Ham, and his posterity, in the very dawn of time. I have shown that he permitted Abraham, Isaac, and Jacob, all to have hosts of slaves, while in full fellowship with Him and with one another. I have shown that God authorized the Jews, through Moses, to purchase with money, and hold slaves forever. I have shown, also, that he incorporated it with the institutions of the passover and circumcision, thus identifying it with, and incorporating it in, both Patriarchal and Jewish dispensations; showing, clearly and conclusively, that slavery is not, as is contended by the opposition, contrary to, but compatible with, the law of God, and consequently cannot be a sin in his sight. Sin being an institution or act contrary to, and in violation of, God's holy law, and God having ordained and established slavery, it cannot be immoral, either in its institution or tendency. A bad tree cannot bring forth good fruit, nor can a good tree bring forth bad fruit. I have farther shown that it is not the use, but the abuse of slavery that brings wretchedness and ruin; that where slavery abounded and was properly regulated, prosperity did much more abound and continue,—thus clearly showing and establishing what was to be proven—that slavery is neither a sin in the sight of God, a great moral evil, or detrimental to the best interests of a state; that it has existed in every age of the world since the flood, and has been incorporated with every dispensation of religion—Patriarchal, Jewish, and Christian.

And then, on motion of Mr. CLARKE, the committee rose and reported progress. Leave was granted for it to sit again, and

The convention adjourned.



TUESDAY, OCTOBER 16, 1849.

Prayer by the Rev. Mr. LANCASTER.

REPORTS FROM COMMITTEES.

Mr. WICKLIFE, from the committee on the court of appeals, made a report as an amendment of the report heretofore made from that committee, which, on his motion, was referred to the committee of the whole and ordered to be printed, as follows:

Sec. 5. Line 2, after "state," add "by counties." Sec. 5. Line 2, after "districts," add "as nearly equal in voting population, and with as convenient limits as may be."

Sec. 13. Add the following: "provided, that when a vacancy may occur from any cause, or the clerk shall be under charges upon information, the judges of the court of appeals shall have power to appoint a clerk, *pro tem*, to perform the duties of clerk until such vacancy shall be filled, or the clerk acquitted."

Add the following: Sec. 15 "All elections of judges of the court of appeals, and the clerks thereof, shall be by ballot."

Mr. BRISTOW, from the committee on the county courts, made a report which was referred to the committee of the whole, and ordered to be printed, as follows:

ARTICLE —.

Sec. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, a county court, to consist of a presiding judge and two associate judges.

Sec. 2. The judges of the county court shall be elected by the qualified voters in each county, for the term of four years, and until their successors shall be duly qualified, and shall receive such compensation for their services as may be fixed by law, to be paid out of the county revenue.

Sec. 3. At the first election after the adoption of this constitution, the three judges shall be elected at the same time, but the associate judges, first elected, shall hold their offices for only two years, so that, thereafter, the election of the presiding judge, and that of the associate judges, will not occur at the same time.

Sec. 4. No person shall be eligible to the office of presiding or associate judge of the county court, unless he be a citizen of the United States, over twenty one years of age, and a resident of the county in which he shall be chosen one year next preceding the election.

Sec. 5. The jurisdiction of the county court shall be regulated by law, and, until changed, shall be the same now vested in the county courts of this commonwealth.

Sec. 6. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Two justices of the peace and one constable shall be elected in each district by the qualified voters therein. The jurisdiction of said officers shall be co-extensive with the county.— Justices of the peace shall be elected for the term of four years, and constables for the term of two years; they shall be citizens of the United States, twenty-one years of age, and shall have resided six months in the district in which

they may be elected, next preceding the election.

Sec. 7. Judges of the county court, and justices of the peace shall be conservators of the peace. They shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The legislature shall provide, by law, for the mode and manner of conducting and making due returns of all elections of judges of the county court, justices of the peace, and constables, and for determining contested elections; and also provide the mode of filling vacancies in these offices.

Sec. 8. Judges of the county courts, justices of the peace, and constables, shall be subject to indictment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant.

Mr. GHOLSON, from a select committee, as its chairman, made the following report, which was referred to the committee of the whole and ordered to be printed:

ARTICLE —.

Sec. 1. Within five years after the adoption of this constitution, the legislature shall appoint not less than three nor more than five persons learned in the law, who shall revise, digest, and arrange the statute laws, civil and criminal, so as to have but one law on any one subject, to be in plain English, in such manner as the legislature may direct; and a like provision shall be had as often as shall be found necessary.

Sec. 2. Each law passed by the legislature shall embrace but one subject matter, which shall be expressed in the title.

Sec. 3. Every amendment of a statute shall include that part of the old statute intended to be retained, as well as the amendment or addition thereto.

Sec. 4. The legislature, at its first session after the adoption of the new constitution, shall provide for the appointment of at least three persons learned in the law, whose duty it shall be to prepare a code of practice for the courts in this commonwealth, by revising, abridging, and simplifying the laws in relation thereto, and report the same to the legislature for their adoption and modification from time to time.

Sec. 5. The mode of taking evidence in this commonwealth shall, in all civil suits, be uniform and the same, and each party shall have the right to make a witness of the opposing party.

Mr. GHOLSON, from a minority of the same committee, asked and obtained leave to make a report differing in some of its details from the report of the majority, with which he said he was unable to agree. On his motion it was referred to the committee of the whole and ordered to be printed, as follows:

ARTICLE —.

Sec. 1. At its first session after the adoption of this constitution, the legislature shall appoint not less than three nor more than five persons learned in the law, whose duty it shall be to revise and arrange the statute laws of this com-

monwealth, both civil and criminal, so as to have but one law on any one subject.

Sec. 2. And, also, three other persons learned in the law, whose duty it shall be to prepare a code of practice for the courts in this commonwealth, by revising, abridging, and simplifying the rules of practice, and laws relating thereto—all of whom shall, at as early a day as practicable, report their labors to the legislature for their approval, amendment, and adoption. A like revision of the statutes and rules of practice shall be provided by the legislature every years.

Sec. 3. When the legislature shall amend a statute, the whole of such statute, as amended, shall be published.

Sec. 4. No law passed by the legislature shall embrace more than one distinct object, or subject matter, which shall be expressed in the title.

Sec. 5. No petition or declaration shall ever be made necessary to the issuance of process, on accounts or notes for the payment of money or property.

Sec. 6. No civil suit shall be dismissed for lack of technical form or specifications; but every citizen shall have justice freely without sale, promptly, without denial or delay, and a trial upon the merits of his case. To this end, the legislature, at its first session after the adoption of this constitution, shall provide one general form of action in which all civil suits shall be brought.

Sec. 7. In all civil suits the witnesses shall be examined orally, and in open court, except in such cases as, from necessity, the legislature shall otherwise order and direct; and either party shall always have the right to make a witness of the opposing party.

Sec. 8. Seven years peaceable possession under a title, either legal or equitable, shall quiet the titles of the occupants of lands in this commonwealth, as to the adverse claim or claims of all and every person or persons—infants, idiots, and persons of unsound mind excepted.

#### LEAVE OF ABSENCE.

On the motion of Mr. JAMES, leave of absence was granted to Mr. Talbott until to-morrow morning.

The PRESIDENT announced that he had received a note from the delegate from Franklin county (Mr. Lindsey) stating that he was detained from his seat, without leave, by the illness of his father.

#### SLAVERY.

The resolutions offered yesterday by Mr. Dixon, affirming the inviolability of slave property, came up as the unfinished business.

Mr. TURNER resumed the discussion, and spoke as follows:

Mr. President: When the gentleman's resolution was read yesterday morning there was such confusion here that I did not at once draw the distinction between the propriety of doing what he desires, and the power of doing it, and I therefore said that I hoped the vote would be taken immediately, for I am sure that not a member wishes to interfere with the right of property. After it was read a second time,

the elder gentleman from Nelson, (Mr. Hardin,) got the floor, and I had not the opportunity of making the remarks I desired. I concur in what was said by that gentleman with one exception, and I do not at present intend to discuss the merits of the resolution of the gentleman from Henderson, except in part, as I understand it is to be amended. I am extremely anxious that we shall all come to an agreement on this subject, and to such a one as will not go out to alarm the people of the commonwealth. It is true there can be no dissent from the proposition that we ought not to interfere with the vested rights of the citizens of Kentucky. Yet, however alarming it may appear at first blush, I have not the most remote doubt that we have the power to interfere with those vested rights, so far as respects the slave property of the commonwealth. I hope the day will never come—it certainly has not now come—when there will be a disposition to exercise this power, either by us or by those who may come after us.

There have been two propositions assumed in this debate, in relation to the influence of the Federal Constitution on this subject of slavery, upon which I wish to express an opinion, and to read some authorities. There has been an opinion expressed here, that the constitution of 1792 and 1798, was a contract between the citizens of, and the government of the state, that they should hold slave property, and that therefore it was guaranteed by that provision of the constitution of the United States, which secures the inviolability of contracts. I do not think that is a correct doctrine. I do not believe that the tenure of our slave property is held in any way under prohibitions or grants of power in the United States constitution, except so far as the provisions of the constitution in regard to runaway slaves, and one other similar matter, may be connected with it. I do not consider a constitution, any more than a law, to be a contract. Is every law we pass a contract between the government and the citizen? And the constitution is nothing more than law. It is supreme, and other law yields to it as inferior law, but still it is a mere law, and rule of action prescribed by the sovereign power. It is a sovereign law in its sphere of action, and where it is not restrained by constitutional power superior to it; but whether it be constitution or law, there are no rights of contract arising from it. If that was the case, then the repeal of the law would leave all the rights under it just as if the law was not repealed. And if we concede that slave property in this country is regulated by, or held in any manner under the federal government, what does that concession amount to? It is the very concession that the wildest advocate of abolitionism desires us to make for them. Instead of the institution being entirely under the protection of our own laws and regulations, it would be entirely under the control of the federal government. It may be said that there are guaranties with regard to it under the federal constitution, but are we not increasing the free states to such an extent that soon two thirds of the Union will be free states, who could at any moment attack those guaranties by way of amending the constitution, and take our property away from us. That would be the goal to

which we are driving, and I protest against the assumption of the existence of any such power in the federal government.

It has been said also, that the slave property is further protected because the constitution of the United States declares that private property shall not be taken without compensation—a similar provision to the one existing in our state constitution. It is not addressed to the state power or authority at all, but it is addressed entirely to the exercise of the power in the federal constitution by congress sitting under it. It has nothing to do with the state institutions or the exercise of state power at all. I will read the decision on this point in the case of *Barrow vs. the Mayor of Baltimore*—7th Peters, page 243.

"The provision declaring that private property shall not be taken for public use without just compensation, is intended solely as a limitation on the exercise of the power by the government of the United States, and is not applicable to the legislation of States. Limitations of power, if expressed in general terms, are necessarily applicable to the government created by the instrument, and not to distinct governments formed by different persons and for different purposes."

As to the remarks of the gentleman from Nelson, (Mr. Hardin,) I concur in all he said in relation to the origin of our title to slave property, and indeed in every thing he said to which he gave the sanction of his opinion. But does he wish to have the idea inferred from his argument, that the delegation of the commercial power in the federal constitution—the power to regulate commerce between the several states, Indian tribes, &c.—places a restriction upon our power over our slave property? I did not understand him as giving his opinion that such was the fact, but only as referring to it as an argument, which he used in 1833, when we were both much younger than now, to keep the non-importation slave law from being passed. The gentleman is too good a lawyer, and too enlightened and candid a man, to say to this house, that he believes that the clause of the constitution of the United States applies to this subject, and reaches the matter of commerce in slaves. He would never throw the weight of his character and judgment into that scale. The federal constitution, when speaking of the regulation of commerce between the states, refers to the ordinary subjects of commerce. It does not apply to "persons," as negroes are designated in that instrument, and they are not within the scope of the federal power. Why, if Congress can pass an act permitting us to bring slaves into Kentucky, can they not also pass a law prohibiting us from doing so? Suppose this was a new state—that there were not an hundred slaves in its whole population, and that we desired to have slavery, can the congress of the United States, legally under its constitution, say that we shall not bring them here, notwithstanding every body desired that we should? I deny that congress has any power over the subject, derived either from the commercial clause in the constitution, or from any other source. The negroes of the southern country are going into Texas in great numbers, and is there any one

who will say, that notwithstanding she is recognized as a state of the Union, the federal government has a right to prohibit those slaves from being brought into that state? Is it not an institution clearly under her own control, over which the federal government has no power? If not, if we admit that congress has that power, under the commercial clause, it is putting the slave institution in the states, entirely under the control of the federal government.

If this power extends to one state, under this commercial clause, it must extend to all. That Congress should have the power to say what shall or shall not be brought into Kentucky, but shall not have the same power with regard to Indiana or Ohio, is a proposition that will not bear even a moment's scrutiny. Wherever they have any power under the constitution it is unlimited in its exercise within the sphere of the limits of the United States, and can be applied to every state, territory, and nook and corner in this nation. The power is not subordinate to that of the state; the state power always, when it comes in conflict with that of the federal government, is subordinate and succumbs to it. In the great case of *Graves vs. Slaughter*, which went up to the United States supreme court from Louisiana, this part of the constitution was touched upon and argued in a manner so able as to draw forth the highest encomiums of the court. Judge McLean on this subject said:

"Can the transfer and sale of slaves, from one state to another, be regulated by Congress, under the commercial power?"

"If a state may admit or prohibit slaves at its discretion, this power must be in the state, and not in Congress. The constitution seems to recognize the power to be in the states. The importation of certain persons, meaning slaves, which was not to be prohibited before eighteen hundred and eight, was limited to such states, then existing, as shall think proper to admit them. Some of the states at that time prohibited the admission of slaves, and their right to do so was as strongly implied by this provision as the right of other states that admitted them."

"The constitution treats slaves as persons.

\* \* \* "The character of property is given them by local law. This law is respected, and all rights under it are protected by the federal authorities; but the constitution acts upon slaves as persons, and not as property. \* \*

"The power over slavery belongs to the states respectively. It is local in its character, and in its effects; and the transfer or sale of slaves cannot be separated from this power. It is, indeed, an essential part of it.

"Each state has the right to protect itself against the avarice and intrusion of the slave dealer; to guard its citizens against the inconveniences and dangers of a slave population.—The right to exercise this power, by a state, is higher and deeper than the constitution. The evil involves the prosperity, and may endanger the existence of a state. Its power to guard against, or to remedy the evil, rests upon the law of self-preservation; a law vital to every community, and especially to a sovereign state."

I will now read a short extract from Chief Justice TANEY:

"I had not intended to express an opinion upon the question raised in the argument in relation to the power of congress to regulate the traffic in slaves between the different states, because the court have come to the conclusion, in which I concur, that the point is not involved in the case before us. But, as my brother McLean has stated his opinion upon it, I am not willing, by remaining silent, to leave any doubt as to mine.

"In my judgment, the power over this subject is exclusively with the several states; and each of them has a right to decide for itself, whether it will or will not allow persons of this description to be brought within their limits, from another state, either for sale or for any other purpose; and, also, to prescribe the manner and mode in which they may be introduced, and to determine their condition and treatment within their respective territories; and the action of the several states upon this subject, cannot be controlled by congress, either by virtue of its power to regulate commerce, or by virtue of any other power conferred by the constitution of the United States. I do not, however, mean to argue this question; and I state my opinion upon it, on account of the interest which a large portion of the union naturally feel in this matter, and from an apprehension that my silence, when another member of the court has delivered his opinion, might be misconstrued."

One of these judges, Mr. McLean, was from a free state, although I believe he is a native of Kentucky, and I have always understood that he grew up to manhood in Lincoln county, where my father knew him as a boy. He was, therefore, reared in a slave state. The other, chief justice Taney, is a citizen of Maryland, where slavery exists. Thus we have the weight of authority of two judges, each residing in different sections of the union, the non-slaveholding and the slaveholding state both concurring. There was no dissent expressed in the court, I believe, except by judge Baldwin, who seems to think the power is vested under the commercial clause.

Mr. DIXON amended his resolution by striking out the words "power or" before the word "right." So that it will read as follows:

*Resolved*, That this convention has not the right, by any principle it may incorporate into the constitution of the state, to deprive the citizen of his property without his consent, unless it be for the public good, and only then by making to him a just compensation therefor.

He then spoke as follows:

Mr. President: I have listened, and I will reply very briefly, to the remarks of the gentleman from Madison and the positions which he has assumed. The proposition which was thrown out by me in the remarks which I had the honor to address to this convention in committee of the whole on another question, is, that there is such a thing as a contract being entered into between the state in its sovereign capacity, and the people in their individual capacities. That was the proposition I then assumed, and which I am prepared now to maintain, not only by arguments which I think ought to be conclusive, but by authorities as high as those the gentleman

read to this convention, and the decisions of the same courts. Now let me understand the proposition contained in the decision, which the gentleman has read to this convention, and upon which he seems so triumphantly to rely as establishing this great fact, that the state has the sole power of controlling its slave population, and that it in no respect belongs to congress and the government of the United States. No body doubts that proposition. The State of Kentucky has the exclusive right to control the slave property of the state—and the gentleman might have gone a little further, and said that the state has the sole and exclusive right of controlling the landed property of Kentucky. It is perfectly clear that congress has no power over the landed property of the commonwealth, nor has it any more power and control over the slaves of the state, or over any right which the state has to control that population. No body ever contended that they had—nor was it ever so contended in the proposition which formed the basis of the decisions to which the gentleman has referred.

But here is the true and the great question: Although congress has no power to control slavery, yet the constitution of the United States lays the state under an inhibition, so far as respects the violation of contracts which it may make with individuals. In regard to abolishing slavery, or of preventing the people of Kentucky from abolishing slavery, congress has no power, but the constitution of the United States lays the state under an inhibition in respect to the right to violate the obligations of contracts. I agree with the gentleman from Madison, that the clause of the United States constitution in regard to the taking of private property, refers alone to the exercise of that power under that instrument, and not to any action of the state.—But this is not the question here. The question which I desire to present, comes up under the resolution I have offered. Can the state enter into a contract with regard to the right of property? The gentleman, if I understand him, says it cannot. Do I understand him to say so or not?

Mr. TURNER. No sir; my position is, that neither the constitution nor the law is a contract, unless it is in the nature of a charter of a bank, or something of that kind.

Mr. DIXON. Well then, the gentleman's proposition is, that there is no such thing as a contract in law, or resulting from a contract, unless it is a bank charter or something of that kind. I take issue directly with the gentleman, and maintain it as a proposition clear and conclusive, that there is a power in the legislative department of the government—nay, in this convention itself—to make a contract with the citizens in regard to every right of property.—Suppose the legislature grants land to the people of the state—there are various modes by which grants are made—either by the direct act of the legislature, or by the governor authorized so to do in the name of the commonwealth. There was such a grant as that mentioned by the legislature of Virginia, to Richard Henderson & Co., granting 200,000 acres of land, not by any patent, but directly, commencing, I believe, at the mouth of Green river. It was a direct grant through a legislative act. I mean to tell

the gentleman, and maintain it too, that grant was an obligation or contract, between the state of Virginia, who granted it, and the grantees under the act. I mean to tell him it was a contract which the legislature of Virginia had not the power to rescind or impair. What is that contract? It is the contract on the part of the state, that it will not re-take from the grantee that which it has granted to him. That is the contract. I bring up the question here, whether it is in the power of this convention to impair that contract, and to declare its obligations void?—That is the question I present to the gentleman. This state can also make a contract with its citizens, that it will not take the property which it has recognized as theirs, without making them compensation therefor. And I maintain that the state did make a contract, a most solemn one, that it would not take the property from the citizen, under the constitution of the years 1792 and 1798. It guaranteed this property, and that guarantee is a contract. What is it? The state invited the citizens of Virginia to settle in Kentucky, then a territory, and the people then living here she invited to remain here, as their future home; and held out to them all the beautiful prospect which spread around them, as a reason why they should emigrate here, and why those living here should remain. And it held out another inducement. It was that their property should be protected. Yes, this was another great inducement held out, that their property should be protected and not violated, and the state entered with the citizens, into this contract, this agreement:

“No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representative, and without just compensation being previously made to him.”

Now what is the contract? “Nor shall any man's property be taken, for the public use, without his consent, and without compensation being made to him.” In this the state agrees with the citizen, that it will not take his property without his consent, or without compensation to him. What does the citizen agree with the state? Why, that if the public good requires it, you may take my property by making compensation for it. Here is the agreement, clear and specific. It is a solemn contract between the state and the citizen; the state guaranteeing and binding itself, that she will not take his property without paying him for it, and the citizen binding himself, that if the public good requires it, the state may take it from him on payment therefor. And will you tell me that this is not a contract? What is it, if it is not a contract, an agreement, a promise; a solemn pledge to the people, which can never be violated without sinking the character of the state into that of dishonor and degradation? Judge Underwood, a man of talents and an honor to Kentucky, although an emancipationist, has said, that this obligation cannot be violated without dishonor or fraud.

Could the people, or will they ever in Kentucky, violate it, unless mobocracy shall be supreme, unless reason itself shall be dislodged, unless the spirit of the institutions of the coun-

try fail in their character, unless that wild spirit of fanaticism which, under the reign of terror, drove the French people to desperation, and induced them to parade through the streets of Paris that singular goddess of reason and worship her in preference to the holy religion, that great spirit which lies at the foundation of law, and which gives strength and value to all that we hold dear on earth, and the results of the disregard of which were exhibited in the bloody rule of a Robespierre, a Danton, a Murat—never, unless influenced by these impulses, could the people of Kentucky arrive at such a conclusion. And it was to guard against this, against the outbreaks of fanaticism, and the terror of a wild mobocracy, who might, in a moment of desperation, seek to impair the obligation of contracts, that these great principles were thrown around the constitution to protect them. This was the object of inserting this provision in the constitution, and I will demonstrate it by the opinion of those who will have weight with all within the sound of my voice. I refer to the great case of Fletcher against Peck, which went up from the state of Georgia to the United States supreme court, and I intend to show by the arguments and decisions on that occasion, that the section of the constitution of Kentucky alluded to, is a solemn contract between the state and the citizen, which is not to be disregarded or violated. I believe the gentleman from Madison holds that the state can make no contract as a law, unless with regard to a corporation, or something of that sort.

Mr. TURNER. What I said was, that ordinary laws were not contracts. They were such when release of lands and powers were made by the state to individuals, but the commonwealth never owned the negroes, or the personal property of the country.

Mr. DIXON. I make no point of it then. I never dispute with a gentleman if he agrees with me. If the gentleman does I am glad of it as it takes from me the duty of meeting his remarks. I hope the convention will attend to me in the reading of this decision, as it is very important and bears directly on the whole question. It is due to themselves and to the whole country, that this question should be understood. I will read:

“The legislature of Georgia was a party to this transaction; and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be considered as a mere act of power, which must find its vindication in a train of reasoning not often heard in courts of justice.

“If the legislature be its own judge in its own case—[that is the very power which I deny here] it would seem equitable that its decision should be regulated by those rules which would have regulated the decision of a judicial tribunal. The question was, in its nature, a question of title, and the tribunal which decided it was either acting in the character of a court of justice, and performing a duty usually assigned to a court, or it was exerting a mere act of power in which it was controlled only by its own will.

“If the legislature felt itself absolved from those rules of property which are common to all the citizens of the United States, and from those

'principles of equity which are acknowledged in all our courts, its act is to be supported by its power alone; and the same power may divest any other individual of his lands, if it shall be the will of the legislature so to exert it.

"It is not intended to speak with disrespect of the legislature of Georgia, or of its acts. Far from it. The question is a general question, and is treated as one. For though such powerful objections to a legislative grant, as are alleged against this, may not again exist, yet the principle, on which alone this rescinding act is to be supposed, may be applied to every case to which it shall be the will of any legislature to apply it. The principle is this, that a legislature may, by its own act, divest the vested estate of any man whatever, for reasons which shall, by itself, be deemed sufficient."

Now you have the whole case spread before you. The legislature may, by its own act, divest any right in this commonwealth of which they may think proper to divest the citizen. I deny that, and maintain here that it cannot be done under that clause in the constitution of the United States declaring that the states shall pass no law impairing the obligation of contracts.

"In this case the legislature may have had ample proof that the original grant was obtained by practices which can never be too much reprobated, and which would have justified its abrogation so far as respected those to whom crime was imputable. But the grant, when issued, conveyed an estate in fee simple to the grantee, clothed with all the solemnities which law can bestow. This estate was transferable; and those who purchased parts of it were not stained by that guilt which infected the original transaction. Their case is not distinguishable from the ordinary case of purchasers of a legal estate without knowledge of any secret fraud which might have led to the emanation of the original grant. According to the well known course of equity, their rights could not be affected by such fraud. Their situation was the same, their title was the same, with that of every other member of the community who holds land by regular conveyances from the original patentee."

But according to the power asserted here by gentlemen in this convention, they occupy no such attitude. The innocent purchaser under the grant of the state of Virginia, before the convention of Kentucky in its sovereign capacity organized a constitution, occupied the very identical ground, so far as taking from him his vested rights is concerned, as the individual who purchased of him, who was guilty of the fraud imputed to the grantees under the patents issued by the state of Georgia. There is no difference between them. And that is the argument that gentlemen proclaim in asserting the right of the sovereignty of Kentucky to seize upon private rights and use and apply them in whatever manner they think proper, and which they ask the convention to assert and proclaim throughout the country. The great point is this—has the state of Kentucky, in its sovereign capacity, the power to take from me those vested rights which it has been instrumental in bestowing upon me, or of violating any other agreement

which it may enter into with me in the form of a constitutional or statute law? That is a power which I utterly repudiate and deny. Here the discussion comes right to the point.

"Is the power of the legislature competent to the annihilation of such title, and to the resumption of the property thus held?"

The state granted to the citizens all the great landed estates, and has no power to divest them of it, and to resume them. Has it the power to do it? The gentleman maintains that it has the power—that this convention stands as the representative of the sovereignty of the people of the state, and that its powers are unlimited in regard to any extent it may think proper to exercise it:

"The principle asserted is, that one legislature is competent to repeal any act which a former legislature was competent to pass; and that one legislature cannot abridge the powers of a succeeding legislature."

What has been done under the constitution of Kentucky, the great organic law of the state? Negroes were brought into the state under it, and it was an act done under the sanction of law. Negroes have been purchased under it, and that was an act done under the law. If I purchase one from you, the title to the negro is to be broken up—the obligation between you and me, you being the grantor to me, is to be violated, by this all-sweeping power of the convention of Kentucky. Because you must violate the obligation of the man who makes the sale, if you declare that the title derived from you is not binding. The obligation can be severed, or our action amounts to nothing at all. For the state of Georgia, in conveying the lands to her citizens, acted on the implied obligation that she would not take back that property. It was so regarded by the Judges of the Supreme Court of the United States, and to which the inhibition in the section which declares that no state shall pass laws impairing the obligations of contract, was intended to apply. If that implied obligation came within that inhibition, is it not clear that it applies as well to your interference with obligations between the citizens, as to obligations between the citizen and the state? The gentleman strikes at that, and in any attempt to break down the titles to slave property, he must destroy the contract between individuals; because, in the act of manumission, you destroy the title to the property you set free, as derived from the laws of the state, and being derived also from another individual, it becomes a great question as to the power of the state of Kentucky to impair the obligations between another individual and me. But I will not argue that point now, but confine myself to the question between the state and its citizens:

"The correctness of this principle, so far as respects general legislation, can never be controverted. But, if an act be done under a law, a succeeding legislature cannot undo it. *The past cannot be recalled by the most absolute power.* Conveyances have been made; those conveyances have vested legal estates; and if those estates may be seized by the sovereign authority, still, that they originally vested is a fact, and cannot cease to be a fact."

Now you will understand that the proposition



before the supreme court was to take away from the person who purchased the property, the title which the state had granted, and to take away subsequently the same property to which individuals had acquired a title under the recipients of the state grants. Two propositions arise—first, the power to abrogate the contract between the state and the citizen, and next the power to abrogate the contract between the citizens themselves—the one purchasing lands through a contract with the other. And you will find that the decision of the court is, that the sovereign power of the State of Georgia cannot deprive either one nor the other of his property. I will read it:

“When, then, a law is in the nature of a contract; when absolute rights have vested under that contract; a repeal of that law cannot divest those rights; and the act of annulling them, if legitimate, is rendered so by a power applicable to the case of every individual in the community.”

Does the gentleman mean to maintain that absolute rights are not vested under the contract in the constitution of Kentucky, solemnly entered into with the citizens of the state? I will not say that you may not repeal the constitution of the state, but I do maintain that when you have done that, you have not destroyed my rights of property, and upon this proposition I will make a few remarks presently.

“It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property [the word property is used here] of an individual, fairly and honestly acquired, may be seized without compensation.

“To the legislature all legislative power is granted; but the question, whether the act of transferring the property of an individual to the public, be in the nature of the legislative power, is well worthy of serious reflection.

“The validity of this rescinding act, then, might well be doubted, were Georgia a single sovereign power. But Georgia cannot be viewed as a single, unconnected, sovereign power, on whose legislature no other restrictions are imposed than may be found in its own constitution; she is a part of a large empire; she is a member of the American union; and that union has a constitution, the supremacy of which all acknowledge, and which imposes limits to the legislatures of the several states, which none claim a right to pass. The constitution of the United States declares that no state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

“Does the case now under consideration come within this prohibitory section of the constitution?”

“In considering this very interesting question, we immediately ask ourselves, what is a contract? Is a grant a contract? A contract is a compact between two or more parties, and it is either executory or executed. An executory contract is one in which a party binds himself to do, or not to do, a particular thing; such was the law under which the conveyance was made by the governor. A contract executed is one in which the object of the contract is performed;

and this, says Blackstone, differs in nothing from a grant. The contract between Georgia and the purchasers was executed by the grant. A contract executed, as well as one which is executory, contains obligations binding on the parties. A grant, in its own nature, amounts to an extinguishment of the right of the grantor, and implies a contract not to reassert that right. A party is, therefore, always estopped by his own grant.”

Since then, in fact, a grant is a contract executed, the obligation of which still continues; and since the constitution uses the general term contracts, without distinguishing between those which are executory and those which are executed, it must be construed to comprehend the latter as well as the former. A law annulling conveyances between the individuals, and declaring that the grantors should stand seized of their former estates, notwithstanding those grants, would be as repugnant to the constitution as a law discharging the vendors of property from the obligation of executing their contracts by conveyances. It would be strange if a contract to convey was secured by the constitution, while an absolute conveyance remained unprotected.

If, under a fair construction of the constitution, grants are comprehended under the term contracts, is a grant from the state excluded from the operation of the provision? Does not this settle the fact conclusively, that if the state of Kentucky, in her sovereign capacity attempts to annul a contract entered into between the president of this convention and myself for a sale of lands, she is debarred from so doing by the constitution of the United States? If she cannot destroy the title to lands, she cannot destroy the title if the president had granted to me slaves or any other description of property, which, under the laws he might be entitled to do. And the act of manumission that some are attempting to impose upon the state, what is it but striking at the contract entered into between two citizens, the one selling to the other. It would be striking at every title in Kentucky. I will read further on this point:

“Is the clause to be considered as inhibiting the state from impairing the obligation of contracts between two individuals, but as excluding from that inhibition contracts made with itself? The words themselves contain no such distinction. They are general, and are applicable to contracts of every description.”

“If contracts made with the state are to be exempted from their operation, the exception must arise from the character of the contracting party, not from the words which are employed.

“Whatever respect might have been felt for state sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property, from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be

'deemed a bill of rights for the people of each state.

'No state shall pass any bill of attainder, or *ex post facto* law, or law impairing the obligation of contracts.

'A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both.

'In this form the power of the legislature over the lives and fortunes of individuals is expressly restrained. What motive, then, for implying, in words which import a general prohibition to impair the obligation of contracts, an exception in favor of the right to impair the obligation of those contracts into which the state may enter.

'The state legislature can pass no *ex post facto* law. An *ex post facto* law, is one which renders an act punishable in a manner in which it was not punishable when it was committed. Such a law may inflict penalties on the person, or may inflict pecuniary penalties which swell the public treasury. The legislature is then prohibited from passing a law by which a man's estate, or any part of it, shall be seized for a crime which was not declared, by some previous law, to render him liable to that punishment. Why, then, should violence be done to the natural meaning of words, for the purpose of leaving to the legislature the power of seizing, for public use, the estate of an individual in the form of a law annulling the title by which he holds that estate? The court can perceive no sufficient grounds for making this distinction. This rescinding act would have the effect of an *ex post facto* law. It forfeits the estate of Fletcher for a crime not committed by himself, but by those from whom he purchased. This cannot be effected in the form of an *ex post facto* law, or bill of attainder; why, then, is it allowable in the form of a law annulling the original grant?

'The argument in favor of presuming an intention to except a case, not excepted by the words of the constitution, is susceptible of some illustration from a principle originally engrafted in that instrument, though no longer a part of it. The constitution, as passed, gave the courts of the United States jurisdiction in suits brought against individual states. A state then, which violated its own contract, was suable in the courts of the United States for that violation. Would it have been a defence in such a suit to say that the state had passed a law absolving itself from the contract? It is scarcely to be conceived that such a defence could be set up. And yet, if a state is neither restrained by general principles of our political institutions, nor by the words of the constitution, from impairing the obligations of its own contracts, such a defence would be a valid one. This feature is no longer found in the constitution; but it aids in the construction of those clauses with which it was originally associated.

'It is then the unanimous opinion of the court, that, in this case, the estate having passed into the hands of a purchaser for a valuable consideration, without notice, the state of Georgia was restrained, either by general principles which are common to our free institutions, or by the

particular provisions of the constitution of the United States, from passing a law whereby the estate of the plaintiff in the premises so purchased could be constitutionally and legally impaired and rendered null and void. In overruling the demurrer to the third plea, therefore, there is no error."

Now I have presented the case here, precisely as it was presented in the supreme court of the United States, by that illustrious man whose decision upon every question has shed a lustre upon the judicial learning of this country that will live in the most distant ages. Then the question is a settled one, that there is a contract between the state and the people of Kentucky; and when I turn to the clause of the constitution which I have read, it is clearly to the effect that the property of our citizens shall not be taken for public use without paying them a compensation therefor. I have shown that if the state grants land to the citizen it cannot take it back; and that if it grants slaves it cannot take them back, for there is no difference between the title to a slave and to land. And I maintain here that under this section of the constitution, the state of Kentucky declares that it shall not be taken for public use without compensation—that it is a contract between the citizen and the state—and that each is bound by it.

But my friend from Nelson maintains another proposition, and I intend to call attention to it now. Yes it is a strange proposition, and that is, that all the right we have to our slave population is derived from the constitution and laws of the state. If the gentleman would but look back to the history of the acquisition of titles to slave property, he would find there a refutation of his whole position. How did we originally acquire any title to slave property in this country? If he will look back as far as 1620, he will find that the very first slaves were brought to Virginia, in that year in a Dutch vessel. If he will look back not quite so far, he will find that charters were granted by Queen Elizabeth to certain companies empowering them to go to Africa and possess themselves of slaves, and bring them to the then colonies of North America. He will find that they were permitted to go, and that many went without permission at all. Well, when they went there, what did they do? They acquired the property. They captured or purchased the negroes. They exercised their manual strength and labor in acquiring the possession of that property—they became owners by occupation or by purchase, a way of acquiring property that gentlemen will readily understand. I say they became owners by occupation, as those gentlemen who have gone to California to dig gold. There being no law to protect it, they become entitled to the gold from the very fact that they exercise manual labor to separate it from that earth in which it has been long imbedded. Law does not provide the right to the gold and it does not provide the right to capture and appropriate the slave. They had the gold without any law, and they have now called a convention of gold diggers and miners, and for what purpose? To give them title to the gold? Not at all, they have that right now—but it is to give protection to those rights which they have acquired by occupancy. That is the ob-

ject and design. To give them rights? Not at all—but the protection of the rights which now exist. Let us take this matter a little further. I believe that when Kentucky separated from Virginia—or to go further—that before any constitution was formed in the United States, the people of Virginia had then slaves, and that people had a right to them. And when the act of separation was passed on the part of Virginia allowing Kentucky to become a separate state—when she separated herself and threw herself back on first principles and declared her sovereignty in the act of establishing organic law, her citizens then had this right of property in slaves. Those rights of property therefore, were not derived from the laws of Virginia, or from the constitution of 1792 and 1795—they existed prior to, and independent of those laws. They existed because they were rights clearly acquired from those who first acquired the slaves and which had come down to their descendants by descent, or which had been transferred by purchase. Thus were these rights existing prior to the adoption of any organic law. But at this particular period of time, when all things are thrown back to their original elements, and all permitted to express their opinions and views on all and every question, a strange proposition is springing up in the midst of our excited countrymen. What is it? One says to another, you have no right to all that land of yours—another, you have no right to your negroes—and another, you have no right to your strong box. It is a strange proposition springing up right here in this community. What will be the result of it?

Mr. C. A. WICKLIFFE. Does the gentleman mean to say that I advocated such a doctrine on this floor? If so he is mistaken.

Mr. DIXON. I mean that such is the effect of the gentleman's proposition. I say that it is the true consequence of the doctrine advanced, that all power belongs to this convention, and that no right exists independent of the organic law it may make, or the statute laws which may be passed under it. I say then, let us go back to the state of society I have mentioned to the gentleman. Let the proposition he made and proclaimed to the people of Kentucky, that prior to the adoption of their constitution the right to property does not exist, and what would be the condition of every member of society? The very assumption of the principle would be looked upon as a violation of every principle of right, which lies at the foundation of every free government.

Well our title to our slaves is not derived from Virginia or from the constitution or statute laws of Kentucky, but it is derived in the manner which I have represented. We come then to the formation of our present constitution. What shall we do here? We intend to unite in framing a constitution that will protect, not destroy, to build up and not to pull down—to throw the ægis of our protection around the rights of the citizen, and not to put in the hands of the incendiary a torch to consume or a sword to destroy and murder. This convention has no such power. And if such a power can exist, if it is to be proclaimed here that fifty one men in this convention have the right to seize on the property,

should they see proper to do it, then away with the rights of the people. If this is not radicalism, the rank old agrarianism starting up here, as from the floors of the old Roman senate, shaking its gory locks at us, it is very like it. I will say to it, "thou canst not say I did it," but I will say also, it is you and you who proclaim such doctrines who did it. And where is this thing to stop? Who can tell what a people may do hereafter, and what a majority may favor hereafter—where is it to stop? I said the other day, when it is once admitted that a mere majority has the right and the power to seize upon the property of the people and to appropriate it to such use as they think proper, there is no longer any safety in society. You have but to proclaim to all the vagabond population of the world, that they have only to become citizens of Kentucky, and a majority, in order to seize upon the property of our citizens and appropriate it as they think proper—you have but to call upon the wild spirits that inhabit the free states and the great cities, the skulking vagabond population who only seek an opportunity for plunder and murder—you have but to call upon those people of other countries who have been expatriated from their own lands, by the laws, and who are driven from necessity to violence and outrage on those who are better off—you have but to call upon these classes to come to Kentucky, and to assert the rights of a citizen and obtain the privilege of voting, and what would be the result? They would pour in upon us as did the Goth and Vandal barbarians upon the Roman territory—they would come as did the Huns under the lead of Attila, sweeping before them, as with a whirlwind of desolation, all the great institutions of the country, and monopolizing all its property. They would rally around some great leader, like that "scourge of nations," and destroyer of civil institutions, who looked back on the desolation he had left, and forward on the beauty that was spread before him, and like that conqueror exclaim, "I look ahead and all is beautiful, and all is cheering to my eyes and hopes. I look behind me, and my track is marked in ashes and in blood. Desolation spreads itself in my rear, and the beauties of civilization wither and fade at my approach."

And your beautiful land of Kentucky—this fair garden of the United States—this spot where the poet delights to dwell, and the statesman and hero delights to linger—this great Kentucky of ours, so glorious in the memory of the past, and so bright in the vista of the future—it is to become like the plains of Italy, it is to be scourged by those who come like the Goths and Vandals and Huns under Attila, scattering ruin and waste through our land.

I never will subscribe to such a doctrine, or agree that fifty-one men shall be armed with the sovereign power of seizing upon my life, liberty, or property, and appropriating it to their own use, in violation of the great principle which lies at the foundation of all free governments. I never will subscribe to that, and what does it amount to? We have embarked all our fortunes in the great vessel of state, and on this great and cheerless deep of political experiment we are now moving onward, having been permitted, each man, to take into this ark of political

safety his property; some one description, and some another; and before the vessel is launched, before she spreads her sails to the favoring winds, and before she has entered on the great voyage, they have pledged themselves solemnly to each other that they will not encroach upon each others rights or property. Well they advance on the great deep, floating on prosperously, when a portion of the crew rise up and declare, you sir have property here that you shall no longer carry, or to another, you have property that we are opposed to taking along—and then they appeal to the majority, and proclaim the right of this majority to compel him either to quit the vessel in which he has embarked with his property, the fruits of his labor or to see that property thrown into the deep. Here is the principle carried out of taking my property without compensation, of taking my slaves without my consent, and in violation of the original pledge in the constitution. I never will yield to that principle, I never will submit to it—never. It was a solemn agreement which we entered into when we entered the great vessel of state, that neither one nor the other should interfere with the rights of the other, and if it became necessary for the public good—to carry out the simile a little further—that a portion of the property should be thrown overboard, that compensation should be made therefor. But that the majority shall rise up and say, away with this, we do not recognize it as property and we will throw it overboard, or you must leave the vessel with it, is a proposition which I utterly repudiate and denounce and against which I enter my solemn protest.

Then what does the resolution I have offered assert? Why this principle—that the citizen has a right to be secure in his person any property—a right which is not only guaranteed by all free governments, but lies at the very foundation of free government, and is illustrated by the principle I read here from that celebrated man, Blackstone, in his commentaries. There the principle is illustrated. It is that the aggregate of society have the right to control its individual members; but the individual members have the right to the protection of all their private rights, and this before any convention is entered into or organic law is framed. It is a solemn agreement that you will not take from me my rights, and in doing that, I submit to you the power of regulating it. I wish to put it to the gentleman—I wish to know whether the resolution I have offered asserts more than the fundamental principle in all the constitutions and laws of the country, that you shall not take private property except for the public good, and only then by granting compensation? I wish to ask whether it is not the principle which ought to be maintained here and everywhere.

Now we are making a great organic law for Kentucky, and asserting great fundamental principles, and why not assert that it is not the right of a mere mob, although in a majority, to seize upon the property of individuals? Why not assert that principle? Admit that we have the power, and the power may exist in this convention, but that does not carry with it an admission of the right of its exercise. I used the word power yesterday, but I meant the word

right. The power may exist, and I admit that the physical power does exist. I, in contravention of the laws of Kentucky, might commit an act which would stain my hands with the blood of a fellow man. I may have the physical power, but not the right to do it. I may rob, murder, and commit every other crime known to the law, but I have not the right to do all these things, and I deny the right to do the act referred to in the resolutions. We may usurp power, but assumption is not right. We may take it upon us to do as we please—we may proclaim to the world powers, which our constituents never delegated to us, and never intended to do. Still those acts and declarations would not carry with them the right to do those acts, which we would proclaim ourselves as having the capacity to perform. No such right can exist. Our rightful powers then, in my humble opinion, are limited to the protection of the people and their rights, and not to destroying their property—not to pulling down, but to building up that great temple of liberty, to which all fly, and to erect that altar around which all may cluster, and offer up the libations due to freedom and human rights.

Mr. C. A. WICKLIFFE. I do not rise to enter into the discussion of the question at present, nor do I think that I shall discuss it at any other time. If I should undertake to do so, I shall desire thoroughly to understand the point that is to be discussed. Certainly the gentleman from Henderson (Mr. Dixon) has not been answering speeches that were made in this house, at least in my hearing; and if no other record of the debate went out save the speech of that honorable gentleman, our honest and confiding constituents would be led into the belief that there was an agrarian spirit prevailing here, and that it had obtained an influence that was threatening to result in robbing them of their property. The remarks of the gentleman would authorize the assumption that such a spirit exists in this house. Does the gentleman intend to ascribe such a feeling to the delegates in this body?

Mr. DIXON. Will the gentleman state the proposition I made.

Mr. C. A. WICKLIFFE. I do not say that the gentleman charged any individual member although from his manner I was led to suppose for a moment, that he was charging me—(but that, I believe is disclaimed by the gentleman) with entertaining the sentiment that this convention has the power to divest the citizen of the title to his property—to go into the strongholds of the miser, and say to him, surrender your gold—to go to the land holder and say give up your land. I utterly disclaim such sentiments.

Mr. DIXON. I do not impute it to the gentleman if he disclaims it. But if the gentleman asserts it, I take issue with him.

Mr. C. A. WICKLIFFE. I trust the gentleman will never have the mortification of listening to the assertion of such an abominable principle from the humble individual now on the floor. I uttered the sentiment yesterday in answer to the remarks which accompanied the introduction of this resolution, that we held slave property in this commonwealth under the guarantees of the constitution. I do not deem it ne-

cessary to go back to the introduction of African slaves into this country, but I expressed the sentiment that it was the constitution of Kentucky, and the constitution of Kentucky alone that gave the guarantee to the holders of this description of property. I believe that to be the principle of your constitution upon the subject. Abrogate that, and I will ask my worthy friend from Jefferson whether his plea of the Mosaic dispensation, in a court of justice, would authorize him to hold his negroes in bondage. That was the position that I advanced, and I advance this further proposition, that the power was given to the conventions that assembled for the purpose of forming the constitutions of 1792 and 1798, to withhold, if they chose to do so, the constitutional guarantee, under which this property was held. This is what I advanced; not that this convention desired or contemplated to infuse into the constitution a principle or spirit or power in any department of the government, destructive of private property; although the gentleman's speech would seem to indicate that such was the purpose of this house. I disclaim it for myself, sir, entirely.

But the object that I had in rising was merely to ascertain from the gentleman whether he maintains the principle that the constitution of the state, where there is no specific grant to A or B of property or privilege, exclusive in its character of the rights of the great mass of the people, is a contract within the meaning of the federal constitution.

Mr. DIXON. I will answer the gentleman.

Mr. C. A. WICKLIFFE (continuing.) A single moment, sir. No one has contended here, in my hearing, that if the legislature chooses, by ordinance, to grant an estate in land to B, or individual and separate and corporate rights to C, or to transfer property by legislative enactment, that such legislative action did not constitute a contract within the meaning of the federal constitution, which inhibits the passing of laws impairing the obligation of contracts. And, hence, the rule applicable to the case which is familiar to every student who has ever crossed the threshold of a lawyer's office, is wholly inapplicable, with due deference to the gentleman, to the question now under consideration. But the question which I propounded to the gentleman is this: Is the constitution—is the organic law of the state—which protects the members of the community in the enjoyment of their political, social, and religious privileges and rights of property, a contract between the members of the convention who made it and the people—the individuals who may have exercised rights and acquired property during its existence? If such be the interpretation of a state constitution, we had better at once draw the little pay to which we are entitled and go home, for every innovation we make in our constitution will be a violation of the contract. Sir, if I am not greatly deceived in my memory—and I regret very much that other matters have almost taught me to forget what law I learned in early life—the question has undergone repeated investigations of the supreme court. The supreme court cannot take cognizance between citizens of the same state under the 25th section of the judicial

act, of any conflict between a state law and the constitution of the same state.

It is no contract. It might as well be said that the provision of the constitution which declares that no man shall be put in jeopardy twice for the same offence, is a contract. If we declare in the new constitution that a man may be tried three times for the same offence, we have a right to do so, and in doing so we violate no contract.

I have grown up under this constitution, says a citizen, I have reared a family under the guarantee, among others, that a man shall not be tried twice for the same offence, and you have now taken away that guarantee for my safety. What remedy have I? Suppose I sue the convention in the supreme court of the United States, will you maintain the position, and let it go abroad, that the constitution of a sovereign state is a contract between a state and individuals, where there was no property vested and no personal rights conveyed to the individual?

Mr. DIXON. I am not certain whether I understood the gentleman or not. I think however, I understood him yesterday to affirm, that it was in the power of this convention to declare what shall be property in Kentucky, and what shall not. And I think I understood the gentleman in addition to this, to make no exception whatever in favor of any kind of property. I understood the gentleman to say, and to maintain here, that it was a power belonging to this convention to say, what should be property, and what should not be property. Did I not so understand the gentleman? The gentleman asked me a question—it was this—whether I mean to affirm here, that the constitution of Kentucky is a contract between the citizens of Kentucky and the sovereign power in regard to the exercise of their civil rights. Sir, I mean to say, and I mean to maintain it, that it is a contract, a solemn contract, one sir, which the government cannot violate—one which ought never to be violated—which no mortal man here can violate without arousing the indignation of the whole world. It is a contract which guarantees to me the right to liberty, the pursuit of happiness, and the privilege of worshipping Almighty God in whatever form I choose. It is a great contract between the people of Kentucky collectively, in their sovereign capacity, and the individual members of society. It is a solemn contract which ought never to be disregarded. I do not mean to maintain here or elsewhere, that the same rules will be applicable as are applicable to the rights of property; but I do mean to say that it is undoubtedly a contract between the governing and the governed—between the makers of the law, and those upon whom they operate.

The gentleman says I have no right to make any such assertion. I ask the gentleman if he—

The PRESIDENT. The hour for calling the order of the day has arrived; and I would remark that this mode of interrogating gentlemen directly in the manner and spirit in which it is done, will lead to unpleasant consequences and should be avoided. It is surely not necessary to the free discussion of any question that may arise.

Mr. DIXON. I stand corrected. I did not commence the system of interrogation, but I confess that I was speaking with some little animation.

The PRESIDENT. The gentleman will permit me to say that the whole tenor of his address was of such a character as to induce the belief that he was making charges against individuals. I forbore to call him to order for some time, for I knew his manner of speaking; but gentlemen must perceive that it will lead to unpleasant consequences unless they correct themselves.

Mr. DIXON. I stand corrected sir.

Mr. TURNER. I hope the gentleman will have leave to finish his speech.

Mr. DIXON. I know that my manner is very earnest; but what I said was intended only in a good natured way. I certainly did not mean to reflect upon any gentleman, but I understood the gentleman from Nelson (Mr. C. A. Wickliffe) to have asked me this question—if I meant to assert that there was power in this convention to take away the property of the people of the state. I understood him to indicate that I had asserted such a proposition. The gentleman may have been reported wrong in the speech which he delivered upon this resolution yesterday to which I beg leave to call attention. The gentleman is reported to have said,

"Yielding my full assent to the position that 'slaves are property, and entitled to the same protection which is guaranteed to other property under the organic law, the enquiry necessarily arises, how came slaves to be considered 'property'? Was it by constitutional provision 'and organic law, speaking it into existence by the authority of the people, exercised in their convention, and carried out by legislation? 'The property in slaves is guaranteed by constitutional law, no matter how originally acquired; and the same power (the people,) which gave the constitutional guaranty, if they elect to do so, may withdraw that guaranty in any 're-construction of the government which they may choose to make. I do not say it would be 'just to do so; but they have the power to do so; 'and the constitution of the United States does 'not inhibit the people of a state from the exercise of such a power. Is it contended that the 'same people have not the power now, or they 'shall not hereafter exercise it in the same manner; they have the same sovereignty, the same 'power to declare what shall and what shall not 'be property within this commonwealth."

If I understood the gentleman correctly, of which I am not entirely certain, I understood him to say that this convention possessed the power of the people. If I am wrong in this, I hope the gentleman will correct me, for I do not wish to misrepresent him. The gentleman then yields his assent.

Mr. C. A. WICKLIFFE rose to address the chair.

The PRESIDENT. I still must insist that this mode of appealing to gentlemen is totally out of order, and it leads directly and at once to difficulties between members of this convention, which it is desirable should be avoided.

Mr. DIXON. If the gentleman means merely to assert the power of the people—that they may

in their strength arise and break down all the guaranties of the constitution—that they may declare who shall and who shall not have property—if he means that when they assume the terrible power that was exercised during the French Revolution, when they overrode and destroyed all the guarantees thrown around the property of the country, which was in itself revolution, I will not take issue with him. But if he means to assert here that the power of declaring what shall be property and what shall not be property, who shall have it and who shall not have it, that the right exists here to take the property of every citizen, to seize it and apply it in any way that the governing power may think proper—then I differ with my honorable friend from Nelson, and therefore I join issue with those who claim this right. I do not mean to assert that any gentleman does claim it. I assert in the resolution that the right does not exist. I assert that we have the right to protect and guard, but not to pull down and destroy the rights of individuals—that our powers are derived from the people, and that we came here to build up the great civil institutions by which the people are to be protected and not to destroy them.

This is what I intended to convey, without intending to cast any reflection upon gentlemen, for I have a deep respect for the opinion of every gentleman, however much he may be opposed to me in the views he entertains; but I must speak out boldly upon the point that is contained in my resolution, and I have done so.

The PRESIDENT stated the question to be on referring the resolution to the committee of the whole, and ordering it to be printed; which was agreed to.

The convention then resolved itself into committee of the whole, Mr. BARLOW in the chair, and resumed the consideration of Mr. Turner's resolution in relation to slavery.

Mr. CHENAULT. I rise on the present occasion, not with the vain hope, sir, of shedding any new light upon the proposition offered by my honorable colleague, and to which a proposition to amend was offered by the honorable president of this body, by striking out all after the word "resolved." But sir, I rise for the purpose of showing to my constituents and to the section of country from which I come, that I have been faithful to the pledges which I made to them. My honorable colleague and myself took issue upon this question when we were canvassing for a seat upon this floor. I am well aware sir, that every speech made on this floor costs the state of Kentucky, perhaps, \$100; but, sir, in obedience to what I owe to my constituents, I desire to make a few remarks before recording my vote upon the resolution.

The people of Kentucky, sir, have convened us here for some purpose, and as far as my knowledge extends, that purpose is to endeavor to amend the organic law of the state, or in other words, the constitution of Kentucky. And, sir, I think if there is any one fact clearly established, or more clearly than all others as respects the amendment of the present constitution of Kentucky, it is this—that many of the most prominent convention men of Kentucky, in 1847, convened in this very place, issued a manifesto



to the people that they would not interfere with slave property as it existed in Kentucky; and I wish to show that that manifesto issued from the seat of government, and having the authority of distinguished names was the great cause, and I believe the sole cause of this convention being called by the people. What, sir, let me ask, was the vote of the convention party in 1833? That vote was but about 28,000.—What, sir, let me ask this house, and the honorable chairman of this committee, has produced the powerfully increased vote in the space of ten years, if it was not the declaration that was made to the world that we would not interfere with private rights, with private property, or property in slaves? I consider that a settled question.

If we attempt, sir, to engraft the law of 1833 upon your constitution, what does it intimate? It is, sir, that we are resolved to change the organic law, by engrafting upon it a feature which, if carried out, will strike at the very root of slavery in this confederacy. Yes, sir, and this understanding produces alarm. Even while we are consuming time here in debate, there is not a Kentucky slaveholder—there is not an infant in Kentucky, of ten years of age, who does not feel that his rights and his property are somewhat endangered by the action of this convention. Sir, I wish to see no such principle engrafted on the constitution of Kentucky.

To engraft this principle does more than this. It builds up, as my honorable friend from Henry (Mr. Nuttall,) says, a slaveocracy in Kentucky; or in other words, a slave monopoly, which I do not desire to see created, and defends that monopoly by guarantees greater than those which apply to other property.

I will do my honorable colleague the justice to say, that I do not think he intended, in offering the resolution, to avow himself an advocate for the incorporation of that law in the constitution, for he said he was not sure that he should support it himself. I think it was his great zeal to get into this body, which induced him to commit himself to such a resolution, deeming that it might be serviceable and give him some degree of strength. I think however, my honorable colleague, from his connection with some of the leading men of the state, from his old associations, and from its having been a *projet* offered to the people of Kentucky, and from its having been carried through the legislature by his aid, has been perhaps wedded to the darling project.

I am opposed to this resolution from another consideration. I recollect a remark that was made by a distinguished gentleman of Kentucky, a member of the legislature, in a speech in which he labored strenuously to convince the people of Kentucky that they ought to engraft the principle of the law of 1833 in the constitution. He told them that from 1833 up to 1840, during the continuance of that law, there had been a decrease in the number of slaves; and he took the ground that when three fifths of the members of the Legislature should think proper to emancipate the slaves, they could do it. Upon that point I take issue with him. I think, sir, that the portrait of Washington, which is hanging over your head, should admonish not only Kentucky, but every

slaveholding state in the Union to stand up and firmly maintain its rights over this property, as well as over all other property that is secured to them by the constitution of the United States or the constitution of Kentucky.

I am a native born Kentuckian, and it was with mortification and regret that I read the letter of a distinguished citizen of Kentucky, in which he said that the time was approaching when the slaveholder would have an opportunity to get rid of his slaves. But I think that his plan was unjust and demoralizing in its tendency, taking away from one portion of the citizens of the state what they had earned by their industry, and leaving others in the full enjoyment of their different species of property. I think the engrafting of such a proposition into the constitution would be to declare to the emancipationists, throughout the length and breadth of the United States, "open your ears, be vigilant, be attentive, Kentucky sets the example that no more slaves shall be introduced; and she is the battle ground where this great contest between slavery and abolitionism is to be fought." And I will say to my co-delegates here assembled, let us fight this great battle like men—let us contend for our rights—and if an overruling providence, as my colleague would say, has decreed that the slaves shall be free at some future day, I would say, with due deference to my colleague, let providence do its own work and let us not attempt to hasten that work.

We see the abolitionists at the north already in the congress of the United States endeavoring to deprive slavery men of their rights—endeavoring to drive them from the country for which they have shed their blood—and even now in this convention, it is proposed to deprive the men who went shoulder to shoulder, and breast to breast in the defence of the country and the country's rights—of the property to which they are entitled under the guarantee of the constitution and laws. Kentucky then is setting an example which, in my humble judgment, will number the days of this republican government. If there ever was a principle more forcibly expressed than another, it was that which was expressed by the father of his country when about to retire from public life, which was, that these states should bind themselves together by one common interest, and that no small differences of opinion should separate them. Our motto should be "united we stand, divided we fall;" and, sir, as we are a frontier state—as Kentucky is to be the battle ground in this contest—let Kentuckians show that they intend to maintain their rights at all hazards, be the consequences what they may.

Mr. MITCHELL. In the progress of this debate, as has been remarked by some gentleman who heretofore participated in it, three classes of opinions have been developed, the first restrictive of slavery; the second approving the existing state of things—approving the constitution as it now stands, and as it has been explained by the court of appeals; the third taking higher ground, and professing so to modify the constitution as to make it conform to what is conceived to have been the spirit and true meaning of the framers of the present constitution in making the provision upon this subject. If I were dis-

posed to generalize, I would say that the first class embraces those who regard slavery as an evil, and who indulge the hope that it will pass away, and are animated by the desire to aid in accomplishing its extinction. As to the second class, it embraces those who have expressed and perhaps entertained no decided opinion upon the abstract question. They are content to repose on the existing state of things, leaving the past with posterity and the future to God. The third category embraces those who have adopted the proposition that slavery, as it exists in this country, was not *per se* an evil in its inception, has been productive of more good than evil in its progress, and does not promise to present a future more inauspicious than the past. I am aware, sir, that surrounding circumstances, habits, associations, temperament, with many other extraneous causes, may have produced such modifications of opinion as to be incompatible with this classification; but I look upon its general accuracy as susceptible of demonstration.

Let me invite the attention of the convention to the language in which the original resolution, which is the foundation of this debate, is couched:

"Resolved, (I do not know whether I can give it accurately from recollection,) that henceforth, no persons shall be slaves within the commonwealth of Kentucky."

This is the general rule, the sweeping declaration—"resolved that henceforth no persons shall be slaves within the commonwealth of Kentucky." The general rule is prohibitory of slavery, the general rule is emancipative in its character, the general rule is to abolish the whole system. It is true sir, there is an exception, and the rights of slaveholders in Kentucky are compressed within the limits of that exception. Slavery, as it now exists, and the descendants of those who are now slaves, and such as are permitted to be brought here under certain restrictions, are embraced within the limits of that exception. But the broad declaration is made, that hereafter no persons shall be slaves within the commonwealth of Kentucky. The language of the resolution seems to me to indicate its spirit. The general rule is laid down from *principle*, the exception is adopted from *necessity*. The principle is that slavery shall cease to exist in Kentucky. The necessity is, that it shall exist *sub modo*. Upon what does this broad declaration rest? If it be predicated of any principle it is, that slavery is an evil. If it point to any end it is, sir, that the evil should be lessened if not extinguished. The effort at restriction necessarily associates the idea, raises the inference that the will, but not the ability to abolish slavery exists. It concedes emancipation as right in the abstract, but the exception contests it in the concrete. It yields up the whole argument, except one isolated point, by narrowing down the controversy to the sole question of practicability.

If then, sir, the principle that slavery is an evil can be eviscerated from this resolution, does it not follow that the only excuse for not correcting the evil, is the impracticability of any plan of emancipation heretofore proposed. This view of the subject, this position seems to me to be strengthened by the statistical argument of

the honorable mover of the resolution. I shall not enter upon its details nor is it necessary for me to do so. It is sufficient to say that his argument concludes with the declaration that to free the slaves would be to enslave the white man. It will not be pretended that the prohibition is designed to operate as a protection to the state against superabundant slave labor. This superabundance does not exist, nor is it reasonable to suppose that it ever will exist; and in this position I am fortified by the argument of the gentleman who first addressed the committee on this subject. He declares that slavery has not increased in Kentucky as in former years, and intimated that a period was approaching when it would cease to exist; and that this would be brought about by a higher power than any human institution—by heaven itself. If then, sir, there is no danger of an excess of slave labor why make the prohibition? The proposition is either nugatory, or it is intended to act as a restriction upon the system as it now exists. There is no danger, sir, of slaves being brought to Kentucky beyond the demand for slave labor. Such a position as that, it seems to me, would be preposterous. Men do not carry coals to Newcastle. Slaves, like every other kind of property, seek the best market, where a demand exists, depend on the same principles that regulate trade in every other department, the difference between the demand and supply fixing the price.

But sir, on the other hand, by restricting the introduction of such slaves as may be necessary to meet the exigencies of the country, you make a direct attack upon the institution of slavery itself. If you carry out what I conceive to be the principle which is embodied in the resolution, what will be the consequence? That anomalous thing, a slave state, without the benefits of slavery, and yet unable to avail herself of free labor. By adopting a provision such as this, and bringing about such a state of things, you place an incubus on the bosom of the body politic, that must weigh down the enterprise and destroy the prosperity of the state.

This view of the subject is not controverted by the fact that for fifteen years the law of 1833 continued upon our statute book. It will be recollected, that by a system of partial legislation, and by continued evasions, that law was rendered inefficient, inoperative, and did not accomplish the purpose for which it was enacted.—The door, though it seemed to be closed, was held continually open. What is to be the effect of adopting such a provision, upon the future prosperity of Kentucky? Is the immense area of fertile lands within the limits of Kentucky to remain as it is, a primeval forest? Is the vast mineral wealth, with which her mountains abound, to sleep forever in the dark bosom of the earth? Who among us can foresee the exigencies of coming years? Who can set bounds to the enterprise which the great mineral and agricultural resources of our state are calculated to awaken? Who can measure the wealth with which that enterprise would be crowned, if it should be left to the exercise of its unshackled energies? Are the men of southern Kentucky content to lie under the shades of their unsubdued forests, and dream of smiling fields waving

in the yellow maturity of promised abundance? I ask you by what process of alchemy, if you please, the mountaineer can change his coal and iron into gold? This proposition will be to Kentucky a Chinese shoe. Crippled in her progress, marred in her fair proportions, she will stumble forward to premature decay, with the sin of undeveloped greatness stamped upon her withered lineaments. Can it be argued that the deficiency in slave labor could be supplied by free labor? The experience, not only of Kentucky, but of all the states of the union, shows the incompatibility between these two descriptions of labor; they cannot co-exist; the presence of one banishes the other. Where slavery exists, the white operative, as a class, is unknown. Such sir, I venture to affirm, is the elevating influence of slavery, that it lifts the white man above that description of labor; it converts him from a mere machine into a man. And hence it is in consequence of this incompatibility, no reliance can be placed upon free labor, when slave labor is inadequate to the purpose. And what will be the consequence? We shall be neither a free nor a slave state; "neither fish, flesh, fowl, nor yet good red herring." And it is easy to be foreseen, that when such a state of things is brought about, the institution must wear itself out. Does it not then follow, if I am correct in the position which I have taken, and in the illustrations which I have attempted to give, that this resolution is a direct attack upon the institution of slavery in Kentucky?

Let me pass on to the consideration, for a very brief period of time, of the second class in the division I have attempted to make. They are those, as I have said, who are content with the provisions in the existing constitution. They are, I apprehend, pro-slavery men, who are not looking forward to a change in our system, and yet for some reason or other, they are not disposed to protect the institution from the perils of possible innovation. I would not be understood as entertaining distrust in popular discretion, when I propose to close the door against any legislation on this subject, except so far as merchandise in slaves is concerned. My object would be to guard against the dangerous effects of agitation. Not that agitation would directly accomplish any thing. Not that it would immediately lead to the overthrow of our institutions. But it is the collateral effects which I dread, the influence it would have upon the slave and the owner of slaves, rendering the slave worthless, disobedient, and intractable, bringing that description of property into disrepute, throwing uncertainty around it, no man knowing how long the institution of slavery would continue among us, inducing men, and the very best men the country boasts, rather than remain in this state of embarrassment and uncertainty, to disrupt all the dearest associations that cluster about the heart, to sever the ties that bind them to home and country, to forego all these considerations, and deserting the birth-place of their young hopes, and the graves of their fathers, carry themselves into voluntary exile, that they may live under the shade of their own vine and fig tree, with no man to make them afraid. Are not these considerations that should induce pro-slavery men

to pause before leaving this subject in a state of uncertainty? Why stop here? Are they not looking forward to a continuance of the institution? If this be not the case, then are they dilatory in their efforts. They stop short. They should attach themselves to the first class of which I spoke. They should make an immediate demonstration, and erect upon it a platform for their future operations.

Why pause, sir? Has not public opinion proclaimed throughout the length and breadth of Kentucky, the sentiments of the good people of this commonwealth? Is it not supposed that emancipation has been buried, as it were, under the avalanche of public opinion? Why permit its inanimate corpse to be dug up? Why suffer it to be reinvigorated and have the breath of a new life breathed into it? Why let a new song be put in its mouth? Why permit emancipation to plant its foot on the platform of the constitution? Why suffer the institution of slavery again to be folded in the stifling embraces of the law of 1833? Why not dispose of this exciting subject at once and bestow upon Kentucky the advantages of an unequivocal position? I am one of those who believe that it was the interest of our fathers, who framed this instrument, to give to it just such an interpretation as the opinions which I have advanced would indicate, to place the subject where I have attempted to place it. I believe that the legislature has no power to prohibit the importation of slaves except for merchandise. I believe this is the true interpretation of the intent of the framers of the existing constitution; and it is to restore to the constitution its original spirit and guard the institution of slavery against the insidious attacks of emancipation, that I take higher ground than do those gentlemen who are for retaining the provisions of the present constitution on this subject.

I will refer for a few minutes to the third class of opinions which seem to be indicated here, and I will remark, that my own opinions are of this class. In order to give my views on this subject, it will be necessary to refer to the relation that exists between master and slave; that I should attempt to show the influence which that relation exerts, not only upon the condition of the parties to that relation, but upon general society. If I am able to prove that slavery is not an evil, as regards the African, as regards the white men, as regards the general structure of society, I shall establish the position which I assumed to belong to this third class. I shall have proved that slavery is not an evil, and when I do that, I shall have proved that it is a blessing. That political equality is a great principle in our government, is as true as that social equality never did, and from the very constitution of man, never can exist. Men are born intellectually, morally, and physically unequal; and these irregularities seem to produce gradations in society. In this country, sir, where political distinction does not exist—where political rank does not obtain, wealth seems to be the chief agent in accomplishing social inequality. Hence, wealth seems to occupy one extreme, and poverty the other, of the social gradation. Upon those who are poor, (I speak of communities where slavery

does not exist,) devolves the performance of all the menial offices of life. It is their destiny. Poverty forces it upon them. The degradation to which they are subjected does not spring so much from the performance of menial service, as from the relation which is generated by that service. The poor man looks up with awe and wonder to his master, as a type of the power of wealth; and when he reflects upon his own condition his soul shrinks within him, and he feels and acknowledges his own nothingness. He looks at the impassable barrier—the abyss that lies between him and his master—and feels that although he has the same political rights, he has not the same social position. Is this calculated to elevate the character and make the proud, fearless freemen that we boast of? That this is true, there can be no doubt. That this state of things does exist, and that it must from the nature of things continue to exist, is equally certain. Now look at the state of things in the slave state. There the menial offices—those services that attach to themselves degradation, are all performed by slaves. No matter how humble his condition, the freeman of the south feels with Cooper's scout that he is a white man, without a cross—that liberty is not only a political right but a personal distinction.

There are in the slave states but two great divisions—white and black. The black is the degraded class; the white the honored. And when it is said that slavery is calculated to produce aristocracy, there is more truth in the remark than persons generally allow. But it is general aristocracy—aristocracy of the whole white race. What is the reason of the marked distinction existing between the men of the south and those of the north, their circumstances being equal? Is it climate? That cannot be, because the distinction stands out as prominently upon the borders, where a river forms the geographical division, as in the interior. They have all sprung from one common origin, speak the same language, live under the same political institutions, yet when you institute a comparison between the men of the north and the south, does it not result in favor of those of the south? Has not the south acquired for itself a character for frankness, generosity, high-toned honor, and chivalry which is unknown to the north? Look a little further. Review the history of our government from its first foundation down to the present time. It exhibits a series of brilliant triumphs achieved by the south, illustrating superiority of moral force over mere numerical strength.—The voice of its eloquence has predominated in the council chamber. She has displayed her courage and patriotic devotion on every battlefield, and throughout the broad expanse of our country. Her energy and her wisdom have been mainly instrumental in achieving the successful progress of those institutions which were originally moulded by her genius and her patriotism.

But there is another view in which I wish this subject to be considered. I wish to contemplate slavery in regard to its general effect upon society as a whole. I wish to contrast the results of the combination of capital and labor in the two sections of this union. Capital and labor are the two great elements of every country's

property. By capital I mean money or property of any description. By labor I mean merely physical exertion, and the united operation of these two constitutes the prosperity of any country. In order to achieve this prosperity they are reciprocally necessary to each other, and yet they are antagonistical. Capital without labor is valueless, and labor without capital is useless. What is the function of capital? It is to accumulate. The function of labor in those states which are usually called free, is to toil out a life of wretchedness, with no ability to escape from the wretchedness of its condition. The fiercest struggles that governments have ever known, struggles that resulted in the overthrow of their institutions, have arisen from this fierce antagonism of capital and labor. They are the great elements of strife in every country where free labor is employed. Talk about ambition stalking to a throne! Infinitely greater are the evils which spring from the strife between capital and labor. Labor complains that she has expended her energies and worn out her life in obtaining a pittance that is scarcely sufficient to support nature, scarcely sufficient to reinvigorate the system and fit it for commencing the same round of labor on the morrow. Capital looks on with unconcern, impassive in its nature and governed by the laws of its being, like the car of Juggernaut it rolls on to the accomplishment of its ends, crushing beneath its wheels those who have ministered to its greatness. In these fierce strifes capital is always the victor. When labor complains, what does capital do? It can afford to wait till the sharp pinchings of hunger force labor into submission. Then it is that capital dictates terms, and puts its foot upon the neck of labor.

Look at Massachusetts, that great State which boasts of her dense population, and of her enormous wealth. Her laborers are absolutely excluded from the social circle. I have attempted to describe the influence of capital, looking at and accomplishing its own ends by immutable laws—laws springing from its very character. Hence the misery, the poverty, the degradation of the operatives as a class where free labor obtains—hence the difference between the manners of the men of the north and those of the south.

Now let us for a moment, if you please, turn our attention to the south, and see how this principle works. There is there no antagonism between labor and capital. They are both united in the same hands. This antagonism cannot possibly exist in a slave state. The union of these two great conflicting elements gives to the state a conservatism which can nowhere be found where slavery does not exist.

The whole population of course are not the owners of slaves. Among those who are not slave-holders, capital in land, for instance, is united with their own labors, thus producing no antagonism, and the residue of the population who are without capital, for the most part mechanics, are so necessary to the capitalists, that instead of having the wages of labor fixed for them by their employers, they dictate their own terms. Hence the difference between the mechanics of the south and those of the north, and the independence growing out of their position and out of the operation of this institution

of slavery. It is this which has elevated them. It is not that there is any intrinsic difference between the men of the south and those of the north. Human nature has been the same in all ages. The difference in their condition must be referred to the circumstances by which they are surrounded.

I have thus attempted to show that this institution, so far as the white population is concerned, works no evil. I have attempted to show that it is elevating and conservative in its influence. I have attempted to show that order and tranquility are the result of the absence of this antagonism, which has produced such fearful convulsions in those countries where the institution of slavery does not exist. The time may come, though God forbid that it ever should, when this union will be severed; when the north and the south will become distinct empires, and if such a calamity is to visit us, the time will in all probability also come when these fierce conflicts to which I have alluded will result in the production of anarchy, and in laying the foundation for a form of government altogether different from that which now exists. If such a calamity does arise, then we shall have a practical example of the conservative influence of this institution of slavery. Then it will be seen that slavery is a social blessing.

Why sir, is it that we hear so much of the outrages of lawless mobs in the north? Such disgraceful scenes are never witnessed in the southern states. I am aware that the cities of the north are larger, that a greater concourse of persons are brought together within a small compass, and that there is, under such circumstances more probability of their passions being inflamed. But why is it that mobs prevail at the north, where there is no great difference in point of population, while they are unknown in the south? To what cause can we refer this, unless it be to this very conservatism of which I have spoken. I therefore look upon slavery as a blessing in all of its relation to the white man. Now, if it appear that it is no injury to the slave himself, I shall have established the proposition which I proposed to establish when I set out with my remarks.

Look for a moment at the condition of the black man as he exists in our country, and as he exists in Africa. The black man here, though he wears the badge of slavery, is infinitely superior to the black man as he exists in his native land. What does this go to show? That the connection which exists between the African and the white man has resulted in the elevation of the former. Look at Africa now, and look at her condition a thousand years ago. Go back to her earliest history, nay, examine the antiquarian researches of Champolion, who dug up from the ruins of an unknown empire the evidences of the degradation of the negro race graven in the mystic hieroglyphic of a literature that had been lost to the world. While other countries have strided forward in the march of improvement, while the lights of science have beamed upon them, and the arts of civilization taken the place of savage rudeness, Africa is now where she was then: the same fierce savage lurks amid the dark jungles of his pestilent clime. This inability to advance proves him to be of

an inferior race. Why, when all the other nations of the earth, have advanced in the arts and sciences and have manifested ability to accomplish the high destiny of man, why, I say, is the negro stationary? It is because he belongs to a race inferior to the Caucasian. Incapable of improvement by his own efforts, it is necessary that he should be under the auspices of the white man, to be dragged from his original degradation. A comparison of the African, in his native condition with the negro reared under white auspices, exhibits the benefit which has accrued to him from this relation. The negro, sustained in the grasp of the white man, when that grasp is relaxed by emancipation, will fall back into his original condition. As proof of this, look at the difference between the free negro and the slave. Comparison shows the superiority of the latter.

Although removed from under the immediate influence of a master, he still enjoys the benefits of civilization, and is still under the control of wholesome laws. How much greater would be his degeneracy if he should be restored to the original condition of his race, and removed entirely beyond the influence which had been the means of his elevation. Would he not if left to his own resources relapse into barbarism?—Would liberty under such circumstances be a boon? Is slavery which thus elevates him a degradation? He would lose the feeble light which had dawned on his original darkness. If, as I before said, liberty be no boon, then is slavery no degradation. If occupying the position he does among us, his condition be degradation as compared with that of the white man, it is nevertheless elevated as compared with that of the native African. If then slavery be not an evil, but a blessing to the race enslaved, I shall have proved the whole proposition, having before established that it is no evil to the white man, and therefore a blessing to both.

If this proposition be admitted to be true, or to approximate to truth, shall we attempt to cripple an institution which in its operation dispenses a double blessing? Why should we throw any obstacle to its successful operation? Why do we not permit it to remain in its full vigor, and allow it to accomplish all that it has done for our fathers, and that it promises to do for posterity.

I am aware that I have already too long trespassed on the patience of the committee, and I would at this point pause, but the peculiarity of my position in reference to another proposition which has been presented for the consideration of the convention, and the duty which I owe, as well to myself as to my constituents, make it necessary that I should very briefly define my position in relation to the proposition above referred to. I avail myself of this moment, because the subject is connected with the one under discussion.

Mr. C. A. WICKLIFFE. If the gentleman will give way, I will make a suggestion which I think will meet with the approbation of the convention. Owing to my peculiar position, I am desirous that the report of the committee, in reference to the court of appeals, shall be considered. I will therefore ask that the committee rise, report progress, and ask leave to sit again on Monday

next, in order that we may take up the report to which I have referred, to-morrow. When the committee of the whole shall have this subject again under consideration, the gentleman can finish his discourse. I will make the motion which I have indicated.

The motion was agreed to, and the committee rose and reported progress, and obtained leave to sit again on Monday week.

The convention then adjourned.

### WEDNESDAY, OCTOBER 17, 1849.

Prayer by the Rev. Mr. LANCASTER.

Mr. MERIWITHER, who has been detained from the convention for several days by severe indisposition, this morning resumed his seat.

#### EXPLANATION.

Mr. TURNER rose to correct a misapprehension of the remarks he made a few days since, on presenting the report of the committee of which he was chairman, with which the committee were dissatisfied.

What he intended to say on that occasion was, that there were several members of the committee who did not concur in the report so far as it affected the election of several of the minor officers, such as surveyors, coroners, and jailers, but that a majority was in favor of electing those officers—and also, that one member of the committee did not concur in the proposed restriction as to age to be required of the candidates for office, as the people ought to be the sole judges, and had a right to elect a man of any age they thought proper.

Mr. GAITHER was glad the chairman of the committee had made this explanation, but did not think it went far enough to meet the imputation which his reported remarks had cast upon at least one member of the committee. The gentleman had said that one member of the committee was not disposed to have any restriction as to the age, qualification, or any thing else of candidates for office. That was an awkward position to be placed in, and one which he did not wish to be charged with having assumed. It was his lot to differ with the gentleman and others of the committee, in relation to what is called the conservative principle; but he wanted mature age to be required, although he was opposed to some other restrictions.

Mr. TURNER had understood the gentleman's position to be as he (Mr. T.) had before stated, but if he was mistaken he would be happy to be corrected.

Mr. GAITHER. You are mistaken.

Mr. TURNER was very glad then that the gentleman had corrected him.

After some other observations the conversation dropped.

#### REPORT FROM A COMMITTEE.

Mr. DESHA, from the committee on militia, made the following report, which, on his motion, was referred to the committee of the whole and ordered to be printed:

#### ARTICLE —.

SEC. 1. The militia of this commonwealth shall consist of all the free, able-bodied male persons (negroes, mulattoes, and Indians excepted,) resident in the same, between the ages of eighteen and forty five years, except such persons as now are, or hereafter may be, exempted by the laws of the United States, or of this State; but those who belong to religious societies whose tenets forbid them to carry arms shall not be compelled to do so, but shall pay an equivalent for personal services.

SEC. 2. The governor shall appoint the adjutant general, and his other staff officers; the majors general, brigadiers general, and commandants of regiments shall respectively appoint their staff officers; and commandants of companies shall appoint their non-commissioned officers.

SEC. 3. All other militia officers shall be elected by persons subject to military duty, within the bounds of their respective companies, battalions, regiments, brigades, and divisions, under such rules and regulations as the legislature may, from time to time, direct and establish.

#### POPULAR ELECTIONS.

Mr. GHOLSON offered the following resolution, and called for the yeas and nays thereon:

*Resolved*, That the good people of this commonwealth are fully competent to judge of, and decide upon, the qualifications of all candidates for any office whether the same be legislative, executive, judicial, or ministerial; wherefore, a certificate of election, according to law, is the only certificate of qualifications that shall ever be required to enable any citizen to enter upon the discharge of the duties of the office to which he may be elected.

Mr. TRIPLETT. Are we to vote upon that resolution without discussion or forethought, and adopt as a constitutional provision now, instantly, unhesitatingly, a matter of as much importance as probably any other provision that is likely to be submitted to this House? Do any of our rules authorize the calling of the yeas and nays before we have had any time to ascertain the full length, and breadth, and depth of a proposition like this? For one, I am not prepared to vote for it throughout, or against it throughout. I want time for reflection; and let me say to the honorable mover of the proposition, that I am rather inclined to think he himself wants time to reflect upon the subject. Is he prepared now to say that the judges of the court of appeals shall have no qualifications whatever; and whether they are twenty-one years of age or not, or learned in the laws of the land or not, is immaterial, because the people are competent to judge of all these qualifications? That may be so, or it may not be so.—The gentleman from Ballard must bear in mind it is a physical impossibility, that in the very nature of things, all the voters who are to vote for or against the election of judges of the court of appeals can be acquainted with their qualifications. The present proposition is to elect four judges of the court of appeals, one in each district; but suppose it is not adopted by the convention, but that the four judges shall be elected by all the voters of the state—does the gentleman intend to lay down the proposition



that the voters of the county of Daviess are not to be entitled to all the light that can be given to them when they come to vote for a candidate that may reside in the county of Bracken, or Knox, or Harlan, or in any of the most remote counties of the state? And the same may be said upon the subject of electing the clerks of the court of appeals—for I understand that we are to elect four clerks of that court, and have four different sets of records. It is a fair presumption, when the people of Kentucky have sent one hundred gentlemen here, that they are at least a fair sample of the intelligence of the state. Why send them at all, unless at least they are an average, if not above an average, of the general intelligence of the people of Kentucky. But I acknowledge that I am not very well qualified to judge what are the proper qualifications of a clerk of the court of appeals. Heretofore, when the judges of the court had the power to give the office to whom they pleased, there was an examination of the candidate duly made before them, and it was only upon a certificate that he was competent to make a good clerk that he received the appointment! Are not the people entitled to have this information conveyed to them? Of the whole of the one hundred members in this body, except half a dozen, perhaps, and the political lion of the tribe of Judah, from Nelson, and his colleague, and some other old lawyers, there are none who are competent to judge of the qualifications of a clerk. As for myself and others around me, I think we are not qualified; and it is but right that we should have all the information on the subject we can possibly obtain. At all events, I hope the resolution may be laid over for a time and that we shall not be compelled to vote on it just now.

Mr. HARDIN. I concur in all that was said by my friend just up, except in his compliment to myself, and to that I dissent. I do not want to vote on this resolution at this time, nor is it necessary, for we are showing in our reports every day, that we are willing to return the election of officers to the people. And when the committee on circuit courts, of which I have the honor to be a member, and of which my worthy friend from Ballard is a most worthy member, shall report, and I hope it will be in a day or two, we shall show that we too are determined to trust them. We came here with that view, and it is not worth while to make a general declaration of it. The report of the committee on the court of appeals, as well as those that have been made from other committees show, that we are in favor of restoring to the people their rights. As to this sweeping resolution proposed by the gentleman, I suppose if it means anything, it intends to strike at some of the details of the report in reference to circuit and county courts, it may be, the provision that no man shall be run as a candidate for the office of clerk unless he is qualified and that he must be examined and get a certificate of his ability. I think it is a very valuable requisition to say to a man who comes forward as a candidate, you shall have the testimonial of your qualifications, and you shall not be elected because you are a successful demagogue on the stump. I am greatly in favor of

throwing back all the power to where it originally belonged, (the people), but let us not run the thing too far. Let us not go too far. We are pressing it too far if we say that men shall be elected clerks, who perhaps were scarcely ever in a clerk's office in their lives. We have prejudices to encounter in establishing this new system; and indeed one of the very objections I have heard urged against the elective system, was in regard to this very subject of the election of clerks. So far as I was concerned, I always gave it the go-by, by saying it was time enough; but I always intended to guard against it, when the opportunity offered. I was striking at the great offices of this commonwealth—and when I go out to hunt such game as the grisly bear of the Rocky Mountains, I do not stop to trouble myself about the little bears that arise around me, but leave them to be attended to at my leisure. And that is the way I got rid of the election of clerks in the election; but I never did intend, so far as I could prevent it, that a man should be elected clerk without the proper qualifications. I hope we may give the subject the go-by at present, and that the resolution may be printed.

I know that my friend from Ballard labors to the same end that I do—to give the great elective franchise to the people, where it naturally and of right belongs. But let us labor to make a good system, without running into too much detail. When I have done that, I shall feel as Barney Edwards' negro did, when he saw his master after a long absence. Said he, "I have seen the face of my master, my God let me die." When I have seen such a system secured, I shall be willing to go.

Mr. IRWIN. I rise, sir, simply to make a motion. I am unprepared to vote for the resolution of the gentleman from Ballard, (Mr. Gholson,) not that I am unwilling to trust the people—not that I do not feel that they are competent to select proper officers—but that I conceive it necessary that the resolution should be considered. I am willing to trust the people when they desire to be trusted, but surely every officer should have some qualifications. I move that the resolution lie on the table for the present and be printed.

Mr. CLARKE. I barely desire to remark that upon general principles, I am inclined to concur with my friend from Ballard, and think that ultimately I shall support his resolution. It involves a great principle, and one that perhaps ought more deliberately and more maturely to engage the consideration of the convention. I am willing to concede that the clerks ought to be qualified to the discharge of the duties of their respective offices, because the clerk of the circuit court, the county court, and the court of appeals have very important and responsible duties to perform. But there is nothing connected with the discharge of the duties of a clerk in which the people, among whom he lives, are not directly and immediately interested. I hold it to be equally important that a legislator should be qualified to make laws, when he is called upon to take a seat in either branch of the legislature, and have gone through a thorough examination. Is there any gentleman on this floor who proposes that when a candidate presents himself for elec-

tion, there shall be a tribunal created by the constitution through which he shall pass and be favorably adjudged before he is considered competent to take a seat in either branch? But when he is elected by the people, and takes his seat, he has then one-third of the sovereignty of the state in his own hands. He becomes a part of the law-making power of the state. It is not insisted upon that he shall undergo an examination before he takes that position, but it is insisted that a clerk shall be so much more qualified to discharge the duties of his office, than a legislator, that a tribunal must be established to judge of his qualifications. If the principle be true, that all political power is inherent in the people—that the people are competent for self-government—and that they are the safest depositories of political power, why not leave with the people, who are directly interested in the subject, the power to judge of the qualifications of a clerk? You strike at the great principle that the people are competent for self-government; and you strike also at the principle that the people are the safest depositories of all political power, when you attempt to withhold from them the exercise of that power, unless you can show a good and sufficient reason for withholding it. I can myself perceive no reason, either potent or powerful, or more satisfactory to my mind, why the power should be given to the people to judge of the qualifications of a candidate for the senate, or the lower branch of the legislature of Kentucky, or of a judge, if you please, and at the same time, the power should be withheld from the people, to judge of the competency of a candidate for a clerkship. Now, I doubt not there is a majority on this floor who will ultimately maintain that the judges, as well of the circuit and county courts, as of the supreme court of the state, shall be elected directly by the people. I understand that question to have been decided in the recent contest for the election of delegates to this convention, and I apprehend there are from seventy to ninety members here who are prepared to concur in giving back to the people the power surrendered in the old constitution, of electing all those officers.

When it is decided that the people are competent to judge of the qualifications of judges of the court of appeals, or of a district judge, or of three judges of the county courts, of judicial officers, in whose hands are placed the lives, liberties, property and reputation, of the people of this state—upon what principle is it that this same people are not competent to judge of the qualifications of the other and minor officers? Upon what principle is it that the same people who are competent to decide upon the qualifications for office, of those at whose hands and will and fiat, all the dearest rights of the citizen can be either crushed or elevated, are declared incompetent and unable to decide on the qualifications of a clerk? The people are just as competent to judge of the qualifications, the competency, the moral character, and the honesty of a clerk, as of a judge of the court of appeals. I maintain that we ought to make no exception to the rule, unless the exception is predicated on some reason more powerful than any I have yet heard.

But I would suggest that, instead of demand-

ing the yeas and nays on the resolution submitted, it would be more consistent with the present disposition of this body to refer it to the committee of the whole, and select some early day for its discussion; for, if I am not mistaken, it is one of the gravest questions that has been submitted to this convention.

Mr. HARDIN. I am always gratified when I hear from the honorable gentleman from Simpson, for he is certainly a very eloquent man, and it is to guard against that very kind of thing that we require some qualification, now and then, on the part of a candidate for office.—Take up the report of the committee on the court of appeals, and is there not some qualification required for a judge of the court of appeals? He is to be thirty years of age, and that is one of his qualifications, and it is one of those restraints upon the rights of the people so highly commented upon. Is it not furthermore provided that he shall live in the district where he is chosen? Yes. Is it not furthermore provided that he shall have been eight years a practicing lawyer? Yes; because the committee very properly took up the idea that it was not the best speaker who would make the best judge. Is there not a qualification necessary for a governor? To be sure. Is there not a qualification as to his age? Yes. And we must now and then impose those kinds of restraints, to guard against that very volume of eloquence that we have heard to-day, or our government runs into what is called a mobocracy, instead of a free representative republic. It is to guard against that state of things that these qualifications are necessarily required. Do we not know that it is of vast importance that none but a man learned in the law should be a judge? And should not the candidate be learned in his profession before you make him a clerk? Is not one just as requisite as the other? And shall we elect the best stump speaker, if you choose, or the man who can organize and "dicker" the most voters at the polls? Is it possible that we are going to do any thing of this kind? I have run this thing as far as I can, but the gentleman out Herods me. Let us impose some wholesome restraints as to qualifications upon all the officers put before the people. Let our governor be qualified as to age and residence; let the judges of the courts of appeals be qualified as to age, residence, and legal attainments; and let our judges of the circuit courts be qualified in the same respects. Yes sir, and there is another class of men, who are called the Queen's solicitors, and it would be more tasteful to the country if we should require some qualifications before they throw themselves before the majority of the people. I have seen many a young man of two or three and twenty years of age, who could address himself very kindly to the sympathies of the people, and yet possess no qualification beyond that. I hope, therefore, we shall not vote now on this resolution, as the subject will soon come up in its appropriate aspect.

Mr. CLARKE. I am aware that it is owing to the overflowing kindness of the gentleman from Nelson, rather than to any merit of my own, that I have received the compliment which he has just paid me. I am not opposed to qualifications, nor did I assert such a principle. I

did not say that a clerk or a judge should not be qualified, but I maintained this ground, that the people were competent to judge of his qualifications, and it was predicated upon the idea, that in the exercise of their sound judgment and well matured discretion, they would make a proper selection. That is the ground I take. I have never argued that a judge or a clerk should not be qualified to discharge the duties of his office; but I assumed the ground which is assumed in the resolution of the gentleman from Ballard, that the people alone are qualified to judge of his qualifications. If they are qualified to judge of the qualifications of a President of the United States, in whose hands are thrown all the diplomatic relations existing between this country and foreign nations, and who wields more patronage and power than any other officer, or ten officers in the United States, I maintain they are competent to judge of the qualifications of a clerk, whether of the circuit court or of the court of appeals. I have assumed, and that is the reason I made the suggestion to my friend from Ballard, that there may be reasons interposing to exclude the election of a clerk by the people, unless he has undergone some examination. As yet, however, they have not occurred to my mind, and it is to hear such reasons, if there are any, that I suggested to my friend from Ballard, the propriety of referring his resolution to the committee of the whole, with the assignment of some day for its discussion.

Mr. GHOLSON. I certainly most cordially reciprocate the kind sentiments expressed with regard to myself. I certainly have no disposition to introduce anything here that shall produce unnecessary debate, or lead to an unprofitable consumption of time. But maintaining as I do—having maintained it before those who sent me here, and that sentiment being, as I believe almost unanimously entertained by them—that the people are capable of self-government, and seeing, as I think, a disposition here to deny this great fundamental principle that all power is inherent in the people, and that they alone have the legitimate right to exercise that power, I desire to test the question at once. What light does any learned gentleman need on this subject? Is any gentleman prepared to say that the people are not capable of self-government? or that they are not competent to choose a clerk? Is any gentleman here prepared to say to his constituents, I fear you will take up some ignorant man who is unfit for the office? That you are so vicious and so ignorant that you will palm upon the country an unqualified officer? Why, I hold it to be a self-evident truth that in the absence of interested motive to do wrong all mankind would do right. And where is the motive that shall prompt the people of any county in this state to do wrong in a matter of this kind? There can be no motive; hence they will do right, and in doing right they will make the best selection. If they make a bad selection they alone are the sufferers; it will be their fault, and perhaps one bad choice may be necessary to put them on their guard, and to make them more careful in future. You might as well undertake to stand between a man and the wife of his choice, and say to him let me decide

on the qualifications of that lady before you marry her.

It is the right of every man, of every free man, to exercise the privilege of selecting the public servants. And it is for this right that I contend. Now, with regard to the proper mode of managing this thing, and as to what will soonest test the question, I am not prepared to say; but I want the ayes and noes upon it. I want every gentleman here to say to the people of Kentucky whether or not in his estimation they are capable of self-government. If it is thought most expedient to set apart a day for the discussion of this subject, I am agreed, provided the time is not too far distant. I want that thing tested, and the sooner the better.

I will not consume the time of the convention at present, as gentlemen say they are unprepared to enter upon a debate, and I wish to give them ample time for preparation; but the whole argument on this subject in my judgment, is in a nutshell and does not require a lengthy discussion. Unprepared as gentlemen may be, I am myself, ready at all times to vote on a question like this. I am willing that the consideration of this subject shall be postponed and made the special order for Monday or Tuesday next, or any other day that the House may think proper to name. If my friend from Logan will withdraw his motion, I will move that the resolution be referred to the committee of the whole, and made the order of the day for Tuesday next.

Mr. IRWIN. I have no objection.

Mr. MITCHELL. With the gentleman from Ballard, I am always ready to vote on a question involving the rights of the people, and I am prepared now to vote on this proposition. It seems to me that there are two questions involved in the resolution, and it has been my purpose to ask for a division of them, when the question shall be taken. One is the abstract proposition—are the people capable of self-government?—on which I shall vote in the affirmative, believing that there is not a question upon the subject. But the other proposition, whether any qualifications for office should exist, is a question which should be considered. Let me suggest, as an additional reason, that in regard to clerks, there is nothing in the requisition of certificates of qualifications from them, that presupposes a disqualification on the part of the people to judge upon the subject. The very requisition seems to indicate the necessity of examination on the part of the people. It requires that some competent tribunal shall be provided for the examination of this officer, authorized not for any incompetency on the part of the people to judge, but from the inability of the whole people to make the examination and with a view of relieving them from that trouble. It was merely to present this view of the subject that I rose.

The resolution was then made a special order for Tuesday next and ordered to be printed.

#### COURT OF CHANCERY AT LOUISVILLE.

Mr. RUDD offered the following resolution, which was adopted:

*Resolved*, That the committee on circuit courts be instructed to enquire into the expediency of permitting the Louisville chancery court to exist under the new constitution, and giving au-

thority to the legislature to establish other chancery courts in the commonwealth.

#### THE COURT OF APPEALS.

The convention resolved itself into committee of the whole, Mr. G. W. JOHNSTON in the chair, on the article reported by the committee on the court of appeals.

The verbal amendments proposed by the standing committee in their supplemental report were adopted, with a view of perfecting the report of the committee.

The question then came up on the proposed additional section to the article, as follows:

Sec. 15. "All elections of judges of the court of appeals, and the clerks thereof, shall be by ballot."

Mr. C. A. WICKLIFFE. It will be remembered, when the committee made the report now under consideration, that under their sanction I announced to the house that the mode in which the elective franchise should be exercised by the people in the choice of judicial officers had not escaped their attention. They did not, however, feel it incumbent on them to express what was understood to be their opinion, by any specific proposition as to the mode in which it should be exercised in the choice of judicial officers, waiting, out of respect, the action of other committees, who had kindred subjects under advisement. The committee, however, upon a further consultation and reflection upon the subject, and looking forward possibly to a division of sentiment in this body in reference to a radical change in the mode of voting prescribed by our present constitution, and as long practiced by our people in the choice of political representatives and officers, have thought that between the advocates of the principle of *viva voce* voting, and those who are in favor of the ballot system, and of introducing this new and important principle in our government of electing all our officers, political as well as judicial, we might attain something at least, in the freedom of the exercise of the privilege where it is brought to bear in the choice of a judicial officer; at all events, that it might operate to relieve the elective principle of one objection which I have heard—I will not say in this house, because it has not been as yet avowed here, but outside of this house—the danger of placing a judicial officer under the influence of personal feelings in his course toward individual suitors and litigants who might either have voted for him or against him. I do not regard however that as at all assailing the principle which lies at the foundation of the elective system. The independence of the judge has never been regarded in any age or country as being secured by or dependent upon the mode of his appointment. It is supposed to rest on the principle which was one of the results of the revolution in England, one of the fruits of which was the change in the tenure of this description of office—prior to which revolution the judge held his office at the will of the crown or the pleasure of the prince, not by the tenure of good behavior. That was the principle, and it is the one from which we have derived, as heretofore entertained, all our notions of an independent judiciary. Not that the officer derived his appointment either by election, from the representatives of the

people in our state legislature, or that he was appointed by the executive under the confirmation of the senate—but that when he is appointed the constitution of '99 secured, at least on paper, and I hope in reality, the independence of the judiciary, because he was made by the tenure of his office only responsible under the forms and principles prescribed in the constitution. I do not now understand that there exists in this body or out of it, whether among the advocates of a convention for constitutional reform or against it, any one who is an advocate for life tenure in office. All of all parties are in favor of surrendering the principle of tenure during good behavior, or in common parlance, life estates in office. Upon all sides the question has been given up. All yield to the principle that the officer should at some time short of his life, be returned back to the appointing power, wherever that power may be deposited. We propose by the bill to deposit the power in the hands of the people, to whom we believe it belongs.

The independence of the judge does not depend upon the source of appointment. Whether a judge be appointed by the governor, the legislature, or the people, if he be a bad man he will make a bad judge, and if he be a good man he will make you a good judge or good officer, and the people must take the chances of selecting between the good and the bad. And they are just as competent, if not indeed more so, to make the selection themselves, than any intermediate delegated agents according to the present mode.

I do not propose at this time, to enter into the discussion of the importance of this change, and the benefits which will result from it, further than is necessary to explain the object of the committee in the amendment they propose.—They were unanimous and unhesitating in their opinion of its importance, and in their desire that it should be engrafted upon the article now under consideration, and if you will allow me to say it, upon all other articles which have reference to the election of judicial officers. I believe that a majority of the States of this Union—I speak but from a general recollection and not from minute recollection—have adopted and are now in the practice, in all elections of every kind and description, of the ballot system. There is much to say in favor of the ballot system, and especially in communities differently organized and constituted in some respects from our own State. I have not understood that a change in the mode of casting the votes of the people of Kentucky, for officers heretofore elected by them, has been a cause of constitutional reform, or that it was a cause of complaint or grievance. I do not believe that the time now exists, or is likely to exist in this country, so long as we shall cherish our domestic institutions—if I am understood by that phrase—that there will be the same necessity for the mode of exercising the elective franchise that other States and communities have believed, or found to exist among them. But in the choice of a judicial officer by the people—to meet the argument or the objection to the system that I have heard alledged—that is, that the judge who is elected, finding A, who has cast his vote against him, a suitor in his court, may feel disposed to visit upon him, in some of his judicial acts, vengeance for this exercise of priv-

ilege. A judge under the influence of bad passions, in the exercise of the high duties which the constitution and the country have confided to him, may visit the perversion of law, tyranny, and injustice, upon some humble but independent man in the country, brought before him by some of the various processes, as witness, litigant, criminal, or suitor. I think if I have a correct knowledge of Kentucky character, that there is more danger from an individual in the exercise of his judicial functions, when elected by the voice of the people, in an action between A his supporter and B his opponent, lest he might be suspected of leaning towards his friend, he would rather lean against him to avoid even the appearance of favoritism. The committee wish to give every man in the State who may choose to vote for a judicial officer, the privilege, if he choose so to do, by a ballot, deposited in a box unknown to any but himself. It will not deprive any man who may feel disposed to let a candidate know how he voted, of the privilege of voting an open ticket if he chooses so to do. But if I am so constituted as to feel that I might place myself in all probability, being a suitor, in an attitude that would excite a lurking and partial and improper feeling in the breast of the judge towards me in the exercise of his judicial powers, if I chose to keep it concealed from him how I voted, give me the privilege of doing so. I leave to you who have no such apprehensions, the privilege of voting your open ticket, in common phrase, or of letting the individual know you voted for or against him as you may prefer. These were the reasons which influenced the committee in asking the amendment to the original report which has just been read, and with this brief explanation I submit the question.

Mr. HARDIN. I hope the gentleman will not press the section at this time, but permit the bill to be gone through with section by section, commencing at the first one; then the amendment would be reached in its order, and we should have time to reflect upon it. For my own part I cannot say yet how I will vote, but I am very much in favor of the *viva voce* mode of voting, and the committee of which I am a member are also rather disposed that way. I like harmony very much and I believe that the mode of voting for all officers should be the same. I am not afraid to tell these high dignitaries how I vote.

Mr. W. C. MARSHALL hoped the report would be taken up section by section. He said, at first blush I am opposed to this innovation upon our custom of voting, and I want time to reflect upon it. As at present advised I shall feel constrained to go against it.

Mr. C. A. WICKLIFFE. I certainly do not desire to press the question if any member is not prepared to vote upon it or desires to discuss it. I will agree to the course suggested the more readily, as I believe that the more these two gentlemen reflect on the subject, the nearer they will arrive at the conclusions to which the committee have come. I suppose I was distinctly understood. I am not advocating a change in the *viva voce* mode of electing political officers. The reason is that if you elect a political officer, a member of congress, of the legislature, or a governor, he cannot visit his official action on me to my

injury for voting against him without its falling with an equal hand on the balance of the community. That is the difference between a political and a judicial officer. Of course I acquiesce with pleasure in the course suggested.

The 1st sec. was then read as follows:

Sec. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, [the courts established by this constitution] and in such inferior courts as the general assembly may from time to time erect and establish.

After a brief conversation in which Messrs. Wickliffe, Dixon, Guthrie, W. C. Marshall and others took part, the section was amended by the insertion of the words placed between brackets. The section as amended was then adopted.

The 2d section was read and adopted without amendment, as follows:

Sec. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

The third section was then read as follows:

Sec. 3. The judges of the court of appeals shall hold their offices for the term of eight years, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation to be fixed by law.

Mr. HARDIN proposed to strike out the words; "which shall not be sufficient grounds of impeachment." He said, I desire that the legislature shall have power to address a judge out of office without the formality of impeachment, and I do not want his removal by address to be confined to such subordinate cases as will not be full cause for impeachment. That is one of the practical modes of making a judge responsible. And while I am up I will state that I shall move to strike out "two thirds," and insert "a majority," because when we come to the two thirds principle, the whole responsibility is as perfect a mockery as can be imagined.

Mr. C. A. WICKLIFFE. The committee thought that by preserving the responsibility which the present constitution has thrown upon the judicial officers of the government, making them removable for good and sufficient cause, upon an address, two-thirds of each house of the general assembly concurring, and by retaining the power of impeachment, judgment upon which extends only and rightfully to removal and disqualification from office; and the responsibility which arises from the return of those officers to the appointing power, the people, by the limitation of the term of office, they have secured to the people a sufficient power over the judges during their term of eight years. They

desired that whilst we were securing to the people, or claiming for them, the power of electing their own officers and limiting the duration of the term for which they shall be elected, to infuse into the exercise of their power some conservative feature, to secure at least those officers, when thus constitutionally appointed, against the possible influence of public excitement, the offspring of political divisions in all free governments.

A party or political majority of the popular branch of the government, maddened with power, unrestrained by any power but the power to do wrong, is, by the amendment of my colleague, to be let loose upon the weakest department of the government—a department filled by the people themselves. Does my honorable colleague remember—I know he has not forgotten the conflict between the legislative department and the judiciary of this state, in 1824. He and myself were side by side, in my humble way—for I bore but an humble part in that memorable contest; he played a distinguished part in that struggle between master spirits, which is known in the history of this state as the contest between the old court and new court party. I refer to this portion of the history of my country in no spirit of unkindness towards those with whom I then differed. There were statesmen and patriots in that party, honest I know in the advocacy of those principles. We triumphed by the power of the ballot box. Had his principle of removing the judges upon the address of a majority of the two houses of the general assembly been engrafted in the existing constitution, as he now proposes it shall be in the new one, what would have become of the great principle, the independence of the judiciary, involved in that contest? Your constitutional court and the principle involved would have gone as by a whirlwind. A good cause for the removal of the judges was then, by a legislative majority, found in the fact that they had decided an act of the legislature unconstitutional.

Sir, I yield to no man in this body in devotion to the great democratic principle, which lies at the foundation of free governments, that the majority shall rule. But sir, to secure that principle in its free and beneficial exercise, I claim, at least, that in framing an organic law, we should take care to insert a rule for the guidance of that majority. Popular majorities need a rule of action by which to be governed. Our constitution is made not so much for the benefit of the majority in the community, as it is to protect the rights of minorities. The great principle in free governments, that a majority shall rule and govern, belongs to political questions, and is loved and cherished by all who love political freedom and civil liberty. I tell gentlemen who think with me, that a government of a majority is the best form of government which the wisdom of man has ever devised; that in order to preserve that government, to secure the liberty, life, and property of the citizen, it is necessary to establish checks and balances, and to throw around the weaker departments those safeguards necessary to insure the freedom of opinion and independence of action in the exercise of their functions. But, sir, in the support and in the advocacy of the principle that a majority shall

rule, I invoke gentlemen not to be misled. I say it is necessary and proper, in the formation of a free constitution, that a majority should impose wholesome restrictions upon itself. We may be in a majority to-day, and by a turn of the political wheel we may be in a minority to-morrow, in the legislative body.

In party times when passion guides the popular leaders, when reason is silenced, and argument is hushed by the conflict of selfish motives, the prostration of the independence of the judiciary department of your government is no difficult task. The legislature assume to be the people, forget their true position, and rush with accumulated rage upon their work of destruction. This will be accomplished by local, if not political combination. Help me to remove this judge, says one faction, he is a whig, and we don't like him; we have a democratic majority, we can hurl him out. You have a whig judge in your district, we will join in removing him, if you assist us. Under the influence of popular excitement, political feelings, perhaps personal animosity, the judge is hurled from office. Well sir, the turn of the political wheel brings the whigs into a majority, and under the same influences, the political juggernaut is rolled over some poor democrat who may be found in office.

To avoid all these possible evils the committee desired to retain the power of removing by address, giving the incumbent the security not so much for his sake as for the sake of public justice, which we have had in our constitution for the last fifty years. They desired to give him the security that he shall not be removed unless the crime, the offence, the cause of removal shall be so apparent to the body that both branches of the legislature shall feel it incumbent upon them to make the removal. When that is the case I have no fears that two-thirds will not agree. If you leave the removal of a judge to the will of a majority of the popular branch of the government, what judge will dare to stand between the encroachments of the legislative department and the citizen? You make him the miserable, suppliant tool of legislative power and wrong, if you trust him in the power of a bare majority, whose acts he will never have the boldness and the independence to declare unconstitutional. What security will there be for the life, liberty, or property of the citizen. I therefore implore the convention to pause before they consent to incorporate the amendment in the constitution we are about to form. The judiciary is the political ark of the poor man, to which he must flee in times of danger; the shield by which he is to resist the attempts of power to deprive him of his rights. If you place the judge in the power of a bare majority, you take from the weak the only security against wrong and injustice. Let us not deceive ourselves by names. The majority of the legislature is not a majority of the people. If you adopt the amendment you virtually surrender all power into the hands of a legislative majority. The legislative department will overwhelm all other departments, and we shall, instead of having secured to the people a government with partitions of power, to operate as checks and balances upon each



other, have established a legislative despotism for our state, in my mind the worst of all despotisms.

Mr. HARDIN. I have been looking forward to the contest which is now approaching. I have been expecting it for months. This is the very point upon which we are to show our hands in some way, shape, or manner. Sir, what is required to insure a good government—a real good, popular, democratic government? It is that the people shall govern themselves, imposing on them a few wholesome salutary restraints. Well, how are they to govern themselves? They cannot meet as the people were accustomed to do in the republic of Athens and vote upon every law. They are spread over a surface of country in this Union which embraces now about three million three hundred thousand square miles. They can only meet by their representatives. The people of the United States can only assemble by their representatives. The people of Kentucky, spread as they are over an extent of forty thousand square miles, comprising a population of eight hundred thousand, can only meet by their representatives. As we cannot have democracy then in its original character, we must approach as near as we can to it. How is this to be attained? Why, the people are to send men here to represent them. These men are to speak the will of the people. In what way, sir, are we to conduct this government? By taking the election of all the officers of the government into our own hands; to proclaim to the world and have it well understood, that we deem ourselves in this enlightened age competent to all purposes of self-government. The world has advanced in sciences of every kind, and it has greatly improved in the science of government. I for one am ready to proclaim to the world that I believe the people of the United States are competent to govern themselves, and no state stands more prominent in its character, in its republican character, than the state of Kentucky. There are those, who under the principle of conservatism, would provide the means by which people may have some way to take care of themselves. Is it the elective principle that insures it? No sir. What is it then? It is the elective principle coupled with practical responsibility. That is what does it. Let us vote for every officer of this government from a governor down to a constable. Let us take the elective franchise into our own hands, and let the same power, the majority that elects a man to office, have a right to say to him whenever they believe that he misbehaves, you shall leave the office. Did not the people of Rome elect the worst men upon the face of the earth as Emperors? They elected a Nero, a Domician and a Tiberias, the very worst scourges by which mankind was ever afflicted; and why did they act as they did? Because there was no power to call them to an account. Did not the people of France elect Bonaparte Emperor? Yes, every man of twenty one year of age, gave his vote to elect an Emperor who put his foot upon their necks. Why was it that he had such power over France that he could make thousands bleed at his pleasure? Because the people of France had no way by which they could make him accountable. It is the elective franchise, exercised by a majority, that makes a country to that extent a republic.

It is the controlling power of the majority that carries out the republican principle, which without that power would not be carried out.

Sir, says the gentleman, what would have become of the old court, if this principle had not been adopted? Yes, and if the two thirds principle had not been in, what would have become of that miserable old magistrate out in Greenup, who was brought before the court, a few years ago, for the worst kind of offence? If it is established that a majority can appoint, a majority should also have power to remove; not the majority of a quorum, but a majority of all those elected, a majority of the whole state. Sir, we set out in this business about four or five years ago—I mean this convention business. It was proclaimed from one end of the state to the other that there must be more practical responsibility, or we should cease to be a republic. Well, sir, a meeting was held in the senate chamber, a chairman was chosen and a certain gentleman was appointed to draw an address to the people of Kentucky. He drew it up, and we met again, a small band of us; we did not like the address exactly in all its parts, it was sent back to be remodeled, and was again brought up and read. Several gentlemen stood off and would not put their names to it. There was something of conservatism about them and they would not put their names to it. At last the people began to take the matter up and names began to be attached to it; first one man and then another put his name to it; we saw then how the wind was blowing and we all pitched in. The men who had before stood off then signed their names. Those who stood aloof when I wrote my name, and would not sign, afterwards did so. Well, upon the first vote for a convention the question was carried by a majority of forty eight thousand. The second year there was a majority of eighty thousand. Well now what was the principal change that was to be made by the convention? It was, that all the officers of government should be elected by the people, and that they should all be held responsible to the people, that every officer should be responsible to the same power that elected him; that is, a majority of the people. Without this, I say it is not a republic at all. Ah, says the gentleman, the people will act incautiously, they will act under excitement; it is not to be suffered that a majority shall have power to displace an officer of the government. That is the language of monarchists, the language of courtiers. The people, he says, must be saved from themselves, they must not be entrusted with this power, they must be guarded by this principle of strong conservatism. If the people are not to be entrusted with the management of their own affairs, let us go back to monarchy, let us go back to Great Britain at once and send for Victoria to rule over us.

I set out in favor of this identical principle, and I would not give a ninepence for the constitution unless this was in it. We are to be saved from ourselves, because we may do wrong. I am a bad manager of my own affairs, as every body knows, particularly of my money matters; but managed right or wrong, I would rather have the management myself than to have any one else manage for me. There is something pleas-

ant in the thought, that I may manage my affairs as I choose, and if this be really a republican government, let a majority of the people manage the affairs of government. Suppose the majority do wrong, who is to suffer? That very majority, and they will soon right themselves. I recollect I once went out when I was about thirteen or fourteen years old, upon a mill pond in a canoe, with three other boys. We commenced rocking the boat. We shall be drowned if we upset, said the three boys, for we cannot swim a stroke. We upset sure enough. I could swim pretty well, so I was not alarmed. I called out to them to hold on to the side of the boat and keep their chins above water, while I swam ashore with the rope so as to drag the boat ashore. They caught hold of the boat. Lord, how they did spread themselves to keep afloat! The instinct of self-preservation made them exert themselves, and self-preservation will make us careful to do right. If we had to cross the Mississippi in a skiff, would we be such fools as to turn over when we knew that we must all be drowned? Not at all. Let us trust ourselves. I came here for the purpose of endeavoring to establish this principle in the new constitution, and if we do not do that, we shall have accomplished nothing. Save us from ourselves! That may be the doctrine of some gentlemen, but it is not my doctrine. God save the people, and let them govern themselves—that is what I say. I never court any man-power, though I court now and then the people. I look to the sovereignty of the people—to that I have looked all my life—I am willing to trust them. I have no idea that a man shall be made a judge unless duly qualified, and I shall vote for the guard of eight years practice at the bar, as a qualification. I will vote for the further guard that the age of thirty years shall be required of the candidate for judgeship. Nay, I would go further, and make it thirty-five years. But as to responsibility, I want to hold him responsible to a majority of all the people of Kentucky. That is the responsibility I ask.

I have no doubt I shall meet a good deal of opposition upon this point, because it is a leading feature among the purposes for which we are assembled. I hope it will be well weighed by this house before they adopt the two-thirds principle. If we adopt it in reference to the judges of the court of appeals, we must adopt it with reference to every other officer of the government; and I now call upon those who are in favor of reform, those who are of the old convention party, to bear in mind that this was one of the principal objects for which the convention was called.

Mr. PRESTON. I know very well the age and experience of my honorable friend from Nelson, and I am aware of the deference that is due to him on a subject of such magnitude as that which he has this moment discussed. It was with some amazement that I heard the proposition, as I had not anticipated that any one in this house would advance the principle, or contend for it, or seek to engraft it in the constitution which we are about to frame. I am at present too, on account of the novelty of the position, unprepared to meet it except by those apparent arguments, which I believe, address them-

selves to the mind of every member of this house upon the great innovation which the gentleman from Nelson proposes to make. I believe, however, that there is fallacy at the bottom of his position, so clear and so palpable, one so destructive of every true principle of government that a mere tyro in the science, destitute of the knowledge or experience that he possesses can clearly discover it. It is not requisite that one should be deeply instructed, in order to find out the monstrous consequences to which it would lead. I take issue with the gentleman boldly and pointedly. If we stand here for the purpose of dragging all the powers of government, bound and manacled to the feet of the legislative power, delusively called, by the member from Nelson, the *people*, I, for one, am not prepared to go such lengths. The people, the people, the people, is the constant cry, and when the gentleman defines what is meant by the people in this case, it appears that it is the address of a bare majority of the legislature of the state. This is what he styles the people. I deny the proposition; the legislature are not the people. It may be deemed presumptuous in me to set my opinions in opposition to those of a gentleman from whom I received much instruction in youth, and from whom I imbibed many of the principles which I entertain in manhood. But in regard to this subject I feel that I stand upon the true ground, and that ground I am ready to maintain, assisted or unassisted in this convention.

What is the provision in the report, in reference to the removal of the judges of the appellate court? It is this:

"But for any reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any of them, on the address of two thirds of each house of the general assembly."

Now sir, the question is, shall we permit a mere majority to exercise this right. A majority of the legislature are to expel ignominiously from office, session after session, the very judges chosen by the people, and yet it is to be done under a false and pernicious political pretext, and in the name of the people. The French convention, when they appointed the committee of public safety, announced the principle, that the people possessed the supreme power. The convention of France, when constituted however, assumed to hold all the power in their own hands, and declared itself was the people. My belief is, that the tendency would be the same with regard to the legislature of Kentucky. If I understand any thing of the feeling which prevails in this house, in regard to the powers of the legislature, that feeling is in favor of curtailing those powers. Look upon our tables, see the multitude of propositions with which they are loaded, until they seem like the moon, described in the poem of Ariosto, a place in which the lost wits and crude ideas of all the world were collected. It is already proposed in this convention, that the legislature shall not be permitted to grant any banking privileges, that they shall not be permitted to meet oftener than once in two years, that they shall not be permitted to run the state into debt, and a multitude of provisions such as these are advocated by distinguished gentlemen. And yet it is now

proposed that they shall have the right to bind and manacle the judges and compel them to retire from office whenever the legislature may see proper so to direct.

Is it possible that gentlemen can suppose that the people of Kentucky will be satisfied with the provision, which directs that the judges shall hold their offices at the will of the legislature. If this principle be applied to the judges, it must be applied also to all the other officers of the government; and the address of a bare majority of the legislature is not only to expel the judges from their office, but to expel the governor of the state from his office, and place the executive and judicial departments under the absolute dominion of the legislature. Would this be in accordance with the wishes of the people of Kentucky? Are gentlemen of this house reduced to the miserable and farcical pretext—and I say it with all respect to my honorable friend from Nelson—of asserting that, when they are imposing limitations upon the powers of the legislature, crippling their authority, saying that they shall have no pay after sixty days, or that it shall be reduced one half, and taking away from them the power to act upon certain specified subjects, that it is necessary to place, at the same time, the judiciary within the grasp of a merciless legislative majority. Sir, the historical examples that were cited by the gentleman were, if my recollection be correct, entirely different in their tenor from that which he supposes. The people of Rome, the gentleman says, placed upon the throne Caligula and Nero, and he says that the tyranny endured by Rome under those Emperors was on account of the people not having a proper control over them. If he will tax his memory a little further he will find that it was the corrupt legislature that elected from time to time the Emperors, and combined with the Pretorian guard, elevated men into power and made sale of the empire to replenish their purses, that caused the destruction of Roman liberty. If he will turn to a more recent instance—to the French assembly to which he has alluded—he will find, that when that assembly had been called together by the people, they abrogated the executive power, and made their own sitting almost permanent. They first declared a constitution, and gave the monarch the right to veto. When, in the time of Louis the 16th, confiscation of the church property was determined on, it was then the assembly cried out against the executive veto. The legislature deprived the executive of that protection, and the king's head fell. The independence of the judiciary soon sunk under the invasions of the same body. A revolutionary tribunal, with Fouquier-Tinville at its head, arose based upon its ruins; bill after bill of attainder was passed and a committee of public safety was appointed. When that committee was established, of which Carnot was a member, Fouquier-Tinville directed, day after day, long lists of accusations and proscriptions to be prepared, and made the streets flow with blood, long processions of carts filled with unfortunate noblemen, were driven along, and when lesser victims failed the lower orders of the people were sacrificed.

Danton remarked that the revolution was endured as long as it operated only upon the aristo-

cratic classes, but after a time the guillotine began to work upon the people themselves, and it was found then that the evil was intolerable.—The revolution, he said, like Saturn, ended by devouring its own children: so it will be with any single department of government in which you place the supreme power. I believe firmly and conscientiously that if the proposition of the gentleman from Nelson be adopted, it will have that effect. I do not mean to say that it will plunge the people immediately into bloody revolutions as in France, because the same oppression does not exist here, and the rebound would not be so terrible. I do not mean to say that it will lead to any such sanguinary results at this moment, but I do assert that if we adopt this principle, the independence of the judiciary of Kentucky will be destroyed. If I were compelled to trust my life, liberty, and fortunes, and those of my children, to the caprice of an unchecked legislative body, I would not hesitate one instant to seek refuge under the safer protection of a limited monarchy. Divide the responsibility of such powers among a hundred legislators, and you limit it in such a manner that it is exercised without restraint or conscience. Rather than go back to such a state of things, it would be better to trust our lives and property to popular assemblies, like the Athenian democracy, collected in the grove of the academy, or to the hundred thousand men who assembled, sword in hand, upon the plain of Volo to decide upon the destinies of Poland. Never let us trust ourselves to the tender mercies of an unscrupulous legislative majority.

I do not believe that this convention is prepared to go to the extremity that the gentleman desires. If it be, the stump will be assumed and God only knows what fortune may await Kentucky. Her people, who have lived for fifty years under a happy constitution, may possibly in a phrensy adopt his propositions. But I know that there are good and patriotic men in this assembly, and throughout the land who will at least lift their warning voices against the measure—a measure which will tend to destroy the whole foundation upon which the independence of the judiciary rests. I am convinced, myself, that if we do so, in a few years the evil will become so intolerable that it will correct itself. I feel confident that it will be repudiated and denounced by the whole people of the state. But I cannot think, Mr. Chairman, that the convention will adopt it. I know full well how inferior is my experience in public life; but if I were the only man in this house to stand up in opposition to this measure, I would feel that I occupied invulnerable and impregnable ground, and never should such a proposition be made and carried in this convention, without my protest being entered against it.

Mr. BULLITT. I agree fully with the gentleman from Nelson in the proposition, that in this government and indeed all governments, a majority should rule in every case where it is practicable. And while I have a particular deference for the great talents of the gentleman, I must enter my protest against his application of this rule. I will endeavor to show the gentleman, that when you come to apply the rule, it will be found to do away with the very princi-

ple for which he contends. Before I enter on the main proposition, however, I will endeavor to answer that portion of his argument in which he refers to the election of the Roman emperors, Cæsar, Tiberias, and Caligula. He says they were elected by the people, in order to secure good government, and the enormities which they committed, the people were unable to restrain for the want of proper checks and balances, for the want of a proper means of controlling them. I set out with this proposition which I think is unanswerable, that the reason why our government is superior to all others that have existed before us is this. It is a cardinal principle that has been established first in America, that the powers of government should be divided into three separate and distinct departments, the legislative, the executive, and the judicial; and that no one of these departments should exercise any power belonging to another. Grant all the powers of government to one department, and you make it a despotism.

While I agree with the gentleman in the principle that a majority should rule, I hold that he is wrong in its application. What does it lead to? He says the legislature possesses the powers of the people. But the legislature is only one department of the government, whereas the people in a republic have the supreme power. It is the business of this convention to make an organic law, separating this government into distinct and separate departments. I have never heard it suggested, that we should dispense with any of the departments I have named, and it is a well settled principle in our government, that one department should not infringe upon the powers of another.

The gentleman is in favor of allowing a majority to rule. So am I. But I am not for giving the legislature that power in the name of the people. Sir, the legislature is not the people. It is a department of the government, and it is that department which has a tendency to swallow up all the others. Now see in what a delicate position you place your judiciary. Here are representatives of the people from every county, assembled in their legislative capacity. They, through party organization, or from particular motives, influencing them, pass a law violating the constitution of the United States, or the constitution of Kentucky. That law is brought before a judge, and the judge is compelled to decide that it is unconstitutional. When he so decides, will not the majority who passed the law almost instantly remove that judge? Is such an act for the good of the people?

But, sir, when you establish the principle that a bare majority of the legislature may remove the judge, you at once take away the great and cardinal principle of our government, that the various departments of the government shall be independent of each other. Any act of the government has first to go through the ordeal of the legislature, then it is subjected to the veto power of the governor, and afterward, as far as constitutionality is concerned, it must be subjected to the veto of the judiciary. But, sir, establish this principle, and you take this very qualified veto from the judicial department.

Now, sir, it seems to be a clear proposition, that if you adopt the principle which the gen-

tleman proposes you will effectually destroy the power of the judiciary. Apply the same principle to the governor, take away the veto power from him, and you put all the powers of the government in the hands of one body. When you do that, your government becomes a despotism, inevitably, call it by whatsoever name you will.

Mr. CLARKE. This proposition has been sprung upon the house somewhat suddenly, but I am satisfied from the little examination I have given the subject, that not less than two thirds of the legislative department should possess the power to remove a judge from office. So far as my reading of history has enabled me to discover, I know of no instance where tyranny has prevailed in any country save by the operation of law. Tyranny and oppression never have existed any where except by the operation of law. No tyrant has ever unsheathed his sword, and from the humble walks of life marched to a throne except by the operation of law. No people have ever been cast down from the elevated position of enlightened freemen, to the degrading position of slaves, except by the operation of law.

It has been well remarked by the gentleman from Louisville, that it is not proposed by any person on this floor to arrange a government on any other principle save that which divides it into three independent and distinct branches, and these to be independent each of the other. What is the principle contained in the proposition of the gentleman from Nelson? It is destructive of the independence that belongs to the judiciary department of the government, and places it at the will, pleasure, and disposal of the legislative department. They, are to be sure, separate, or independent, the one of the other, but in what does that independence consist? If you place the judiciary department under the control of the legislative, why not place the executive and the executive department under the same control? And when you do that you have merged all the different departments of government in the legislative department—the very department in every government from which oppression and tyranny has sprung. Why is it that in the constitution of the United States we see a provision that no law shall take effect after it has met the disapprobation of the executive until two thirds of both houses of congress shall give it their sanction? Because it is necessary that the executive should be clothed with the power to shield and protect himself from insults and encroachments on the part of the legislative department of the federal government: and for the purpose of keeping up that independence which is necessary for the wholesome and the healthy operation of the government itself. I am one of those who entertain the opinions expressed by my honorable friend from Henderson, (Mr. Dixon,) that there are things in government bearing on the social relations that exist between the citizens and the relations that exist between the citizens and the government that cannot and ought not to be done by majorities. And the very moment you lay down the principle that a majority of the legislature may, at its will and pleasure, remove a judge, that very moment you lay down the principle that the same majority

may remove the executive officer of the state, and you have thus centered all the powers of the government in the hands of one department. Therefore the idea of three distinct departments of government is repudiated in the practical operation of the principle proposed by the gentleman from Nelson, and I desire to enter my protest against it. When I am aware from the history of the past, that no country has ever lost its liberties except by the operation of law—and the legislative department is the law making power of government—I am unwilling to vest in that department of government whose instincts incline it to encroach on the rights of the other departments—a power that will place them at its mercy.

As I before remarked, this question has been sprung upon us suddenly, and perhaps but few on this floor are prepared to give a vote upon it understandingly and upon mature deliberation. I have only risen to enter my protest against a proposition that a bare majority of the legislature of Kentucky may remove a judge from that position to which he has been elevated by the people. If the power is conferred at all, as perhaps it correctly ought to be, I would withhold the exercise of it until it has the concurrence of two thirds of the representatives of the people.

The PRESIDENT. I believe in the power of the people to govern themselves wisely and discreetly. I believe in their power to frame organic laws to guide and direct the legislature, and to define the judicial and executive departments and to prescribe their duties. I come here as one of the people and from the people, to give my aid and support in establishing, or rather of re-modeling such a government. I expect to vote to place in this constitution the provision that is in the present constitution, declaring that "the powers of the government of the state of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: those which are legislative, to one; those which are executive to another; and those which are judiciary, to another." And I expect to vote to restore the appointing power to the people, in all respects, that was confided to their agents by those who framed our present constitution, and that the judiciary, as well as the executive, shall receive their appointment and authority to judge this people from the people themselves, and from no intervening agent. I came to do it, and I shall do it unshrinkingly, without the shadow of a doubt or question of the intelligence, the capacity, and the right of the people to choose these officers. And it is a trust better confided to them, than to any other power that it is possible for us to select. We have confided the appointment of our judges to the executive, and of our clerks to the courts, and the various inferior officers to other agencies without the immediate and direct action of the people. I expect the people of Kentucky to take one step further in advance in the principles of free government, and to give my vote to restore all these appointments to the people. And when they shall have appointed all these officers, I expect to provide in this new constitution, by my vote, a responsibility to the people immediate and direct, by bringing them again before the appointing power in a limited

period of years, so that the people shall have a right to say, "well done, good and faithful servant"—or to dismiss those that have proved unworthy, and to select other and better qualified individuals. And that is the responsibility to the people that I believe in—the majority of the people—and the majority of no other department in this government that we shall create. It is a direct responsibility, and that is the advantage and benefit that will grow out of a limited term of office. If gentlemen want other responsibilities—if a judge or other officer has been guilty of acts worthy of impeachment, provide for that impeachment. Let the judgment of the impeaching tribunal have the effect as it now has, of removing them from office. That tribunal we have provided in the constitution of the state, and in that same instrument we have also provided, in obedience to the principle that requires the conviction of an individual in the civil tribunals to be by the voice of the whole, a change in relation to impeachments, and require the conviction to be by two-thirds of the judging body. If that is not sufficient to remove these officers, then I will go further, and allow the address to be spread upon the records of the general assembly; but I will not vote that less than two-thirds shall remove an appointee of the people. The office comes from the people, and let them provide the responsibility of a limited term of years. If the incumbent becomes worthy of impeachment, I am willing to provide a tribunal, and to follow in the footsteps of those who have gone before us, and to let that tribunal be the house of representatives impeaching for the people, and the senate judging for the people. I am willing to go further. I am willing to allow an address of both branches of the legislature to enable the governor to remove, but I am not willing that a bare majority shall do it.

The President here waived any further remarks, and on motion of Mr. C. A. WICKLIFFE the committee rose and reported progress, and asked leave to sit again.

Leave was granted, and  
The convention adjourned.

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THURSDAY, OCTOBER 18, 1849.

Prayer by the Rev. STUART ROBINSON.

Mr. CHAMBERS offered the following resolution, which was adopted:

*Resolved*, That the committee on the legislative department be instructed to enquire into the propriety and expediency of holding the annual elections on some day other than Monday, and in some month other than August; and, also, that said committee enquire into the propriety and expediency of permitting each free white male citizen, who at the time being shall have attained to the age of twenty one years, and shall have resided in the state one year, and in the county three months, next preceding the election, to exercise the right of suffrage in all state, county, and district elections—and that said committee report, &c.

Mr. THOMPSON offered the following, which was agreed to:

WHEREAS, great public inconvenience has arisen from the suspension of the enactments of general laws. Therefore,

*Resolved*, That the committee on the miscellaneous provisions of the constitution be instructed to enquire into the expediency of making the following amendment to that part of the constitution to them referred: The legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals rights, privileges, immunities, or exemptions, other than such as may be, by the same law, extended to any member of the community who may be able to bring himself within the provisions of such law: *Provided always*, the legislature shall have power to grant such charter of corporations as they may deem expedient for the public good.

#### COURT OF APPEALS.

On the motion of Mr. BARLOW the convention resolved itself into committee of the whole, Mr. HUSTON in the chair, on the article reported by the committee on the court of appeals.

The PRESIDENT. Mr. Chairman, at the concluding part of the remarks which I submitted to the convention yesterday, I said, that I was opposed to the proposed amendments. I hold that in all that is essential to the peace of society, to the public justice of the country, the security of the persons, the lives, and the fortunes of the citizens, the judicial department is the most important branch of this government; and one, that in laying the foundations of this government, we should be the most careful, the most prudent, to lay in wisdom. It is the proud privilege of this people to live under a government of laws—laws enacted in the form of constitutional provisions, which are a barrier to the legislature, a barrier to the judiciary, that secures to every man the blessings of liberty, the pursuit of happiness, the enjoyment of the fruits of his industry, and to the high and the low with equal hope of justice. And, in selecting the officers who are to apply that law to the people, more regard, more care should be taken that it be confided to able, correct, independent, honest men, than in the selection of those put in charge of any other branch of this government. It is the confidence of the people in that branch of government that gives happiness and repose to society; and there can be no confidence where there is not integrity, where there is not independence, where there is not ample intelligence to apply those powers wisely, discreetly, justly, efficiently, without favor and without affection to the lowest man, and to bring the highest to that equal tribunal of right, which it is the privilege of a free people to secure to all the citizens. In restoring the appointment of these officers to the people, I do not desire to lessen the chances in the remotest or smallest degree, of the selection of the description of men to fill those offices that I have alluded to. I want them to possess that independence that flows from intelligence and integrity; that independence that is characteristic of our people, and to

know no man in the tribunals of justice; but to regard those considerations alone in the decisions they shall make. But in making them thus independent in the sight of the people, and in their own consciences, I desire that they shall be responsible. Responsible to whom? They, as all the other officers that we shall choose, to carry out the government of this people, are only the agents of this people. As agents, they should be faithful and intelligent in the fulfillment of their duties. As agents, I would have them responsible to the people, who created them for purposes of public justice; and I would make them responsible in no other way. We propose to restore the appointment of these officers to the people. Heretofore, we have selected the governor, as a trustee, to nominate most of these officers, confiding to him a trust, which now, in the name and by the authority of the people of Kentucky, we have come here to resume and give back to those who gave the trust. We propose to make them responsible by bringing them periodically before the people, when they will be required to render an account before that people, who are to pass upon them. Heretofore, we appointed these officers through the agency of the governor, during good behavior. We subjected them to impeachment for crimes and great misdemeanors, because it was unseemly and improper, that those who presided in the tribunals of the public justice of the country, should be stained or suspected of the crime of violating the laws of the land. And in order that public justice might flow pure, untainted, and unsuspected, we subjected them, when charged with crimes and great misdemeanors, to impeachment, to removal from office, and left them subject to the laws of the country by indictment, as all other citizens are left. We did more, sir. We provided that upon an address of two-thirds of both branches of the legislature, the governor might remove for other causes less than impeachment. And the cause of removal is required to be spread upon the journal.

The wisdom of that provision I acknowledge. If a judge became insane, it was no crime, no misdemeanor. He was not liable to impeachment—it was a visitation of divine Providence to which the whole human family are liable. If he became imbecile, he was not liable to be impeached. Even if he failed to do the duties of his office and continued the docket, it was hardly to be considered a great misdemeanor, or subject matter for impeachment. For these, and perhaps other causes, he being incapable of fulfilling the duties for which he was selected, or failing to discharge the trust, there must be some power somewhere to remove the officer, and supply his place. And hence the provision, that for causes less than impeachment, the officer might be removed upon the address of two-thirds. The constitution of the United States provides for impeachment, and that by two-thirds; and the senate shall be the body to try, and two-thirds of the representatives shall prefer the charges against these officers. And of the thirty states which constitute this union, twenty-seven of them have adopted that principle. Some twenty of them have the provision requiring two-thirds to remove on address.—



Massachusetts, New Hampshire, and one other state do not fix what number shall constitute that concurring verdict in case of impeachment; and some of them have failed to put in their constitutions the provisions for removal. Now, these provisions, by all these states, requiring, with so great unanimity as they do, a concurrence of two-thirds for impeachment, and two-thirds for address, are causes for reflection and consideration—just for what they are worth before this body. There are but few states of this union that have restored to the people the right to select their judges; and if we were to take the example of the majority, and make it conclusive on us, why, we would decide against this restoration. And, perhaps, if you were to take the whole of the nations of the earth, you would decide against the capacity of the people for self-government. Take the whole acts of all the people upon the earth, and you would decide against their competency to govern themselves. Still, the concurring acts of so many of the state governments, requiring the verdict of two-thirds in impeachment in a criminal offence, and two-thirds in an address to remove, is evidence furnished by the acts of a free people, of the extreme caution with which they have given the power to one department of the government to invade that of another. And we may look into human nature and draw our own conclusions in relation to the cause.

Now, I am opposed to the first amendment proposed by the gentleman from Nelson, to strike out the words "for cause less than impeachment," which would have the effect of allowing them to remove for all and any cause.—And I am also opposed to striking out the words "two-thirds," which would give the power to a majority of a quorum, or a majority of all elected. These officers are to be selected by the people, and we are to calculate that for these high, sacred trusts, that entwine themselves with the interests of all society, men of character, men of intelligence, men of capacity and learning for the particular description of business they are selected to perform, will be chosen.

My reading of the history of democracy in America, and the lessons which it gives us, persuade me that the intelligence of the people will induce them to select for all their offices, men capable from their age, their experience, and their talents, their knowledge, their information, and their integrity, for the particular office in question. Take the galaxy of distinguished individuals who have filled the presidency of the United States, elected by the people themselves, and a better example of the intelligence and capacity of the people to select for that high and distinguished office, cannot be produced in the annals of the world. And it is one to which we may appeal in relation to these officers, that in proportion to the importance of the office, and its application to the great interests of society, will the people be interested in filling it with talented and competent men; and they will bring their intelligence to operate here, in proportion to the interests at stake. In all the State constitutions, the principle is recognised that the wisest provision in relation to the organization of government, is that its powers be confided to three descriptions of officers; those which are execu-

tive, those which are judicial, and those which are legislative. That principle is recognised in them all. The principle is also recognised, that they should be separate and distinct, and that no one of these departments of government should be placed under the control of another. They all flow from the people. They are all the agents of the people to whom the different trusts are confided; and no one of these departments should have the power of reducing, controlling, directing, or influencing another. Their duties are clear, separate, and distinct. Their responsibility should be to the authority which created them. What does the gentleman propose to do by this amendment? To strike out! And the effect of it is, to strike out impeachment for crime against these officers; and in the conviction of them for these crimes, which is to remove them from office, the tribunal that is to try them is not to be sworn. In all impeaching tribunals, an oath is taken of the sacred character that is administered to a jury when it tries a man for his life or his liberty; or even in a case between individuals, that relates to the property of the one or the other. But in this instance, the sanctity of that oath is proposed to be dispensed with.

Mr. HARDIN. The gentleman does not understand me, or I do not understand myself. If the gentleman will permit me, I will explain. It is not to strike out the article for impeachment, but to provide for removal by address.

The PRESIDENT. I understood the gentleman exactly. If they are not to proceed by impeachment, if they may choose between the two modes of proceeding, if they may drop the impeachment and take address, my argument is applicable. If I desire to attain a particular object, and if there are difficulties in one mode of accomplishing it, I will take that course which will bring me more directly and more surely to the accomplishment of my end. And if I desired to remove a judge, and the sanction of an oath stands in the way of such removal in one method, I should certainly avail myself of the privilege and remove the case to a tribunal where no oath is necessary, where I should not have to ride over the consciences of men to accomplish the end. I understood the gentleman right, for the effect of his proposition is to do away with the impeachment and place it within the power of the two branches of the legislature to remove, and stain by that act, the character of these high functionaries that the people have called to their tribunals to administer the justice of the country. Therefore, I am opposed to it.

The legislature are to spread upon the records, the causes of the removal. They are to judge of the evidence which is to satisfy their minds. Indeed, it is not apparent that there is to be any evidence. They make the indictment for themselves; they spread it on their records, and they are to judge of the evidence. They may judge of the evidence from public rumor, or they may not. They may give notice, they may call evidence; but in the address there is no obligation to do so, and then these high functionaries, created by the people, indicted by one branch of the legislature, tried by that branch, with or without evidence, are at their will and pleasure, removed from office, and sent back to the people that elected them. That is the effect of it.

The people may return them again, and the power of this legislature is to be like that of the British Parliament, which repeatedly sent back Mr. Wilkes to his constituents, declaring that he was not fit to be the representative of the people that had chosen him. And this is to be accomplished when you strike out the two thirds, by a bare majority!

Why, in Athens, we read that they banished Aristides from the commonwealth for no other reason, and for no other cause, than that they were weary of hearing him called "the just." Take deliberative assemblies from the earliest period from which you can trace their history, and you will find there are times when passion, when prejudice, when party rule is triumphant, and justice is lost and never heard of in their courts. I will not refer to the bloody scenes of the French revolution. It were enough to look at the blood of patriots sacrificed by a British parliament, at the frown, or at the instigation of the king. They were the representatives of a free people—they boast the freest in the world. And yet these representatives of the people, by their proceedings exhibited their readiness to shed the blood of patriots.

We bring the actions of men to the tribunal of public opinion, and whilst that tribunal is sound, there is no fear. But will it always be sound? Is there no suspicion in the breast of the patriot, that even here, in this enlightened age, in this land where we boast of our independence, and our liberty, that passion, prejudice, and party feeling, will trample on the rights of individuals and upon the public justice of the country? And are we sure that the time may not come when this very intelligence, this very freedom, may grow into licentiousness, and that the intelligence of the country may be united to lead the passions and feelings of those who are not so enlightened, astray on many subjects? Now there is a great example to which I will refer, for no further purpose than for illustration. It is sufficient cause in the minds of intelligent statesmen, to turn a man out of office because he is not one of the same party. It is not confined to one party, or to another, and in the progress of this government it will not be confined to one or the other; for so sure as one party prevails over another, and that has acted on that principle and been sanctioned by the intelligence of the people, or by their passions or prejudices, and upheld on party grounds and party distinctions, so surely and so certainly, when they come into power, they will turn out and replace those they find in office with their own partizans.

I hope that in framing this constitution of Kentucky, in giving these offices to the people, that we will constitute no tribunal, who acting on that principle, on vague rumors, or false reports, will let the vengeance of the majority in this state fall on the innocent, and turn out for alleged incapacity the officers whom the people have selected. I tell you we should never give the power to permit it to be done. I hold we have all the power in our hands for the purpose of making this constitution. We are the people; we represent them. They have given us all the power. For what? To lay the foundations of this government in wisdom and in justice, to restrain the legislative department, so that by

passion or by prejudice, or unawares, and without due reflection, they shall not pass those boundaries that we in the name of the people, may prescribe for them. And tell these judges, whom we select to decide upon all the great interests that a free people can have in a government like this, and who are the coercive powers that give life, action, and being to the government itself. That they shall only be responsible to the people, that they are subject to nothing else, so that no passion, or prejudice, shall turn the judiciary aside from the great ends for which we established it. Is there a gentleman on this floor who, were it proposed that a man should be indicted for a crime, would contend that the tribunal should not be sworn, should hear no evidence, should decide without the obligation of an oath, consign to infamy, or consign to banishment any citizen of this land, would not start back from it? I would fain persuade myself that the gentleman from Nelson has not fully regarded the consequences of this thing. I know that he is an able lawyer; I know that he is far more familiar with statesmanship than I am. I have great confidence that his heart is in this movement, and that he desires to restore these offices to the people. And verily, I believe in my conscience that to him more than any other man is attributed the great unanimity with which we now meet in favor of the restoration of these offices to the people—for he early and boldly and decidedly placed himself on that ground and has not wavered.

I should be sorry, as he intimates, to part with him here. A great principle is involved in this question—a great principle of responsibility. Responsibility to whom? To the people? The term of office is the great responsibility to which I look. The reward the people are to bestow after he has served his term, when he and his friends may be greeted with the proud certificate that a re-election will give him, for the able and efficient manner in which he has discharged the duties of his trust, will give to the officer a stimulus to increase his intelligence, to guard his integrity and his impartiality in the distribution of the public justice of the country. It is to that reward he should look.

It is to the approbation of a free, intelligent, and patriotic people that the patriot looks as the brightest reward for the services and dangers he has encountered in the service of the people, sure that that approbation, following an upright, virtuous, correct, and impartial conduct is better calculated than any other, to make him live in the pages of history. I want to hold out to these judges that approbation, that encouragement, that security, and bind them by the hopes of that reward to a faithful and true discharge of their duties. I do not wish these judges to be looking before their offices have expired, as a celebrated statesman looked, when he asked where he was to go when his term was out. For these reasons I am opposed to striking out these provisions. I am disposed to leave in this constitution the power of impeachment, to get clear of those who have been guilty of crimes and high misdemeanors, and remove them from the judiciary. And, I expect that in this constitution a provision will be inserted, that when

the great inquest of the state of Kentucky, constituted of the representatives of the people, shall find an impeachment, that provision will be made for the appointment of an officer to discharge the duties during and after the trial. I expect we shall put a provision of that kind in the constitution, so that the tribunals of justice, after such inquest, shall not be filled with men suspected of crime and of great misdemeanors against the laws of the land. I expect when accidents happen which render a judge incapable to, or improper that he should, discharge his duty, that by address he may be removed and another put in his place. I am willing to trust this qualified power to the legislature. It is not the power of appointment, nor the power of removal, except in a qualified mode. And, whenever a man is guilty of crime, and is convicted, he ought to be removed; and we direct the legislature in the place of a grand jury, as a grand inquest of the state, to find the grounds of impeachment. We trust to our senators, men whom we elect for their age, and whom the people choose for their intelligence, their probity, talents, and character, to be the triers. And, in these cases of removal, I expect that the representatives, and the senate, and the executive, combined, will remove.

No man on this floor feels more firmly decided, or desires more anxiously than I do, to give the appointment of all these officers to the people. There is no man sees more strongly the necessity, the importance, the propriety of the independence of these judges from the power of the executive, and from the power of the legislative department than I do; yet, if these officers should be guilty of crime or misdemeanor, elected as they may be—for no man can tell when crimes shall be brought to his own door—by the frailty and temptations of life—they shall have a tribunal fair, honorable, and such as is worthy of a free people to try them. They shall not be removed unless it is manifest and clear to two thirds of both branches of the legislature and the executive that they ought to be removed. And I think there is no danger in making this requisition, and that we should be traveling in the path that has been traveled by other states of this union.

I think the proposition of the gentleman will have the effect, in high party times, when great clamor is raised against an individual, to sacrifice the office to party, prejudice, and clamor, instead of his falling under the justice of his country; and for this reason I am opposed to striking out both provisions.

The gentleman says, there is a place where two parties in this convention are to separate, and intimates very strongly that if this proposition is not sustained, many of us will part. I came here to make a constitution. I never expected to get it exactly my way. I calculated to yield to the better judgment, to the sounder experience of others; and if, upon the whole, when the constitution is made, I believe we have made a step in advance for the benefit and prosperity, and happiness, and for the advancement of the public justice of the country in all time to come, I intend to give it my signature and my support. And I trust that the gentleman from Nelson, if he should chance to be in a minority, will consider that this is not the place where the

friends of constitutional reform in Kentucky should part. I trust that he who struck the hardest and strongest blow against the central power, and in favor of distributing and giving it to the people, will reconsider and go with us.

I go with every gentleman who can obtain the sanction of my judgment in relation to his measures. I go for compromise, when compromise is essential to gain a portion; but the man who secures my vote for his proposition must first obtain the sanction of my judgment. This the gentleman's proposition has failed to do.

Mr. STEVENSON. There is not a member upon this floor who would be less pleased to hear the sound of his own voice reverberating in these halls than myself, but I consider that no more important question will be presented to the consideration of this convention than the principle involved in the proposition of the gentleman from Nelson. Equally important ones may be presented and are perhaps in embryo for the consideration of this house, but none more important, none more vital for the preservation, in my humble judgment, of civil liberty itself. I therefore throw myself upon the indulgence of this house, to express the grounds upon which my vote will stand recorded upon the journals of this convention. I yield to no man in the advocacy of the calling of a convention in this state, and while I cheerfully acquiesce in the distinguished ability of the gentleman from Nelson, and yield to him with pleasure the position of leader in that contest—I yield to no man here in the advocacy of what I believe to be the true democracy of the country—that democracy which recognizes equality of rights, equality of liberty, and security of property. And while I say this, I have, at least, brought my own mind to the conclusion that the adoption of the proposition of the gentleman would be striking at, if not the corner stone, one of the great principles upon which democratic government rests. No man entertains a more exalted respect or a greater friendship for the mover of this proposition than myself; and though I am compelled to dissent from him, and to enter my protest against his proposition, I know and I believe that he has been led in an error by a too zealous and exaggerated love for the rights of the people.

The history of all governments, from the foundation of the world to the present time, has shown that the people themselves, to secure a good government, have deemed it necessary to put certain limitations upon their own power. The history of Athens has been quoted in this discussion; and why was it that the people of Athens did not meet in mass to enact their own laws and take into their own hands the government? Why has the axiom been handed down to us, that if every Athenian was a Socrates, yet then every Athenian assemblage would be a mob? It was because they could not trust themselves to the excitements which weak humanity is heir to; and they were afraid to trust themselves to the charmed tongue of some wild demagogue—some ambitious marplot, who, commencing a demagogue, never fails to end a tyrant.

The very foundation of government rests upon the restriction upon popular rights, and the people wisely have determined to take the authority of the masses and to confer it upon certain agents,

under certain written restrictions and boundaries by which it is to be marked, and beyond which these agents have no right to go. One great error of the gentleman consists in supposing that the legislature constitutes the people. During the canvass last summer, and upon every stump in my county, when the subject of the open clause was discussed, I undertook to battle this ground with my opponent, and one of the grounds, the impregnable ground upon which I stood, was that the legislature was not the people. Is it necessary for me to take up the time of this convention to undertake to prove a maxim which seems to me almost axiomatic? Why when I was a boy, the first great leading state paper which I saw in my own native state, was a celebrated report issued in 1812, setting forth that the doctrine of instruction was the cardinal doctrine of the democratic party. The object of that paper was to elucidate and to explain the responsibility of those agents of the people to the source from whence their power was derived. But now it seems that great cardinal doctrine is to be overthrown and to be subverted, and we are told that the legislature can do no wrong—that a bare majority of a legislature shall have the right to violate a still more fundamental principle of the government—that the three great departments of this government shall be kept, as far as can be, into distinct and separate departments. Give the gentleman his proposition, and allow a majority of the legislature—whether actuated by political excitement, whether carried away by some momentary phrenzy, or whether, like myself, charmed by the eloquent tones and able arguments of the gentleman who stood there yesterday, advocating this very doctrine, and throwing around it a soft silvery tinsel, to be carried away by such arts as these—and do you not bring suppliant at their feet, the judiciary of this land? The gentleman cited, in support of his position, the case of a magistrate from the county of Carter, I believe. I had the honor of occupying at that time this seat in the legislature, and the house of representatives with a unanimity, perhaps scarcely ever witnessed on any other question, considered him unworthy to hold public office in Kentucky; but the case went to the other branch, and there personal prejudice or political feeling so blinded a number of the senators as to render our action nugatory. Does the gentleman know how often he has quoted the axiom, “that it was better that 99 guilty men should escape than one innocent man suffer”—and has he considered that the same motives which kept them from doing justice then, might on another occasion urge them to destroy the very pillars upon which our government rests?

I am guilty of no affected diffidence when I say that I have never before felt the responsibility I feel now. One of the youngest members upon this floor, I find myself engaged—not in the passage of laws, not in that action which we can do to-day and undo to-morrow—but in that important and sacred work under which we at least, and our children after us are to live. It has been said, and said truly, that “the ill that men do, lives after them, but the good is too often interred with their bones.” And when I come to consider that one false step in the building up of

this great work may bring upon those who sent us here misfortune, ruin, and destruction, I say that I do feel, feel sensibly, the sense of the responsibility under which I act.

Is it not true that, if a majority of the legislature have a right to remove a judge, we lessen the independence of one department to the other? And do we not, if we adopt the gentleman's proposition, bring down the judiciary to the very feet of the legislative department? The legislature, coming from different counties fresh from the people, to the discharge of their duties here, have an influence over the people that neither of the other two departments from their position and their duties can ever attain. They live among them, they are with them, and they come here only for a short period to discharge their duty. The governor is at the seat of government, where he is naturally withdrawn from the people. The judges, from their close application to business, and their residence here, are also withdrawn from the people, and they have none of that affection of the people brought about by the daily and common intercourse of man with man.

In the legislature there invariably springs up an unnatural jealousy towards both the executive and the judiciary, and prepossessed with those feelings, some new question arises; the democrats are in a majority and they want to get rid of a judge in the north or the south of the state. They commence by throwing out all sorts of insinuations against his capacity, his personal integrity, or against, if you please, his political opinions. A flame of discord is excited here, and soon is found some eloquent, daring defender of the people's rights, who intoxicates the house by his eloquence and his logic, into a belief that really the safety of this government, the safety of the party, the integrity of our judicial system itself requires that the head of that judge should be off. We can justify ourselves before the people—we can go to them and influence them; they know us as vigilant defenders of their rights—they do not know these judges, these aristocrats at the seat of government who have never met with the people, and who never know them if they do. They will say this, and they say further: this is the judge who decided the case by which you lost your land—or, this is the man who met you in Frankfort and did not know you. This popular appeal is made to the people, and they might or might not sanction it. And what have you done even if they do not sanction it? You have placed on the records of your land, that will live forever, this man as disgraced and dishonored—a plague spot on his fair fame as a heritage to his children, through generations to come. And ten thousand reprobations of the people would not alter or diminish the dishonor of that act. And suppose the people did sustain him, the transaction would be very far from being right. I think, talking about democracy—and my friend made many zealous appeals to democracy—that a few years ago I heard somewhere that there was a sober second thought of the people. What was meant by that sober second thought, but that the people themselves, whenever they would act wisely, would reflect and act coolly. Not under impassioned appeals or

excitement, but coolly they should hear, and still more coolly they should determine.

But there is another great objection to this doctrine. I have heard another maxim—that all governments should be permanent—that we should not change for light and transient causes that government under which we live. But supposing, as the honorable gentleman says, the legislature should carry out the will of the people and should appeal to them—what sort of equilibrium could exist in any government when the legislature can appeal to the people on a constitutional question. What sort of equilibrium and permanency in any government can there be, when on the very fundamental principles of the constitution you can give to one department of government the right to appeal to the people, and allow them, from day to day, or year to year, to change, undermine, or destroy it? It is at war with the permanency of any government and tends directly and immediately to destroy it.

Why has it been in all governments, that certain guards were thrown around each of its various departments? Was it not to protect it from the assaults that might be made upon it? Was it not to give it that independence and that security against the assaults which the other departments, either by a combination or singly, should make upon it? I have always so understood and always so regarded it. And when a gentleman tells me that the people themselves are not subject to these passions—that the legislature can do no wrong—I point him to all past history as a perfect and complete refutation and condemnation of this doctrine. Look at France and you see her daily expiring from the very excess of liberty. Look at our own government, and you will see, not only in our own constitution, but in the constitution of every state in the Union, certain restrictions, placed around each and every of its departments. And the surrender of power by the people themselves, in the constitution or organization of a government is itself a restriction upon them to a certain extent. I cannot for myself see upon what ground or in what way the gentleman can hope to carry through his proposition. It strikes me as perfectly destroying the very independence of the judiciary. It strikes me as bringing down the ermine of judicial integrity into the conflicts of the hustings—destroying first its independence, and then covering its purity with the dirt of personal detraction or political malice. It cannot be supposed if the gentleman's proposition prevails, and any succeeding legislature that may convene here, undertakes to remove two or three of these judges, that they will not seek to defend themselves against these attacks, and that they will not go before the people to justify their conduct? In the destruction of the reputation and character of a judge, we will suppose the case that the people themselves do not sustain their representatives, and that the judge thus assailed is re-elected some years afterwards to make some slight atonement for this indignity. Or if, as I understand the proposition is likely to be amended, the matter is to be submitted at once to the people, and the act of ostracism by the legislature is not to go into effect until approved by the people, still I must make

objection to it, because then the judge appeals to the people, and we have on the hustings of every county, the accuser on the one side, and the judges on the other. The people perhaps sustain the judge, and do you think that judge would be competent to sit in those counties, and decide between these accusers and their rights. Admit that it is gratifying to see high judicial integrity, the spotless ermine of our country drabbled, soiled, and trodden under foot, in the country, and then the popular voice raising it up again, what Kentuckian is there in the land who would not feel dishonored and humbled in the dust thereby? What man, after having passed through a conflict of bitter passion, in which his honor, and reputation, and the interest of his family had been insulted, and had suffered under the slanderous tongue of some ambitious demagogue, could trust himself to ascend the judicial tribunal and decide between the rights of these men? I felt almost charmed to the spot by the eloquent remarks of my distinguished friend yesterday, but that very eloquence shows me the danger of the doctrine it supports, and was to me a convincing argument against subjecting judicial reputation and integrity to the assaults of those artful demagogues who, with eloquence to support them, might choose to assail it.

Nay, sir, charmed as I was, I heard the speech more in sorrow than in anger—with a sort of pleasant melancholy mourning to think that the gentleman should be willing so far to go on in the course which, without the slightest disrespect to the gentleman, I regard as the very perfection of radicalism. The sentiments delivered by him, it must be remembered, will have their effect. I have seen how far party has carried this excitement in Kentucky, during the past summer, and a still more striking example of how high excitement upon local questions can rise. You know, sir, and every member within the sound of my voice will recollect how Kentucky heaved and tossed like an agitated ocean whilst the slavery discussion was going on. In the height of that excitement, in several of the counties, the great doctrine seemed to have been forgotten that "error ceases to be dangerous when reason is left free to combat it." When you touch a man's property—when you touch the doctrine which invades, as he supposes, either his liberty or the sanctity of his fireside you almost dethrone his reason. The people themselves can be led on, where questions, excitable in themselves, are agitated by the wily tongue of the ambitious, though they lead us to extremes on every subject. Suppose, if you please, that you have a pro-slavery legislature, and I trust in God no other will ever sit within these walls, and some gentleman holding the position of a judge, in the exercise of his reason and under the sanction of his oath, chooses to give an honest expression of his opinion, and we will suppose that expression of opinion is wholly and entirely opposed to the legislature. Sir, you can imagine from even the glimmerings of the scenes of last winter what a fire-brand such an expression of opinion must throw into the legislature. What security then will there be for the independent exercise of the functions of the judiciary? How perfectly fragile and

crumbling must be the organization of any of the departments of this government when it is to depend on the mere temporary comprehension of the legislature itself. Why, sir, you have no right to suppose that this legislature will bring from their constituents an expression of opinion in regard to their action in the investigation into the conduct of an officer against whom charges may be preferred. Cases must spring up, which will require legislative interposition, long after the time when the members of the Legislature shall have been elected. Yet you will undertake to give to these men, uninformed as they must be as to the wishes and opinions of their constituents on this subject, the right to remove any judge and to destroy his reputation—to strip him of his office, and when the people themselves ask the reason, you can only say to them, “we did what we supposed to be right.” Yet they may have been deceived. I mention these examples merely to show, in the first place, that I do not look to the legislature for correct action in such cases. All history attests that the legislatures of all the states, have at times run counter to popular sentiment. Why, sir, how many times have you witnessed on this floor less than one third of the members who are returned here, and I believe one instance is on record in Virginia, where, perhaps, two thirds were, after having given a particular vote, defeated before the people. It seems to me that the principle embraced in the proposition strikes at the very root of this government—it strikes at its stability—it disturbs its equilibrium—it is really bringing both the judiciary and the executive at the footstool of the legislature. It is constituting them the great sovereign power of the land, and I understand the gentleman to say, that he not only does not confine the principle to the judges, but that he carried it from the governor down to a constable.

I have given, very imperfectly, the reasons in addition to those delivered with so much ability, both by the distinguished President of this convention, and by my honorable friend from Nelson (Mr. C. A. Wickliffe,) why I am opposed to this proposition. I shall never, sir, were I to live to the age of Methuselah, place my hand upon my heart and give a vote, upon the correctness of which I could not stand at all times. I came here sir, to form what I hope will be a conservative constitution. I came here to stand up for those principles of government which have been instilled into my mind from the earliest moment of my recollection; and if I fall, I ask no prouder epitaph, than that I fell at the foot of what is believed the fundamental principle of a civil and religious government. I shall never seek to gain office by pandering to the prejudices of the populace—call them people—or call them what you please. I am a believer in popular government, and I believe in the good sense of those who sent me here, to give me at least an opportunity to defend myself upon every vote I give here; and when I go before them, should I be called on to give an account of my stewardship, I shall very readily be able to satisfy them that I pursued the dictates of my conscience and my honest judgement. I know them too well to believe that they will ask me to sacrifice my honest convictions, and I hope that they

know me too well to expect it of me. No sir, I believe that one of the greatest errors of this enlightened age is, a disposition on the part of gentlemen not to trust enough to the good sense of the people—not to profit by their own wisdom and experience and to do what that wisdom and experience shall dictate. It is better that gentlemen should rely upon their own ability to justify their conduct, instead of pandering to popular opinion. I mean this for no gentleman on this floor. I recognize the ability of the distinguished gentleman who offered this amendment. I concede to him entire honesty of purpose, though I frankly say that I do think him wholly and entirely wrong. I have detained the committee longer than I intended, and I can only return my thanks for their attention.

Mr. NUTTALL. It is not sir that I expect on the present occasion to throw such light on the subject as will influence the committee to render their verdict in favor of the proposition of the gentleman from Nelson, (Mr. Hardin.) To judge from present appearances, at least, the supporters of the amendment which he has proposed will in all probability be “few and far between.” I am never myself startled by such considerations. I have but one rule of action—one principle for the government of my conduct, and that is to form my opinions myself in all cases and in all times, and to advocate them on all occasions to the best of my ability. I was extremely gratified to hear the honorable President of the convention, for whose talents I have a high regard, after having last evening exhibited a degree of temper which almost induced me to think that he had fallen out with all mankind—I was gratified I say, when he resumed the stand this morning, to find that he was restored to his customary good humor, and that he was disposed to discuss this question with that clearness and ability for which he is so distinguished. Now, sir, gentlemen have defended their positions with regard to this question of constitutional reform—they have indicated the attitude which they assume towards this great question. Although there are older men on this floor than myself, I can date back my advocacy of the measure to the year 1823. Save the gentleman from Madison and the gentleman from Nelson, I suppose I am the oldest advocate of a convention upon this floor—not that I think the gentleman from Madison would ever have taken the sense of the people whether they would amend the constitution or not. And I would like to know, sir, what new lights have dawned upon his mind, and how long it is since he became the advocate of constitutional reform. And I think there are many others on this floor who have become new converts. I can trace their increase from that day to this, in every election in which I with feeble powers advocated the propriety of calling a convention; nay, sir, I go further; I can say what no other man in this house can say, that when the question was submitted to the people a year ago whether they would revise the constitution or not, and my own father was a candidate in opposition, I went to the polls like a freeman and voted against him. I think, sir, whatever may be the judgment of this house in regard to myself and the position which I occupy, I can show to my countrymen



that I have at least been consistent through life upon this question.

I think that gentlemen have misunderstood or misinterpreted, at least, the effect of the amendment proposed by the gentleman from Nelson. I understand sir, that the partition of the powers of the government provided by the article reported by the chairman of the committee, is pretty much in the language in which the old constitution of Kentucky is couched. Am I wrong?

Mr. C. A. WICKLIFFE. If the gentleman will allow me, I will answer the question. The committee have made in their report no partition of the powers of government. They have looked forward with hope and confidence that the partition of those powers already to be found in the existing constitution, and which lies at the foundation of every free government would be retained or re-adopted in the constitution which we may form. If the gentleman means the three departments of the government, the legislative, the executive, and the judicial, with the duties belonging to each committed to a separate body of magistrates, acting independently in their own spheres, we considered that no alteration would be made in that respect, and have made no such partition because we thought it unnecessary.

Mr. NUTTALL. Well then, I take it, if that is to stand as it ought to stand, that this government is divided into three separate, distinct departments, the legislative, the judicial, and the executive, and that neither of these departments is to exercise the powers properly belonging to the others. That is the true ground. That is the doctrine for which I mean to contend, and now sir I would like to know how it is, and upon what principle, if you make the judges removable by the address of a bare majority, that it conflicts with any provision in the order of government. Does it interfere with the judicial department of this government merely to give the power to the legislature, by a fair address, to remove a judge from office in consequence either of misfeasance, malfeasance, or nonfeasance in office. I say sir, it will not and cannot be construed by a reasonable interpretation into a conflict with any provision of the constitution which regulates the powers of government. I have listened with great pleasure and have been perfectly enraptured by the eloquence of the gentleman from Kenton. He reminded me very much of the poet whose tongue was strung with golden sinews, whose honied accents could tame down tigers, and cause the huge leviathan to leave the unfathomed deep to dance upon the sands. But my judgment has not been convinced.

What is it that has done this thing? What portion of this convention? I do not mean to particularize. Who, sir, are endangering the pillars of this temple of civil liberty, the right arm, the stay, the prop, the anchor of our safety? I will not say that it is those who have gone before the people and attempted to destroy the independence of the judiciary, and drag them down by popular clamor, by contending for the election of the judges by the people.

Now, sir, I may live to see the day, though I trust in God I never shall, when the issue which gentlemen talk about will be made; when you will

try a judge and turn him out by a bare majority, and then have an issue between the judge on one side and his accusers on the other. But do not gentlemen see that they will place the government in more danger—that they will throw the vessel of state upon a more dark and tempestuous ocean of confusion, by allowing the people to elect the judges than by allowing them to be removed by a bare majority? I hope I may never see the day, when a judge, being removed from office, will mount the stump; when, a great constitutional question having been decided by him, or a great and important question involving hundreds of thousands of dollars, he will be compelled to canvass before the people the question involved in his decision. But who will be to blame in this? Sir, I am for the independence of the judiciary. My position was before my constituents, until the popular clamor, which gentlemen so much dreaded, had swept over this commonwealth, and had swept off every man who was disposed to stand up for the independence of the judiciary of his country.—We all had to give way; we all had to recede from our position. I intend to vote for an elective judiciary. But sir, while I do that it is in obedience to the commands of those who sent me here. I have always had my misgivings with regard to an elective judiciary, and I am willing that it should be entered upon the records of this house, upon the journal of our proceedings, and that it shall stand for all time to come, to show whether I rightfully prejudged the case or not.

There never is any danger, there never can be any danger where the judges have a revisory tribunal to correct their errors and rectify their erroneous judgments. We have no difficulty on this point. But to some extent, and to a very great extent, the judges must be vested with enlarged discretionary powers, and then, sir, when those poor men of whom the gentleman from Kenton spoke, on one side, and the rich and powerful on the other, come up before the local judge who has the right to exercise this discretionary power, to which side will the decision incline.

Well then, sir, the proposition of the gentleman from Nelson, is the only proposition that can meet a contingency of this sort. The judge is to be in office eight years, according to the present plan of government, and if whilst in office he abuses this discretionary power; if he is guilty of misfeasance, malfeasance, or nonfeasance in office, then, sir, a bare majority of the legislature has the right to address him out, spreading upon the journal the cause for which they do so. And I know it was never contemplated by the gentleman from Nelson that these judges should be tried without witnesses. I think that delegates in this convention have conjured up a great bugbear here as a make-weight. I do not think that the gentleman from Nelson ever did or could conceive of such a preposterous proposition, as that they should be tried without witnesses. Now I intend to show my constituents that their wishes shall be carried out. I intend to vote for the proposition of the gentleman from Nelson, even if it gets no other vote than mine; and in doing this I preserve the great landmarks of republican liberty. I shall

stand by those landmarks, for I do not want in after years to have some surveyor go hunting up landmarks for me.

The doctrine I set out with is that which I mean to maintain, that the people have a right to govern, and ought to govern in this free country. That is where I stood, sir, twenty three years ago; and if the people of the state will be consistent, and upon sober reflection just alter the tenure of office of the judges, and uphold in their elections the removal by a bare majority, they will have a system which I doubt not will work better than the present.

I do not wish to be understood as being opposed to an elective judiciary. I only throw this out for the benefit of gentlemen who may not have known my position heretofore; and I intend to occupy that position so long as I have any thing to do with public life.

It all goes back to this; every argument that I have heard from able, learned, and talented gentlemen here, runs right back to the old doctrine of monarchists, that the people are not capable of self-government. You may govern yourselves say they, but we will throw restrictions around you, for you may be led away by demagogues, and not form a correct judgment. And my friend from Kenton gave as an instance, that at some future day the democratic party might have a majority! Great God! that I should throw out such an insinuation in regard to the party to which I belong; that the great democratic party is so steeped in iniquity and immorality that they would be guilty of such scoundrelism; that a period could arrive in this country, when, for mere party purposes, a democratic majority of the legislature would turn out a judge. Great God Almighty! if I belonged to a party who would act thus, I would turn my back upon them in five minutes, and never unite with them again on the face of the earth.

Mr. STEVENSON. I did not speak of the democratic party. I said that gentlemen who came here professing to be democrats, might disregard the popular voice when they get here. There have been gentlemen who professed one thing on the stump, and pursued a different course when they came here.

Mr. NUTTALL. Well I think that may be applicable to the gentleman from Kenton, but I know it is not to me. I go upon the principle, that our constituents throughout the length and breadth of this great and patriotic state are enlightened men. I dare any gentleman to go home and take the stump and say there are men living at the seat of government who understand these matters better than you do; men who can form a correct judgment in relation to the affairs of government, whilst you who live in seclusion, who know nothing of the refinements of city life, who have never heard the tones of a piano, or seen tables groaning under loads of sweet-meats, are not capable of forming an opinion. I do not pretend to much refinement myself; I am one of the people, a demagogue, if you please, but sometimes, when I meet before the people men who have considerable pretension on the score of attainments, I do assure you I make their hair stand on end. But sir, I have read an old adage which I will give you presently. When a set of gentlemen want to put

down any great measure, they always refer us to the manner in which the governments of antiquity have all run the road to ruin. The free governments of Rome and Athens are pointed out, as an index, as a beacon light to show us where the rocks and quicksands are situated. Well, I have read some little myself in Dilworth's spelling book, but I do not think that I ever saw in all my reading, any description of a government that comes up to my idea of a free government, except our own. And when a gentleman comes here, like the gentleman from Kenton, who is on his first legs, or like my honorable friend from Louisville, when the lobbies are crowded with ladies, they like to talk about Greece and Rome, and make a display of their learning. I don't wish to make any display. I think even if my wife were to die and there was ever so much attraction in the lobbies—I take that back,—Mr. Chairman; but a great many men certainly do come here to extinguish themselves. [Irrepressible laughter throughout the house, as well as much merriment in the galleries, was elicited by the quaintness of the honorable delegate.] But I never saw anything in this Greece and Rome business to alarm me. I have no doubt there are some gentlemen who know more about those countries than I do; I never was there, and never expect to go there; and never having read more than Dilworth's spelling book, I never expect to know more of them than I shall hear in oratorical displays in this house. I had thought, however, or perhaps dreamed that free governments always fell from the fact that a few men get into power, whether by demagoguery or not, and by degrees destroyed the foundations of the government, and stole away the liberties of the people. I may be wrong. But, sir, it is a very favorite topic. If gentlemen want to break down measures which a few men like myself advocate, in order to give strength to the other side of the question, they cry out demagoguery—demagoguism. Well, I have no idea that any gentleman who has used this expression has tried to give it point towards any member of this body.

I am determined, as far as my action is concerned to preserve the great land mark, that a majority shall rule, and I do not fear that the constituents of any man in this country, in this enlightened age, ever can or will be influenced by demagogues, first to elect an improper person as judge, and then to elect a man to the legislature who is incompetent to determine whether the judge has committed an offence for which he ought to be removed. I do say sir, that it is underrating the intelligence of the people; it is not a proper appreciation of their general intelligence to say that any state of things, in this our day, can arise, in which the people can be misled; because if they suffer themselves to be deceived it is they who must suffer the ill consequences resulting therefrom. But I do humbly conceive from the fact that all the important officers of the government are to be elected by the people, that they will be cautious, that they will act with judgment, and certainly not permit themselves to elect to important offices, such persons as are incapable of administering the government. I think they will at all times rise superior to the charge

which gentlemen have seen fit to throw out against them. That is my doctrine.

I do not know how much I am influenced by what may be laid up at home against a man, for his acts in this convention; but in very few words, in conclusion, I will give you my opinion as to what we ought to do. And first, I will say that if this amendment does not succeed, I am still with the convention party. I am going for the amendment in good faith, and whether successful or not in this, I am still going for other amendments in the constitution; and if we can fix up a constitution that will suit a majority of this house, my signature shall be attached to it, whether I coincide in the amendments that are made or not. I intend to be consistent. Although my own notions may not meet the views of a majority here, yet if you secure the great object for which we have assembled by forming a constitution that will be acceptable to a majority, I am with you. When you secure an elective judiciary, and secure to the people the election of all the other officers of the government, you will have effected one of the great objects which the people had in view in ordering this convention. If only this shall be accomplished, I shall vote for the new constitution. I do not know how long my friend from Nelson and myself will continue to vote together. I suppose that if his amendment should be rejected, he will part from most of his old friends, by putting himself in opposition to any constitution that may be made.

I believe I have said all that I designed to say, and perhaps more than I ought to have said. As the preacher says in winding up his sermon, if anything has been said that is out of the way, I hope the house [I will not call upon the Lord, for I am not good enough for that,] will have mercy upon me.

Mr. MACHEN. I do not rise, sir, with a view of detaining this house, or of attempting to enlighten it, by presenting this subject in any new light. I feel it due to myself, however, and to those whom I represent, to give a reason for the action which I shall take, when we have the privilege of attempting to dispose of the question which has been under discussion. I have seen sir, heretofore in this house, the shafts of ridicule attempted to be hurled, where there was no argument to sustain the position which the party was endeavoring to advocate. But sir, the shafts of ridicule, I trust, will always fall harmless upon the ear of every speaker in this convention. We are here for high and important purposes; and I conceive that the action of this convention upon the question which is now before it, has a great deal to do in carrying out those purposes for which we are here assembled.

I, sir, claim to be as fully initiated in the spirit of democracy as any man upon this floor. I claim to have gone as far in all my past history, in endeavoring to sustain those great principles, which I believe lie at the foundation of all republican governments as any man on this floor. But sir, for the first time in my short existence have I learned that the representatives of the people assembled here, constitute the people themselves. It is a new doctrine to me; and sir, I conceive it to be fraught with error which is so fundamental, that if sustained by the action of

this convention, all our institutions will be overturned, and the legislative department of our government will, as has been frequently stated by gentlemen on this floor, be the great fish which is to swallow up all the other departments. I know that the argument made by the venerable gentleman from Nelson was well calculated to lead us astray; it was well calculated to deceive the unwary; and at the first blush might be supposed to carry with it a power, which in reality it did not possess. Ah! sir, it was like a bed of beautiful roses, inviting to the eye, but it contained within it an asp, and if we lay our hand upon it the poison of the asp will be felt.

It is attempted to be maintained that the legislature are the people themselves. I ask you to look back for a few years at the action of our legislature, and then say if the people, regarding the legislature as the people, are capable of self-government. I say the position cannot be maintained, if we take the action of the legislature for the action of the people themselves. What is the fact? One year the legislature is here assembled, engaged in enacting laws by which the commonwealth is to be governed. They return to their constituents; and, as remarked by the gentleman from Kenton, it frequently happens, that not one-third of those who were engaged in enacting those laws, are returned to the next legislature. Their constituents say to them, you have not been good and faithful servants; we must elect those who will carry out our views.

One of the great disadvantages of a republican government is, that we have to delegate our authority. We are here representing the people of Kentucky, but are we the people? No sir, we are acting with delegated authority. If we do their will, we shall receive their approbation, and our work will be sustained by an overwhelming power in the commonwealth. But is it not a fact, that the people from one end of this great commonwealth to the other, have looked and are still looking upon our action here with great jealousy? That is from the fact that our power is delegated to us; that they have entrusted to the action of a few men, the interests of this great commonwealth.

The gentleman who was last up presented this to my mind in rather a startling point of view. He says that his voice is for maintaining the sovereignty of the people; that he has full confidence in their capacity for self-government.—And how does he demonstrate this? He says he believes that the power to elect the judiciary ought not to be entrusted to their hands. What was it that led him to this conclusion? He says that the people will demonstrate their imbecility; that when the election of the officers of government is thrown upon the people, their imbecility will be demonstrated in their action. I believe that the people have the capacity to elect any of the officers of the government.

Mr. NUTTALL. I wish to be distinctly understood in regard to this matter, because it is to be a matter of record. The ground which I took before my constituents, and which I take now is, that the people are qualified to elect every officer of the government, from the president down to a constable; but that in the case of a judge, though the people are not disqualified to

elect him, yet from the fact of his receiving his appointment in that way, it operates as a disqualification upon him. That is the ground I take.

Mr. MACHEN. I understand then, that the spirit of the proposition which I made has not been controverted. If, sir, the exercise of the power that is here intended, as I trust, to be placed in the hands of the people, is to operate as a disqualification of those who are to carry on the operations of the government, I affirm that according to any system of reasoning with which I am acquainted, it must result in a disqualification of the people themselves to control the government. Now, what is to be the effect of the adoption of this principle? The gentleman from Nelson has clearly indicated that he intends that the principle shall extend to all the officers of the government, from the governor down to a constable. What will be the condition of the governor under such a system? The legislature meets and passes a law, which on account of a constitutional objection, the governor is compelled to return to them without his sanction. What will be the action of that body? They will say, "sir, you have stepped in between the rights of the people and the interests of those for whose benefit the law was passed; you shall no longer be governor." And what is to be the remedy? Ah, gentlemen say, go back to your constituents and defend your conduct. Will that restore the governor to his position? Will that secure you against the evils which are incident to such a power in the legislative department? No, sir, it will not do it.

I did not intend when I rose, to detain the house as long as I have. I have not attempted to arrange what few ideas I entertain on the subject, in any thing like a correct form. I know that upon my tongue there is no syren sound, that is calculated to attract those who listen long. I have lived long enough, however, to feel that this is one of those important principles upon which will depend the good order, or the confusion, attendant upon the operations of the government. It is important, if you would secure harmony and good order, that each department of the government should be kept separate, and made to feel its independence. There are many ways in which, if this principle be carried out, it will operate injuriously to the interests of the people. It is not necessary to specify them; the intellectual vision of gentlemen will readily suggest them. I shall vote against the motion to strike out, for it is my firm conviction that the power here contemplated to be given to a majority should never be exercised, unless two-thirds at least of the assembled wisdom of the state pronounce in favor of it, and this is what the people will sanction.

Mr. THOMPSON. The proposition before the committee is this: whether, when a judge is brought before the legislature, it shall require a vote of two thirds to remove him, or the vote of a bare majority. Now who is it that proposes this tribunal to remove a judge? From the arguments that I have heard here, I apprehend it is supposed that the legislature is subject to all the improper influences that can be brought to bear upon man. Who is it that proposes that this power shall be placed in the

hands of the legislature? Why, the proposition came from the committee on the judiciary. If that department is not the proper tribunal to exercise this power, why did you propose it? why did you not propose some other, if the legislature is not to be trusted? This power has existed in the legislative department of the government from the year 1792 under the old constitution and under the present constitution up to this hour; and I call upon gentlemen to point out an instance when this two third power has ever been carried into effect. Sir, it has remained a dead letter in both the old and the present constitution. What is the effect of it? Suppose the legislature is liable to all the improper influences suggested by gentlemen. There are one hundred and thirty eight men in the two houses. A judge is brought before them for malfeasance in office. Ninety one say that he is guilty, and forty seven say he is not. How does the rule operate? Why, according to the proposition of those who advocate the two thirds system the forty seven are to rule the ninety one. Is this republicanism? I say it is not. Are not the forty seven more liable to improper influences than the ninety one? Most undoubtedly. Sir, the same argument that I have heard urged in favor of this two thirds rule I have heard urged against the election of the judges by the people. I have no doubt if you take the vote of the judges on the subject the two thirds rule will be adopted; but if you carry it to the people they will decide that a majority shall rule. That is the principle that should be carried through every department of the government. If the legislature is not the proper department to be entrusted with this power, then select some other; but if it is the department that is to exercise the power, then let the republican principle apply, that a majority shall rule.

On motion of Mr. R. N. WICKLIFFE, the committee rose, reported progress, and obtained leave to sit again.

The convention then adjourned.

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FRIDAY, OCTOBER 19, 1849.

Prayer by the Rev. Mr. ROBINSON.

EVENING SESSIONS.

Mr. PROCTOR submitted a resolution, as follows:

*Resolved*, That after Monday next this convention will hold a morning and an evening session, the evening session to commence each day at 3 o'clock.

He said he did not deem it necessary to say any thing in favor of this resolution. It was well known to the whole country that one of the objects in calling this convention was, that there should be economy secured in the expenditures of the state. This convention had already spent much time in the discussion of abstract principles which had been well settled in the primary assemblies of the people. He hoped the convention would adopt the resolution, that they might be enabled to do the business for the state of Kentucky, to do which the people had

sent them here. On the resolution he called for the yeas and nays.

Mr. BOYD suggested an amendment, so as to provide that the morning session should commence at 9 o'clock.

Mr. PROCTOR accepted the amendment, and the resolution, as amended, was as follows:

*Resolved*, That after Monday next the convention will hold a morning and evening session—the morning session to commence each day at 9 o'clock and the evening session at 3 o'clock.

Mr. IRWIN was as desirous to secure economy as any gentleman on this floor, and he was as anxious that they should get through the labors which devolved upon them here. He was anxious to return to his own business, which required his attention, but the people of the state of Kentucky had entrusted to them the important duty of making a constitution under which they were hereafter to be governed, and so important a work should not be done in a hurry. It was not only necessary to do their work, but to do it well, and thus to guard against some of the consequences of unnecessary haste. And what was the state of things here? Why, from several committees, the convention had, as yet, received no report. These committees were in session daily, and their hour of meeting was three o'clock. How then could they meet here at three o'clock, without interfering with their business in the committee room, on which the progress of business in the convention so much depended? The committee on contested elections would meet to-day at three o'clock, which many members of the convention were desirous to attend. This was a fact which would show the convention that all its business was not confined to this hall; and he was well satisfied that it was too early a period to adopt the resolution which had been just offered.

With respect to the call for the yeas and nays, which he presumed was to affect individuals at home, by showing that certain delegates were more anxious than others to secure economy in the expenditures of the State, he would merely observe that he was not thereby to be driven from giving such a vote as in his judgment he believed to be right. No effect to be produced by it hereafter would change his course of action, when he conscientiously believed that evening sessions at this time would rather retard than facilitate the business of the convention. He really thought that the resolution ought not to be adopted.

Mr. C. A. WICKLIFFE thought he should be prepared to vote for this resolution a week hence, but at present there were some two or three standing committees which had made no reports.—These committees met at three o'clock in the afternoon, but in the course of a week he thought they would be prepared to devote more time to business in convention. If he had any particular reputation it was that of being a laborious and industrious man; and he was as anxious as any gentleman to make rapid progress with the business which they had come to accomplish; but at present they were not prepared for the adoption of this resolution. He would therefore move that this resolution be postponed until Monday week, when he would call it up again if nobody else did.

Mr. HARDIN remarked that it had been suggested to him that the three committees on the various branches of the judiciary—the court of appeals, the circuit courts, and the county courts—should, after they had finished their several labors, have a joint meeting for the purpose of attempting to unite upon some harmonious system as a whole. The reports as they now stood, did not harmonize. He thought it a very sensible suggestion and hoped it would be acted upon, and that the discussion on the judiciary should cease until the result of that action was known. All he desired was to secure that harmonious action which would produce the best possible system. All came here for that object, and all seemed to concur on several of the prominent principles that were to be acted upon by this convention. He hoped they would harmonize, and the result be, that they would give to the people such a constitution as that generations for time to come would say, "God bless the convention of 1849."

Mr. PROCTOR was as anxious as any one that full time and deliberation should be allowed in the performance of the labors of the convention, but from his observation of the proceedings, he thought his proposition would afford ample time to the committees for any such purpose. If every subject was to be discussed to the extent which those under consideration had been, he did not believe they would get through their labors until after Christmas, unless the convention sat more hours daily. In calling for the yeas and noes his object was not to influence any gentleman in his vote, and he presumed the call would exert no such influence. As gentlemen of more experience than himself seemed to regard it as the best plan, he had no objection to the suggestion of the gentleman from Nelson (Mr. Wickliffe.)

Mr. C. A. WICKLIFFE said that the suggestion to which his colleague had referred was based upon the idea that the great principles upon which this new system of a judiciary was to be organized, should be first determined by a vote of the house. The committees could then harmonize so far as its details were concerned. He did not wish to be understood as desiring that the committees in joint meeting should settle upon the principles, because it would be no final determination if they did, as the matter would still have to be decided in the house. He hoped the resolution would be postponed. While he was willing to second all efforts to further the business of the house, he did not want to act hastily on a work of so important a character as this. It was not like the ordinary legislation of this country which could undo on one day what had been done the day preceding.

The resolution was by consent postponed until Monday week.

#### LEAVE OF ABSENCE.

On the motion of Mr. BARLOW, leave of absence until Monday week was granted to Mr. Hamilton.

#### PROPOSAL TO TERMINATE DEBATE.

Mr. KELLY moved that all debate in committee of the whole on the amendment of the gentleman from Nelson, (Mr. Hardin,) to the re-

port made from the committee on the court of appeals, be terminated at 1 o'clock this day, and that the committee shall then proceed to vote thereon. He said he made this motion with a view to expedite the business of the convention. In the course of a few days it might be necessary that he should be absent for a brief period, and as it had been suggested that the question involved a greater responsibility than any other that had arisen during their deliberations, he desired the opportunity of voting against the amendment. He called for the yeas and nays on his motion.

The PRESIDENT had some doubt whether the motion was in order, for the report referred to was in the possession of the committee of the whole, and was not now before the convention. He did not see how they could reach it while it was in committee of the whole.

Mr. C. A. WICKLIFFE suggested that the motion would be in order, if made so as to instruct the committee to rise and report upon the amendment at a certain hour. The committee certainly were bound to obey the instructions of the house. But he should vote against any motion to arrest debate, believing that, although it had consumed something like two days, it had not been unprofitable to the house and the country. It was too important a question to decide without full debate, and as the mover of the amendment, and others desired to be heard upon it, he believed they should have that opportunity. Like the gentleman he was anxious, and indeed he was compelled to be absent for a few days, but if public duty required him to stay, his individual interests must take their chance.

Mr. HARDIN would do any thing in the world to accommodate the gentleman from Washington, but it was impossible that he could get a vote on the amendment at one o'clock to-day. The whole article had to be gone through with in committee before it was reported, and the ayes and noes could only be called after it had come back to the house. By that time both gentlemen would have returned to the house. There were a great many propositions connected with this article that would elicit discussion. There was the question in relation to the four judges—another in relation to the eight years term—and then there was the question of eligibility on which undoubtedly there was a formidable battle to be fought. That was the place where he meant to make a stand if he had to die in the ditch. This was the leading bill of the house, and opportunity ought to be afforded for a full discussion upon it. He did not know whether he should speak again on the subject or not, such was the feeble condition of his health, but he was willing to forego any remarks on that point. But on the great question of eligibility or re-eligibility, he did desire to be heard at some length. He desired also to be heard on the question as to the manner of voting. He was in favor of the *viva voce* system and wished it applied to all officers that were to be elected. He had no idea that the manner of voting for a judge should be different. They were not the sun, that we were obliged to look at them through a smoked glass, and he was willing to look them in the face and vote aye or no, as he chose.

Mr. C. A. WICKLIFFE, said that his colleague had taken the occasion in his own peculiar way, to give notice of his future opposition to the bill. For this he was very much obliged, and had the gentleman given the same notice on the question under consideration, he (Mr. W.) would perhaps have been better prepared to meet the subject than he was when it was sprung upon him the other day.

Here the conversation dropped without any action on the motion, the President having decided that it was out of order.

#### REPORT OF A COMMITTEE.

Mr. McHENRY, from the committee on miscellaneous provisions made a report as follows, which was referred to the committee of the whole and ordered to be printed:

#### PREAMBLE.

We, the representatives of the people of the state of Kentucky, in convention assembled, to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this constitution for its government.

#### ARTICLE 1.

*Concerning the distribution of the powers of the government.*

SEC. 1. The powers of the Government of the state of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: those which are legislative to one; those which are executive to another, and those which are judiciary to another.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

#### COURT OF APPEALS.

The convention then again resolved itself into committee of the whole, on the report of the committee on the court of appeals, Mr. HUSTON in the chair.

Mr. R. N. WICKLIFFE. I have been a listener during the whole sitting of this convention, and I have derived much more gratification thereby, than I expect to impart by speaking any crude notions of my own. The committee on the court of appeals have submitted their report proposing some very serious innovations upon our present judiciary system. They propose to elect the judges, to fix their term of office at eight years, and to make them responsible to at least two-thirds of the legislature. The gentleman from Nelson in his amendment now under consideration, proposes to make them responsible not to two-thirds of both branches of the legislature, but to a majority of both branches. I shall vote for that amendment, and I shall vote also for the proposition of the committee to elect the judges. As a part of the means to secure that responsibility of the judge, heretofore needed, the committee propose to elect him for the limited term of eight years. For the purpose of securing a more immediate and practicable responsibility than that limited term of office of it-



self provides, the gentleman from Nelson has proposed his amendment. I shall vote with the committee to elect the judge, and with the gentleman from Nelson, to secure a more efficient and practical responsibility. In giving either or both of these votes it is possible that I shall differ from those who give me authority to vote at all in this convention. I was elected here, like some other gentlemen perhaps, upon another issue; a question which at the time was thought to involve danger, fearful and threatening enough to obliterate all the ancient landmarks by which parties have been characterized. The subject to which I refer, has engaged the attention of the convention for the last ten days, and it is a question which I had thought was settled, eternally settled by the popular voice in a manner so decided as to leave no room for cavil. When it comes up again, I may desire to say something upon it—and I allude to it now, only for the purpose of showing how it was I came here at all, and why it is that on these questions of an elective judiciary, and judicial responsibility, I may differ from my fellow-citizens whose good opinion I so deeply regard. But whatever may be the effect of the vote I may give, I have this to console me—that I never practised any concealment to secure their suffrages. I was guilty of no hypocritical pretences to secure a seat on this floor. So far from that, day after day, during the canvass, it was imputed to me that my views on particular subjects, were of too radical and revolutionary a character, as I believe my friend from Bourbon has designated them. If, therefore, I differ from the people of Fayette county, it will be a fair difference of opinion between them and me, and presenting on my part no violation of pledged faith, no broken promises, or disregard of understood obligation. I say it is possible I may differ from them, but the question is one which has never been much discussed in that county. A few years ago, a man would have been laughed at, if he talked about electing a judge, or of securing that responsibility for the faithful discharge of his duties that is proposed by the gentleman from Nelson. And at first blush we all shrink from the idea. There is no principle more universal in the human breast, than that which induces us to shrink from any change that trenches on those systems of labor and habits of thought, to which we have been accustomed for years, and which are hallowed perhaps by the memories of past days. But this is not the age, nor is this the people to be content with the argument that because a thing has been, therefore it must be.

It is a misfortune, or a fact whether it be a misfortune or not, that the profession of which I have the honor to be a member, learned as it is, honorable as it is, and ancient as it is, is always the very last to give up any antiquated theory or practice, connected with the judicial department of the government. Whenever it undergoes any reform, the duty has to be done by those outside the court house, and without the co-operation of those who minister at the altar of justice. Instead of our leading, as we are apt to do, in regard to all other great and salutary reforms, we here have to follow in the wake of those who originated this great principle,

and to whom will belong all the honor, if it is successful.

Now it is useless to allude to the causes which produce this state of things. There are many of them, but perhaps the most obvious one is this: the very first book we read reveals to us some political notions that may do very well for the country we came from, but which is found to be utterly false when we come to apply them to the organization of government as it exists among us. We read in Blackstone about an independent judiciary, and we have heard of it in this hall from all the distinguished gentlemen who have addressed the committee. We read about an independent judiciary, and whenever any attempt is made to infuse an element of responsibility into that department of the government, like that proposed by the committee, or by the gentleman from Nelson, it is always met with the cry, you are violating that sacred principle so essential to the safety of the government, and the independence of the judiciary. The words "independence of the judiciary" have a meaning, a full meaning in England. There is not a page of British history—full as it is of deeds of renown, both civil and military, that give character and dignity to the race from which we sprang—brighter than that which records the struggles of the English judiciary in behalf of English liberty. The king formerly appointed his judges, for they were called his judges—to hold their offices during his will and pleasure, and they were paid by him, and were responsible to no body else. And now refer to the statute books of England and see the number of crimes which the subject is capable of committing against his royal majesty, and you will not be surprised that the king was in constant struggle with his people. And who could doubt the result of such struggles where the king had only to point to the subject and nod to the judge? What was the first great struggle for English liberty? It was to change the tenure by which the judge held office during the will of the king to the right of holding it during good behavior. That was the great struggle for English liberty.

And it was not fully achieved until as late as the reign of William and Mary, after the revolution. But mark you now, the very men, and they were wise and great men, who made this change—that he should hold during good behavior—also fixed the responsibility of the judge not to the king but to the parliament—where men speak their minds according to the definition of the word and not to two thirds but to a majority, both houses concurring. That is what they did. What did they do next? When the king died, the judges' commission became vacant, and thus the officer was still made dependant on the crown. And when the new monarch ascended the throne, this power to reappoint the judges gave him a vast patronage, and enabled him to create on the part of the judge some feeling of obligation to the crown. It became then another struggle of English liberty to rectify that error, and that was not achieved I think until the time of George the Third. Then the act was passed continuing the judge in office, notwithstanding the king should die, and the independence of the English judi-

ciary was fully established. It was in this way that it became entitled to all the endearing recollections, with which we regard it at this day. No page of British history—no period in all the English struggles for liberty—not even that when the barons forced king John at Runnymede to sign magna charta—not even all the wars against all the kingly prerogative which ended in the revolution, and the decapitation of the king—none present an instance where the ancient spirit of old English liberty was more indomitably and triumphantly developed than in stripping the king of the power he had over the judiciary. No longer could he prosecute and punish in a court of his own contriving, and before a judge of his own appointment, either for cause or upon pretext, the subject whom he might think dangerous to the throne.

Here ended the struggle of English liberty. It ended too soon, as we think in this country, and as I believe it has always ended in England. When they forced king James to resign the crown, they simply submitted to the house of Hanover. When we rejected the authority of George the Third, we did not import a Dutch Stadtholder to reign over us, but we went to work and formed a republican government in which we infused these elements of English liberty. But mark you, we commenced at the point where the struggle for English liberty had left this thing. They left the power of appointing the judge in the hands of the king, the executive branch of the government, to hold for good behavior, with responsibility to the parliament. We copied in this particular from England, leaving the power of appointment in the hands of the executive, the judge to hold his office during good behavior with responsibility to the legislature. We, however, went even beyond the British parliament, and vested the responsibility in two thirds of both branches of the legislature instead of a majority. The amendment of the gentleman from Nelson, as I understand it, seeks to restore the responsibility to the majority as it exists in the British parliament. Now it is proposed to take the power of appointment from the executive and to give it to the people—the judge to hold, not during good behavior, but for a limited term, and then to be responsible to the people in their representative capacity. And I see every thing to justify the principle of making them responsible to a majority, and there is nothing whatever in what I have heard, that is not as fully applicable to the very principle of electing the judges.

We have had a great deal of new light upon this matter of progress in constitutional reform. It is a curious fact that the wise men who framed the federal constitution—pure as they were—coming as they did just from the very fires of the revolution—did not think that the people were competent to elect a president. They looked to the past, to the turbulent, violent democracies of ancient times, and that brought them to the melancholy conclusion that the people were unsafe depositories of power. Hence it was that they interposed the body of electors between the people and the candidate. What are they for? It was intended to be a deliberative body, with power to choose a president for the people, but in fact the practice is otherwise. They have be-

come a mere ministerial body, to do simply what the people have called them to do. I am in favor of so amending the federal constitution as to dispense with all that machinery, for it is perfectly useless. And there is some danger that after a while it may be perverted to harm, through the faithlessness of some man to the trust which the people have reposed in him. I have merely referred to this as showing you the apprehension entertained at one time as to the capacity of the people to elect their officers.—Now, I believe there will not be much controversy as to the propriety of the people electing even their judicial officers. And why is it proposed that the people shall elect them? Was it not for the purpose of securing some responsibility on the part of the judiciary to the people, whose representatives they are? And if they are to have so long a term as eight years, would it not be a more efficient and practical responsibility if they were held accountable to the legislature? Gentlemen here have denounced the legislative department of government, and why that particularity? Has the judicial department of government always been so pure and immaculate that it ought not to be held to accountability to any body? How were they in the times of the children of Israel of old? We are told that they became corrupt and were deposed! We are told, too, that in the Roman empire, in the days of Cicero, the judges became so corrupt and bribery so common, that they actually boasted of the amounts they had received to decide causes in a particular way! How was it in England before the revolution? Were they not hanging and banishing them for a long time? But since the tenure was changed to good behavior, with responsibility to the representatives of the people in parliament assembled, they have had, with but few exceptions, the best judges in the world. And in opposition to all these facts, gentlemen were constantly referring to the excesses of a single popular assembly in revolutionary France, as showing the dangers to be apprehended from the legislative department. And they propose too, to give these judges an eight years' term of office, with no other responsibility than that they shall come back at the end of that time to the people, or to require two-thirds of both branches of the legislature to bring them back there before that time. This Mr. Jefferson long since pronounced a mere scare crow, and the history of the country shows that it is so.

We are told that to make them responsible to a majority of the legislature, would be to destroy the independence of a department of the government. I do not understand that each department in your government is independent.—When you say in your constitution that the government shall be divided into three departments, you mean that no body of men in one shall exercise the powers properly belonging to the other; but not that they shall all of them be irresponsible. How is it now? A judge has the power to strike your legislative act dead. Was that not an interference with the legislative department? The president of the United States has a qualified veto on the acts of congress, and a large and intelligent body of gentlemen think that to be wrong, although he is elected by, and is the representative of, the people! Congress

may, however, pass an act notwithstanding the objections of the president, but the judge in the judicial department of the government, not responsible to the people, has an absolute and unqualified veto upon every act of congress. In the name of God, is not that enough? They are said to be co-equal and co-ordinate, but I do not think so. I think with this vast power in its hands, of striking every act of the legislature dead, the supremacy is clearly on the side of the judiciary. And if we are to give them a term of office of eight years duration, we must provide some other checks upon them. You can have none other than the legislature. All say that they are willing they should be made responsible to the people—but that would clearly be no responsibility at all, because you cannot assemble the immense body of the people to act upon it. The only place, then, where you can delegate this responsibility, is clearly with the legislative department of the government.—They are the representatives of the people, and elected every year by the people, as I trust in God they will continue to be, for I am not in favor of biennial sessions. Frequency of political elections is a cardinal doctrine with me in political faith; and I am not to be led off from it by the mere consideration of the cost of assembling the legislature every year. Nor can I consent that these judges shall be elected by ballot, and nobody else. I am for the ballot, and I would apply the principle to the election of every officer in the government. I would make no distinction—and permit me to say that the remark of my distinguished friend was a sad one on that subject. He thought that it was necessary to restrict the ballot for the purpose of preserving a peculiar institution in Kentucky! I have never heard such an argument before.

Mr. C. A. WICKLIFE. The gentleman will pardon me, but he neither could have heard me or read my printed speech. The remark I made was, that I was attached, from long habit, to the *viva voce* system of voting; and that the reasons which perhaps had induced other states to adopt and practice the system of voting by ballot, did not, and would not exist here, as they were supposed to exist there, so long as we cherished and maintained our present domestic institutions.—Not that the *viva voce* system was necessary to maintain these institutions, but that the maintenance of them would obviate the necessity for the existence of those causes which have driven other states to the adoption of the ballot system.

Mr. R. N. WICKLIFE. I am very happy to hear the explanation of the gentleman, for I certainly would not like to have such an idea go forth with the sanction of the distinguished gentleman from Nelson. We have had enough of appeals to the non-slaveholder against the slaveholder in Kentucky. There was not a county in the state in which such an appeal had been successful, and what was it that had composed this body as it is, with the sentiments they entertain on this subject? What was it but a sense of justice in the public mind? I go with the gentleman from Henderson, (Mr. Dixon) and I expect to vote in favor of his resolution, declaring that you have no right to take the property of the citizen without paying him for it. You have no

more right to take it without due compensation, than the non-stockholders in a bank have a right to seize on the bank's money—and there is not one man in five hundred who is a stockholder in a bank.

Gentlemen have frequently made allusions to the ancient democracies, and drawn largely from those sources for illustration. But there is a principle, it should be recollected, the discovery of modern times, of which those democracies knew nothing. That is the representative principle. The people here do not meet together now, as they did in olden times, even when it is possible for them to do so. There is not a village in the state, in which the people might not meet and adopt their municipal regulations.—Yet do they not elect trustees to whom they confide their business? The principle has become so interwoven with the hearts and customs of the people, that they exercise it even in those cases where they could easily meet *en masse*, and transact their business. But along with that principle has come another, and without it the system would all end in despotism. That is the principle of periodical responsibility on the part of any man delegated to office, to those who delegated him. It is responsibility on the part of the public agent, not only to the people themselves, but to those who come directly to the people, and who alone are competent to bring him to the public scrutiny. That is the principle, and hence I shall vote for the amendment of the gentleman from Nelson. Then we shall have responsibilities directly to the people at the end of eight years, as provided by the committee, but another, and a better, and more efficient responsibility to the people's representatives.—I do not contend that the legislature is the people. But they are the representatives of the people, elected every year, and coming fresh from the people, and they are the proper depositories of the duty of holding to accountability all other officers.

I had not designed to occupy much of the time of the committee, and I rose merely for the purpose of indicating my views in regard to an independent judiciary. I have done so frankly, though perhaps the people of my county may not entertain the same views that I do. They may be, for aught I know, governed by the views of a distinguished gentleman in Clarke, who is writing and circulating, through the public press, a series of essays in which he takes the very grounds in arguing against an elective judiciary—the same melancholy strains that gentlemen do here, against the principle of providing a responsibility on the part of the judiciary to the legislative department of government.

I shall add no more, though perhaps I may avail myself of a parliamentary privilege, if I think proper, and write out my views a little fuller on this subject than I have here delivered them.

Mr. GRAY. I desire to occupy for a few moments the attention of the committee, while I give the reasons that will induce me to dissent from the proposition of my respected friend from Nelson. I have been taught, from my earliest infancy, to receive whatever should come from his lips as being dictated by the purest principles

of patriotism, and as having been suggested by great and superior wisdom and experience. And I am very sorry that on this occasion, I cannot give my assent to the proposition which the gentleman has suggested. What is that proposition? Why, if I understand it, it is to strike out of the third section of the report of the committee on the court of appeals, the words, "that shall not be sufficient grounds of impeachment," with a view if I understand correctly, that we may so alter and so frame this constitution which we are called upon to make, that there shall be no distinction in right of the legislature to remove the judges from office, whether by address or by impeachment; and that for any matter for which a judge shall be subject to impeachment and trial by a court that is to consist of the Senate upon oath, he may also be removed by a bare majority of the legislature. Not only judicial but executive officers, as I understand it, from the highest to the lowest are to be subject to this same tribunal. That is the question that we are now called upon to consider. And I ask you, in considering this question, if it is not necessary to understand why we have three great departments in this government? Why is it that the wisdom of our fathers, who framed our general government, and the wisdom of those who framed all our state governments, have thought proper to divide and distribute the powers of government into three distinct departments, and to give to each department a separate body of magistracy? If I understand the great principle that has made this experiment of a free government successful, it is that there has entered into it the provision which never before entered into any government: that these three departments should be separate and independent. And this too notwithstanding the position of the gentleman from Fayette, (Mr. R. N. Wickliffe), that they cannot be independent of each other. It has been my learning that these departments of government operate as checks and balances on each other, and thus the one would prevent the other from exercising any power which did not properly belong to it. If these are true principles, if they lie at the foundation of our government, and are worth maintaining and preserving in the constitution that we are called upon to frame, I ask you if the proposition of the gentleman from Nelson is not calculated to subvert and destroy them. It seems to me they would crumble into dust. Now, what are the arguments that gentlemen offer in support of that proposition, and what reasons do they give here, why this principle should be changed—a principle which has been sanctioned by the authority of every state in the union, and by the constitution of the United States itself. I ask, sir, what reasons do gentlemen give for going thus against the experience and the history of the country from its foundation to the present time. Why, the gentleman says this is a republican government, and here the great republican principle is that the majority must rule, and that they can do no wrong. That is the only position, the only principle that my honorable friend has urged as a reason for making this radical change, as I conceive it to be in the principles of our constitution. I will go as far as any man, in saying that a majority

of the people have the right to rule, and to frame and fashion their government as they think will best secure their rights, but how and when are they to do it? Here is the place, and we are delegated to do it. Here the majority of the people are heard, and they have a right to frame, and I trust we shall frame such a government as a majority on this floor will approve, and when we submit it to the people that a majority will ratify it.

Then can that objection prevail if the people, acting here in their sovereign capacity through their representatives, think that the great ends of government, the security of the life, liberty, and property of the citizens of the state, will be better attained by having the provision in the constitution, that one department of the government shall not be interfered with or removed by another department—although it may be as the gentleman has said the representatives of the people, unless they can get two thirds of their number to concur therein. We have the same right to engraft that principle on the constitution, and it will be as republican, as if they thought proper to place it in the power of a bare majority of the legislature to override and control the other departments of the government.

It seems to me that all the reasons that gentlemen have offered for this change, amount to nothing more than that. The honorable gentleman from Fayette has gone into a history of the judiciary of England, to state and show us that the judiciary there, is independent. Why, from the gentleman's speech, I presume that he thinks that it is far better and more independent than any judiciary we have here now, or that we will have, after we have organized it on the plan proposed in the report now under consideration. He tells us that the judges there are subject and responsible to a majority of the parliament, and not to two thirds. He told us at the same time, that these judges derive their power and authority by appointment from the king. Is there no difference here? Is there no difference in the proposition that is now before the committee? Do we propose that any king shall bestow this appointment upon the judges, or that any other one individual shall do it? No, sir, the proposition here is that the people in their sovereign capacity shall elect these judges. And I ask if it would not be the height of folly and absurdity when they give them the right to elect their judges, to say we will give to a bare majority, an accidental one perhaps, of the legislature, who are elected by the same power, not for the purpose of making judges, but to attend to the legislation of the country, the right to turn out all the judges in the commonwealth, for some difference in opinion that they may conceive to exist between them. It would seem to me, that instead of this responsibility that the gentleman speaks of, he is building up a power to tear down and destroy what the people themselves have set up. If they are qualified to elect men to discharge the duties of the office of judge, ought there to be a power above the people, a bare majority of another department of this government to undo, to tear down and demolish that which the people have built up. It seems to me a strange fallacy that has got into the heads of some of my friends. But the gentleman says there will not be a suffi-

cient responsibility to the people, or to any other appointing power. Now, would it not be quite as proper that the people should appoint some power to regulate the legislature? They are both selected as the agents of the people. And would it not be quite as plausible to say that there should be some tribunal to overrule and investigate the acts of the legislature before they should operate on the people. This very provision requires that all these judges shall go out at the end of eight years; and if you adopt the report, one of them is to go out at the expiration of every two years. Is not that a responsibility directly to the people, and one that will affect them as soon as the responsibility of the representatives in the legislature will be thrown back upon them? I presume my friend from Fayette is the only gentleman here who is in favor of annual sessions of the legislature. If there was any thing that did most to bring about this convention in my section of the country, it was the fact that the people complained of the legislation of the country—that there was too much of it—that the legislature met here annually, and were engaged in passing all manner of laws which before they could be fairly understood, or their effects tested, were half of them modified, changed, or repealed, until the gentleman himself, with all his legal knowledge, would find it difficult to trace out the law on some particular subject. It seems to me that this was one of the reasons why this convention was called together. And it will certainly be engrafted on the constitution that the legislature shall not meet oftener than once in two years.

And then the same responsibility would exist in regard to one of these judges as there would in regard to the legislature itself. They would be directly responsible to the people, (both the judge and the legislature,) and within the same period of time. But what are the bad effects that would result from the proposition of the gentleman? Why, whenever a legislature should come here, instead of going about the business the people entrusted to them, the legislation of the country, we should have agitation all over the state in regard to the removal of the judges. Here would be a judge in one section of the state, who was not acting in a manner suited to the notions of some particular representative, he having, perhaps, decided some case under a particular law against him or his friend, and on that principle you might combine members from all parts of the state, and consume more of the time of the legislature in trying these judges than might be required in passing all the laws that were necessary and proper. And if there should be any law passed involving any great constitutional question bearing upon the people at large—any thing which would excite and divide the people into parties, no matter what sort of parties, I ask gentlemen if these party feelings would not come into conflict here and operate on these judges? These judges are appointed to restrain the action of the legislature—to confine them to the principles and powers as defined in the constitution we may adopt. Do you not immediately excite a jealousy between the legislative power and the judicial power, when the judiciary, in the solemn discharge of the duties imposed on them, decide on the constitutionality of the

law adopted by the legislature? I ask you if a bare majority of the legislature, that passed the law, should have the power to remove the court? I ask if the court would not be swept off, notwithstanding its decision might be right, and the people themselves might approve of it? The people, at one time, might be wrong, and we know the majority of the people change, and that the majority is not always right; and would it be right then, to subject the courts of the country, the tribunals that are to decide upon the rights of every citizen, to any popular whim, any mere freak that might come over the people? We have had some experience in this country on this subject at the time the new and old court parties divided the people. We know that the people were in favor of sustaining some of the laws that the court declared to be unconstitutional, and if a majority of the representatives of the people then could have reached the court, we should have had the sacred principle in our constitution, that the obligation of no contract should be impaired, obliterated, and in effect destroyed.

Now, when we see the bad effects that may result from this principle, ought we not to hesitate? Is it not better, as the gentleman says, that we should stand by the old landmarks which have been regarded in all the states, and which have proved successful for the purposes for which they were intended? I believe, that in the state of Illinois, which is certainly democratic enough for any man on God's earth, and where I am told that the candidates for the senate of the United States canvass the whole state as the candidates for governor do here—they modified their constitution only two years ago, and we find that this same principle of requiring two thirds of the legislature to remove a judge, is preserved in it. I ask then, if we shall obliterate it here, unless gentlemen can give us some good reason, or show some great danger that is to result from its retention. I think it is a principle that has been tested by time, and that no inconvenience can result from it, while great inconvenience may result from its being changed as the gentleman desires.

Mr. ROOT. It is with the greatest diffidence that I rise at any time, to address this convention, and my only apology for doing so at present is, that I look upon the subject which is now before the convention as one of very great importance, and I am desirous therefore, that my views in relation to it, however humble they may be, shall be known to my immediate constituents.

Since the proposition of the gentleman from Nelson has been presented to this house, gentlemen upon this floor, both on my right hand and on my left, gentlemen of acknowledged ability, and gentlemen who are abundantly able to argue the question, and to show clearly all the pros and cons, have seemed to magnify the subject as though the proposition of the gentleman from Nelson was to incorporate a new principle into the report of the committee. I will notice what principle is proposed to be incorporated, and in the mean time, sir, as gentlemen have defined their positions on the subject of their early advocacy of the convention principle, I too will venture to announce my course on this subject.

I am an original convention man. I contend-

ed for it in my county and in the adjacent counties, when the principle was unpopular. In 1844 I stood upon this floor, and introduced the bill for a convention, and I stood solitary and alone. I was unsupported, save by one individual who had the temerity to stand up and denounce the iniquity that existed under the old constitution, and to apprise the people of Kentucky of the oppressions they had been laboring under for fifty years, and of the amount of money that might be saved to them, if the administration of the government of this commonwealth were carried on under a different system. I have therefore, a right to have some idea of what the people of my section of the country desire shall be incorporated in the constitution.

The committee, in their report, have proposed to give to the people the right to elect their judges. That is the principle that is contended for by nearly every gentleman on this floor; but the report of the committee goes on, and proposes to incorporate in the new constitution the two thirds principle. Sir, the two thirds principle is the identical principle, about which the public mind in Kentucky was awakened to a sense of the iniquitous system that was resting upon us. It was upon this ground that I stood impregably before the people—the responsibility of the judges and other officers of the government to the people. You elect your judges for eight years. The judge whom you elect may be a man of fifty or sixty years of age; he does not anticipate a re-election for a second term, and during that long period of eight years, he will be as irresponsible to the people, as he would under the old system. And, sir, we have the lights of past history before us to show that in all times, and particularly in Kentucky, for the last fifty years, the time has not been when a solitary judge, or magistrate, or any other individual holding office, could be brought before the legislature with any probability of his being removed from office for any cause whatever.

There is a sort of hallowed dignity surrounding the emine of the judge, that our legislature dare not tamper with. Sir, a judge ought not only to be pure, but he ought to be like Cæsar's wife, clear of all suspicion. Can the committee suppose for a moment, that a judge, with all the influence which he possesses, and with the elevated character which the people have given him, by electing him, will have injustice done to him by one hundred and forty of the representatives of the people of the State? Is it possible that a majority of the house of representatives, and of the senate, responsible immediately to the people as they are, will turn a man out of office, unless there be some just cause for which he should be removed? If it becomes a doubtful contest, whether a judge may be legally turned out of office for malfeasance or misfeasance, or for any capital crime that he may have committed, he ought to be turned out by the people themselves, for in no case should a judge be retained in office, even if a breath of suspicion rests upon him. The judiciary of a country ought to be kept pure; and in order that it may be, you ought to elect a tribunal for the express purpose of taking cognizance of such cases. Incorporate the two third principle, and go back to your constituents, and declare to them what

you have done, and they will tell you that you have adopted the old system of no responsibility, for it amounts to none. Have we never had a judge or a magistrate in the commonwealth, that ought to have been turned out of office? Yet where is the power that has ever arrested their course, in cases where they have done wrong? There has not been a solitary instance.

Look at the case that has been referred to in the county of Greenup—a case in which the magistrate ought not only to have been turned out of office, but damned to eternal infamy.—But when brought before the legislature, there was not virtue enough in the two-third principle to relieve the public from this incubus that was resting upon them. The majority principle is the principle of republican liberty—the principle that runs through every avenue throughout this broad land. And it is a safe basis on which the people may rest. If you go into the court of appeals, there a majority of the judges assembled, will decide your case, though millions are depending upon it. If you go to congress, where the great interests of the nation are discussed, and where the solemn arbitrament is made upon the destinies of a free people, there a majority of the representatives assembled to decide upon the great interests of the nation. And is there anything peculiarly sacred or holy that surrounds the character of a judge, rendering it proper that he should not be held responsible to the people? To the people I say, he ought to be held responsible; and in order to make him so, it is necessary to strike from your constitution the two-third principle.

Sir, there is no danger of the people, through their representatives, doing any injustice to the people's judges. Would any man having the character of a representative of the people, blast his own reputation and put a blot upon his own esentcheon in order to reach the judge of his particular district and to turn him out upon political grounds or from malevolent motives?

Sir, admitting that all the representatives from the tenth judicial district shall conspire together in order to place A in the office to which B has been elected by the people; or admit that B had rendered himself obnoxious to a gentleman who possesses great influence and power throughout the judicial district, are there not one hundred and thirty five representatives of the people from other parts of the state who will constitute a check upon the designs of the representatives and others of that particular district? In short are there not checks enough in order to hold the scales of public justice even? I apprehend that the two thirds principle, instead of making votes for your new constitution, will be the paramount cause why it will fall before the people.

Sir, the gentleman who last addressed you rested the whole case upon this—that the judges may decide a law of a certain legislature unconstitutional, and hence he supposes that all the representatives of the state will be lashed into a fury, and that they will come up here and in the face of the constitution will be for hurling the judge out of his seat. Sir, let us look at the history of Kentucky for the last fifty years. If you turn over the journals you will find that but few of the men who were assembled here any one



year in the legislature, are returned the next year.

Sir, the responsibility to a majority of the sovereign people, or the representatives of the people, is the only true criterion of responsibility that I know of. The same principle, as noticed yesterday, and which my honorable friend from Fayette has elaborated, is the law of England, when a majority of parliament can depose a judge. Yet gentlemen, who have relied so much in this discussion upon English precedent and authority, array themselves against the republican principle of the right of the majority to rule. Sir, why adopt a two thirds principle in relation to judges and not to other officers? Why not say that the President of the United States shall be elected by a two thirds vote? The President of the United States unites in his hands more power over the destinies of this country, than any other officer in the land, and yet he is elected by a majority vote. Sir, the principle is not tenable; and in my conception it is not consonant with republicanism. It is not such as I desire to see incorporated in the constitution.

Mr. KAVANAUGH. It is with great difficulty that I have brought my mind to the point of addressing this committee, and giving the reasons that will influence my vote, both to the committee and to the country. But sir, the attitude which I occupy here, and the relation which I sustain to the constituency which sent me to this body, make it necessary that I define the reasons that shall induce me to give the vote which I shall give upon the question, which is now under consideration. That there have been great and general complaints throughout the state of Kentucky, as to the non-responsibility of the judiciary of the country, cannot be contradicted. There is scarcely a dissenting voice among all those with whom I have conversed on the subject, that there is no practical responsibility, so far as the judges of the courts are concerned, and I myself have ever been in favor of an efficient mode, if it can be devised, of reaching the judiciary of the country, for any malfeasance in office. I took that position before my constituents, and came here with the understanding, that so far at least as the county officers were concerned, my views and those of my constituents were with the report of the committee on that subject. But with regard to other classes of officers than the county officers—and we have the question now to meet in regard to the judges of the court of appeals and the circuit court. Where is the tribunal to try them? I have heard many suggestions as to the proper tribunal. However, the only question now before the committee is, whether they shall be tried by a simple majority of the legislature, or by a majority of two-thirds. That is the question. And sir, one word upon the responsibility principle, which has been spoken of by almost every gentleman who has addressed the committee upon this subject. I yield to none, sir, so far as devotion to the call of the convention is concerned, from the very beginning. I yield to none sir, so far as regards a desire and intention of restoring back to the people those rights, which they have conveyed to a corps of agents in the common-

wealth, and restoring back to the people the election of their own officers. I was originally a convention man. I went for it throughout. The question as to the right of the people to rule by a majority, is not the question we have now to consider. As far as I understand, the people have a right to say what agents shall decide this question or the other question. Now when the legislature of Kentucky is convened for the purpose of passing upon the judicial officers of the commonwealth, they are sitting as a *quasi* judicial tribunal, they are made the judges of the law and the facts of the case.

Suppose you incorporate into the constitution the principle that a bare majority of the legislature shall turn a man out of office? What do you do sir? You go in the very teeth of the practice that you have pursued from the commencement of the government of this commonwealth; you say in effect, that although the question is doubtful, whether the officer is competent to discharge the duties of his office or not, or whether he has been guilty of malfeasance in office or not, a bare majority shall remove him from office. I ask you if that is not contrary to the principles of every free government?

Now, what has been the practice of the commonwealth of Kentucky? A jury decides the facts of the case, and your judges the law of the case. Questions of fact are much more difficult to be decided than questions of law. You require the unanimous verdict of a jury to determine the title to property, or to pass upon the life of an individual. That is right sir. I know that in some quarters of this house, there is an intimation given out in favor of a majority verdict of a jury. I am for the old method.

But to return, you come to this question as a judicial tribunal. When a judge has been elected by the people of his district, if he discharges the duty as he ought, he holds the office till the time for which he has been elected has expired. Yet here you propose to remove him, and not only to remove him, but to fix a blot, a stain upon his character, which cannot be wiped away. That is the course that is proposed to be pursued. I came here ready to go for any proposition which would meet the two questions into which this whole matter is resolvable, and that is convenience and justice. A convenient mode of reaching your officers, and a mode which will, at the same time that it is convenient, square with the ends of justice. But sir, what has been the practice of this commonwealth, so far as this power of impeachment and address is concerned? We are told that at no time have judges been addressed out of office, or impeached out. That is all true.

Mr. C. A. WICKLIFFE. If the gentleman will allow me, I will correct him in regard to this. If he means to apply his remark to the old jury court, he is mistaken. The records of the court show that judges have been removed by impeachment, and disqualified from holding office. I allude to the magistrate from the county of Logan.

Mr. KAVANAUGH. As far as that is concerned, I have not examined carefully the whole proceedings of the legislature on the subject. And as far as the recollection of the gentleman extends I stand corrected. I make no doubt he

is correct, but I am coming to this point. A gentleman tells us that when a judge is elected by a majority of the people, the same majority which returned him to office shall have power to say whether or not he shall continue in office.

That is the question. That it is anti-republican to say that a judge shall hold his office when a majority of the people are against him. I say that that question is not involved in the question now before us. A judge from one of your circuit courts is brought before the legislature. When he comes before them, if it is not a political question upon which he is brought, your legislators act in the capacity of judges and jurors to determine the facts and the law in the case. And it is no longer an expression of the people's will, but simply a decision of the legislature sitting as judges upon the case. Suppose you bring a judge before the legislature for malfeasance in office from the county of Hickman, your representatives from other counties, knowing nothing of the merits of the case, sit as impartial triers for the purpose of determining whether or not according to the facts of the case he ought to be removed.

But suppose on the other hand that the judge is arraigned for political offences, or upon such pretences as any one may choose to invent, or upon a charge of incompetency if you please. What then is the result? It is not often that a political question, in which the judiciary may take part produces such great excitement, such deep interest in the country as to cause him to be arraigned. But if you bring him here for a political offence, the legislature being of one political complexion, and the judge of an opposite, and the greatest excitement prevails, as at the time of the contest between the old and the new court, though the judge give a fair *expose* of the constitution, yet if the majority principle had then prevailed, the judge would have been removed, and a stain cast upon his character, unless the people had risen in their might and reinstate him. When it comes to a political question there is danger in allowing the legislature to remove a judge even upon the two thirds principle; yet I go for that principle.

I am in favor of the report of the committee as it now stands. I am in favor of the election of the judiciary by the people. It is unnecessary to add a single remark on that subject. It was the intention of the convention party in the state to bring every office in the state, judicial or otherwise, within the reach of every man who is competent to fill such office, and who has proved himself worthy of office in the estimation and opinion of those by whom he was surrounded; and that no office should depend on executive patronage.

I shall therefore go for an elective judiciary, but sir, I shall go for these judges of the court of appeals holding their offices for the term of six years only. If that is incorporated in the constitution it is probable that the wheels of government might roll on for the next fifty years, and not a single complaint be urged against the judge; for the simple reason that any man who comes before the people of this country for office, no matter who he is, is desirous of securing the approbation of the people; and if he understands any thing of the people of Ken-

tucky he will endeavor to discharge the duties of his office properly in order to secure his election a second time.

But throwing that out of the question entirely, any man who may be elected by the people to the office of judge will probably be competent to discharge the duties of his office correctly. I have no doubt the people will make proper selections? But there is one other view of the subject which has occurred to my mind, to which I will simply call the attention of the committee, and I have done.

There have, perhaps, been fewer attempts made in Kentucky to remove judges from office than there would have been, from the fact that this mode of removing them by a vote of two-thirds of the legislature, was regarded as rather a difficult mode than otherwise, by which to accomplish anything. The people at this time are looking to the re-eligibility of the judges, and of all other officers in the commonwealth, as their mode of redress in consequence of the faithlessness of the officer to the trust which has been reposed in him. Heretofore sir, even though a judge may have abused the discretionary power vested in him, even though he may not have come up to the line in which a majority of the people would like the judge to walk, and which nevertheless, would not be sufficient ground of removal, either by impeachment or address, they have remained quiet, and why? For the simple fact that they had no other remedy than going before the legislature.

There are a thousand things that would not influence the legislature in the case of addressing, or in the case of impeachment, which, nevertheless, would have great influence with the people when they march up to the polls to cast their votes. I think therefore, that the very best responsibility is in limiting the term of office to about six years, making them re-eligible. Why sir, a judge, whether of the circuit or appellate court, when elevated to the bench, looses his practice. He, no doubt, will desire to be re-elected. If he does, it will be the very best guaranty the people can have that the judge will discharge the duties of his office properly.

For the reasons I have given, I shall vote for the report of the committee as it now stands and against the amendment of the gentleman from Nelson. And I thought it due to the constituents whom I represent here to give the reasons which induced me to give this vote. I hold myself ready, however, at all times when a more convenient mode shall be proposed by any member of this committee, of holding your appellate judges responsible, so as at the same time to secure the proper administration of justice, to go with those who are in favor of such a measure, if I do not see radical objections to it. I admit, sir, that the mode which is provided in the present constitution, and in almost every constitution of the different states of this union, is a difficult mode. I admit all this, and if a better mode could be devised I am for it. But from what reflection I have been able to give to the subject, I have been unable to devise any. Your appellate judges are officers of the whole state; officers in whom the whole state are interested; officers, who are not to be removed, however, by the popular will. They are officers who

are to be removed from, or retained in office by a set of judges, consisting of the members of the legislature, sitting to determine whether they have been guilty of malfeasance in office. Sir, when I am elected to an office, I have the right to hold that office until I have been convicted of being guilty of some malfeasance, and it has been proved that I am no longer worthy to hold it. There is a point at which your democratic majorities must stop. It comes up under the principles couched in the resolution of the gentleman from Henderson. It comes up in the principle of the trial by jury. It is where no majority has a right to take from a man a vested right, unless the facts and circumstances be clearly proven as in the case of a judge that he has forfeited his office.

With these remarks, having defined my position. I shall no longer detain the committee.

Mr. NESBITT. As it seems to be the order of the day for delegates to give the reasons which will influence their votes upon the subjects which are under the consideration of the convention, I have thought it would be proper for me to ask the attention of the committee whilst I also assign a few of the reasons by which I shall be governed in reference to the question which is now before us.

I have heard it stated by several delegates that they have always been convention men. I too claim the honor of having been a convention man, and something beyond that—a convention boy. I advocated the principle of reform, sir, as best I might long before I had a right to vote.

I listened with pleasure, sir, to the gentleman from Fayette this morning, and I cannot help regretting that, after having taken so many pleasant tours together advocating a convention and constitutional reform, in the upper counties, we shall now at this late day be compelled to part company. I will not say that I led him through the mountains; and he shall not say that he led me in this convention.

I have been somewhat astonished too at some of the declarations that have been made by delegates here. Some take the ground that this convention is the people. Some take the ground that the legislature is the people. The good old doctrine used to be that the legislature was nothing more than the servants of the people. And looking back into history how do we find that nations have risen and fallen? Just as long as legislatures recognized the doctrine and acted upon the principle that they were the servants of the people, all things went on well. But they at last began to preach the doctrine that is preached here, that they were equal with the people, and that they were the people themselves. And soon another step was taken which taught that they were superior to the people, and then the state began to totter to its fall.

What is the question, sir—what are the objects of it? What are the ends proposed to be accomplished? Gentlemen seem to be anxious to proclaim to the world how much they are willing and how anxiously they desire that a majority shall rule. I too, sir, am in favor of a majority ruling, but I want a majority of the people to do so; and it does seem to me that in advocating the amendment of the gentleman from Nelson, gentlemen desire to fix upon, an easy mode of curbing the will of the major-

ity, and to hurl from power the officers of the government, whom a majority of the people have placed in power. I know that I am to be held responsible, not to this convention but to the people themselves, for every act I may perform here and every word I may utter; and I desire to be able to furnish some authority for the manner in which I may act. If the committee will indulge me for a few moments I will make a few extracts from the farewell address of the Father of his Country:

“Towards the preservation of your government, and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care, the spirit of innovation upon its principles, however specious the pretext. One method of assault may be to effect, in the forms of the constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of government, as of other human institutions; that experience is the surest standard, by which to test the real tendency of the existing constitution of a country: that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion; and remember, especially, that for the efficient management of your common interests in a country so extensive as ours, a government of as much vigor, as is consistent with the perfect security of liberty, is indispensable. Liberty itself will find in such a government, with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and of property.

“I have already intimated to you, the danger of parties in the state, with particular reference to the founding of them on geographical discriminations. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party, generally.

“This spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind. It exists under different shapes, in all governments; more or less stifled, controlled, or repressed; but in those of the popular form, it is seen in its greatest rankness, and is truly their worst enemy.

“The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism: but this leads at length to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this

'disposition to the purposes of his own elevation, on the ruins of public liberty.'

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"It is important likewise, that the habits of thinking, in a free country, should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism."

Now, sir, it seems to me that the amendment which has been proposed here, tends at once to consolidate all the departments of the government into that one called the legislative department. Gentlemen have gone to England and have raked up authorities there to prove that the judiciary ought to be independent. I grant it ought.

If we change the principle, I want responsibility to the people of this great commonwealth. And I want the judiciary to be independent of the two other departments of the government. I do not want the judiciary to be bound hand and foot, and to be made responsible to the executive or to the legislative department. I do not desire the legislative department to be responsible to either of the other two departments. I want the executive, legislative, and the judiciary departments, to be independent of each other—to be the representatives of the will of the people of Kentucky, and to be responsible alone to them; and to bring about this end, sir, I shall so cast my vote.

There are other reasons sir, why I do not desire to see the amendment of the gentleman from Nelson prevail. The people of the commonwealth of Kentucky are already jealous of this convention. They know their rights and they know well how to maintain them; though I see sir, here manifested a spirit of radicalism that is likely, if carried to its utmost extreme, to bring us back to our original chaos, to leave us without a constitution, and without any form of civil government. We were elected, sir, for the purpose of making radical changes and alterations in the constitution, I will admit. We were elected for the purpose of carrying into effect the public will—for the purpose of doing that which the people desire to have done, and of doing nothing more.

And I would like to know sir, whether there is a gentleman in this convention who was instructed at the polls by his constituents to say that a bare majority of the legislature shall have the power to undo the work which they shall do at the polls? If there be one, I hope he will discharge his duty. For myself, I know what I was told to do, and I know I was not told to carry into effect any such principle as that contained in the amendment. I have learned my lesson well; and a part of it is to let alone every thing in the old constitution that my constituents have not told me to vote to amend.

This question may not again arise—I do not suppose it will on the report of any other committee, and I thought it proper, sir, to give the reasons why I shall vote to sustain the report of the committee.

There is another reason sir, why I shall do so. I took the trouble to disseminate among the people of my county, as far as I could, the report of the committee, and I asked it as a favor of them, that they would send me information whether it suited them or not; and as far as I received information, it is unqualified that it suits them.

Mr. TAYLOR. I perceive that the discussion of this deeply important and interesting question will not be terminated for several days.

I will move that the committee rise, report progress and ask leave to sit again.

The motion was agreed to, and leave was granted to sit again.

The convention then adjourned.

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SATURDAY, OCTOBER 20, 1849.

Prayer by the Rev. Mr. NORTON.

LEAVE OF ABSENCE.

On the motion of Mr. ROOT, leave of absence was granted to Mr. WHEELER until Monday next.

COURT OF APPEALS.

On the motion of Mr. BARLOW the convention resolved into committee of the whole, Mr. HUSTON in the chair, on the report of the committee on the court of appeals.

Mr. TAYLOR. Yesterday, while my friend from Fayette (Mr. R. N. Wickliffe) was addressing the committee, I could not help remarking upon the vicissitudes of human life. I shared with him the innocent amusements of boyhood, and now, after twenty-five years have elapsed, we find ourselves participating in the more sober, serious, and as I hope, to the country at least, more profitable pursuits of manhood. Although I differ entirely from him, I could not but admire the beauty and power of diction, and that impressiveness of manner which twenty-five years ago, as well as now, enabled him to make the worse appear the better reason. There are in this country three descriptions of aristocracy—the aristocracy of wealth, the aristocracy of intellect, and the aristocracy of office—to none of which I belong, and yet to all of which I desire to be most intimately attached and connected. I cannot destroy the aristocracy of wealth, and I do not know that I ought even if I could. I could not if I would, and I would not if I could, destroy the aristocracy of intellect. This aristocracy of intellect, or rather this mental quality called talent, is the first divinity which my budding spirit was taught to worship, and it is the last idol which the startling proximity to the grave, will in my bosom totter to its fall.—But there is another description of aristocracy—that of office—to which I am hostile, and in the destruction of which I am, in common with many around me, about to participate. I was, as I said a few days ago, an early and an ardent friend of constitutional reform. I was not so because I desired this or that particular reform, or this or that particular measure; but I was the ardent and early friend of constitutional reform on principle. That principle was neither more nor less than an anxiety to secure such a consti-

tution as would level men up, instead of leveling them down. I was for a constitution that would throw open to the aspirations of the poor as well as the rich, to the humble as well as the exalted, the offices of the country. I had seen the offices of Kentucky—so had the people—bought and sold for money. I have seen these offices bought and sold, and the price paid for them was partizan and political services. I was anxious to correct this manifest and inexcusable abuse, and hence I was in favor of constitutional reform, so that the only price which should be paid for the offices of Kentucky should be qualification and integrity.

Have you ever read, Mr. Chairman, that most graphic description of a country church and of a country preacher, given by that justly celebrated and distinguished lawyer, William Wirt, in the *British Spy*? The meeting house composed of logs, filled with the simple-hearted, honest and confiding people, plainly but neatly attired, their quiet, sturdy horses hitched to the swinging limbs of the surrounding trees, permit the eye of your imagination to rest for a moment on such a picture as described so inimitably by Wirt, such doubtless as you have seen along the pathway of your life; then throw yourself into a city, such as the beautiful one in which we are now convened, and enter a church covered all over with tapestry and splendor, with the pews most beautifully cushioned, with the red morocco bound bible with a piece of green ribbon to mark the chapter and place of the text, and just at the end of the pew a gilt sign with the owner's name upon it; in the first described old fashioned country church, with the horses tied thick around, the worshippers are the plain, modest, and unsuspecting people; in the latter the ostentatious office-holders of the country, with the pharasaical air about them of, "stand back, for I am holier than thou."

This is a just description of the difference between the office-holders and the people, under the present constitution. And it is for that reason, and because of that difference, so plain and manifest, to which no man can or ought if he could, shut his eyes, that I was an early advocate for a convention. I wanted to level men up—I wanted the church doors thrown open, so that every man could go in and worship there. I wanted those aspirations for office in which the poor may indulge as well as the rich, and if need be, gratified; and I wanted the price to be paid for that gratification in Kentucky, integrity and qualifications. And it was because of that principle that I am now here, and it is for the formation of a constitution such as I have just indicated, and possessing the spirit to which I have just alluded, that I mean to vote, not only here, but at the polls, in case it should be submitted to the people. The character of a government depends very much upon the character, and genius, and spirit of the people, and the reverse of the proposition is just as true; and I want a constitution that, in the beautiful language of my friend, Captain Cutter,

"Shall create a chasm within the very air,  
Which shall teach each haughty thing,  
The poorest man he meets with here  
Is every inch a King."

I want all the officers in the country, as some

gentlemen have said, from the highest to the lowest, to be elected. I had, at first, I very frankly acknowledge, some misgivings in regard to an elective judiciary. I had been early taught that for such a purpose the people was a dangerous depository of power, but I am satisfied now, and experience has proved that it is the safest and the best mode of selection. Every coterminous state, save Virginia, have, in some form or other, an elective judiciary. Tennessee, Ohio, Indiana, Illinois, and Missouri, all have an elective judiciary in some form or other. And fortunately they have made the experiment for us, for I am not prepared to cut down the lamp post which experience has placed along the pathway of human life, and to plod on in darkness rather than in light. The experiment has been made in other states, and in New York most satisfactorily and successfully. Originally the judges in New York were selected as they now are under the present constitution of Kentucky. From 1818 to 1835, some of the most ardent contests for governor have taken place in New York than have ever occurred in any state of the union; and simply from the fact that next to the president of the United States, the office of governor of New York was considered the most important. And it has been used with some success, as a sort of spring-board, from which political aspirants have leaped into the presidency of the United States. What were the consequences growing out of these ardent contests? The consequences were, that vacancies in the supreme, and other courts, were filled without reference to the fact whether the incumbent was an honest man or a good lawyer. Executives are but men at last, and are subject to the common frailties and imperfections of our nature, and they therefore, in New York, were prone to fill the office of judge, whenever vacant, with one of these ardent and faithful partizans who had carried, perhaps, a particular county and district for them. What was the consequence? The people became indignant and dissatisfied, and justly so, with this mode of appointment. What was the next step? It was to make the office of judge elective by joint ballot of the legislature. I have lived in one of the states in this union where the judges were so elected, and I say with all candor and truth, that I saw just as good judges there as we have had in Kentucky—possessing as large an amount of legal attainments, integrity, and all those qualifications which a judge ought to possess. I have lived also in a state where they were elected directly by the people, and in that state I saw just as good judges as I have seen under the system which we have adopted and used for the last half century. Hence I say my own experience and observation, connected with the experience and observation of those in other states of this union, goes to prove that an elective judiciary is not fraught with such fearful and dreadful consequences as some gentlemen have fancied and imagined. Hence it is that I am in favor of an elective judiciary.

What is this thing called public opinion?—Sir, it is the school master of public men. It is the originator, frequently, of some wise and salutary public measures. It is, indeed, as Burns has said, "a sort of hangman whip, to hault

the wretch in order." Do you want an example, full, complete, and conclusive, of its power? It is to be found reported in the book of life, and is presented in the person of the boldest and most talented of the apostles. The apostle Peter, who upon the sea of Galilee, amid the awe of darkness and the storm, had seen his divine master say to the winds "peace," and to the waves "be still"—and all was quiet as an August noon—the same Peter who had stood by the grave of Lazarus, and witnessed that mysterious re-union between the dead body and the immortal spirit of him who was sleeping in the grave—that very man, quailing before the effect of a false public opinion, in one and the same hour thrice denied his faith and his master. I am in favor of an elective judiciary, the officers of which shall be, every eight years, submitted to the salutary operation of public opinion. I am asked to go a step further than this, and to make the judge removable by a bare majority of the legislature. I do not mean to go that far, and the man who would ask me to do it, after the surrender of the prejudices which I have already made on the subject of an elective judiciary, would have cried fire during the deluge.

This thing called an independent judiciary is a matter about which a great deal has been said, and a great deal more thought. Most significant allusion was made yesterday, to an independent judiciary in what was formerly called the mother country. The judges in England, as was said by my friend from Fayette, were originally appointed by the crown. They were, to use a common expression which every man in this house whether a lawyer or not, understands, tenants at will of the crown. What was the consequence? History shows that wherever the prerogative of the crown came in conflict with the interests and liberties of the subject, the judges were invariably found on the side of the king. It was just as the old maxim contained in the book of life declares, "The ox knoweth its owner, and the ass its master's crib." It is a long time since I read the history of England—a good deal longer than since my friend from Henry (Mr. Nuttall) read the history of Greece and Rome—and I believe he said he never read it except in Dilworth—but the contest which finally resulted in securing the independence of the judges, commenced, according to my reading, about the year 1688. It is immaterial when it commenced, but it finally resulted in changing the tenure by which the judges held their office from that of a tenancy at will of the crown, to that of good behavior, and that amounts generally to a tenancy for life. What were the consequences of that change of tenure? The judges from being the supple and pliant tools of the king were converted into a city of refuge for the subject. The judiciary of England then, for the first time in the history of the country, was indeed converted, if I may use the thought, into the shadow of a mighty rock in a weary land, to shelter and to protect. Before that period, the security of the crown rather than the safety of the subject was consulted. Such were the proper, natural, and legitimate consequences of judicial independence.

Although we are about to destroy in some respects the old constitution of Kentucky, there

are still some good things in it which have my admiration and confidence, and which are connected not only with the glorious past, but with security for the present, and proud and still more glorious hopes of the future. I desire to read from the very first article in that constitution, and to commend its consideration in all its length and breadth to the house, ere the hour of trial, the hour of voting shall arrive.

"ARTICLE I. SECTION I.

'The powers of the government of the state of Kentucky, shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judiciary, to another.'

There is safety and security in that, and there is protection in it. And why? For the reason that it is a division of the powers of government, and it is the separation and division of those powers which constitute republicanism, as contradistinguished and opposed to despotism. I will read the second clause of this section of the constitution, to show you how the division and continued separation of those powers were guarded by the framers of the constitution:

"ARTICLE I. SECTION II.

'No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others; except in the instances hereinafter expressly directed or permitted.'

What is despotism? I ask every gentleman to propound the question to himself, and to answer for himself. What but the union of all the powers of government in the same hand? And I vastly prefer living under a despotism where the union of all these powers is in one hand, than where it is in a hundred. There can be legislative despotism as well as any other. And when the legislature, by constitutional provision or by usurpation, get into their hands all the powers of government—executive, legislative, and judicial—as my friend from Jefferson well said the other day, it is a despotism. And it is the worst form of despotism, for obvious reasons. It generates public opinion, and after it is generated, it directs and controls it. The history of the French revolution, so eloquently referred to by my friend from Louisville, (Mr. Preston) is full of meaning and instruction upon the subject of the danger to be apprehended from legislative despotism. What were the consequences there? The monstrous visage of public robbery and murder, covered with the mask of public necessity, stalked over the land; the government carried in one hand the torch of a profane philosophy, and in the other the cup of massacre; public purification for its object, and plunder, rapine, and murder its means. The history of the past is pregnant with the dangers of legislative despotism, and the want of some power in which the people can confide, to stay the hand of popular madness and faction. It is that very separation of the powers of government, contained in this first article—and the strong injunction contained in the second clause of it, that no one department shall exercise the powers properly belonging to another, which constitutes



the safety of the citizen, and gives perpetuity itself to the government. And without this clause, I would not give a farthing for any constitution which the wisdom of the people as represented in this convention may frame. And unless that principle is incorporated in the new constitution, I shall go home and take the stump against it, or at least clear my own conscience by voting against it.

Gentlemen seem to think that the legislature is the people, and that its opinions and action is always the just reflex of public sentiment. My own experience and that of every man on this floor shows most conclusively that this is not true. Is there a man here who has forgotten the scenes of 1822, '23, and '24. No sir, and what is more, I hope and trust they never may be forgotten; and all I ask of gentlemen is that, before the vote is taken on the proposition of my friend from Nelson, they will just allow their recollections to wander back to the scenes to which I allude. They are part of history now. The statute of limitations has been well called a statute of repose, and I advert to this history of the past only for the purpose of illustration. What was that history? The legislature passed a law which had the approbation doubtless of their hearts rather than their heads, and which resulted from their sympathy with the unfortunate and distracted state of the country. The courts of Kentucky decided that law to be unconstitutional. The legislature could not remove the judges by address, and what was the result? Finding they could not remove them as the constitution provided, the legislature attempted to do it in an unconstitutional manner. There is an example which is to be avoided of the danger of legislative power, and it is one too, which I desire gentlemen before they vote on the amendment of my friend from Nelson, to look at and to reflect upon. Make a judge subordinate to the legislative power and you make him a mere creature of legislative will. Is that the mode by which we expect to guard his integrity and secure his honor in the administration of justice? Not at all. Look at the judiciary now. Under the present system the executive and the legislature are elected by the people, while the judiciary, whose duty it is to protect the rights and interests of the citizen, to give efficacy to the laws, and stability to the government itself, and even to control the other two departments of the government, is created by the executive and one branch of the legislature. Hence it is that among other reasons, one of the strongest which has induced me to sustain an elective judiciary, is that it will withdraw the judges entirely from legislative influence. If a judge is conscious that he may be removed by a mere legislative majority, will he not be "to their faults a little blind, and to their virtues very kind."

We will suppose the case, and I acknowledge it is a violent supposition, of a legislature in the midst of high party feeling and excitement, suspending in a time of profound peace the writ of habeas corpus, or putting some man in jeopardy of life and limb twice for the same offence, or even taking private property for public use without the consent of or compensation to the owner. The judge standing upon the

constitution, acting as a co-ordinate branch of the government, says to them like the prophet of old, with his censer in his hand, "thus far shalt thou come and no farther," and declares those acts unconstitutional, and therefore null and void. They having the power so to do by a bare majority, could and would remove him. And they would place in his stead some pliant and subservient tool, some gentleman who would be obedient to the legislative will, some man who would be ready to say to them, whatever you order I do, and whatever are your injunctions I am obedient. That is the description of the judges which we would have upon the bench, should the amendment of the gentleman from Nelson prevail, and it could not be otherwise. The honest judge would be subject to removal for the honest indication of his opinion, and for his just and unpurchased expositions of the law, or else you would have in the judicial tribunals of the country the mere tools of the legislature ready to record their will, and to do their bidding.

I am therefore, utterly opposed to the amendment of the gentleman from Nelson, because I believe that upon an honest and unpurchasable judiciary, the safety of the rights and interests of the citizen depend. I believe that times may come and have come when the legislature will be induced to overstep the bounds of the constitution, and to punish the judge for resisting them. I believe, also, that the time has once come, and may come again, when they will be disposed to try a fall with justice only for the express purpose of showing its weakness, and I am opposed therefore, utterly opposed, to the amendment of the gentleman from Nelson. And I am anxious that the new constitution should contain a clause requiring two thirds of the legislature as necessary to remove the judge. We have done enough in all conscience when we have made the judiciary elective, and subjected them to the salutary operation of public opinion at the end of each eight years of service.

I have made these remarks because I considered it my duty so to do, and I shall, whenever the question is submitted to the decision of the house, vote against the adoption of the amendment of the gentleman from Nelson, for the reasons which I have just given.

Mr. GHOLSON. I have not risen with any particular expectation that I shall be able to enlighten this body. I cannot expect that my remarks will have much weight. I feel disposed, however, to exercise this privilege in behalf of those who sent me here, knowing as I do that they will be greatly dissatisfied if some of these measures are adopted. Now, sir, what is the question before us? What is it we are called upon to decide? It is to make a decision between something on the one hand and nothing on the other; for all experience will bear me out, when I say that impeachment by a majority, or even by a two thirds vote, is but a mere scarecrow. It has no terrors for the judicial tyrant on his throne. And why? Because in fifty years it has never succeeded in removing one. What does all this argue? Why one of two things—that we have had the most honest, correct, independent judiciary that the sun ever shone upon on the one hand, or on the other, that this

system has proved the most inoperative and ineffectual for the purpose for which it was intended. And now, while I repeat that I believe we have had as enlightened, as honest, as worthy a judiciary as has fallen to the lot of any other people, I will also say we have had those on the judicial bench who did deserve punishment; and I affirm that they ought to have been punished on account of disqualification and misdemeanors in office; but they could not be reached. I, myself, have felt the iron heel of judicial omnipotence, and yet because I was poor I had to succumb before the tyrant. I have felt, and I hope I shall always feel that respect which is due to the judiciary of the country. I am conscious of never having offered an insult to a judge upon the bench. I beg pardon, if what I have said in relation to the judiciary is offensive; but I am a stranger to that sycophancy which I see abroad in the land towards those upon the judicial bench. Who is the judge? Is he not one of us? By what right does he occupy his station? Is it not the gift of the people? Is he not their servant? To what is it you bow when you enter the court house? It is not to the biped who sits there, but it is to the law itself. It is to the majesty of the law—it is to that which, if properly administered, should command our respect, and which, like the dews of heaven, should shed its benign influence alike upon all. It is to that which I bow; and this proposition that the judge shall only be reached by a two thirds vote, is to grant him a dispensation to do what he may please, in his omnipotence, to the end of his term. It is to say, you shall not be punished; the like never has been done, and therefore we have a good reason to believe it will never be done, and you may do as you please. It is possible, and only among possibilities, that if the majority principle, as proposed by the honorable gentleman from Nelson is adopted, an innocent and upright judge might be removed. One single, solitary instance in fifty years is given; and I have listened with pleasure to the declaration that there has been but one instance of this kind in which any disposition has been shown by a majority of the legislature to remove a judge for any cause whatever. We have had a great deal of light on the subject of English jurisprudence. Now, I do not pretend to know all about English history. Much has been said on the troubles that have visited other lands. It may be truly said that I have not gone further than crucifix in that kind of history, for poverty was my only inheritance and freedom my birthright, and it is for that freedom here I will contend. I do not pretend to say whether gentlemen are right or wrong, in their account of British or other foreign history, but I do say that their remarks are wholly inapplicable. I maintain that we are the only free people under the wide canopy of heaven—that we are the only people who are capable of self-government, in the proper sense of that word. These things have no application; these hobgoblins, raw heads and bloody bones, have no terrors for me. I have an abiding confidence in the patriotism and intelligence of the people; and I say to my brother delegates here and the whole world that if I believed my fellow-citizens of Kentucky were so corrupt and so degraded as to abuse, disgrace, and pollute this

legislative hall, as some seem to think they would do if this majority principle should prevail, I would turn my back on this state forever, I would not live among such people, who, for opinion's sake, or party's sake, would commit such an act. That I have political opinions of my own I confess. I am a democrat, but I never intend to say it in the convention again. I am sorry to hear some gentlemen bringing up these party terms, and foreboding what party may do. I am a republican, and intend to assist in framing a republican government. I am for doing the greatest amount of good to the greatest number. I am for putting it in the power of the poor to obtain equal and exact justice as well as the rich. And I want to put it in the power of the poor man to reach the high in a manner that will make the tyrant on his throne tremble, and compel him to pursue the path of rectitude. This whole matter seems to be wrong. When you say to a man in the lower or upper end of Kentucky, if you have been imposed upon by a judge—if he fines you improperly—if he is guilty of malfeasance, or any other feascance, for there are so many feasances which gentlemen have referred to, I cannot remember them all—you must follow that judge to Frankfort to get redress, does not any man know that it will amount to nothing. The poor man, we all know, in such a case would obtain no redress; and I beseech you to look at the matter as it is, and do not, because a man lives at a distance from the capital, take from him the power of redress. I know that I am considered radical, and I may be, perhaps, a little too radical; if so, I owe it to the oppressions I have endured and to the abominations in the administration of the government that I have experienced. I have come here to lay the axe at the root of the tree. I hold every man here to be a servant of the people, and I want all officers of the government so to consider themselves, instead of considering themselves their masters. I am not to be told and made to believe that the thing is not practicable. I appeal to gentlemen to erect some tribunal which shall be within the reach of every man within the broad commonwealth, where every man shall be held to accountability. Were I to choose between the two propositions, I would vote for the majority principle. That is something, while the two thirds vote is nothing; it is less than nothing; it never has, it never can, and it never will embrace the object. It is anti-republican; it makes the minority rule; it is all wrong in principle.

I have been astonished—and I say it with all imaginable deference to the grey heads and the wise heads that have discussed this subject—at this discussion and the importance which gentlemen attach to the difference between a majority and two thirds. Why, it will never affect any one for ill; it will never remove a man from office in Kentucky. The responsibility may reach a judge who lives at Frankfort, but it will never reach those in distant parts of the State. The only remedy for the evil complained of is to return to the source whence the power is derived by frequent elections. When the proper time comes, I want to propose the term of four years instead of eight. I want to have some tribunal erected where the judge will be tried by a jury of the vicinage, or other competent tribunal, instead

of sending the case to be tried away from the witnesses and the injured party. I have heard it said that there is something too dignified and too noble about a judge that he should be tried by an ignorant jury. Now, I hold there is no man living in the broad expanse of Kentucky who has more rights than you or I, or more interests to be disposed of by a jury of twelve men. Gentlemen talk about bringing a judge in chains to the feet of one department, that of our own legislature. I agree, in one particular, that it is wrong that a judge should be brought before the legislature. It is a violation of the first article of the constitution, which declares that the government shall be divided into three separate departments. I want to keep them separate. I want to carry out the articles in their spirit and truth. I do not want the judge brought to the feet of the executive. I want the judge to do his duty, and to rely alone on those who elected him to office. It is certainly subverting one of the principles of the constitution; it is undeniable that you cannot sustain the position, and maintain these two powers distinct. The legislature, if effectual as a tribunal for the trial of judges, destroys their independence. It merges all power in the legislature, in that respect, whether the required number be two thirds or a majority. It is immaterial; it brings the other departments to the footstool of the legislative department; and then its impracticability is demonstrated by experience, the best teacher on the face of the earth. When we have seen what has occurred in Kentucky in relation to the old and new court system, I think gentlemen should be convinced that if the majority should not rule, a judge can never be removed. And I do not think, if the majority had been sustained, in the case to which I have referred, that the country would have suffered any great harm. True, I was then in favor of sustaining the judges, because I believed they acted honestly, and that they intended to sustain the constitution—still the object of the legislature in passing the law, decided to be unconstitutional, was a good one. For these reasons, and these alone it was that I was disposed to sustain the law.

Well, that single, solitary instance, from the foundation of the government to the present time, is the only one that has occurred, if I rightly recollect our history. It is the only instance in which any attempt to remove any officer, except perhaps that of a justice of the peace, for malfeasance, or misdemeanor, had even the appearance of being successful. And are we sent here by the people, with high hopes and expectations, which are wide spread over the land, that something radical, something republican, should be done, to go back and say to them, that the united wisdom of Kentucky is not sufficient to devise a plan that shall give justice to the whole land? Are we disposed to say when we return to our constituents, you must follow a judge, if he impose upon you, to Frankfort, or go without redress. If you have not thousands you must endure your grievance as best you may. Is this republican? Is it for this that we came here? Are delegates prepared to go home and say there is something so high and sanctimonious in the name of a judge, that we cannot permit you plebians to lay hands on him, unless

you follow him to Frankfort. You confess the citizens of this country are not competent; they are too ignorant, too vicious. We cannot trust you. There is not in the whole country materials for a competent tribunal to try a judge for misdemeanors in office. And then will you turn round and tell them, that although this is the case, they shall not have the privilege of going away? You will try the poor man where the offence is committed, unless he gets a change of venue. But, although the act of a judge is as atrocious as it can be, still he is sent off here for trial. And this is republicanism! This is equality! And this is the glorious feast, that gentlemen, in their devotion and their patriotic strains, in which they dilate so eloquently on the fruits of the judiciary, have invited us to! This is the feast of the poor! This is the grand banquet which is to result from our conventional labors here.

Now, I would respectfully ask why it is you will put in the constitution a provision that, you all must agree, has heretofore proved ineffectual, and one which we may, therefore, reasonably expect will be so hereafter. Why, I ask, will you put such a provision in the constitution, when it has never removed a circuit judge in the whole extent of Kentucky? Is it not trifling with the rights of the people? Is it not trampling the rights of the poor man in the dust? I affirm that it is. But I have heard it objected out of this house, although I do not recollect that any gentleman has adverted to it in his remarks, that a judge would be harassed—would be subject to perpetual indictment, if a jury was permitted to act on the case.

I submit it to gentlemen if that is not saying a great deal for their several constituencies, that a judge could not be permitted to go on in an even-handed and straight forward administration of justice, because their constituents are so malicious and so black-hearted that they would continually harass them with wicked and unfounded indictments. For my part, in the name and behalf of my constituents I deny the imputation. I represent no such people here. No, far from it. All we ask for is even-handed justice. All that we want is, to do away with that distinction which, because one man is poor, places him directly within the reach of the law, and because another is an official dignitary takes him away to another and a higher tribunal. The whole system is wrong, and anti-republican, and I protest against it. I never will submit to that principle. I maintain that we all stand here on one broad platform of equality, and I claim that the poorest in my county shall enjoy the same rights and have the same protection as the richest and proudest in this broad commonwealth.

We claim no exclusive privilege—we claim to be freemen, to be honest, and we claim a just share in all the rights of the government. This is what I ask at the hands of the convention; and I call upon delegates to do away with this horizontal distinction. It cannot be denied that this creates one. It is an invidious distinction between the rich and the poor. Am I to be frightened by this talk about taking away the character of a judge, when you take away his office? All experience shows that if you want

to make a man a martyr, your surest way to do it is by persecution. I hold, then, that this result never would take place; that the honest man never would be put down and eternally disgraced by such an act. If wrongfully removed he would be sustained by the people. There is too much patriotism and too much intelligence in this commonwealth to allow the innocent man to suffer. They never have done it, and never will do it. We ask for equality in the administration of justice; and this is to be insisted upon to the last. No man can successfully maintain that the character of a judge is more sacred than the life of an individual, yet you will compel the individual to be tried on the spot by a jury, and if found guilty, you will hang him as high as Haman's gallows. Yet a man, because he is a judge, when he has violated the rights of a citizen, must go to Frankfort for trial. I call on gentlemen to blot out this horizontal distinction; our people call for this; and they call with one stentorian voice for a return of all the powers of government to their hands. It is for that I ask—for that equality that should belong to a republican people.

I do not know that it becomes me on the present occasion to say any thing more. There was another point to which I desired to call the attention of the committee, but as that may come up at another time more appropriately, I will say no more at present.

Mr. DIXON. I do not rise to remark upon the amendment of the gentleman from Nelson, but merely to refer to some of the positions just taken by my friend from Ballard and McCracken. I will take this occasion to remark that I look upon the independence of the judiciary as the sheet anchor of the ship of state, and without which there would be no security, either of person or property. I am for the independence of the judiciary, and I regard it as the great palladium of the rights, and the liberties of the people of this commonwealth, and I trust in God that the people will never become so insane as to bring the judicial power of the country down at the feet of faction, or subject to the mere excitement of popular feeling. The gentleman from Ballard and McCracken, has implored this convention not to sacrifice the rights of the poor, and he seems to think that those rights are to be protected by the persecution of the judicial intelligence of the country. Did the gentleman ever enquire how it was that men are influenced, or what it is that can influence the judge on the bench, or stain the judicial ermine with corruption? Did he ever learn that it was not the poor who could influence the judge?

Mr. GHOLSON. I utterly disavow any design to persecute the judiciary, or that such were my remarks.

Mr. DIXON. I did not say that the gentleman had used that language, but his argument comes to that point, and I am remarking upon the effects of the gentleman's argument. Does the gentleman desire to humiliate the judiciary at the feet of popular power, which in its wild excesses, knows no right, and is limited by no restraint? What is it that corrupts the judge, prostitutes the judicial character, and sinks it to the low and degraded position of pandering to the appetites of men in power? Is it the poor

man who can do this? Does he find that when the rich suitor and the poor suitor appear before the judgment seat, that the former is more likely to influence the judge than the latter? Is the judge likely to be more sensible to the approaches of the poor man, than to the power and wealth of the rich and powerful? What then is it that ever protects the rights of the lowest and the meanest in the commonwealth from violation and outrage, but the independence of the judiciary and the integrity of the judge? When party spirit is exerted, when passions sway, and judgment is subordinate, then you behold an independent judiciary elevated on an eminence far above the storm, looking down and calming the stormy wave, and throwing the ægis of judicial protection around the weak, whom public fury would have sacrificed. The gentleman would bring down the judge from that high elevation; but the people, the poor man who finds in an independent judiciary the best protection of his rights, will never consent to it.

The gentleman seems to think that majorities should rule and control in all things. There are some things in which majorities ought not and cannot rule. What is the object of law at all? What is the object of constitutional law? What is the object of those great principles which are declared in our bill of rights? Does the gentleman mean to say that the restraints which are there imposed on the rights of majorities are wrong? Does he mean to strike out of the constitution of the state, a great principle which has prevailed throughout the land—that a bare majority shall not take from me those great rights there secured? It was to sustain them, that is the very object of framing a constitution at all. It was to restrain the majority, to abridge their power, and to say to them, "thus far shalt thou go, and no farther." This is the very object of all law and constitutions.

With all due respect to the gentleman from Nelson, I must enter my protest against one principle contained in his amendment. It proposes, as I conceive, that one department of the government shall have the power of swallowing up another. Its effect will be to make the judicial department but the slave of the legislature. Does not every gentleman here see, that if the judges are to be elected throughout the country, that if it becomes the organic law, that the legislature may remove the judge for any cause they may think proper—that they have but to suggest as a reason why they should remove him, that he has decided the act of assembly to have been unconstitutionally passed? You have made a constitution, the object of which is the protection of the rights of the people—and you have thrown around them the safeguards which are designated in the bill of rights. The legislature, led on by some turbulent spirit or other, violates those safeguards, the judicial department of the government steps in to rescue them, and declares the law to be unconstitutional—and the legislature having the power so to do by a bare majority, sweep them down from that high elevation upon which the people have placed them. Do you not see that the legislative department will thereby sweep down, by a bare majority, this department which was intended to restrain those fierce popular excite-

ments which tend to sweep away all that is dear and valuable to society. I shall go against the amendment because of its tendency to permit one department to swallow up another, and to drag down and bring as a victim to the feet of the legislature, that great safeguard of the rights of the people—the judiciary.

I rose not to make a speech, but merely to say to the gentleman from Ballard and McCracken—let him beware of his proposition.

MR. M. P. MARSHALL. I have been exceedingly edified by the course which this question has taken since its introduction into this house. It will be admitted that the discursive character of the debate which has been tolerated, has evolved all the elements, out of which a pure and independent judiciary is to be constructed. It was not my intention, if this question had been kept within its legitimate limits, to have been heard in regard to it. But I stand here sir, more deeply interested in regard to making a pure, independent judiciary, than upon any other subject which may be presented to the consideration of the convention. When all the elements which enter into the structure of this judiciary department seem to be free for discussion here, I feel it to be my duty to those whom I represent, as well as what I consider to be in obedience to the dictates of my own conscience, to say a few words.

We are sent here to reform our constitution only in those parts which public sentiment has indicated should be reformed. We are not to demolish the constitution under which we have lived for fifty years in safety and prosperity; but to reform the government only in such parts as have created dissatisfaction in the minds of the people. The people of this State have found no fault with the constitution except in some of its parts, which we may reform without going deeply into the vital principles which were established in 1799.

Amongst other things that either ideally or really oppress them, is the irresponsibility of their inferior and higher courts. That irresponsibility they wish to be changed by the constitution which we are sent here to make, and some practical principle placed in the constitution which would make the judiciary, whether high or low, more responsible. Experience diffused through the State in regard to the action of the lower branches of the judiciary—the experience of the oppressions of this branch of magistracy—I mean the justice of peace system,—has created a dissatisfaction in regard to that department of the government.

What is the great evil which we are here as a convention called upon to correct? I ask every gentleman in this house, whether or not the leading grievance of which the community, that we here represent, most loudly complain, was not the grievance arising from these lower branches of the judiciary? I ask them whether it in fact was not, in its inception, the great reason why this convention should be called? That was the first real grievance which led the people to agitate the call of a convention.

Now sir, as has been well and truly said, we should have a government adapted to the public sentiment. The public sentiment, which is our *lex non scripta*, ought to be obeyed, or it is not a

government of the people at all. An enactment that is not in accordance with public sentiment, lies as a dead letter on the statute book. Public sentiment should be implicitly obeyed, and its behests should be embodied in the organic law which we are here to frame.

Now, the public sentiment, as indicated, in regard to the inferior branch of our judiciary is, that the constitution should be altered, in so far as relates to the manner in which men should hold office, as well as to the punishment that should be inflicted upon them for malfeasance in office. Public sentiment, I repeat, has shown that clearly. The present constitution has also shown that their magistracy is not sufficiently responsible to the people. And one reason why this is so, is because the people do not put them in power. They are self-created, and perpetuate themselves by their own action, and that among others has been given as a reason why the people voted for a convention. Let us elect this magistracy, and let us elect them in the different precincts in which they reside, giving them a proper jurisdiction, and the people will select officers who will perform the service properly. The election by the people is an indication of public sentiment which is unmistakable, and should be obeyed. Go higher up, and what have the counties in the State indicated in regard to the circuit court judges? Do you find as much unanimity as you do in respect to the inferior magistracy? In some counties there is some unanimity, and in others they leave it to the discretion of those whom they send here. But, in regard to the lower branches, there is a unanimous opinion that they should be elected.

In regard to the next branch, you find a division on the broad surface of Kentucky; that while some counties are for electing, some are for electing in one way, and some in another. We find there is not unanimity in this respect. Let what I say be understood as believed by me; there is a unanimity in Kentucky to limit this life tenure, and to break up the principle of a tenure during good behavior, which amounts to a life tenure, and insert in lieu thereof, a limited tenure. This is a principle upon which the people have fixed their seal, and they have equally announced the limitation principle. Public sentiment must be embodied in the constitution, and it has fixed its condemnation upon life services.

The time of service shall be limited, but with regard to the number of years, there is not the same agreement in opinion. We all agree that the services of a judge shall be limited by a term of years; and whether appointed by the governor or elected by the legislature, or by the people; that is to be an element in the structure of his office. We all agree on that—there is no difficulty in the committee in regard to this point. We all agree to limit the judicial office to a term of years, but there arise the questions, what further shall be done in the structure of this judicial system? How shall we get the judge into office? How long shall he be retained in office? How shall he be dismissed from that office? These questions involve these propositions. You are called upon to make an office, and the first inquiry which is natural to a reasonable mind is, what is the object of the office? What do the people wish to effect through

the medium of this ministerial agent were a called upon to constitute? They wish a judge who will decide between the weak and the powerful impartially. They wish to protect one citizen against the villanies of another. They wish a judge to stand as a barrier against the tyrannous influences that may arise in the private walks of life. What more do the people ask at your hands in the structure of this office? He is not only to protect the weak against the strong, the poor against the wealthy and powerful, but he has still other duties to perform.—Duties higher cannot be under heaven, except the duty to God. His duties, then, are higher than any which rest upon him as a mere member of society. What are they? That he shall protect the balances of our government from those usurping tendencies and influences which we have seen in all times in the legislative department of the government. And without which protection, each department would rush madly and wildly upon the other, and in the collision sweep down and destroy all those great constitutional barriers which the wisdom of ages has thrown around the rights and liberties of mankind. Much has been said of the safety of human liberty when in the power of the legislative department, and some gentlemen have been so inaccurate as to refer to Roman history to sustain their position. It is not my wish to revert to that; and it is not necessary to maintain my position that I should do so. But liberty has, in as many instances suffered through the despotic influence of combined numbers as through any other influence whatever, and the testimony of history is that liberty has always expired under the influence of factions generated in such bodies as this. Such may be the case here; but our judges are called upon to stand between the citizen and the usurped authority on the part of the executive or the legislative departments. They are called upon to be a barrier to protect your constitution against invasion from either the executive or the legislative, and you must, in making this structure of a judge, confine yourself to the view of its object. No mechanic makes a machine unless he takes into view the object for which it is designed. No man lays down a proposition except he has his end in view, and no politician can advocate a measure except he knows what it is calculated to produce. Hence, we are, in framing a constitution to take into consideration all its provisions to make it so that all its provisions can have a fair and proper operation. One gentleman has observed that, in the course of duty, the judiciary is called on to stand against the action of the legislature. Your legislature, perhaps, pass a law against human liberty in a time of excitement, such a time as may arise in this country on the slave question, such a time as might arise on the question of emancipation, or no emancipation, when men, in carrying out the feelings of their hearts, and which they believe to be right, may place themselves in a false position before society. The people may appeal to the constitution which gives them equal rights and privileges, and which declares that the right of trial by jury shall be sacred and inviolate to them. And this appeal is submitted to the judiciary, whilst a great majority of the

legislature have enacted laws having a restraining effect on the rights of the citizens. Here is a decision upon an enactment of the legislature, which, for the time being, receives the popular applause, and is considered correct, but which involves some rights, which were not agreed upon when the charter of liberty was framed. Here is a law then, which the legislature has passed; which comes in conflict with the freedom of the person of the individual under the constitution; and here is a judge called upon to protect him from the unconstitutional effect of this law on his rights. The judge then, if he fulfils the functions for which he is appointed is bound to decide according to the dictates of his conscience, and protect this citizen if he is right, against legislative and popular influence. Now, that is a proposition which is far higher than any which relates to contests between individuals.

In making this judge, you are to take into consideration that these exigencies may arise in the process of time, and that you are to confer upon him the power of preventing this evil from legislative usurpation. And after securing his independence the whole structure of the office should conform to the design you had in view when you created it. Well, you have made it in conformity with the design which you had in view when you created the office, and the duties which the judge may be called upon to discharge. Then you must guard him against the attacks of faction in his course, which will destroy his power. You must not ask a man to do that which no man can do, and which is imposed upon no man in view of the frailties of human nature, that which no man can do without being exposed to the insinuations of temptation, or the bold assaults of power.

Then, in making this department in conformity to the duties which you require, is there a man who means to make this structure anything but that which will produce a pure, independent action? Not one. We all agree that the judge shall be pure, intelligent, independent, yet when you aim to accomplish this object, will you surround him with a class of circumstances that conflict with the idea of purity and independence? If you do, you are guilty of that which, I presume, you do not intend. You place him in circumstances which are sure to produce the reverse.

Your judge, then, must be independent in order that he may be pure; he must have salary enough to induce talented men to accept the office, intelligence enough to induce intelligent men to elect him, and integrity enough to resist the usurping tendencies of the other departments of this government. Then what is the proposition that is laid down by the gentleman from Nelson? Let us look at it. It is that a majority of the legislature shall remove this judge from office for any cause which, in their wise discretion, they may think proper, by spreading their reasons on the journals. You desire this judge to be independent, yet you require him to be independent at the risk of his own honor, at the risk of his own bread. He is elected by the people, and removable by what? A great mistake seems to pervade this house, and let me remark upon that mistake. There is a great mistake, as indi-



eated by the language of delegates when they speak of the legislature in such a manner as to confound the idea of that body with the idea that they are, in reality, the people, when in fact they are only a majority of a party of the people. The great object in making the judge independent is to render him pure and above the influence of partizan operations. But, in making him above party it is to place him above the sphere of those influences which mere partisan operations have upon the people. The difference between a party of the people and the people themselves is a most important one. Suppose, for instance, a judge is arraigned before the legislature for the declaration that the course which some violent emancipationist has taken, is not wrong, and that the fundamental principles of the constitution, which secures to him equal privileges, have been violated by the passage of an act of the legislature which was founded upon public sentiment at the time of its enactment. His punishment is called for by public sentiment, but like the weak who fly to a fortress of strength, he goes to the charter which the constitution has erected, and that charter points him to the judge that is to protect him. This tribunal, therefore, is by the terms of the resolution of the gentleman from Nelson, to be disgraced by the legislature if he dares to declare that it has interfered with the rights of this humble citizen; that legislature elected by the people over this broad state, divided and distracted as they may be, yet still having a majority sufficient to carry out all the wishes of the people, stand here ready to represent them in saying that this doctrine of emancipation must be put down, even if it must be at the expense of the destruction of the fundamental principles of this government. Now, if I understand the object of government, it is to protect the weak against the strong; it is not made to protect majorities, but minorities. Hence there are certain fundamental principles and maxims that are never to be disturbed.

When you trace out the origin of the improvements that have taken place in our judicial system, you will find that our ancestors have been struggling for the maintenance of that principle from the time of King John, when they secured to themselves the principles of Magna Charta, the foundation of all those parliamentary provisions, that were enacted from time to time, giving personal liberty, and which they placed upon their statute books. We read in English history, that in the time of the Plantagenets and the Tudors, the liberties of the subject were repeatedly violated, either by the king, or by whatever power had the ascendancy. And although the English people had the name of being free, they never had an inch of freedom, nor ever did enjoy it in fact, for the want of one great desideratum in their system of civil polity. And what was the reason that this system of polity was so corrupt, that with all their paper rights, they still were not free? Their property was not secure, and their lives and their liberties outraged by the laws of the land. Let me refer gentlemen to that state of things, and let me entreat them to pause and reflect on the reason that this people did not enjoy their liberties. At that period, although their system of civil polity was considered complete, yet they did not enjoy

that polity in security. It was on account of the administration of the law by a dependent judiciary, and because it was a mere idle farce to proclaim a man free while the king and the parliament might trample his dearest rights under foot, and he have no protection. These freemen, from whose loins we are descended, and who are the pride of human nature—these freemen and law-abiding people, a people governed by a common sense principle in all their actions, both national and individual—a people who look upon human government, as the most difficult on earth, as a science that should be made more and more perfect, as necessity points out—this people, I say, endured these grievances patiently and impatiently, according to the circumstances that surrounded them, till having wandered through a labyrinth of difficulties, and after having listened to the voice of the wise Bacon, (that judge so famous for receiving the influence of private solicitation,) these people who had lived for ages, and laid up the maxims out of which human wisdom is made—these people, at last found out that the great cause why their liberty was only in name, and their property secure only in name, was for the want of some ministerial agency, some power engrafted on their civil polity, to hold up the weak against the strong.

Why is it that from that day to this no power has been found that will secure that solitary principle, the protection of the weak against the strong? Why is it that the great desideratum of government has never yet been discovered, that the weak might be protected in his property and his liberty against the strong? Why was it that beings like us, enlightened as they were in ancient times, failed to make this discovery? Why was it that the democracy of Athens, who conceived themselves so wise in all the principles of government, failed? Why was it that the numerous attempts to establish a republic in Rome was unsuccessful? Why was it that the prætor, when he went into power, was only asked to be consistent with himself? When we refer to the times to which I have alluded, we discover that it was the ignorance of the principle, which would secure the weak against the strong, which caused those failures to establish self-government. That principle never was discovered till our ancestry in England, having passed through the process of adventurous experiments, were forced, by the necessity of the occasion, to adopt the plan of an independent judiciary.

Surround such a man as Bacon, an ornament to the human intellect, a most astounding phenomenon of human intellect, surround him with favorable circumstances, let him not look to power to hold him in office, give him a salary sufficient to place him above temptation, in other respects, and a more pure and noble instance of the mind of man has never been known since the days of the earliest memory of man. The circumstances which surrounded this great man were the cause of his lack of purity and independence. Circumstances formed the man. Where you meet with one man in this high position, who walks like a giant above all circumstances around him, you meet with a million who are the mere creatures of circumstan-

ces. That man is the true genius, who can make circumstances bow to the high behests of his own intellect. That man, to whom I have referred, Lord Bacon, was not that elevated genius. He was an instance of a giant intellect, thrown down by circumstances and temptation, into abject contempt. Go on from that period and trace the rise of the judicial structure, and you will find that it lasted till the days of William and Mary, till after public sentiment had been whipped into maturity of wisdom; and this great desideratum, the independence and purity of a judge, was discovered.

When you get to that epoch of time, shortly after the expulsion of James II. for crimes which never can be atoned for, among other principles asserted, is the principle that the judge shall hold office during good behavior; that he shall be subject to no power but the power of God, in inscribing a deep sense of right on his conscience in all his relations to the great King, or the minor King.

That independence which is secured by putting the judge in office during good behavior, is the most important principle that can affect the human character. This independence is absolutely essential to the character of a judge, as essential as in any department of this government. A paper constitution is nothing without efficacy and sanction. A principle is nothing unless it can be carried out practically. An abstract principle may be correct, yet when it is reduced to practice, it may prove its inadequacy for the end; but, the very beauty of the science of government is, that although it is fit on principle, yet in practice it produces effects perfectly answering the purposes of its institution. Your abstract proposition is, that you will have a balanced government and an independent judiciary, and you will reduce these two principles to practice. And how are you to do it? Are you to guess at the manner in which it is to be accomplished? Are you to destroy the government which your ancestry framed, and adopt a mere guess-work form of government, or are you to look to the light of experience, which you have as a guide, and which penetrates beyond the bounds of speculation into the regions of reality?

Your design is to make an independent judge, and in the word independence, we will include ideas which must go with it—purity and intelligence; for, no judge can perform his duty if he is dependent upon those around him. But you can make him pure and intelligent as the necessary consequence of independence.

I have shown why Lord Bacon and other eminent jurists failed to reach the character, which we have seen in modern times. It was because they held their power during the pleasure of those that placed them in office. But we are called on to limit this life service, and the public sentiment must be gratified. We are not bound to demolish that principle in our constitution; we are, however, bound to limit the term of office, for this is absolutely necessary to obey the will of those who sent us here. Now, can we obey that will and still retain in this judicial system this important principle of judicial independence? I say we can, that this object can be achieved, and that we can now make another ad-

vance in the science of government beyond that which was made by the wisdom of those who have gone before us. They attained the greatest independence by allowing the judges to retain their office during good behavior; we can attain the desideratum by permitting them to retain their office for a term of years. It is not so important how a judge gets into office, as that he shall have no temptation when he shall have taken his seat. The manner of his appointment is not so important, as that, after he secures that appointment, he shall properly discharge the duties which belong to his station. The elective principle, therefore, may be considered as the manner of putting him in office, and the tenure of office for a term of years, may be adopted and still he will be pure. The independence of a judge in England, did not arise from the circumstance that he was appointed for life, but from the fact that if he behaved well he could not be removed, and that he had no occasion whatever, to look to any source for his continuance in office except his own merits. Now, I wish this idea to be well weighed by gentlemen. The judge was not put in for a term of years by the King, to be again appointed at the end of that term by the same King, because if so, he would have been under the influence of temptation to propitiate the kind feelings of that King that he might secure a second appointment. He was not re-eligible to office because if he was turned out of it he suffered the fines and penalties incident to that disgraceful position. He was placed in an office, the term of which was limited by life if he behaved himself well.

Now, what is it? You put a man into office, and say to him if you behave yourself, you shall remain. In order to remove from him any temptation, (such as existed in the heart of the English judiciary to succumb to the appointing power,) I say the principle ought to be incorporated in the constitution that he shall not be re-eligible—that he shall hold his office during this term of years, provided he behaves himself; and when that term shall have elapsed, he shall go out of power for at least one term. Let us consider this matter and inquire what we shall have gained by inserting this principle in the constitution. Like causes will produce similar effects in the moral as well as in the physical world. The great cause of the independence of the English judiciary was, they were not under the influence of power. The same cause must be produced here.

Look at the man who is chosen for eight years, and then is a candidate for re-election. See what a spectacle will be presented to the people of Kentucky. Your judge is to be elected by the people at large, that is a concession I admit. Your people are, therefore, to elect your judges. A man is a man in whatever guise he may be, and when a candidate comes before you he will mingle with the people. Now, I am no servile adulator of man as man, or of man as many; and although I have heard an adulation in regard to the people that would make me think I was any where else but in this body, though I have a respect for the people which those should have who resort to this adulation, still I know the people. I know the people of Kentucky are influenced by common sense and justice, and

they suspect that man, who is always saying the people cannot err; and that man who expects to rise into favor with the people by appealing to them in such terms of adulation as I have sometimes heard—I do not mean to allude to any one in this convention—will fail in his attempt to secure their favor; but a manly independent course before the people of this state, telling them what is true, though it operates against you, is a course that will be sustained by the people, and will more surely attain the public favor than any other course whatever. Now, if the judge comes before the people, he comes before a people of this kind, although you may look at it as paradoxical. The people will be generally divided into two classes, and these parties—whigs and democrats—perhaps are nearly equally divided, but there is another class mingling with the people. What class is that? It is a class found in every republic, which floats between the two great parties, giving first to one party the ascendancy, and then to the other. The effect of this floating vote has been shown in many cases within the knowledge of gentlemen during the last thirty years. What caused the election of General Harrison, except the inclination of this floating interest to his side? And what but this, produced the election of Gen. Taylor? If this proposition has proved true on a large scale, are you to expect it will be otherwise upon a limited one in this commonwealth? When your candidates for re-election present themselves before the people, what is likely to be the practice of the two parties? The two great parties stand out prominently, but here is another party, which ought not to be classed among the people. This judge is to be elected. His mind is anxious and he begins to weigh his chances of success, and he thinks he must propitiate this floating party. Here are a thousand voters on one side, and nine hundred upon the other, and one hundred and fifty floating voters who must be propitiated. What is to be done? I ought not to ask that question; human nature is human nature, and proud as human intellect may be, or elevated as your principles of morality may be, when your mind is inflamed, you are sure to call to your aid this balance of power which may decide your fate. You are sure to propitiate it with all the will that your nature can invent. Is this a true or a false picture of the practical effect which will be produced by the election of the judiciary by the people? Is it a true or a false picture of the practices to which our judges will have to resort to obtain this high elevation of the judgeship. If it is true, there is nothing but a power, which must be abiding in this house, which will make me yield to the election of the judiciary by the people. In deference, however, to that power which I know to be present in this house, I have conceded this question. The judge has assumed his seat for a term of years, limited, some say to four and some to eight years; he has received his salary, his honors, and the only dark spot in his reminiscence is the corrupt scene through which he was forced to pass, to obtain his office. But oh what a sad condition. It has caused me to lose my self-respect. I have had to pass through the ordeal. I have obtained office, but I have lost my self-respect. I have condescended to do that

which should make a proud and honest man blush. But nothing but necessity has caused it. It is the plea of necessity that always gives the tyrant his excuse. It was the plea of my necessity which caused me to sacrifice the principle which I ought to cherish more than any other—my own self-respect.

He is in power though, and he holds that power subject to the will of the people for re-election. In England the king or parliament put the judge in power. This person, was he put there by the people—by the whig or the democratic party? Every man will say it was the little floating party that elected him. What have we seen in the great state of Ohio? After great trouble and confusion the legislature of that state was organized. It became the duty of that body, under the constitution and laws of that state, to elect a senator in congress and judges. There it was that a little, insignificant band of fanatics, called free soilers, insignificant in number, more insignificant in intellect, showed itself in the legislature. Neither of the great parties holding the balance of power, the potency of this little party was sorely felt. They held the balance of power and dictated to the democratic party the course to be pursued in the election of these high officers. They told the democratic party if they would come into their terms, they should have success in the fond wish of their hearts. They gave them the United States senator, and then this little party, composed of three men, demanded the judiciary of the state!

Now what happens in a body constituted of one hundred and fifty, may happen in one of an hundred thousand. The same cause may produce the same results when acting in the broad space of unlimited numbers, and just so certainly will this small irresponsible party, dictate in the counties of this state, who shall be the judge. The judge looks then to that party as the source and origin of his power, and with great propriety he looks to them for his re-election. Is that a proposition that is understood here by this house? The very power of his appointment he has to look to for his re-appointment.

In England the judge was put in for life, and of course he was ineligible. Then incorporate this same principle during good behaviour. But how? Say he shall not be re-elected—give him a good salary—incorporate that salary in the constitution—then make that judge ineligible, and although you have demolished that judicial structure which we have borrowed from England, you have constructed one which will secure the same end that was designed to be secured by the old structure. But gentlemen say there is no stimulant for the judge to behave well while in office, unless he is to be placed before his constituents again. Let us look at it. I know that I am detaining the house longer than they want to be detained, but the subject under consideration rises above every other subject.

Mr. A. K. MARSHALL here rose and asked the gentleman from Fleming to give way for the purpose of enabling him to make a motion that the committee rise.

Mr. M. P. MARSHALL assented.

Mr. A. K. MARSHALL then moved that the

committee rise, report progress, and ask leave to sit again.

The motion was agreed to, leave was granted, and then the convention adjourned.

MONDAY, OCTOBER 21, 1849.

Prayer by the Rev. Mr. NORTON.

CONTESTED ELECTION.

Mr. ROOT, from the committee on Elections, made the following report:

Your committee, to whom was referred the memorial of Joseph Lecompte, contesting the right of Elijah F. Nuttall, the delegate returned to serve in this convention from the county of Henry, which memorial is as follows:

"To the honorable, the constitutional convention of Kentucky, now assembled in the city of Frankfort.

"Your memorialist, JOSEPH LECOMPTE, a citizen of Henry county, Kentucky, claims that he is entitled to membership in your honorable body, in exclusion of Elijah F. Nuttall, Esq., who now occupies a seat upon the floor of said body, claiming to represent the county of Henry: and your memorialist shows the following causes upon which he predicates his claims.

"1st. Your memorialist avers, that he was a candidate for membership in your body at the last August election in Henry county, and that your memorialist having all the legal qualification for membership, as aforesaid, and being opposed by the said Nuttall, was elected over the said Nuttall, by having a majority of all the legally qualified voters, who voted at said election, to vote for your memorialist, over said Nuttall.

"2d. Your memorialist avers that the poll-books of all the places of voting in Henry county, do, in fact, show upon their face, that your memorialist did receive a majority of the total number of votes cast at said election; and he claims in virtue thereof, that he is entitled to the seat as the delegate for Henry county.

"3d. Yet, nevertheless, your memorialist avers, that the returning officer, who was entitled to certify the election of the delegate who might be elected, certified to the Secretary of State that the said Nuttall was elected; and, in virtue thereof, the said Nuttall hath taken his seat in your honorable body; when, in fact your memorialist avers, that the said poll-books show your memorialist to have been entitled to said certificate by *ten votes*: but your memorialist avers that he is entitled to said seat for other reasons: he charges,

"4th. That voters voted for said Nuttall who were not citizens of the county of Henry at the time of voting.

"5th. That voters duplicated their votes for said Nuttall.

"6th. That persons, who were under the age of 21 years, voted for said Nuttall.

"7th. That citizens of Shelby county voted for said Nuttall.

"8th. That, in these and other respects, there were two hundred illegal votes for said Nuttall.

"Wherefore, your memorialist prays that the proper steps may be set on foot to ascertain the truth of the case, and that your honorable body will declare your memorialist entitled to a seat in this convention, as a member thereof, provided it shall turn out that your memorialist is, in law, entitled thereto. And your memorialist will ever pray, &c., &c.,

"JOSEPH LECOMPTE."

have had the same under consideration, and report thereon: That it was agreed by the memorialist, on his part, to withdraw all the allegations in his memorial, except the second, and to rely on that alone—

"2d. Your memorialist avers, that the poll-books of all the places of voting in Henry county, do, in fact, show upon their face, that your memorialist did receive a majority of the total number of votes cast at said election; and he claims in virtue thereof, that he is entitled to the seat as the delegate for Henry county."

And on the part of the sitting member, Elijah F. Nuttall, that he would rely alone, upon showing the fact, that after the said election, and after the poll-books were returned to the clerk's office of the said county of Henry, that the poll-books for the precinct of New Castle, in said county, were changed, altered, and forged, and that twenty-six marks (or votes) were placed in Lecompte's columns opposite to the names of divers persons, who voted for neither of the parties in this contest, at the August election. The issue being thus formed, and the *onus probandi* thrown upon Nuttall, the said Nuttall proceeded to call his witnesses, when Lecompte, by his counsel, moved your committee to exclude all parol testimony, tending to show any alteration or forgery of the poll-books of the said county of Henry; which motion, being fully heard, on the part of Lecompte, was overruled. Whereupon, Lecompte, by his counsel, demanded a specification, in writing, of the votes, that the sitting member alledges to have been forged upon the poll-books of New Castle, and it was furnished him:

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|-----------------------|-----------------------|
| 1. Samuel Eddy,       | 15. John Roberts,     |
| 2. Charles Allen,     | 16. F. Roberts,       |
| 3. Uriah Edwards,     | 17. S. T. Drane,      |
| 4. A. W. Pritchett,   | 18. Edward Ransdale,  |
| 5. W. L. Batts,       | 19. J. C. Sheperd,    |
| 6. James Johnson,     | 20. John Ransdale,    |
| 7. M. Lockett,        | 21. James Whitehead,  |
| 8. Wm. Harris,        | 22. John Radford,     |
| 9. John Shryock,      | 23. Tho. J. Bruce,    |
| 10. James Hawkins,    | 24. Josiah Bridgeman, |
| 11. Gideon King,      | 25. R. Shockensey,    |
| 12. B. F. Owen,       | 26. Richard Neale,    |
| 13. T. H. Meriwether, | 27. A. Foree.         |
| 14. Tho. L. Martin,   |                       |

Whereupon, the memorialist, (Lecompte,) declined all further contest, and withdrew any further claim to a seat in this convention.

Your committee would further report: That, from an examination of the poll-books, from the said precinct of New Castle, that they are of the opinion, that votes had been added to Lecompte's columns, opposite to divers names of voters, since the "footing up" of said poll-books by the clerk of the election; and this was more apparent to your committee from the fact, that

no such errors appeared in the addition of the votes of either of the other candidates. Your committee enumerated the number of votes upon the New Castle poll-book in Lecompte's columns, and found that the number of marks standing for votes, exceeded upon each page, except one, of said poll-book, the clerk's addition, from two to four votes.

Your committee also report the following resolution:

*Resolved*, That Elijah F. Nuttall, who has been returned by the sheriff of Henry county, to have been duly elected, at the last August election, a delegate to this convention from the county aforesaid, was duly elected by the qualified voters of said county; and is entitled to his seat upon this floor.

The PRESIDENT stated the question to be on the adoption of the resolution.

Mr. BOYD called for the yeas and nays.

Mr. NUTTALL said he would like to have them taken. He had been extremely anxious that the committee should have received some of the testimony on the question of forgery, but they thought that the withdrawal of the contest was perhaps an admission of the fact. He was better acquainted with the tactics of his competitor at home than perhaps any gentleman on this floor, and he should like to have the yeas and nays taken. In fact it was at his suggestion that the gentleman from Trigg made the call.

Mr. C. A. WICKLIFFE suggested that the vote should be taken, and if there were any noes then the yeas and nays could be called for.

The PRESIDENT put the question on the adoption of the resolution, and it was agreed to unanimously.

Mr. HARDIN brought before the convention the question of paying the expense of this contest. He said there had been many witnesses brought to this city at an expense of several hundred dollars.

The PRESIDENT intimated that no claim was made by the witnesses.

Mr. HARDIN replied that he understood their attorney had paid the money for them.

Mr. NUTTALL said he had already paid a portion of the witnesses, but he did not conceive that these expenses should fall upon him under the circumstances.

Mr. HARDIN said before this contest was commenced, Mr. Lecompte enquired from him who would be adjudged to pay the costs; and he (Mr. Hardin,) replied that he supposed the state would pay if there was probable ground for the contest, and if not, that Mr. Lecompte would have to pay them. Mr. Lecompte added that he was exceedingly poor, and did not wish to be obliged to pay. It did not now appear that Mr. Lecompte had probable ground whereon to contest the seat of the sitting member, and it would be better if the state should pay. He (Mr. H.) had felt bound to make this statement.

Mr. NUTTALL thought that from \$70 to \$100 would pay the whole expense of the prosecution, including the witnesses.

The PRESIDENT interposed and said there was no question before the convention.

The conversation then dropped.

#### COURT OF APPEALS.

The convention again resolved itself into com-

mittee of the whole on the report of the committee on the court of appeals, Mr. Huston in the chair.

Mr. M. P. MARSHALL. The discussion of the subjects involved in the question, so exceedingly important in their character and bearing, on Saturday last exhausted me physically; and this morning I feel the propriety of putting off the discussion of this point till a more propitious period. The independence of the judiciary is a standard principle in its character, which must be engrafted into the constitution, which we make in this house. And in view of having it thus engrafted I will read a proposition which in its proper place and at the proper time I will offer for the action of the convention.

"The judges of the court of appeals shall receive each a fixed annual salary of not less than ——— dollars, and be ineligible for the succeeding term after the expiration of the time for which they shall have been elected."

This distinct proposition, carrying with it a principle which it is necessary should be engrafted on a judicial structure, will be submitted at the proper time, and I hope it will then receive the aid of all those who view the matter as I do. I believe the proper time has not now arrived, and therefore I shall not trouble the house with any more remarks.

Mr. HARDIN. I designed making one or two remarks further in this case, but I have conversed with the honorable chairman of the committee, and he says that he is desirous of closing the debate. If any gentleman is desirous of speaking, I will not speak at the present time. If not, I will submit a few remarks.

Mr. ROGERS. I do not design to make a speech on this question, but it has excited considerable interest in the house, and perhaps in the country. I only design to give my reasons why I will not vote for the amendment of the gentleman from Nelson. Members have assigned various reasons, and unless I assign mine, my constituents might place me among those who have given reasons of which I do not approve. Most of the members have set out with the proposition that they were original convention men. I, too, claim to have been an original convention man. I claim to be one of those who go as far in favor of reform as any gentleman in this house. I think, with other members who have addressed the committee, that all power belongs to the people, and that power should be exercised for their good. I claim for them the sovereignty in this land, but it seems they have sent me here to yield up a portion of it and to frame a government that shall be enduring. We have divided our government into three several parts. The executive power we confine to one, the law-making power to another, and the judiciary to a third. Our government, without going back to England, and to the history of the past, is framed on the principle of checks and balances. This principle should be kept up and not destroyed.

The law-making power is one part of this government; it is that department to which the people of this state look with more jealousy than any other. But they have thrown a protection upon, and have made the judiciary supreme. They are the check, and when we make a law by

the legislature, it is the duty of the judiciary to declare whether it is or is not constitutional. But if we make the judiciary subservient to the law-making power, then the judiciary will be the tools, the tenants at will of that department, as the judges were in England previous to the revolution. This will be the case here, and it behooves us to fix this thing up permanently, that it may stand. How can the gentleman from Nelson go for making the judiciary subservient to the law-making power, when he does not go for specific amendments? He wants to throw around the constitution the present clause in relation to amendments. He wants the people to come to their sober second thoughts before we destroy the present constitution. He would not go for a bare majority to amend our constitution, much less ought he to go to destroy that power in our government, which holds them in check and awe. There is not a consistency in these two principles. I have before remarked, it seems to me, that the power is in the hands of the people, and I wish to make the judiciary subservient to them. I want the judiciary made elective by the people, and elected for a term of years. If good and faithful servants, they can be returned again, and that will be the strongest stimulant that can be thrown around an honest man. I also wish to have a separate department to try men for malfeasances. I would be as radical as the gentleman from Ballard and McCracken. I would have a tribunal to try a judge in the vicinage. There is a precedent for this: and then it would be necessary that they should have the consent of the whole jury, and not a majority merely. A verdict of the whole twelve sworn jurors would be required. Some gentlemen are in favor of a verdict by a majority of jurors; but that was not the ground of the original convention men. It seems to me that no man who is a lover of that which is consistent, and a lover of justice can be in favor of such a system. Some gentleman, I believe it was the gentleman from Campbell, said there is not virtue enough in two-thirds to try a judge. This to me appears to be a strange position; if there is not virtue enough in two-thirds, for God's sake don't take a majority. In times of excitement, politicians will transcend their duties. They have done so. The passage of the law of 1833 was uncalled for, and the repeal of it was uncalled for. They have passed many uncalled for laws, and I want to throw around the law-making department many checks. With the expression of these few reasons, I do not think it necessary that I should say anything more.

Mr. CHAMBERS. The faculty or power of condensing is a most valuable one, and its exercise is indispensably necessary in the formation of a constitution. This power might also have been advantageously and happily infused into many of the speeches which gentlemen have addressed to us upon the subject before the committee. Sir, seeing the difficulty of obtaining the floor, and witnessing the distressing embarrassment that young and modest members must experience in attempting to address the convention, I had determined to condense and to compress all that I might have to say into the simple yet comprehensive aye or no; and sir, I shall not very greatly depart from that determination on this occasion.

Sir, the subject matter under consideration is the motion made by the gentleman from Nelson to amend that portion of the report from the committee on the court of appeals which relates to impeachments and address, and he proposes to strike out the words "two thirds" and insert "majority."

Now sir, the effect of this amendment, should it prevail, will be to place not only the judges, but all of the higher officers of this commonwealth at the mercy of a bare majority in the legislature; and why sir, should we do this? Has any gentleman's constituents required such a provision at his hands? Will such a provision conduce to the securing of abler and better men for these offices? Is it requisite to insure a faithful discharge of their duties, that these officers should constantly have the terrors of address or impeachment before their eyes? I think not sir. What sir, is the prominent and distinguishing feature, the characteristic movement on the part of the people in calling this convention? Was it to enlarge the powers of either of the great departments of this government? Was it to make any one of those departments more dependant upon another than it is under the existing constitution? No sir, no. I have not so understood them. But on the contrary the object and design most apparent in the great movement which has resulted in our assembling here, was a determination on the part of the people to reclaim and to have restored to them many of the powers now delegated to the several departments. It was not to increase the strength of one of these departments at the expense of another's weakness that we were called here. No sir. It was to take from each of these departments some of the powers now delegated to it, and to restore the exercise thereof to the people themselves. What sir, are our instructions with regard to the executive branch of this government? Are they not that we shall strip him of all appointing power and patronage? that we leave with him the qualified veto he now has—the command of the militia, and the exercise of the attributes of mercy and clemency—the pardoning power.

What sir, are our instructions with respect to the judiciary? Are they not, that we take the little patronage it now has, the appointment of clerks, from it? That we make the judges as well as clerks elective? That we shorten the terms of their offices? That we make the incumbents dependant upon, and responsible to, the people?

And, what sir, are our instructions in reference to the legislative department; are they that we shall enlarge its powers, or make either of the others more dependant upon it? I think not sir. If I understand the requirements of the people they are that the legislature shall meet less frequently—that it shall confine its action to subjects of a general character and interest—that it shall be limited in its power to incur debts and to increase the taxes.

These sir, are the great measures for the accomplishment of which this convention was called, and sir, let us not disappoint the people by doing either more or less than they have required.

Here sir, I might stop, for I have said about all that I intended to say, and more, perhaps, than



some may consider germane to the subject. But we are in committee of the whole, and great latitude in discussion is allowed; and as I do not know that a time more opportune to say something about impeachments will occur, I will say it now. Sir, whence did we derive this feature in our constitution? Other gentlemen, fresh from the perusal of English history, anticipating the proper time for such discussion, have descanted most eloquently upon the rise of British jurisprudence, the progress of judicial independence, and so forth; but sir, I was surprised that whilst gentlemen went minutely into these details, they entirely overlooked and lost sight of that highest and most august of all judicial tribunals, from which our court of impeachment is derived,—I mean, sir, the British house of lords, sitting as a high court of impeachment, and a court of final and last resort for causes as well civil as criminal. This too, when that identical provision in our proposed amendment is the subject under consideration. But sir, it is easy to account for this oversight. The engrossing subject with us is the mode of appointment, tenure of office, &c., of the judges of our ordinary tribunals of justice. The court of impeachment is an extraordinary one, and one, to my mind, wholly useless and unsuited to the genius and character of our people and that of our institutions. Sir, it may suit a proud old monarchy, such as that of Great Britain, to tolerate such an institution, and surely a sight more imposing, in the civil pursuits of life, is no where to be seen than that exhibited by the British house of lords sitting as a high court of impeachment. There, sir, you may behold the lords spiritual and temporal, with all the high dignitaries of the crown and parliament, arrayed in all their decorations and insignia of office—there you may see the house of commons, with its speaker at its head preferring charges—there you may see an ex-governor of India, arraigned as a criminal, and there you may hear the overpowering and enrapturing eloquence of a Burke, a Sheridan, a Windham, a Fox, and a Pitt. Sir, such an institution may be a proper appendage to a regal government, but it is wholly out of place in a plain democratic republic, where institutions are wanted for practical and useful purposes, and not for expense and show. But gentlemen look at me enquiringly, and seem to demand, how will you reach the high officers of government for official delinquencies? Reach them, sir, just as I would the lower officers!—And how is that, sir? By indictment and trial by jury in our superior courts of law. But there are impeachable offences which are not indictable at common law. But I presume these can be made so by statute. Under an impeachment the charges and specifications must be set out with clearness and certainty, and could not the same be done with equal clearness and certainty in an indictment? Sir, I prefer the indictment, because it offers some practicable way to reach these offenders, and insures a fair, cheap, and speedy trial. Sir, for political offences there is no accountability nor responsibility, save that to public opinion; but for crimes and misdemeanors, every officer in this government stands upon an equal footing with the private citizen, and all are amenable at the bar of the same tribunal,

the ordinary courts of law. And sir, we are about to render our inferior officers so amenable for their official delinquencies; why then shall we make an exception, and provide a different tribunal for the trial of official delinquencies in superior officers? Sir, I see no good reason for such a distinction. Sir, what is the penalty attached to a conviction by impeachment? It is, I believe, removal from office and disqualification forever after. Could not this follow conviction by indictment as well? I think it could sir, and in addition, it might, in aggravated cases, be right to inflict upon the person convicted, death, confinement in the penitentiary, or other punishment. Sir, I see nothing in the prosecution by impeachment which is not attainable by indictment. I am, therefore, in favor of our omitting this article of impeachment and substituting indictment and trial by jury. Let conviction vacate the office, and let it be the duty of the acting executive, upon proper information of such a state of case, to issue a writ of election to fill the vacancy thus occasioned.

Still sir, in a certain class of cases, removal by address will be necessary; and I am in favor of it by a two-thirds vote, but not by that of a bare majority. When an incumbent has become unfit for the office by age, infirmity, or other cause not amounting to an indictable offence, removal by address would seem to be proper, and some provision for such contingencies should be made.

Mr. MAYES. I am not unaware of the fact that the patience of the committee is well nigh exhausted in the examination and investigation of the important and interesting question presented by the motion of the gentleman from Nelson. This fact together with another, the feeble state of my health, admonishes me that it is altogether proper even if I was otherwise inclined, that in any remarks I may submit, I should be as brief as the nature of the case and the circumstance, will permit.

I had thought indeed when I left my home that the convention would have but little difficulty in arranging and framing such a constitution as would accord with the notions and opinions of the people as expressed in the late August election. I thought indeed, and still entertain the same opinion, that all the important amendments desired by the people to the organic law had been so deliberately discussed by the people, and so clearly understood by their representatives, that we would have but little to do here other than to meet together and to throw into proper form the amendments desired to be made in the constitution by those over whom it is to have a mighty influence either for weal or for woe. I know of but two great and important questions discussed during the last summer, in reference to such amendments as should be made in the constitution. Those questions I know were discussed at length in the part of the country in which I live, and from my reading and the indications as exhibited by the newspapers of the country, they were the two great and important questions operating on the people at the time they called the convention. What were they? One was that the legislature met too frequently, and that out of that arose unnecessary

and extravagant expenditures, which it was the great object of the people to curtail. Another great object as I then understood, and still understand, of the people in calling a convention was that there should be returned to them the power heretofore delegated to the executive—that of appointing the officers of the commonwealth. The people claimed the right to appoint these officers themselves directly at the ballot box. This question of slavery which has been so ably and eloquently discussed here never entered into the minds of the people as an important question until after it was determined to hold the convention. After that happened the question became an important one, and we have all come here, I doubt not, to express the voice of the people in the way of altering the constitution on this subject. Hence I remark I considered the discussion here on the subject of slavery as uncalled for, and under the circumstances as wholly and entirely improper. I will remark here again, that many have professed to come here in opposition to the open clause or specific amendment, and why? Because they say if the constitution is left in a position to be specifically amended, this question of slavery will agitate and distract the country from year to year. Yet we have here from day to day, in speaking upon and agitating that very question, done the very thing which we would arrest by a clause in the constitution. Hence I regard that we have in our action on that subject been somewhat contradictory to ourselves.

Now I think I am right when I say that the people of Kentucky require no such change in the constitution of the state, as the one proposed by the amendment of the gentleman from Nelson. I am not prepared to say that a bare majority of the legislature in all time to come shall have the right at its will and pleasure to remove from office the judges placed in office, not by the legislature, but by the vote of the people, given at the polls. Gentlemen have told us to beware, to look to our constituents, and I believe if I was to give a vote of that character it would be directly in opposition to the will of those who sent me here. The people desire no such change so far as I am informed, in the fundamental law, as the one contemplated in the amendment of the able, learned, and experienced gentleman from Nelson. I am not to be driven from any opinion on this subject, deliberately formed, by the repeated declaration that the people are capable of self government. It seems that whenever gentlemen desire to press a question and to carry it through they get up and admonish us that the people, the sovereign people of this country, are capable of self government. Sir, this is the lesson, I suppose to have been taught us all from infancy up to the present time—that the people of this free, this happy, and this glorious confederacy, are and ever have been capable of self government. Why, I have understood this to be one of the great and mighty principles for which our fathers in the days of the revolution, the times which tried the souls of men, and for which Washington, Jefferson, and Madison, and all the patriots of that day, contended. All power of right belongs to the people, and should be vested in and confided to them, yet the people themselves, in their funda-

mental law, desire such checks and guards as shall protect them against wrong and fraud, come from what source it may. This I understand to be the wish and desire of the people. Yet you tell me that you give to the people the right to elect a judge, and at the same time you say that a bare majority of the legislature, without cause, unless it be some political cause, shall have a right to remove the very judge from office elected by the people. I understand that it is contemplated, and I believe it will be done, that the State of Kentucky shall be laid out into four districts, in each of which the people there residing shall select one judge. I understand, also, that it is more than likely that the convention will determine that the state shall be laid out into twelve, or more or less, circuits, and that the people of each circuit shall have the power restored to them to determine who shall be judge in a particular circuit in which they live. Now, assuming that this change shall be made in the constitution, in the district in which I live, the people knowing the integrity, the fitness, and virtue of the individual living in that district, select him and say he shall take the scales of justice, and administer the justice of the land in that district.

Well, the legislature coming from every county in the state meets, and charges are preferred against that judge, or no charge is preferred; if you please he has been a partizan. The legislature, by a bare majority, tell the people of my district, "you have elected your judge; you know him; you have lived with him; you know he is a man of integrity, virtue, and honesty, and legal learning, yet the constitution leaves a majority of us to say that you shall not have the man you select." This would be the effect of it. "You have the right to elect the judge, and a large majority of the district may desire to continue him in office, but a majority of the representatives in the legislature say, you shall not retain him." Why, is it desired that the power of impeachment and the requirement that two thirds of the legislature shall be necessary to remove a judge from office shall be stricken from the constitution, because it is said the judges, where two thirds are required to remove them, are irresponsible to the people? Can it be seriously contended that a judge, elected and holding his station under the change in the constitution proposed by the committee on the court of appeals, will not be responsible to the people? Is not the responsibility seen at once, and will not this responsibility direct the people to remove any difficulty that might exist so far as the amendment of the gentleman from Nelson would be calculated to remove it? Would it not? But if the motion of the gentleman shall be rejected, and the constitution shall require two thirds of the legislature to remove a judge from office, the gentleman tells us he would not give a cent for the constitution. Nay, if you do what the people desired you to do when you were elected—if you say that the power to elect these officers shall be returned to them, the power to select the judge who is to administer the justice of the land in a district—if you say this, I would not give a cent for the constitution, says the gentleman. If you say that the legislature hereafter shall not convene oftener than once in two, three, or

four years, still, says the gentleman, I would not give a cent for the constitution. If, again, you leave the proposition in the constitution in relation to slavery as it is, and say you consider the people desire it, still the gentleman says, I would not give a cent for the constitution. Why, these are the great changes, the important changes that it is desired by the people should be made in the organic law of Kentucky.

But the legislature, in the language of the gentleman, is defeated. The legislature of Kentucky constitutes the people of the state of Kentucky. Now, I do confess that to me—although I do not profess to have much learning—this is a new idea. But I would ask before I remark upon it, whether there be in any civilized government upon earth such a feature as the gentleman desires to incorporate in the constitution of Kentucky? I ask if there be in any one of the constitutions of the thirty states, forming this great confederacy, such a feature as the gentleman wishes to have inserted in the constitution of Kentucky? When, and where did he learn that the legislature constituted the people? If any department of the government has been more completely condemned and repudiated (to use a strong term) by the people than any other, it is this self same legislative department.—Why is it that the people desire that it should not be called together more than once in four years, or, at least, once in two years? Why, from the very fact that the people themselves have but little confidence in the discretion and wisdom of that branch of the government. It arises out of that. Why is it that the people desire that the legislature shall not have the right to run the state in debt, without first consulting the people in relation to the appropriations they may desire to make? Because, from experience, the best of all teachers, they have learned that the legislature, on the subject, is not to be relied upon. That is the reason. Why is it that the people desire that this constitution, for the framing of which we have been called together, shall provide for the protection and security of the common school fund of Kentucky? It is for the reason, and that alone, that they apprehend the legislative department of the government will squander and waste that fund which has been set apart, most sacredly, for the education of the poor as well as the rich. Sir, I know it to be the case, so far as the people I have the honor to represent are concerned. Last year, in my county, a large majority was given in opposition to the tax of two cents for common school purposes. Why was it? Simply because they had no faith in the legislative department of the government, and believed they would divert the tax to another purpose. They approved of the common school system, and saw the necessity of education. They know that the very existence and perpetuity of the free institutions of this country depend upon the virtue and intelligence of the people; but say they, “we have no confidence in the representatives of the people.” Not that they have no confidence in the people; they tell you they have all confidence in the people. But they say those men we sometimes elect, are not the people, and do that which the people repudiate and condemn. The experience of every man shows this to be true. We all know it to be

true. Now, the gentleman from Kenton was right; experience teaches us that he was, although my friend from Henry repudiated it in reference to the democracy, in relation to the principles of party action. The principle of action spoken of by the gentlemen applies to one party as well as another when in power. We may try to bear it off. We may felicitate ourselves that one party in power will not remove from office those opposed to that party, but every day's experience proves to us that when one party is in power, those in office, holding different politics, must give way. Give the legislature the power to remove the judges, and I care not whether the whig or democratic party is in power, human nature is the same in both. A judge, in a time of high party excitement, must bow and cringe at the feet of the legislative department, if they would keep their places. I believe that no gentleman, legally qualified, and having that virtue and integrity so essential to the bench, and possessing one particle of self-respect, if the motion of the gentleman from Nelson succeeds and becomes part and parcel of the constitution, would ever go upon the bench. No, sir. No man who respected his own standing, who regarded the peace and happiness of the community in which he lived, or the reputation of his family and his friends, would place himself in a position so unenviable. I take office from the hands of the people; the district elects me a judge, and am I to be removed from office by the vote of a bare majority of their representatives? Whether it be for good causes or not, let him be removed, and there is a plague spot, a stain, a disgrace, fixed upon his reputation for all time to come. And no man having self-respect would, as I conceive, receive office so trammelled.

I was very much pleased with the gentleman from Henry, and with a good part of his speech, but I do think he rather contradicted himself. But he is not like an individual who tells you, if he does not succeed in a motion, he will go against the constitution. He is an advocate of constitutional reform for the sake of constitutional reform, and if he can better the constitution in any one particular, he will go for the new constitution heart and hand, although all the little notions he may entertain were not adopted in it. This, I conceive to be the right spirit, which the people intended should operate upon all of us when they sent us here to frame a new constitution. Why do the people in one county believe that they are going to get a constitution made exactly as they would have it? Do they not know it must be built up, and framed upon that principle of mutual concession so essential to framing a basis for any government. I shall be with the gentleman, if any essential change, which is desired by the people in their organic law, be made, whether the one particularly favored by the people I represent or not. I go for the new constitution, on the ground that the condition of the people will be bettered, and that one improvement, at least, on the subject of government, the most important subject that relates to mankind, has been made. I am for having the power returned to the people to elect their officers. I will sign and vote for the constitution, if that power be refused, and the legis-

lative department shall be regulated as the people desire; and I will use what little influence I may have to induce others to go with me. I think with the gentleman from Henry, and his very countenance is an index of his honesty on another subject, and that is, that it was made manifest during the discussion of this subject, that the votes in favor of the proposition of the gentleman from Nelson, as indicated in this house, will be few and far between. I think they should be few and far between, for if we desire to sap, and blast, and ruin the very foundations of the government under which we live, it does seem to me that we could not more effectually do it than by incorporating in the constitution the feature proposed by the gentleman from Nelson.

One word in reference to a remark of the gentleman from Mason. It seems the gentleman has lived in different states. He tells us he has lived in a state where the legislature by joint vote are permitted to determine who shall administer the law; and I was surprised to hear the gentleman say it was a happy mode. Of all the modes presented to my mind, that by joint vote of the two houses of the legislature is the most objectionable. It is, in my opinion, obnoxious to the most serious and powerful objections. I believe that the people are capable of electing persons who will discharge the duties of judge with ability and fidelity. Where they have an opportunity to know the individual, the appointment will be a good one; they will select such persons as are worthy to be entrusted with the important interests which must necessarily be confided to a judge.

Now I merely desire to state why I object to the principle which is recommended by the gentleman from Mason.

The people of the county where I live, desire by their free suffrages to call in some man to act as judge; but you provide by your constitution that he shall be elected by joint ballot of the legislature. What follows? I desire to have a certain man elected. A member of the legislature from another county, desires to secure the election of a particular individual to a similar office in his county. He says to me you go for my man and I will go for yours. If there is no judge to be appointed in his county there may be some object for which he desires an appropriation of money. The result is the same. We enter into an alliance for mutual support and assistance. No sir, it is one of the most corrupt modes by which appointments can be made; one of the very worst systems in my opinion, that could be adopted in any country. The stream of justice should be kept pure and unadulterated. The people themselves whose interests are so deeply concerned should be the appointing power. They are interested in having the best men that can be selected for judges, and they will take care to select such.

Well, sir, there is another point connected with the subject under consideration, to which I will for a moment advert. I think we were admonished the other day that at the proper time a motion would be made to strike out of this report the feature which requires that some test of qualification shall be required of those who present themselves for election to the office of

judge. The propriety of such a provision has been already adverted to by some gentlemen who have taken part in this discussion; and for myself, sir, I give notice now, that I am in favor of it. I design to go for protecting the people against imposition and fraud. No man should receive the appointment of judge who is not learned in the law, and who is not in all respects properly qualified to discharge the duties appertaining to the office. Being learned in the law is, I apprehend, a very essential qualification, and there ought to be some mode of determining this point, beyond the mere *prima facie* evidence that you have seen him engaged in the practice of the law. It must be evident to gentlemen that it is desirable that the candidate for judgeship should be able to certify the electors of his qualifications. This must strike gentlemen as being necessary and proper for the safety of the community, that the people may know into whose hands their interests are to be intrusted.

Gentlemen agree that there ought to be a certain age fixed at which a man may be elevated to the bench; and another requirement should be a certain number of years' practice at the bar before he is made eligible. But, gentlemen say the people are capable of self-government, and in consequence of the people being capable of self-government, no qualification is necessary to be fixed for those who are to hold office under appointment by the people. Without the insertion of these provisions, I think gentlemen will find that their constituents will not be satisfied. I told the people in the county where I live that if I should be elected to the convention I should be in favor of these tests of qualification, in reference to the judges, and also in reference to the clerks of courts. But when a man presents himself before the people for the station of judge, the mere presentation of a certificate will not be sufficient evidence of his qualification. It is a fact that is well known that there was a time when in Tennessee there was no test, I believe, required on the part of a candidate for a clerkship. Well, sir, a fact came under my own observation in relation to the conduct of a clerk—it may be an extreme case, but still many such cases have no doubt transpired—which shows most conclusively how far we may be from shielding and protecting the rights of those whom the gentleman so fondly calls the people, if we adopt this constitution, and permit A. B. or C. D. whether ten years of age or older, whether instructed in the duties of the office or not, to be elected clerk. Under such a system the man who can best flatter the people is the man who will be most successful. He will be certain to be elected without any test or qualification. This will be but opening the door for the demagogue—the man who loves himself better than he loves the dear people.

I had occasion to call for the record of one of the counties of Tennessee; I sent to the clerk of that county for a copy. What think you the clerk did? Instead of sending a copy of the record, he was so well qualified for the high station he occupied, he was so well informed of his duties, that instead of the record he sent an entirely different document. That clerk was elected un-

der this system, of which I have spoken, without test of qualification, or fitness for office. And I will tell you how it happened that he was elected. I am but a poor historian, but I will give you an outline of the case. There was a war commencing in Florida; this man started for the war, but he did not get there. The circumstance of his having started, however, gave him so much popularity that they made him clerk. Why, the very rights of the people themselves depend upon the qualifications of the public officers. The people are capable of judging of the qualification and fitness of candidates for office, when they have the means within their power; but if you withhold from the people the means of judging, it cannot be expected that they will be able to make suitable selections. How, in the name of common sense, can the people elect a proper officer, unless they have the means of judging of his qualifications? Will they vote for a man because he happens to belong to one party or another? Very likely they might in such a case as that of the clerk of the court in Tennessee, to whom I have referred, who had started for the Florida war, and thus had acquired a degree of popularity.

But it is the duty of this convention to provide the means of judging of the qualification and fitness of candidates for office. The people are not to be deceived by flattery, by being told they are capable of self-government. That is an axiom, of the truth of which they are well satisfied. The feature which the committee desire to have retained in the constitution, is the very guard which the people want. Strike that feature from the constitution, and they will have no guard, no security, for the proper discharge of the duties of the judicial officer. It is that feature which they desire should be retained, so far as I am acquainted with the wishes of the people.

If the legislature are the people, why may we not with equal propriety, say that the judges are the people? The members of the legislature, according to my apprehension, are agents of the people, and they are agents who frequently abuse their trust. The judges, over whom the legislature is to sit as a kind of inquisition, the judges themselves, are the agents of the people also. Let the people elect them. Let the people elect every officer, from the judge of the court of appeals, or from the executive down to a constable. Every officer of the government is an agent of the people. Does it follow that he is the people? But gentlemen tell me that a majority of the legislature ought to have the right to determine for every district in the state, who shall be judge, and who shall not. To this proposition I can never agree.

Mr. TRIPLETT. I do not rise to make a speech, but I want the ear, for a moment or two, of the honorable delegate from the county of Nelson, and I also, for a very few moments, desire the attention of the members of this convention, and your own. There are two propositions that were made by the gentleman from Nelson, and provided such explanations are given by him, as I have no doubt he is fully capable of giving, and such promises are made by him, as he is fully capable of complying with;

if these explanations and promises are given to myself and the committee, I shall vote for the first proposition; without them I shall not vote for it, and I believe the committee will not.—For the second proposition I shall not vote, on any account whatever, for the reasons which have been given by gentlemen who have participated in this discussion, which reasons I will not repeat, because it is not worth while to repeat what has been better said by others. But as no gentleman has turned his attention to the first proposition, I desire to advert to it for a moment, for I consider it of the utmost importance. It establishes a principle which I am in favor of, if we can carry through the whole constitution. But I am not willing, and I do not believe that a solitary member of this committee is willing, to adopt that principle in this particular place, unless it can be carried through the whole constitution. We are all aware that it is necessary that we should be extremely careful that all the parts of the constitution shall harmonize—that they shall not only fit well together, but work well together, and that no one part of the machinery shall conflict with another. The proposition to which I now refer, is that for striking out the words, “which shall not be sufficient ground for impeachment.” If it be intended to retain in the new constitution the whole of the fifth article of the old constitution, these words ought to be stricken out. I see around me several gentlemen who were members of the old legislature. The gentleman from Henry is one of them, and the gentleman from Nelson, Mr. Hardin, is another. The first gentleman has declared that he has travelled in his literary researches as far as Dilworth, and the other gentleman has advanced as far as words of three syllables; but these gentlemen, if they have not read their political spelling book, have at least read the book of mankind, and they know what it is that the people expect. They know, or ought to know, that every species of special pleading should be avoided in a document of this kind—that it is necessary that we should make our meaning clear. I want to leave as little as possible for legislative or judicial construction. What we do I want to do so plainly that the different departments of the government may not only read it as they run, but understand it well and easily. Now, leave this clause as it stands, without striking out the words referred to, and this question will occur frequently.—There is a certain class of acts which amount to malfeasance, others to misfeasance, and others to nonfeasance in office. A man has done a particular thing that he ought not to do, or he has omitted to do a thing he ought to do, about which acts there may be cavilling as to whether they fall under the class of cases to which impeachment applies, or whether they come under that of address. I know on one occasion such a question saved a man from being turned out of office. It opens a door by which men of tender consciences evade the responsibility of voting directly upon the question of a man's culpability. It raises a doubt by which men of strong consciences or no consciences at all, can escape the consequences of their misdeeds. To put it in legal phrase, which will be intelligible to every body, they demur to the case set out on

the motion for the address, on this ground—that it is not cause for address, but cause for impeachment, and that you must not put it in the form of an address. Why? Because it is a higher, a worse, a blacker crime than that which, by the constitution of the state, is authorized to be made cause of removal by address.

I acknowledge sir, that this is a very strange reason, and it would be a strange reason to an undisciplined mind; but the greater should always include the less, and if the judge had committed treason, larceny, or arson, or any capital offence, and the moral sense of the community was satisfied of his guilt, yet one of your men of tender conscience may say it is not good cause for removal by address. I want to get rid of this objection. Gentlemen can imagine a thousand different cases in which this objection might be raised. If you think proper to give the power of impeachment, put in the necessary words for that purpose and you will have all that I aim at, and that is, when a civil officer of the government has been guilty of such high crimes and misdemeanors as to require impeachment, impeach him if you think proper, but the impeachment of a civil officer has in this country become almost unnecessary, and indeed almost impracticable. If a judge fail to attend court for such a length of time as to make it evident to the legislature that his conduct amounts to nonfeasance in office, it might be cause for impeachment, provided sickness or other legitimate reasons for such absence be not proven; but you may remove him by address, although his absence had been occasioned by sickness or physical disability. Retain then the 5th article of the old constitution, and add to it, and every evil or inconvenience that has been predicted will be avoided. I cannot agree to go so far, as to strike out the two-thirds principle; but without going into that question at present, I will only ask the gentleman from Nelson, when he comes to reply to the arguments that have been advanced against his proposition, to answer this solitary question: was not the two thirds principle originally inserted in the constitution of this State, and in the constitution of the United States, as a matter of compromise between requiring the verdict of the whole jury to decide the facts on one side, and the majority of the court to decide the law on the other, and whether when the legislature meets and has to remove a man by address, they are not occupying the position of both a jury to decide the facts, and the court to decide the law,—whether this principle was not put in as a compromise in consequence of the mixture of the character of the court, having to decide touching the law and the facts—between the two extremes, of requiring only a bare majority of the court on one side and the whole of the jury on the other? Has it not worked well? Tell me a solitary instance where it has failed upon address, although gentlemen can find a hundred instances where it has failed by impeachment. There is the point. I am in favor of striking out the words proposed to be stricken out.

I am averse to detaining the committee longer, for there are many gentlemen who are desirous of giving their views, and who seem to think our sittings are too brief. My own opinion is that

we would get along faster, if we were to allow the committees to do more work.

Mr. C. A. WICKLIFFE. I will state briefly what the views of the committee were. They, in the first place, believed differently from the gentleman from Daviess, that no officer should be removed by address or impeachment upon mere rumor. I understand the gentleman to state that cases might arise, cases of high crimes and misdemeanors, and although the legislature may be satisfied that the crimes were committed, yet in the absence of direct proof of the fact the party cannot be removed.

Mr. TRIPLETT. As this is a matter of some importance, I wish it to be clearly understood. What I wish to know is, whether it is intended by the committee that an officer shall be removed for something which is not a fact to be proved by testimony. If this be the intention, let it be done; but if you intend to remove the judge upon facts that require the testimony of witnesses, in the name of Heaven go through with the address in the same manner as you would with an impeachment. Give the accused notice in writing of all the facts you intend to prove against him. Let him be heard at the bar by himself or counsel and let him produce witnesses for his defence. Give him the benefit of all the means of defence when you propose to remove him by address, the same as you would if the form of proceeding was by impeachment. I desire to ask both the gentlemen from Nelson, one as the mover of the amendment, and the other as chairman of the committee, whether if you retain the fifth article, you intend to grant to the judge under the address all the means of defence that he would be entitled to under impeachment. If you do this, you will have made a most salutary reform.

Mr. C. A. WICKLIFFE. I think that I did not misunderstand my honorable friend. The object of impeachment is not only to get clear of the officer, but also to disqualify him for the future from holding office in the community. The committee did not design, in giving the right to the legislature to remove by address, requiring the usual number—two thirds—to lessen the rights of the accused or to enlarge the privileges of the accuser—the commonwealth. That no man should be removed unless there be sufficient proof of the facts alleged against him, nor shall he be removed upon a charge which is but partly proved. If I understand my honorable friend, his objection was, that for any offence which was punishable by impeachment, the triers of that impeachment, when called to exercise their functions under the solemnity of an oath recently administered, would, like a jury, require proof before they would convict the individual. But he may be guilty, says the gentleman, and there may not be sufficient proof to satisfy a court, or the constituted tribunal, yet enough to satisfy the minds of the people, and that you will convict him upon mere rumor propagated by his enemies. That is the gentleman's position if I understand it. The gentleman divides the offences for which officers may be removed into two classes—into such as are *mala in se*, and such as do not amount to crimes. It is upon this latter class that the removing power by address is intended to operate, and in cases



of trials or misdemeanors, the mode of proceeding is by impeachment, therefore I was in favor of retaining the impeaching power.

Mr. TRIPPLETT. Sir, although I know there is an impropriety in this conversational mode of debate, yet I must be excused for a single moment. No man supposes that it was intended that an officer should be tried without an oath on the part of those who try him, and notice of the accusation that is made against him. I cannot believe that my honorable friend from Nelson is unable to comprehend the distinction that I take. Suppose a judge gives a decision which is so perfectly absurd, that you see he is incompetent to discharge the duties of his station, there you want no testimony to prove the fact. It is matter of record. But when you accuse him of felony, when you accuse him of any crime, then it is necessary not only that you give him notice of the accusation, but that the senate shall be sworn as well as the lower house. All these things might confuse the minds of a jury, but they cannot confuse this house. There is a distinctness of understanding on the part of gentlemen around me, which convinces me that they cannot be confused. Why then go another step and say they shall be newly sworn? Swear them every morning if you wish. That does not touch the point of my argument. This thing of removing men by address is a serious matter, but it is one which becomes necessary sometimes, and shall we not take the trouble to lay down the necessary preliminaries so that it may be done correctly? It is only writing a few lines further, and saying at the bottom of a paragraph, that each house when sitting and adjudicating upon an address shall be sworn, and prescribe the form of oath. I think the proposition made by the gentleman from Nelson (Mr. Hardin,) ought to succeed, provided it is particularly guarded, and I leave in his able hands the duty of properly guarding it.

Mr. HARDIN. Were it not that an expectation is entertained in this house that I should make some reply to what has been said in opposition to the proposition which I made, I would not address the house now or at any other time on this question, because I discover, sir, that I am in what may be called a very small minority, and it is somewhat unpleasant to travel in such company. I rise, however, rather for the purpose of disabusing myself from some remarks, though not of a personal character, and not for the purpose of making a set speech. Before I do that, I will make this preliminary remark, that for five years back I have been exceedingly anxious for the call of a convention. I discovered that great abuses had crept into our government—very great abuses—especially in the appointing power, and that in the language of Jefferson, "power is always stealing away from the many to the few," and that it has been emphatically stealing away from the people of Kentucky; and like boys playing "cat or corner ball," when the ball is lost they stop and cry out "lost ball." I was ready, for one to stop legislating and cry out "lost ball." One great object that I had in view, in advocating the call of a convention, I felicitate myself will be fully attained, and that is that the appointing power will be restored to the people where it originally

and of right belongs. When I attain that, I will vote for almost any thing that this house may be disposed to insert in the constitution. I did not like from the start the proposition that is now before this committee, and I hope I may be indulged while I recapitulate the new and substantial provisions contained therein, and as I go along I will point out some of the objections that I have to them. The first principle is that the judges shall be elected by the people; I heartily go for that. The next proposition is substantially, that the judges shall not be removed by address in any case that is the subject of impeachment. I am rather opposed to that, but not particularly wedded to my opinion. The next great principle is, that it shall require a vote of two thirds to remove a judge. Well, sir, I am against that, as I intimated to this house a week or two ago; yet that would not be a *sine qua non* with me, if I could get some other alterations made. I want—whether it be a majority or two thirds of the legislature, that shall have power to remove a judge—that the passage of the resolution shall be *ipso facto*, the removal of the judge, and that the governor shall have no hand in it afterwards; because if we were to pass a resolution, unless there was some provision of that kind inserted, he would veto it, and there is no provision by which we can pass the resolution, his veto notwithstanding. It will be remembered by delegates in this house that the legislature of Pennsylvania attempted to address a judge out, and the words employed in their constitution were, "the governor *may* remove." The legislature passed the resolution by a large majority of both houses and laid it before the governor. He refused to remove the individual, and the legislature entered upon the labor of expostulation. They contended that the word "*may*" was synonymous in the sense in which it was used in that place with "*shall*." The governor returned this insolent answer: "You say the word '*may*' means '*shall*;' I say it means '*I will not*.'" He then went on and said, "You do those things which you ought not to do, and you leave undone those things which you ought to do, and there is no health in you." That was the language of the governor of Pennsylvania.

I am in favor, whether you require a vote of two thirds or three fifths or a bare majority, of removing the individual without the intervention of the governor at all. The governor has no hand in the election of a judge, except by his vote as a private individual, and I am not for applying to him, as governor, to sanction what the legislature has done.

Well sir, I am willing that the eight years principle shall be retained in the bill, provided you introduce in it the principle of ineligibility after that time. If they are to be re-eligible, let their terms be as in Mississippi, for but four years; and let the re-eligibility only continue for two terms. But I would prefer a term of eight years, with ineligibility for at least four, five, six, or eight years more.

I do not know that the court of appeals would be placed in a position in which they may exercise any undue influence upon the voters. But take the circuit courts—and I imagine that we are to have twelve judicial districts, embracing

perhaps eight or ten counties each, in which may be included some fourteen or fifteen thousand voters—and imagine to yourself a judge on the bench, who is looking, if you please, for a re-election. Imagine to yourself that he has the life of some member of a powerful and influential family in his hands, or the liberties of another member of a family of that description—and he may have a thousand cases of that kind before him—and I ask you if that is not a lever of power that cannot be resisted for one moment? What lawyer in the state can come in competition with him? None, none sir! I am in favor of a man, when he comes before the people, coming without the black cloak of a judge upon him. I am opposed to re-eligibility, and I want to say to this house, that if I could see the ineligibility principle carried out in this bill, with some other alterations, I would forego the proposition that I now make. I am making these propositions, because, take this bill as a whole, I do not like its provisions. I do not like the proposition for four judges. I have no recollection that we ever had four judges, except in that celebrated court called the new court; and I recollect very well that when I took the stump against that famous court, of all the weapons that I used that was the most powerful, except that of John Trimble's woman's saddle which he put in the mortgage. I have a deep-rooted prejudice against four judges, and I will state a case. The circuit judge, if you please, decides a certain principle of law. It comes up to the court of appeals. The four judges stand two to two in their opinions, and the decision below is sustained, because they are equally divided. Well, a case comes up in which the circuit judge has taken an opposite opinion; the court is divided and so it stands. That is what we call a beautiful uniformity of decision. Give us then a number that can agree; take three, five, seven, nine, or eleven, if you want to give us a number that can never be equally divided; but three judges have done our business very well for the last twenty or thirty years, I believe. I have but little fault to find with the court of appeals, and it was a fault that we all find, namely, that the governor was the appointing power. I want to give it to the people. Next, I always thought there was something of indecent hurry and haste in the manner in which these judges discharge their business. The higher court of the state should do its business with something like a measured gravity and dignity; yet their whole business has been accomplished in one hundred days of one year. And the moment they accomplish it they hurry off to accomplish other business—some to lecture on law, some to do one thing and some another. I do not know that I shall offer an amendment, or that it is practicable to make any alteration on that point. I am against four judges, because it will add to the expenses of the court some \$1500, at least—\$2000 if we fix the salary at that sum.

I am against branching the court. Branching the court will make it necessary to have four clerks, four clerk's offices, four clerk's records, four different sets of all the machinery attending the court. That will swell the expenses, perhaps, taking all together, some \$5000. But I have an objection still stronger. Where are you

to locate these four branches? If you leave it to the legislature, it will be a bone of contention eternally. And when they are located, it will perhaps be in places where there are not to be found five law books. At all events they may be located at places where full and competent libraries for the court of appeals cannot be obtained. Well how many days will these branches have to sit? And how many terms are they to hold? Will they have four terms? If so, how many weeks and days will they sit at each? Say eight weeks, and I will soon show you that that will not do. There will be four clerks, four sets of records, four clerk's offices, at the expense of the state; there will also be four men to wait on the court, four men to make the fires, and God knows how much additional machinery will be required in these courts. But the great objection is this—will they in any term in the year be able to do the business? Some gentlemen tell you that if you divide the business of the court of appeals into four parts the judges can do the business. But do you not know, and I appeal to every lawyer in this house, that if you branch it the business will be doubled and trebled. Did you ever see a neighborhood where there was no court house within twenty miles? How peaceable, and quiet, and civilly disposed towards each other they were. Make a new county and bring a court house to their doors, and every man begins to pull his neighbors hair the wrong way, directly in the shape of a law suit. Bring up a branch to any place, and I can safely say that I can point out some five lawyers that can take more business to the court than it can do in that part of the year allotted to it. In Mississippi—I went there in 1837 and 1838 with a view of practicing there—it was known that that was the case, and they presented me with a set of rules to sign; and it was a regulation of fees, such as a per centage for collecting, and a half per cent. for getting continuances. Now a great deal of the business will be exactly of this kind. You double and treble the business, and throw into the court, where it only sits once a year, so much that the court will soon get behind hand. It will soon be found that the great business of the lawyers will be to get the fees by continuances.

I recollect that when I practised in Green, a very worthy lawyer, Sam Brents, the half of whose business was getting continuances, of which he obtained the fees; and I have known him, for the purpose of getting a continuance, to speak four hours on the point, whether *at* the court was equal to *in* the court. I am against this proposition; and I am against the proposition that we shall vote for these judges by ballot. I am in favor of the *viva voce* vote for every officer in this commonwealth; and I do not subscribe to the reasons suggested by my colleague, that the judges ought not to know who voted for them, lest they may wreak their vengeance upon the men who voted against them. If that be the case, the public feeling in this country is in a most deplorable condition, to say the least. But if a judge wants to play that game, cannot he very easily find out who voted against him? The gentleman and myself can go into a crowd, and without asking a man, but by merely shaking hands with him, we can tell whether

he will vote for or against us. A candidate has a hundred ways by which he can find it out. I recollect when I run for congress in 1835, I met a very worthy man on the Sunday evening before the election; he shook hands with me, and said where are you going? I am going to Taylorsville, said I. Are you going to be there tomorrow, while the election is going on? I answered yes. I vote at Bloomfield, he added. Yes, said I; and I hope you will take all your friends with you, and get them to vote for me. A week or two afterwards, I again met him, and he said to me, how did you know that I was going to vote for you? Just from the manner in which you enquired where I was going. I knew you felt interested in my locality the first day of the election, and that was enough for me. But if I cannot ascertain it in that way, it would be very easy for me to ask one man to enquire from another, how he voted, and thus I can soon find out. But I will not indulge the opinion that in this country men will be afraid to vote, and to avow their sentiments, for fear of the wrath and indignation of the judge; and I am unwilling to believe that the judge would exercise it. When I come up to vote, I am not to look at the judge through a smoked glass, as they do at the sun, when it is about to be eclipsed. We are not to have any man here that we are afraid to look upon. My worthy colleague well knows that the people are not afraid to vote. We have been candidates too often not to know that our best friends, who do not agree with us, will come and vote against us, and look us fairly in the face, and be friends with us afterwards. In counties where there are large landholders—men holding perhaps half a county—there may be tenants that it may be necessary to screen from the wrath and indignation of their landlord, when he knows how they vote. In counties too, where there are large manufacturing establishments, and where a man can control the votes of a thousand operatives, it may be necessary to protect them; but in this country, above all others in the world, we ought to be the last people afraid to vote. The first objection which I made, was, as pointed out by my worthy friend from Daviess, (Mr. Triplett.)

If the gentleman will turn to our constitution, he will see that it is only a misdemeanor in office, that is a ground of impeachment under our state constitution. But in the constitution of the United States, the power of impeachment extends beyond that:

"ART. 2, SEC. 4. The President, Vice President, and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors."

A man in the government of the United States may be impeached for treason, and felony, and other high crimes, and misdemeanors, that remove him from office. When you come to the State of Kentucky, it is only upon misdemeanor in office, as to the court of appeals. And when it comes to a justice of the peace, they can be removed by impeachment for any offence, or they can be addressed out:

"ART. 5, SEC. 3. The governor and all civil officers shall be liable to impeachment for any

'misdemeanor in office; but judgment in such cases shall not extend further than to removal from office, and disqualification from any office of honor, trust, or profit, under this commonwealth; but the party convicted shall nevertheless be liable and subject to indictment, trial, and punishment according to law."

Any thing he can be impeached for he can be removed for; but a justice of the court of appeals cannot be removed unless for misbehaviour in office. A judge of the supreme court can be removed by impeachment, for bribery and other high crimes and misdemeanors which do not relate to the office. A judge of our supreme court can only be removed for misbehaviour in office by impeachment—a justice of the peace for all the catalogue of offences that can be committed by man for which he would be worthy of removal. I see no reason in the world why there should be that difference. If a man is guilty of misbehaviour in office, why not give the opportunity to address him out? Say he is guilty of gross oppression or tyranny in office, are we to get at him in no way except by impeachment? How many ten thousands of oppressions and misbehaviours are there of which a judge may be guilty; and I ask if there is no way to reach him but by impeachment? What is an impeachment? Who starts an impeachment? Why some man in the country; or an address may be prepared and carried on by some member of the legislature. We know, as a matter of experience, that the resort to impeachment is impracticable. The people are cowed and afraid to undertake it. I recollect once that some of the officers of the banks in the District of Columbia pointed out to me how Mr. Dallas, then Secretary of the Treasury, had swindled the government, on a loan, in favor of his son-in-law, Bache, out of \$1,250,000. They showed me the book where his son-in-law had subscribed for or bought up \$13,000 at eighty seven and a half cents on the hundred for stock—for that was the price during the war. And he had been permitted to pay in the whole ten millions in that way; although at the time he paid it in the war had closed, and the stock had risen to par, enabling him to realize twelve and a half per cent. on the ten million loan. This I say they pointed out to me, and it is in a book which I will never part with in the world. I pointed it out to Mr. Randolph and he attacked Mr. Dallas. Some gentleman from the other side of the house cried impeach him, and Randolph replied, I once tried that against that corrupt Judge Chase and it would not do, and I will try it no more. And then he said this—When I was a boy I read some book where the rats held a great convention to devise the ways and means to get clear of the cat, of whom they stood in fear. At last they agreed to put a bell round the cat's neck, but when they came to the last question—which rat would put the bell on the cat—there was none found willing to do it, and the whole business fell through. No rat could be found to bell the cat. And so it would be with impeachments. Burke, Fox, and Sheridan, tried to bell the cat, Warren Hastings, for a series of oppressions unparalleled in the history of the world, but they failed after a trial of fourteen years. The ministry protected him—the Queen took his wife by the hand to her

crowded levees and parties—and the King protected him and the prosecution failed. Since then an impeachment in the House of Lords, has been considered a perfect mockery. I look upon the whole doctrine of impeachments as a perfect mockery and insult upon the people. Where is the man that was ever impeached out? You (pointing to Mr. C. A. Wickliffe) tried it with Judge Peck—you, and others of as great talent, tried it and failed by one vote. You know, as far as you are concerned, that it is a mockery. You labored in such a way as to entitle you to great credit, and so did your colleagues in the house of representatives, but they all failed. Chase was one of the judges of the supreme court of the United States at the time that John Adams was in office, and congress with his aid and assent passed the Alien and Sedition laws, which roused the indignation of the people of the United States in all its length and breadth. Chase was the man who played the same part to John Adams the elder, that the infamous Judge Jeffries did to James II precisely. They were a pair that were worthy of each other, and they were as tyrannical a pair as were ever on the bench in the world. The people of the United States, however, with one united voice nearly, hurled John Adams from the presidential chair and put Jefferson into it. But the whole federal senators remained, and when Chase was impeached for his misbehaviour in office, and for all his tyrannies and course of oppression, in office, the federalists attended to a man. If you were ever in congress at the time you know how they sat. I had the misfortune or good fortune to be there during a little of the time. There they sat on one side of the house, the federalists dressed as the Duke of Wellington or the Marquis of *Whitewash*, or any other distinguished nobleman, with their heads all powdered. On the other side were the republicans in their plain clothes and no powder. On the trial of Chase the fine dressed federal senators, to the number of fifteen, against nineteen of the finest republicans the world ever saw, saved that old tyrant; and that as Randolph said, was enough for him. While nineteen republicans voted against Chase, fifteen old federalists, in their fine clothes and powdered heads, voted for him because he had been serving their cause during the administration of Adams, and they kept him on the bench. That is what they called obedience to public sentiment I suppose. They knew that four fifths of the whole nation were republicans at the time; but those federalists, who were elected during the reign of Adams, held their seats, with some additions from the New England states; and those fifteen saved him. I consider impeachments of no use at all. There is only a procrastination and expense in it. Nobody will undertake it, and the only remedy is an address to both houses.

Well how is an impeachment tried? There are sixty senators; and of these, thirty one is a quorum. Two thirds of that number is all that is necessary to convict a man—that is twenty one. But how is an impeachment tried in the Senate here? There are thirty eight senators, of whom twenty is a quorum, and two thirds of that number is fourteen and that fourteen may

convict. Now fourteen is six less than my amendment presents to this house.

If an address of the majority prevails, it will be, if the number should remain as it now is, twenty senators and fifty one representatives. By impeachment fourteen senators have the power to remove a man. The constitution is based on that theory. I know that in common, and in perhaps ninety nine cases out of a hundred the whole senate will be full; but the government is predicated on the theory that fourteen senators out of thirty eight can break a governor if they choose.

Now what is this dangerous proposition that has excited so much opposition? From every quarter of this house has opposition sprung and all seem to be astonished that I have the temerity—I had almost said the audacity—to bring it forward.

What is the proposition? If we are to have one hundred members in one house, fifty one which is a clear majority of all elected, with all absentees counted against them, will be all that is necessary. If the senate consists of thirty eight as at present, then twenty will be all that is necessary in that body. But there must be twenty, because the proposition is that a majority of each house, which means a majority of all the members to which it is entitled, shall be required. Then where is the difference between us? You say two thirds, that is twenty six senators and sixty seven representatives. We on our part, the small band that went to Thermopylae, and will I hope, again, if we can bring it before the people, say twenty in one house and fifty one in another. You say twenty six in one house and sixty seven in the other. And after that, you meet the argument precisely in the same way, by crying out revolution, revolution, as Cromwell did, when he cried out Sir Harry Vane, save me from Sir Harry Vane. Is there any thing more revolutionary in our proposition than in yours? The only difference in the two propositions is in regard to these numbers, differing to the number of six in one house and sixteen in the other.

Gentlemen ask, shall the judiciary be at the mercy of the legislative department. Well who is to try the case, if it takes two-thirds? The same body? The same body precisely. If the proposition was to have a different department of government to try, then the gentleman's argument would be sound; but when it is the same department, the legislative department, we see that the difference is in the number only, which is necessary to convict. I ask now is it more revolutionary with us than with you? How is it to oppress the judiciary by the legislature in one case more than in the other? Gentlemen say that the Polish manner will be taken, deciding that one vote is a sufficient negative, till one man can cut off a member's head. There is then, nothing in the proposition to alarm any body. It is only a question (not that another department, but the same department shall try) whether it shall be twenty in one house and fifty one in the other, or twenty six in one house and sixty seven in the other. If our doctrine is revolutionary so is yours, gentlemen. If our doctrine is that the legislative department shall be called on to decide on the judiciary, so is

yours. It is only in reference to number that we differ. I want the legislature, the senate, and the house of representatives, to take the attitude of a high court of judicature, and hence I do not want the governor to have any connection with it or any veto upon their action. I want to have it possess the dignity and the solemnity so far as practicable, of a high court of judicature, by giving to the accused the right of being heard by himself and counsel, that it shall not be a mere hasty thing, as was caught up against Judge Clarke under the excitement of the moment. But there shall be two branches acting separately, and they shall assume the high character of a court of adjudication, and the governor shall have no hand in it, but the accused may be heard by himself and counsel. I ask gentlemen, are not our judges to be responsible to the people in some way? Do you mean to make them entirely irresponsible? If responsible, how are they to be? Can the people come here, one hundred and fifty five thousand voters, according to the census, in this or any other place to try and remove a judge by impeachment? You must make the judges responsible through some agents that they may designate. Whom will the people designate? Is it to be the governor? God forbid! Who then? To the people through the senate by impeachment; the whole people of Kentucky through their representatives, taking both houses together. Who represents the people more immediately than any other? You say the governor does. Yes he does. Who ought to do it? The senate and house of representatives, who come immediately from the people, from one end of the state to the other, from the mouth of Big Sanday to Mills' Point, and from Louisville to Cumberland Gap. I say there cannot be a tribunal better selected, more proper, and more amenable to the people than the house of representatives and the senate.

We must adopt that system. We are obliged to make them responsible to the people in some shape. They cannot be responsible to the people individually, and therefore they must be responsible to their agents, and who so proper as the senate and house of representatives? Away then with the argument that you put them at the mercy of the legislative department. A few days since a gentleman gave us an instance of the new court, and perhaps he will give us another of Judge Clarke. That occurrence has happened once since the formation of the government in 1792, but I hope and trust in God it will never happen again. A bad course of legislation in 1819, by chartering a set of independent banks, and thus flooding this country with paper, produced an inordinate spirit of speculation, and got the whole state into debt. You had no laws to protect a poor man's land from being sacrificed as you have now by the two thirds principle, and of exempting a poor man's bed or cow, or only working beast from seizure and sale. Constables and sheriffs were going from place to place through the land, and there was no safe-guard that the land should be sold at the court house door. None. Sheriffs and constables were going through the land, and selling as I know, valuable lands for one-fiftieth of their value. I know of ten thousand acres that were sold for one hundred and twenty dol-

lars, and the sale was confirmed in the court of appeals. I know a thousand acres, worth four or five thousand dollars, sold for four dollars, and the sale was good. I know another case of fifteen thousand acres, that belonged to an uncle of mine, and which had descended to his heirs, sold for ten dollars. Sir, there was a parcel of merciless speculators following the sheriffs and constables of the country, like carrion crows, buzzards, and vultures, following a marching and fighting army to prey upon the bodiless slain in battle, or those who might die by disease, and the people were goaded on to madness. But I hope never to see such a state of things again. It is better that the people should succeed than that such a principle should be retained in the constitution. I did vote for the old court. I am one who, rather than be sustained by the trickeries of bond and mortgage, would live in a worked-out saltpetre cave. I fought for the old court, and I saw the sufferings of the whole country. The legislature in its wisdom has surrounded the poor man with the protection of a two-thirds principle, and exemption and sale at the court house. We are not to reason from extreme cases, as that of Judge Peck, or the extreme case of Judge Chase, or of Judge Clarke, in the old court, but we are to settle on the general rule, on the safe principle based on the common occurrences of all good governments. That is what we ought to settle down upon now. I ask what is the theory of our government, and what is the theory of all republican governments? There are but two kinds of government. None but two. Some are called the government of the Grand Turk, some the government of the great Emperor of all the Russias, or the Emperor of Austria, the King of Prussia, the miserable little Bonaparte here now in Paris, and Queen Victoria with her royal spouse, whose father owned a little country that had sixteen hundred people in it, and we may go and look back to the aristocracies that existed in Venice, and in all there are but two. One is that of a minority controlling a majority, and the other, that of a majority controlling its own action; call it imperial, monarchical, or what you will, there are but two.

What is the theory of our government? Is it not that of a majority? Are you afraid of the majority? Are you to say the majority cannot be trusted—God save the majority from themselves, their foolish selves? Cannot a majority of the supreme court of nine judges be trusted to decide upon ten millions of property? Yes. Cannot a majority of a court martial decide on the high-toned honors of General Scott, or of General Taylor, if he were still a general? Yes. Cannot a majority in congress make a law?—They could if it was not for the president's veto. Cannot a majority of the legislature of Kentucky make a law, the governor's veto notwithstanding? Yes. Does not a majority in the court of appeals govern? Does not a majority in the county court govern? And if there were other courts would not a majority govern in them? Yes. But when a majority of the legislature come to try and fine for misdemeanors they cannot be trusted! This is the whole case.

I go for having the elections by the people, and then I go for practical responsibility. We

all do. But then they say that practical responsibility is two-thirds, and I say that it is responsibility to a majority of the representative department. This is the only difference between us. We agree in the elective principle, and we agree in responsibility, but we differ in saying in whom that responsibility shall consist.

But when you come to the trial of an officer for misbehavior, a majority is not to be trusted. That is the whole case. I go for the election being with the people. All of us go for that. I go then for periodical responsibility. We all go for that. But then they say that periodical responsibility is two-thirds, but I say that it is no responsibility at all. That is the only difference between us. We concur in the elective principle, but when we come to responsibility, they insist upon the two-third principle, which I say is no responsibility at all. I have looked a little into this matter, as regards the practice in other states. The constitution of Massachusetts—and there are other constitutions which have the same provision—is in these words:

"CHAP. 3, ART. 1. The tenure that all commissioned officers, shall, by law have in their offices shall be expressed in their respective commissions: all judicial officers duly appointed, commissioned and sworn, shall hold their offices during good behavior; excepting such concerning whom there is a different provision made in this constitution: *Provided, nevertheless*, the Governor, with the consent of the council, may remove them upon the address of both houses of the Legislature."

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"ART. 3. In order that the people may not suffer from the long continuance in any place of any justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void in the term of seven years from their respective dates; and upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well being of the Commonwealth."

There the majority principle with the governor's concurrence, removes a judge. In the constitutions of New Hampshire and Rhode Island there is the same provision. In New York the judges are removed by impeachment, and the majority of the senate and a majority of the supreme court constitute the tribunal, and then it takes two thirds of this majority to authorize the act of removal. Indiana has about the same provision. We know one thing, that in Massachusetts they have a first rate judiciary, equal to any in America, and their constitution has been in existence ever since the year 1780, and we know that in New Hampshire and Rhode Island they have a good judiciary. In Rhode Island they are not only elected by the people, but they are elected every six months, and yet they have a good judiciary. So that the majority principle is not a new one. It is not new in Massachusetts, for it has been in existence there since 1780; it is not new in New Hampshire and Rhode Island, and as my friend from Fayette said, it is not new in Great Britain. Here is the British statute on the subject:

"All judges must derive their authority from the crown, by some commission warranted by law. The judges of *Westminster* are (all except the chief justice of the *King's bench*, who is created by writ) appointed by patent, and formerly held their places only during the King's pleasure; but now for the greater security of the liberty of the subject, by the 12 and 13 W., 3 c. 2, their commissions are to be *quandiu se bene gesserint*; but upon the address of both houses of Parliament, it may be lawful to remove them."

A majority controls in the house of Lords and in the house of Commons. The judges are to be commissioned by the King and the appointing power is vested in him still; but the removing power, the responsible power to the people, is in the Lords and Commons. Not in two thirds, but in a majority of those bodies, and as the same gentleman observed, to secure further the power of the judiciary, as to its responsibility to the people, when a King dies, the judge's commission does not die with him. Under the statute of George III. he continues in office as long as he lives, unless he is removed for misbehavior. Are not impeachments in the house of Lords decided by a majority? Are not all laws passed by the Parliament of Great Britain passed by a majority? Does not congress pass all laws by a majority? Is there the two thirds principle in any part of the government of the United States? To be sure, it takes two thirds of the senators present to decide upon an impeachment, and therefore, twenty one out of sixty can remove a judge or any other functionary under trial. How that principle got into our constitution God in his mercy only knows. If my friend from Daviess comes to enquire of me, as he says he will, I must tell him to go further ahead. I can give him no information. I have looked at the theory of the British government. The two thirds principle is not there, nor does it prevail in the courts in Great Britain. If twelve judges are on the bench seven may decide. If an impeachment is tried in the house of Lords, a majority decides. The principle of a majority controls throughout in the British government. It controls throughout that of the United States, except in the removal of a judge by address, and I propose, or shall propose, that the judge be heard by himself or counsel, and that the governor shall have no hand in it, and that the legislature shall be considered as a high and dignified court of judicature.

Sir, this is an age of improvement. What was the condition of the world fifty years ago, and what is it now? What was known of the power of steam fifty years ago? It is not twenty years since a man in Kentucky drove his horses to the market in South Carolina, and driving along the turnpike where a railroad passed over it, and looking above, four or five cars passed over his head—his horses scattering in every direction, "my God," he exclaimed, "behold hell in harness." Forty years ago, the moving of a steamboat by night down the Ohio river, would have alarmed the whole western world. Ten years ago, would any man have believed that he could have talked to the people in Washington city and get an answer the same minute? We thought Franklin, the benefactor



of the world, when he armed the world with the lightning rod against the thunder bolts of heaven. And now we call down the same thunder bolts, and send them as messengers to every part of the world. I recollect hearing a dispute between two ignorant men when erecting the posts for the telegraph which passes through Bardstown: one man said they could talk, on that line, to the people at Washington city in a minute. "It is not so," said the other, "God Almighty keeps his lightning to punish sinners, and He will never part with it in the world." Look at the history of the world. Behold the wonderful growth of the energy of Greece. See what power was developed in the Roman republic, and see how they were degraded the moment the tyrant slipped in. What is Greece now? What was she an hundred years after liberty was driven from her border? Nothing. What was she during the palmy days of her republicanism?—the admiration of the world, and the world was hardly a match for her in battle, though she covered not ten thousand square miles at most. What was Rome after she lost her liberty? A great corrupt mass of the human family. And how the mind and the energies of man sunk, and how they became disordered and degraded. Constantine established the christian religion—it threw itself into the hands of the corrupted civil authorities and sunk mankind almost to the level of the brute creation. So much so, that a handful of naked Arabs, like to have overrun and conquered all the christian world. They conquered in Asia, in Africa, and in Europe, until the great battle was fought on the plains of France, and there nothing saved the christian world, if God had not said to the Huns be christians and march against the infidels, and they did march, and after three days hard fighting conquered. There was no energy or power at all, and the whole christian world was in a state of absolute slavery. How was it afterwards? The Saracen power went down, and the Turkish power stood up. They conquered the christian world again in Asia and Africa. They conquered the seat of christianity—Constantinople. They conquered Greece, Thessaly, Macedonia, Thrace, the country on both sides of the Danube, and were on the very point of conquering Vienna and the whole christian world in Europe, when the Poles, by the word of God became christians, and through their king, John Sobieski, saved it again.

How was it again when Martin Luther sprang up. Religious liberty walked abroad and the nations of the world improved in all the arts and sciences of war and civil liberty. And after the American revolution started and proclaimed liberty to mankind, the flame of revolution was caught in France by the boys who fought here in our ranks—Lafayette, Pichegru, Jourdan, Bernadotte and others. Liberty was then proclaimed, and how now does it stand over the world? We have to a great extent civil liberty and religious and political liberty, and what now is the condition of mankind? Can the heathen world ever overrun them again? Never! We have nothing to fear from the arms of the heathen world again! Nor will it ever be necessary to convert a heathen nation to save us again. The christian world through the influ-

ence of religions and civil liberty can conquer ten thousand heathen worlds, let them be no stronger than it is now. Gentlemen have spoken of the French convention. Well God bless the French nation, the French convention was a great thing. It was composed of a powerful set of men, and it struggled and was convulsed in its effort for liberty. Their king turned against them, and their queen and their nobility did the same. All Europe declared war against them, and what did the French convention do? They accepted battle with the whole united crowned heads of Europe, and in the language of Danton—"the gauge of battle was the head of a king thrown down." What a noble expression. And would to Almighty God, the Hungarians had thrown down as their gauge of battle the heads of the tyrants of Austria and Russia, and they would have roused mankind from one end of the world to the other. But they have succumbed and I would rather be at this day, the son of Kossuth, or of any of those who were beheaded, or who now are in jail, than the son of that vile traitor Georgy, who now is basking in the sunshine of his master's favor. Sir, mankind is equal to any emergency. When our revolution broke out how was it? Great Britain said—you have not a man in America who can command a company of regulars—you have no talents—but the moment we struck for independence, a thousand, aye ten thousand showed themselves on the theatre of action, both in the cabinet and in the field. Do you think the Almighty creates men for particular purposes? No, but it is the natural genius of men to resist slavery and bondage—and man walked abroad in his own grandeur and majesty. It was the occasion that made Washington and all the generals, and all the statesmen of that day. It was the occasion that made Massena, who fought fourteen years in the royal ranks of Louis XVI, and never knew what energy he had. So it was with Bernadotte who fought in our ranks. It was the occasion that made Massena and Bernadotte, Mirabeau and others. Say to the people that they are capable of self-government, and I will warrant you they are able.

It may be said, Hardin you are a demagogue. I am not, and every body that knows me knows that I am not. I have looked to the people for every thing, in a political way, that I ever received, with scarcely a single exception, and so have you, and you, and you, and you, (pointing to several delegates.) We have all looked to the people. Thank God, I do not know a man in this house, that has been a solicitor of power, except at the hands of the people; and I despise the man, that like a little dog, goes scratching at the door of power at about the hour of nine o'clock at night, and by his scratching gains admission. I never did that, and thank God, I do not believe there is one man in the house who has ever done it. We all look to the people, and we all desire to give to them the best government that is possible. Let us at the same time that we give a government to the people, give them one that will be acceptable to them. There is as much necessity to give them such a government, as to consult the wisest maxims that Plato could devise. I know it is difficult to frame a government for

posterity, but let us give them the best one we can. I want the best constitution. I come to yield a great deal to the views of those who may not agree with me. If I get the elective franchise restored to the people, I shall have gained a great point. If I get the appointment of the judges for a limited number of years, and their ineligibility, I shall have gained another great point, and will take almost any thing after that; but I am not willing to take this bill as it now stands, in all its provisions. I introduce this amendment, intending to get something better, and I hope for that still. I have nothing to hope for in the political world, and where a man hopes for nothing, he has nothing to fear. I have spoken my honest convictions, the same that I held two years ago last winter, in this hall—the same that I held in every political speech I made. I do not know that I said the majority principle, but a more practical responsibility than the two thirds principle. I do not say that my colleague agreed to it; in fact, I have no recollection what he said; I had as much to do as I wanted to take care of myself. But I held this doctrine in the counties of Hardin, Spencer, Marion, Bullit, and Nelson, and in this hall, therefore, I play no demagogue.

I am sorry that I should in any way, bring down upon myself the rebuke of the gentleman from Graves. He is a worthy man, and I am told, is the brother of one of the fastest friends I ever had, and one of the finest men I ever knew, and I should be sorry that he should lock horns with me; and if he thought that I said I would not give a cent for the constitution, it was rather a slip of the tongue than otherwise, and if he please, I will modify what I said; I will do it at all events to avoid his opposition.

I have not been in good health as every body knows for a month, and if I could have avoided making a speech I should have done it, but I felt bound to do it. I know that I am to be in a minority, but if I knew there was not one man in this house, who would vote for it, I would vote as I shall now; and I beg those gentlemen who think as I do on this subject, to stand up like men, and maintain their views by their vote. Three hundred men fought more than a million at Thermopylæ, and let us, like the Spartan charging, sing the hymn of battle, and fight on bravely. I have but a few days to live in this world, and it is more my business to get ready to die, than any thing else. I will only mention that I have the authority of Mr. Jefferson, which is considered high authority, for this principle of a majority. He says:

"It has been said that the people are not competent electors of judges learned in the law. But I do not know that this is true, and if doubtful we should follow the principle in this as in many other elections, they would be guided by reputation, which would not err oftener, perhaps, than the present mode of appointment. In one state of the union, at least, it has been long tried, and with the most satisfactory success. The judges of Connecticut have been chosen by the people every six months, for nearly two centuries, and I believe there has hardly ever been an instance of change; so successful is the curb of incessant responsibility. If prejudice however, derived from a

monarchical institution, is still to prevail against the vital elective principle of our own, and if the existing example among ourselves of pericodical elections, by the people, be still mistrusted, let us not at least adopt the evil and reject the good of the English precedent; let us retain a movability, on the concurrence of the executive and legislative branches, and nomination by the executive alone."

This two thirds principle has insinuated itself into our constitution, but I cannot tell how it got there. We know that in jury trials it requires a unanimous vote. This principle was wrested from the king by the people, so far as it regards the rights of persons. It is entirely *sui generis* and does not belong to this government. The theory of this government is, that a majority should govern.

Mr. C. A. WICKLIFFE. After the able vindication we have just heard, and in consideration of the length of time we have been in session, it would scarcely be courteous to this house, nor would it be doing justice to myself were I to proceed in my remarks at present. I may desire to do so to-morrow, and for that purpose I will move that the committee now rise.

The committee accordingly rose, reported progress, and obtained leave to sit again.

The convention then adjourned.

## TUESDAY, OCTOBER 23, 1849.

Prayer by the Rev. Mr. NORTON.

Mr. HARGIS, who has been detained from the convention for some days by severe indisposition, resumed his seat this morning.

### EXEMPTION FROM EXECUTION.

Mr. PROCTOR submitted the following resolution, which was adopted:

*Resolved*, That the committee on the legislative department be requested to enquire into the expediency and propriety of providing in the new constitution, a clause specifying the amount of property which shall hereafter be exempt from execution.

### COURTS OF CONCILIATION.

Mr. IRWIN offered the following resolution:

*Resolved*, That tribunals of conciliation shall be established in every county by law; such law shall be general, and shall be of uniform operation throughout the state.

Mr. IRWIN said he wished that proposition to be referred to the committee on county courts. He was not satisfied how such a court as was indicated by that resolution would operate; but on an examination of the proceedings of the conventions in the states of New York and New Jersey, he saw that such a proposition was submitted to each of those bodies. The object of the proposition was to prevent litigation, and he had no doubt that every gentleman would have it much at heart to accomplish this. He had read that in Denmark there were 25,000 law suits in one year, which after the adoption of these courts were reduced to 10,000. They have also

been established in Prussia and France, and, it was said, with good effect. He was not quite sure that these courts would suit this country, even if they could be carried into effect. It was said, he believed, that the people of the country could establish arbitrators for themselves, but he thought it better to establish such courts in each county for the settlement of small disputes that might arise. He wished to have this proposition referred to the committee on county courts that the convention might get the information which that committee would be able to furnish. He would read to the convention an extract from a report made some few years since to the New Jersey convention on this subject:

"In each town or precinct, two persons are chosen by the people, who sit one day in each week, for the receiving of complaints, issuing summonses for the appearance of parties at the next regular day of meeting, and for hearing the parties already summoned. The courts sit with closed doors, and none but the parties themselves, or their special attorneys, are permitted to be present. The duty of the court is to hear the complaints and reply to the parties, and to endeavor to induce them to adjust their difficulties amicably. As an absolute rule, nothing that passes in the court is divulged by the members of it, and is forbidden as evidence in the courts of law. Should the attempt for reconciliation fail, the court grants to each of the parties a certificate stating that they had appeared, but did not reconcile their differences. Those certificates are required by the courts of law, in order to oblige parties to seek reconciliation.

"The fee of this proceeding is very trifling, and is paid by one or both of the parties, as may be decided by the reconciling judges.

"Your committee suppose, that it is unnecessary for them to say any thing in recommendation of a tribunal so simple in its formation and so evidently useful, but they cannot refrain from calling the attention of the convention to the fact of the numberless cases which are subjects of lengthy, expensive and vexatious law suits, which have their origin in trifling differences between neighbors and friends, and which the amicable agency of a third party could reconcile and put forever at rest."

He then continued to say, that he knew but little of the effect the adoption of such a provision would have; he had merely desired to call to it the attention of the convention, for if the object was to prevent litigation, it was certainly an object worthy of attention.

Mr. BRISTOW said, however highly he appreciated the object of the gentleman from Logan, as manifested in the resolution, and however desirous he was to carry out that object, he must protest against the reference proposed. He could suggest another reference which he thought would be more appropriate than the committee of which he was the chairman, which was principally composed of lawyers, and of whom it might be said, although they might profess a great desire to produce peace and harmony throughout the borders of this great commonwealth, that

"When self the wavering balance shake,  
Its rarely right adjusted."

How much more proper would it be to refer the proposition to a committee composed of farmers, whose labor will not be distrusted in their laudable attempt to prevent litigation.

Mr. IRWIN briefly replied. He was not quite sure that a committee of farmers could so well understand this subject as one on which there were lawyers as distinguished as the gentleman from Todd. He however was not particularly anxious as to the direction which the proposition should take; the only object he had in view being to bring it to the attention of the house, believing as he did that it was worthy of their attention.

The motion to refer to the committee on county courts was negatived, and the proposition was referred to a select committee, consisting of

Messrs. Irwin, Boyd, Gholson, Dudley, and White.

#### COURT OF APPEALS.

The convention then again resolved itself into committee of the whole, on the report of the committee on the court of appeals, Mr. HUSTON in the chair.

Mr. WICKLIFFE. This debate was commenced on the amendment of my colleague, presenting to the consideration of the committee a single question, but one which, in my humble judgment, is of vast importance and magnitude as connected with our deliberations and the duties before us.

The question, sir, is a proposition that the judges of the appellate court, and of consequence all other officers from the governor down to a constable, to use the language of my colleague, shall be subject to be removed from office by an address of a majority of each house of the legislature.

The proposition, sir, is at war with the opinions that I have entertained ever since I had a knowledge of the theory and practice of my government. Coming from the quarter whence it did, I confess it struck me with more than ordinary surprise. It is a proposition, sir, which has for its purpose the inevitable effect of placing the two departments, the executive and judiciary, of this government at the will and mercy of a legislative majority, congregated in this hall for the purposes of legislation under the provisions of the constitution—a proposition which, if adopted, makes the legislature what the British Parliament is to that government—omnipotent—and produces necessarily a concentration of all power directly and indirectly in one department of government—the popular branch. This proposition, announced with such confidence in its propriety, accompanied by such an appeal from the source whence it came, was not in itself calculated to quiet the apprehensions I had.

We were told that he had been anticipating the question which was then before the house; that he had looked for it, and turning with emphatic expression and authoritative tone, he appealed to the delegates of this convention who were the real advocates of constitutional reform, to rally under his banner on this principle, as the one great principle upon which he intended to make battle in this house, declaring—and he is so reported—that if it were not incorporated in the constitution which we are about to make, he

would not give a ninepence for the constitution. My friend from Graves, who addressed the house yesterday, misquoted him when he said one cent; that is less than he said he would give for it.

I attempted, sir, upon the introduction of that amendment, to present in brief the views which influenced the committee in so organizing the article as you have it from the report. I have, perhaps, in part to vindicate that committee again to-day; but what I shall say will be rather in vindication of my own opinions. It is at all times unpleasant to me to differ with my honorable colleague upon questions of constitutional law, but more especially, related as we are, being the representatives of one of the counties in this commonwealth. He undertakes to speak for the county of Nelson, and presumes, and I have no doubt believes, that he speaks truly their opinions on this subject. Differing with him, not only in the soundness of the principle, but in fact in reference to the opinions of the people of Nelson, I should be recreant to them and unjust to myself if I did not take issue with him, both in reference to the principle itself and the fact on which he acts.

Sir, the question of the mode and manner in which a judge shall be removed from office, after he shall have been elected by the people, was not a subject of discussion in that canvass. However much I desired the honor of representing that county on this floor, and however much I feel honored by the confidence of the people of that county, a majority of them being politically opposed to me on other questions, had the question been presented in discussion, whether we should incorporate a provision into the new constitution, by which to place the judiciary department within the power of both branches of the legislature; from whatever source such a proposition might have come; I would have staked my political existence on the issue before the people, and would have risked that question with the most entire confidence as to the result.

I regret that under the circumstances, the question was not made, for if I know myself I desire to make a constitution, not for the present generation alone, but for those who come after us. I would not consent to be the representative of a people, and engraft into their organic law a principle of self-destruction of the very liberty and independence of a co-ordinate branch of this government. Other agents should have been employed.

My worthy and respected colleague is adroit in debate, powerful in purpose, and always has one when he acts. I have known him long and tried him often in forensic debate in professional life, and it has sometimes fallen to my good fortune to be on the right side against him. When beaten upon one point he retreated with great skill and assailed me upon another. Conscious that the principle he has advanced cannot be sustained by the enlightened judgment of this house, yielding the question that he stands in a most woful minority, he consoles himself that his proposition was to feel the pulse of the house, and having done so, he has drawn around him a Spartan band, as he calls it, to rally under his banner in the future operations in framing this constitution. I would say to this band,

if such a band have enrolled themselves under his banner, take heed, be cautious that you are not led to make war, before you are done, on your own principles, and your own best interests, and the best interests of the state. We came here to make a constitution such as the people of Kentucky can live prosperously and happily under, and such as they will be satisfied with when it passes from our hands; and, sir, I can say to the gentleman, that his warning voice to the advocates of reform in this house, for whatever purpose intended, did not strike on my ear as necessary. We were told that there were enemies of reform at work, and those of us who desired constitutional reform, should take care whom they trusted and with whom they acted, and he gave us the biographical illustration of the life and profession of Burke, the man who made his living by killing his friends with kindness. Did he mean that there were political Burkers in this house, professing to be in favor of reform, but in reality designing to defeat the very purpose for which this convention was called? And I suppose by inference that we are to understand that the article on the organization of the court of appeals emanated from a college of Burkers, and that it was designed by that committee so to operate in its provisions, as to defeat the object which the people had in reference to the judiciary department of the government, to-wit, election by the popular voice, and limitation of the term of office, and return to the elective power, and what I think is a necessary corollary, a constitutional guarantee and safe guard, and wall of defence thrown around them while in the exercise of that office, that will enable them fairly, boldly, and independently to discharge their duties, without the constant apprehension of being dragged to the house of parliament in this state, and their independence sacrificed at the will of a bare majority. These were the purposes, so far as I understand, the people desired in reference to the judiciary department. But it seems that, weary of this principle, made perhaps a little sick of it by the manifestation of the judgment of this house against it, if not by his own recollections of his past history and opinions on this question, he has surrendered the question, suffered a non-suit and made an onslaught on the whole bill on this motion. I must be pardoned while I devote a portion of the time which I had assigned to this discussion to vindicate the bill, upon the points indicated yesterday, from the assaults which have been made and are threatened to be made, before I progress further in the discussion of the immediate question before the committee.

Sir, my colleague has notified us that he objects to four judges for the appellate court, and declares that it is unparalleled, save in a new court, organized in 1824. If his recollection is as much at fault in some of the facts and historical incidents he so eloquently presented to us yesterday, as in that, I am rather inclined to think it would be difficult for any member to beat him, in the language of a countryman of mine, in arguing history. In 1801 the appellate court was constituted of four judges. It so remained till 1813, when, upon the demise of one of the judges, the legislature passed a law declaring that thereafter it should consist of three

judges. I need not name the eminent men who filled that court during that time. And during all that period of twelve years, the case which he put yesterday as an objection to four judges, to wit, the two cases decided differently by two circuit judges, and both affirmed by a divided court of appeals, did not occur, and perhaps never will. To answer that objection, for a single moment as I pass—does my honorable colleague know that where a case should be confirmed by a divided court, that it stands as the decision and precedent of the appellate court and governs not only the court below, but all the other courts until it shall be otherwise decided. And should the case come up, that he alludes to, of a different decision to the circuit judge, the appellate court is bound by the precedent of the first decision. It is putting a case that has not happened in the history of twelve years of our appellate jurisprudence. It is putting a case that has not happened in the history of the jurisprudence of any of the other states whose appellate courts are constituted of an even number of judges, and most of the appellate courts of our sister states are composed of the number four. It is putting a case calculated to scare a skeptical mind more than to enlighten a reasoning mind. Why did the committee propose to organize this tribunal of four judges, to stand as long as this constitution shall stand, if we make one? I appeal to the lawyers, who are in the habit of practising in that court, on my left and on my right—I appeal to every man who has attended that tribunal for the last eight or ten years—if the judges have not been so overburdened and overwhelmed with labor as to be almost forced to retire from the bench. The answer is uniform and without a dissenting voice, that there is more than three men can do with dispatch and accuracy; the labors are greater than it is possible for them to perform to the satisfaction of themselves and the community. Looking forward to an increase of population and business in this commonwealth, conjecturing and hoping that our constitution shall be such, at least, that it shall endure for the period that our present constitution has endured—fifty years—what will be the increase of population and business in the commonwealth of Kentucky? And is it too much to ask, in the formation of the court that the tribunal shall be composed of the number of four judges? Indeed, some of the members of the committee—although it is not altogether parliamentary to speak of the individual opinions of the members of a committee—were anxious to engraft in the constitution the provision that the legislature shall have the power of increasing that number if the public exigency should require it. More, however, upon this subject, when the gentleman's proposition comes up to reduce the number of these judges; and then it will be proper for me to call upon some of my able associates in the committee to vindicate theirs as well as my own judgment upon it.

But the gentleman admonishes us he is also against the principle of re-eligibility in office of the judges of the court of appeals as well as all the other judges, and he invites his spartan band to come up to his rescue, and stand by him upon that question. I fancy that he will find the

principal portion of that force disinclined to follow him in this movement at least.

I listened with great pleasure, as I always do, to the able and ingenious argument that my friend from Fleming incidentally introduced on this subject, and I could not see, sir, with every desire to be convinced, if I was wrong upon this question, and I know there is no gentleman more able to convince me than he—I listened to him and I did not hear an argument from him upon the subject of a judicial officer, with all due deference and respect, that did not strike at the very principle of electing the judges by the people. His argument was, that there were two great parties in this state, and there necessarily always would be, which were nearly equally balanced. He chose to give them their appropriate names, whig and democrat, or some other name that may hereafter spring up. In either party there were sound portions of the community competent and capable of exercising the elective franchise with freedom and judgment. But that there existed in this community also another power which he represented as floating to one side or the other, as appliances, corruptions, blandishments, or allurements, might be able to turn it. That it had always and would always control our popular elections, and that the judge necessarily would court that portion of the population which he described as not properly entitled, and who ought not to be allowed, to exercise the elective franchise in the choice of the judicial, or any other officers.

We again hear on the other side, from another quarter, that instead of courting that portion of the people the judge would be influenced by the powerful and wealthy within his district. It was emphatically asked, if a powerful and wealthy family is involved in a contest in his district, either by crime, or in litigation, whether you could find a man to stand up and administer justice in the face of such a power? It is utterly impossible, says the gentleman. Yet the same gentleman tells us when he declares his opposition to the mode of balloting, reported by the committee, that he cannot believe that any judge could be found weak and wicked enough to be influenced in the exercise of his official duties, and controlled and diverted from the line of justice and probity, because one or the other of the litigants may have voted for or against him. The inconsistencies in that line of argument I will not stop to point out.

What is this principle of re-eligibility? You have seen the action of other state governments and their constitutions, in which they have declared that after a given age no incumbent shall be re-eligible, or continued on the bench. In New York, I believe, the age of 60 or 65 drove from her bench a chancellor Kent and a Spencer, men whose mental capacity and great legal learning made them shining lights in the history of American jurisprudence, not only while in commission, but for some twenty years after they were supposed to be incompetent to administer justice and decide the questions of law submitted to them by their fellow-citizens. That state became satisfied that this system of ostracism was wrong; that to provide by legislative enactment, when human intellect should fail, was unwise, and they abandoned it. In all the ef-

forts of the states to return the power of appointing the judges, either directly to the people, or in a less popular form to the legislative branch of the government, there is not a single instance, nor do the records of any of their journals or debates, so far as they have fallen under my examination, show that a single man had indicated a desire to render a judge ineligible after the expiration of his term. Kentucky statesmen are the first to maintain that such a principle is necessary to preserve the purity of the judge. Convince me that it is dangerous to the purity of our jurisprudence that the judge elected by the people should, because of the confidence which he may have created by his good conduct and pre-eminent qualifications, and because the purity of his conduct on the bench has commanded the respect and confidence of all who have been called to his court—convince me that such confidence shall operate to disqualify a man and to deprive the state or district of his services, and I fall back to the old principle of appointment, or some other mode. Sir, it is to charge upon the people, not in so many words, but by implication, a want of capacity to discriminate in the choice of their officers between the good and the bad. It is telling them, you are incapable of determining on the character of your judicial officers, whose official conduct is day in and day out exposed to the scrutiny, the vigilance, aye sir, the keen eye of the advocate in his court. You are not capable of determining or deciding when a man is influenced by improper or corrupt motives, and you shall not be permitted to re-elect him, though he may have commended himself for all the decorum, all the probity, all the integrity, all the justice, and all the firmness that can endear a judge to a state, or to a district. We will incorporate into your organic law a provision taking from you the privilege of calling upon him again as your public servant upon the bench of the appellate or district court. It is telling the people they are without discretion, and without capacity thus to select for themselves, and to determine, when they witness the conduct of a man upon the bench, whether he be corrupt or pure. The great argument with me in surrendering the opinions formed in the law school, or the library, those principles which all students imbibe from the eulogy which Blackstone has pronounced on the judicial department of England, and his opinions as to the tenure of the judicial office, the necessity of the independence of the judges, and the policy of removing their appointment as far as possible from the excitements and turmoil of political conflicts, was my confidence in the capacity and integrity of the people to select their own officers. I desire to give to the people the power of selecting judicial officers, believing they had the capacity, the discretion, and from the deep and abiding interest they had involved, that they would make a selection better than any other intermediate agency which I can devise myself, or which others can devise. I have seen a reason for this, that all will acknowledge, in the exercise of the executive power of appointment of all the officers. I will not stop to quarrel with them or point them out. They are remembered. And, as my worthy colleague was, at one time, part and parcel of the executive, I take his

testimony as conclusive evidence on the subject.

I am in favor of the election of the judge because, feeling his responsibility to the people, he has a conscious pride about him—he feels a spirit of independence, and he knows that the justice of this community is such, that if he turns to the right or to the left, if he should kick the beam of justice in favor of the rich or the poor, there is discrimination enough in the community to know it. There is no officer in this commonwealth—I care not what he may be called—who is watched with more vigilance, more scrutiny by the public at large, than the judges in the courts of original jurisdiction. Sir, when a judge enters upon the discharge of the duties confided to him by the people of the state, he knows his responsibility, he knows that, to secure the good opinion the people entertained of him, when they placed him there, he must strike for justice, to use a common phrase; and when the people see that he does so, they will sustain him. But when they see the miserable tool of power, the instrument of fear, they abandon him. There is no necessity therefore, for inserting in the constitution the provision that he shall not be re-eligible. I put it to my colleague whether we shall go further in this business than our sister states have gone? Shall we manifest an apprehension lest some one elected by the people should become corrupt, and acting from improper motives, should discharge the duties confided to him improperly? I trust not. Why, I ask you sir, when the judge has been elected by the people, and he has served his six years, or if you please, his four years, or eight years, whichever may be fixed, and the people are satisfied with him, and are anxious to retain him, when there is no better man in the district, to whom they can confide these high, and honorable, and important trusts—why, I ask you, will you deprive the people of the opportunity of calling to their aid, the man who has given such universal satisfaction? Why disqualify a man in the prime of life? And sir, this is not all. If my honorable colleague should carry out the intimation he has given, that the term of eight years is too long in the appellate court—that six years is too long a term for the circuit court—and four years too long for the county court, and should come down as low as some are disposed to come, (but I will take it at the period at which I understand his committee has fixed upon as the term of service for the circuit judge—six years) I ask you sir, with his principle of ineligibility engrafted upon the constitution—I ask him sir, of what materials will his court be composed? Will he tell me that he will secure the services of capable lawyers? I appeal to every member in this house—I appeal to my honorable colleague himself. Go home and look abroad in your own district—tell me of a lawyer whose practice is worth following—tell me of a lawyer who is willing, for the sake of the elevation to the bench, to abandon his practice, with a constitutional restriction upon him that when he has served six years—when his practice and clients are gone, his habits of life changed, he is to go back to the practice of law. Tell me of a lawyer who is fit to go on the bench—I speak in



reference to his capacity—who would accept the promotion? It is true of the profession that the larger portion of them work hard, live well, and die poor. No man sir, who has attained the necessary standing in his profession, and is of the age proposed in this provision, would be willing to surrender his practice and the means of support for his family, for the tenure of six years, with the glorious privilege of being disqualified for the judgeship thereafter, and of being compelled to turn to the practice of law for the support of the family that is dependent on his exertions. No, sir, no. Your judiciary, under such a system, would be composed of old, broken down lawyers, who never did much good for themselves, or young ones who have been following the profession all their lives and have not overtaken it. Besides, I would as soon think, myself, of leasing a farm to a tenant for six years, telling him that he should no longer occupy it; and telling him, also, that he should not be accountable for waste during the time.—What would be the practice of a judge under such a tenure of office? Tell him that he must go back at the end of the term, for a living, to the practice of the profession, and for the last two or three years of his judicial life he would be like the tenant who is not responsible for waste. The one would leave the briars growing in the corners of the fences, and the other would leave the docket overflowing with causes. That would be the effect of your system of disqualification.

Something was said sir, by my honorable colleague yesterday about districting the court of appeals—and I regret exceedingly that he had not reserved himself till we had got clear of this motion. To use his own language, he was mightily opposed to this system of branching the court of appeals. I care not by what name you term it, the proposition is, that the court of appeals shall hold its sessions in four districts, at such times and places as shall be provided by the legislature. Is this a new question in this state? No, sir. Long and often has a large portion of this commonwealth demanded that the court of appeals—to use a common phrase—shall rusticate; shall hold their sessions at different points in this commonwealth, thereby to destroy the tendency to centralization—to bring the administration of justice nearer to the residences of the suitors.

My colleague says it will have a tendency to increase litigation. I am not prepared sir, to say that it will or will not. I am much inclined to believe that it will not have that tendency, because if we are successful in giving to the people of this commonwealth a good, intelligent, independent tribunal of original jurisdiction, it will tend greatly to lessen the necessity for an appellate court. Give us a court that the bar and the country will have confidence in—that is, a court which tries the case originally, and the suitor be content to abide the result. It is, sir, because our tribunals of original jurisdiction are so constituted that neither the bar nor the community, in many parts of the state, have confidence in their decisions, that the business in the appellate court has been increasing for the last fifteen years. But admitting that it has a tendency to increase the business, shall we de-

ny to a suitor of the county of Hickman the privilege of having his cause revised by holding the court at so great a distance that his counsel may not be able to follow the cause? Is public justice served by denying to suitors who reside at a distance the privilege of having their cases revised in the appellate court, when in the opinion of the counsel justice has not been done?

I said, sir, that this business of dividing the labor of this court is not one that is new in this commonwealth. I have not the time, sir, nor is it necessary that I should look up the various bills that have been, from time to time, before the legislature in reference to this subject, and defeated in their passage by being pronounced unconstitutional. I find that in 1816 the subject was before the legislature, and it was proposed, I think, to hold the court at three or four points in the state; and that I may do justice to gentlemen who thought then as I think now, I will read the names of those who voted for the bill. They are "Messrs. Buckner, Breathitt, Beauchamp, Craig, Cotton, Coffee, Cosby, Dollerhide, Emerson, Flournoy, Fergus, Forrest, Goode, Hughes, Hornbeck, Hart, Hubbard, Harrison, Letcher, Mills, Moorman, McMahan, Metcalfe, McClanahan, Patton, Rennick, Robinson, Reeves, Rowan, P. Thompson, Ward, Wirt, Wall, Yantis, and Yates." Among them are names of great weight, men of great political influence, lawyers eminent for their talents. I could go to the journals and show you, year after year, men who were voting for this proposition, and demanding it as an act of justice to the extremes of this commonwealth.

Looking, sir, to the questions that belong to the bill further on, especially the mode of electing these judges by ballot, or by *viva voce*, individually I care not one farthing what may be the decision of this house in regard to the mode in which the votes shall be cast. I do not doubt the gentleman himself possesses the independence to look boldly at the judge whilst voting against him. He is not prohibited from doing so; but sir, there are others who may not have been blest with that spirit. The object of the committee was to give the voter the privilege of voting with perfect freedom. As I remarked the other day, a majority of the states in this union have adopted the ballot system in all their elections. I said that the reason why they adopted it in many of the states in reference to the election of many of their officers, did not, and I hope never will, exist in our commonwealth.—I allude to the crowded and dependent population, such as they have in many of their towns and cities.

But to return to the question immediately before the committee, I will endeavor to meet the argument which I understand to be the only one that has been presented, that the impeaching power, and the power to drive these officers out of commission by the voice of two thirds of each branch of the legislature, is inoperative, is not efficient, and cannot be used either to keep the officer in order, or to punish him when he has violated his duty as a public officer. And sir, I regret exceedingly that my worthy and honorable colleague in drawing upon his memory for instances to illustrate this position, had not called to his mind the admonition which I

think is necessary to be observed in all our intercourse: "*de mortuis nil decit sic nisi bonum.*"

He, sir, introduced as an illustration, the memorable assault made on the secretary of the treasury, Alexander J. Dallas, by the federalists and anti-war party of 1812, growing out of his operations as secretary of the treasury, in regard to a loan authorized by act of congress. Sir, who was Alexander J. Dallas? No man of his age or day was more revered or more highly respected and esteemed by his associates, by those who knew him and had familiar intercourse with him, in his social and political relations. His memory, his name, his virtues, his social qualities, are held in veneration by those who knew him. Sir, those of his descendants and representatives who now live, and the representatives of his gallant son, who sacrificed his life in the cause of his country, are to have the mortification of reading in the debates of this convention, recorded and perpetuated for all time, that their father was guilty of swindling the government, when acting as secretary of the treasury amid the struggles and differences between the federal and the war party in 1812. I stop not to investigate that transaction; but when investigated, it will be found that Mr. Dallas was free from all blame. He could not afterwards have lived and died, beloved and respected as he was throughout the commonwealth of Pennsylvania and the United States, had he been guilty of swindling the government. I had not the pleasure of a personal acquaintance with him, but I have long had an intimate acquaintance with his distinguished son, the late Vice-President of the United States. It is the regard I have for the high reputation of the deceased, that I feel called upon to say, that there is at least one man in the convention, who is not prepared to take the assaults of the federalists against that distinguished gentleman as true, without proof from the record. I have no doubt my colleague believed what the clerk told him, but the allegation that Mr. Dallas swindled the government out of this money cannot be true. It is impossible that it can be true.

As another illustration of the inefficiency of this power, my colleague gave us a graphic description of the personal appearance of those federalists, who sustained Judge Chase on the occasion of his trial, and my colleague was so emphatic that he not only denounced the judge but he denounced his triers also. I had thought that the public judgment upon the exciting questions which arose out of the memorable contests of 1801 had become settled, and that those excitements had passed away when the actors in those scenes had paid the last debt of nature, and the public mind had been brought to bear impartially upon the subject. I had thought that there was at this day but one opinion in reference to the decision in the case of Judge Chase, and I will venture to say that the gentleman, with all his ability, if he take his jury from this house, and produce all the evidence he is capable of producing, would not be able to obtain a reversal of the decision in that case. Sir, if his triers, the senators of the United States, deserve the condemnation which my honorable colleague gave them yesterday, I think the statement at least ought to be accompanied

by the names of the men whose votes I find recorded as declaring Judge Chase not guilty of the charges preferred against him. I have heard him loud and eloquent in his encomiums upon the individual, his patriotism, intelligence, public virtue, his fitness for the high station of President of the United States, whose name stands recorded first among those who voted not guilty upon every charge against Judge Chase. That individual was John Quincy Adams. Yet sir, my worthy colleague would have elevated this gentleman to the highest office in this government, considering him worthy of the confidence of this nation. I could give you other distinguished names sir, names of individuals in whom my honorable colleague professed to have unlimited confidence, who nevertheless voted not guilty upon the charges preferred against Judge Chase. I could give you the name of one of the distinguished senators of Kentucky, formerly a resident and revered citizen of this town, who, though acting with the republican party of that day, was compelled to record his vote against a majority of the charges contained in the indictment.

And what was this charge? Without going into particulars, Judge Chase had decided that it was treason against the government to resist, by an armed force, the execution of a statute of the United States. Iredell, his predecessor, Judge Peters, and Judge Patterson, decided the same question. When the gentleman comes to examine with care and attention the whole case, together with the judgment of the court, I think he will arrive at the same conclusion to which my mind has been brought, that the senate of the United States could not have decided otherwise.

He has been pleased to allude to the case of Judge Peck, with which my name is associated as one of the managers. It is true the house of representatives voted an impeachment in that case. The charge was, that he had punished a lawyer for contempt, because the lawyer had criticised his opinion in the newspapers. The house thought that it was an improper exercise of power, the offence not having been committed in court; that it did not properly belong to a judge to punish for contempt where the contempt consisted in something written or said out of court. The senate thought otherwise; that is, they thought there was nothing of corruption in the exercise of the power. The judge was acquitted, but I believe it improved his manners as a judge. This case led to the passage of an act of Congress defining what should constitute a contempt of court.

The gentleman has referred to the case in the county of Carter as evidence that this power of impeachment, or address, has fallen as a dead letter upon the statute book. Are we to be told that because I can point you to a case where a notorious criminal has escaped public justice, by the improper conduct of a judge, or by a misconception on the part of the jury, or a perversion of the facts, that we are therefore to abandon the ancient mode of trial by jury? Because all criminals have not been convicted shall we go back and take up this invention, which I see emanating from a law shop in Louisville, that upon the trial of a criminal, the com-

monwealth shall have the right to challenge as many jurors as the criminal, and that the jury shall consist of seven? Are we to abandon our time-honored system because Judge Chase, or the Carter magistrate, has escaped? I trust not.

Let us come sir, to our own state and see how this thing has operated. Has this power never been invoked efficiently on our judicial bench? I entered public life as a member of the legislature, (I am almost ashamed to acknowledge it as long ago as 1812,) and one of the first acts that attracted my attention was a charge brought against an associate judge of the county of Nicholas. The charge was that he was an alien, and the proof was that he had been some twenty years in the United States, but had not taken the oath of allegiance; and further, that he had declared himself delighted with the result of a conflict that had taken place, in which the British were victorious in 1812. The result was, the legislature broke him by the unanimous vote, I believe, of both houses. I could give you numerous instances where officers of the government have been removed by the legislature. It is true, attempts have been made to remove judges by address, and have failed, but I call upon my colleague, and upon the gentleman from Fayette, his lieutenant, I suppose, in his Spartan band, to point out to me a case where a judge has been brought before the legislature for a moral delinquency or misdemeanor in office where there was a failure to remove the judge when he ought to be removed. I will pause if my colleague will name a case; my own memory does not furnish me with one. I remember very well the case of judge Clarke. He was attempted to be removed under the two-thirds rule, and the attempt failed. Yet sir, there was a majority in both houses in favor of his removal, and, but for this principle of requiring two-thirds, that worthy man, that able jurist and statesman, would have shared the fate, which many a judge will meet, if my friend should succeed in his proposition, to engraft the majority principle in the constitution. I must be allowed by the committee to disinter the facts connected with this case from the buried rubbish of your library, and place them once more in bold relief before the people of Kentucky, that they may understand what would be the effect of my colleague's proposition if he should be able to engraft it in the constitution.

In 1822 we had in Kentucky a set of politicians, most of whom have passed from the stage of life, whose residences were around the Athens of Kentucky. They were called and familiarly known throughout the commonwealth in those days as the Lexington junto. They assumed to control the will of the legislature. Judge Clarke, in the Bourbon circuit court, was called upon to quash a replevin bond. He quashed the bond on the ground that the law was unconstitutional and void. I think the opinion was given on Tuesday or Wednesday evening, and on Friday night there came an avalanche from Lexington, with a copy of the judge's opinion taken from the newspapers. The next morning, being Saturday, as soon as we met, a gentleman, who is now no more, who was not behind my honorable colleague in his power of appealing to the passions and prejudices and ex-

citements of the people, thought it necessary to call forth public indignation against an offending officer, came into the house and moved the appointment of a committee not to inquire into the guilt of the individual, not to inquire into the merits of the case, but to report an address to the governor requiring his dismissal from office, for no other offence than that of deciding a law to be unconstitutional. I happened to be a member of the committee. Such was the indecent haste, not having time to sit on Saturday night, for the session of the house lasted until nearly the hour of midnight, I was summoned on the Sabbath day, sir, to meet in a member's room to take the subject into consideration. I well remember the room and its furniture, and its inmates. There was a bed two chairs and a jug of whisky. I tried then to procure a summons to be sent to Judge Clarke, or a letter inviting him to appear before the committee. A few others with myself attempted with all our persuasive powers, or rather with imploring solicitude, to preserve at least the appearance of justice in our proceedings, and to have the judge before the committee. It was denied. The report was made to the house requiring the governor to remove him. We again, for some six hours, continued to solicit the tribunal for a summons, requiring the attendance of Judge Clarke before the bar of the house to answer to the charge, and as a mere act of grace and mercy, at the close of the day, an order was made for process against him. The officer found him engaged in the trial of two persons indicted for murder. The jury had just found the men guilty, and the judge was dragged from his court, leaving the verdict unconfirmed, and before the ensuing term the convicts broke jail and escaped justice. Now here are the proceedings in the case of Judge Clarke, and here is an exemplification of the glorious provision of my friend. Here is a large majority, sir, lacking but two votes of being two thirds, prepared to dismiss a judicial officer, for no other offence than deciding an act of the legislature unconstitutional. And sir, I beg you to bring your mind down and follow the history of the man to his grave, and tell me what was the judgment of the country upon that man so long as he lived. He afterwards filled a seat in congress as long as he chose. He was once a judge of your appellate bench; he was elected by the people of this commonwealth its chief magistrate; I believe, in purity and virtue, he may have had equals, but no superior in Kentucky. And it is to avoid scenes of this kind that I wish to guard the judiciary department. My colleague, in his impassioned and glowing eloquence, gave us the causes which led the legislature into the adoption of the relief system, and the violation of the constitution, and the temporary prostration of the appellate court. He is of opinion the like causes will never exist; that the execution laws of the state now protect the debtors' property against sacrifice. Sir, these laws are mutable; may be swept from your statute book, and I do not wish to leave the judiciary to the discretion of a bare majority of the legislature. I want the judiciary to act as a check and balance upon the other two departments of the government. I wish not to let the judge depend for his continuance in office,

upon the mere will and pleasure of a majority of either branch of the legislature, or of both together.

Sir, I will not take the trouble, nor detain the committee, by reading the proceedings and votes of the house in the case of judge Clarke. But I shall request the reporter to append them to the remarks I make, not for any purpose of my own, but as a part of the history of the case. I want my constituents to see and know what will be the effect of placing the judiciary at the will and pleasure of the popular branch of the government. I want them to draw a lesson from the experience of the past.

Sir, my colleague referred to the reforms in the judicial department in our mother country. I admit that the revolution brought about a great reformation in favor of English liberty when they changed the tenure of judicial office. When they did that sir, however, claiming to be omnipotent, the parliament retained in their hands the power of removing the judges by address. Is that all sir? No. The concurrence of his majesty, the king, is necessary, besides the concurrence of a majority of parliament. Our ancestors, however, benefitted by experience, improved upon the English system. In order to better it and to secure American liberty, and the independence of the American government, they carried it yet further, and provided, as I think, in almost every American constitution, certain safe guards which were thrown around the judicial department of the government, which we claim shall be thrown around our judicial department in Kentucky. They did not leave to the will of a bare majority of the legislative department, the power of destroying the independence of the judiciary department. They accordingly incorporated into the American system, these further improvements upon the British system. They provided that the judiciary should not be controlled by the will of a majority; but for misdemeanors in office, they require higher evidence than the dictum of a popular majority before they shall be removed.

My worthy colleague brought himself to the conclusion yesterday, that there is very little difference between us, and by figures he attempted to prove that there is very little difference between a majority of the house and a vote of two thirds. I will not stop to work out that problem. I think there is, however, some difference. What has been the effect of this attempt to get clear of the judges by a popular vote of the house of representatives and the senate? I might call your attention to the attempt to get rid of judge Robbins, and I believe the main charge against him was, that he refused to appoint the son of a man, who had resigned his office, to a clerkship. But let us examine a little into our own history in reference to this attempt to put down the judiciary. I will not go abroad for precedents or opinions. I will refer to many instances in our own history and our own times, to support the position that I maintain on this floor. I stated the other day, that in all popular governments, based upon the will of a majority, that majority needed checks and balances and restraints upon itself; that it was necessary in the formation of an organic law in a popular government, if they wished to preserve public lib-

erty and secure private rights, to throw restraints and safe guards around themselves. For uttering this sentiment, my colleague chose to say that it was the sentiment of a monarchist and a courtier. If it be so sir, it is one that I have imbibed by long reflection and from high authority.

Allow me to read an extract from the opinion of one well schooled in the science of government, (Mr. Rutledge, of South Carolina):

"Yes, sir, in popular governments constitutional checks are necessary for their preservation; the people want to be protected against themselves; no man is so absurd as to suppose the people collectively will consent to the prostration of their liberties; but if they be not shielded by some constitutional checks they will suffer them to be destroyed; to be destroyed by demagogues, who filch the confidence of the people by pretending to be their friends; demagogues who, at the time they are soothing and cajoling the people, with bland and captivating speeches, are forging chains for them; demagogues who carry daggers in their hearts, and seductive smiles in their hypocritical faces; who are dooming the people to despotism, when they profess to be exclusively the friends of the people. Against such designs and such artifices were our constitutional checks made to preserve the people of this country."

I will not stop to give you historical illustrations from other nations or times than our own. Sir, I will not content myself with quoting the opinions of this distinguished American statesman and jurist. I have authority nearer home, and authority that is entitled to more weight perhaps upon this question than the one I have just read. I will proceed to read from this last authority:

"The government of the people is divided into three distinct co-ordinate departments; one to make the laws, another to expound the laws, and a third to execute them. The departments emanate from the same great fountain of power, the people; they are equal and independent of each other, with a few exceptions, which shall be noticed hereafter. And it is necessary, in the nature of things, that it should be so; for the people intended, in making their government, that they should be checks and balances to each other.

"This great principle of three departments of governments, co-equal, co-ordinate and independent of each other, to a great extent, has been considered one of the pillars upon which this republic, that of the United States, and our sister states, are erected. It is an indispensable ingredient to the very existence of all republics."

Have you three co-ordinate equal departments of the government if you bring the judiciary to the footstool of the legislature? But to proceed, for these authorities are rich and abundant. Why, sir, Bonaparte, and Greece, and Rome, are good authority. So acknowledged, I believe, on all sides. But I read again:

"Gentlemen ought to be cautious whenever they depart from the fair, obvious, and manifest import of the constitution, as the same was wrote by the convention, in pursuit of what they suppose or call the public good; they are travelling on dangerous ground; it is nothing

'more or less than the plea of all tyrants and despots; for in their most wanton acts of oppression and cruelty, they plead the public good and the public necessity. Bonaparte pleaded necessity, public good, and the glory of France, for his conscriptions and wars. England relies on the same plea for her system of oppressive taxation, and her prostration of every thing like civil liberty. John Adams had the same defence to make, for his alien and sedition laws, and all his acts of official misconduct and mal-administration. The truth is, no republic can exist long without a constitution, the charter of their liberties; and that charter amounts to nothing unless it is revered by all and obeyed by all, and never broken or evaded, either in letter or spirit, by any department of government, under any pretence whatever, even if it should assume the imposing name of public good or necessity. It is by imposing names and appearances we are always deceived. The syrens beguiled by their music. Christ was betrayed by a kiss.

"We are told, in the next place, that the judges ought to be removed by way of asserting the supremacy of the legislature. That doctrine goes to an entire annihilation of the constitution and is subversive of all government. The constitution contains a delegation of power to the three departments of government; and also, it contains prohibitions and restrictions upon the three departments of government. Certain great fundamental rights are reserved to the people. The three departments are to check each other, if either exceed its constitutional power and encroach upon the other departments, or the great rights reserved to the people."

By this authority we are taught that if we leave the legislative power uncontrolled, it will be invoked to crush the independence of the judiciary department.

Again, sir, to continue the quotation:

"The people intended that the judicial department should be a check to the legislative, should that department attempt any unconstitutional act, any encroachment upon the great inalienable rights of the people. I would ask, how can that department be a check, if the other, by an ordinary act of legislation, can destroy it at will and pleasure?"

To do this is what the committee intended by the article under consideration, that it should constitute a constitutional check upon the other departments; that they should be responsible to the people who gave them their appointments, and that the legislature should act as a court to try them for crimes and misdemeanors.

"Will you not allow the judges to decide upon a constitutional question? Is it not their duty, when the question is brought before them? And will you turn them out of office for doing their duty, because you may suppose the opinion is wrong? Are our judges to be removed whenever the legislature may differ with them in opinion? If that be the tenure by which they hold their offices, then, I say, it is a brittle tenure, and our judiciary, instead of being a safeguard, a shield and buckler, to defend the property, liberty, and life of the citizen, is a mere mockery."

How can my colleague hope to see an independent judiciary under this constitution, if by the exercise of a mere act of legislation they can be removed from office?

Sir, the concluding remarks of a very able speech of my colleague, from which I have been reading, are emphatic.

"All republics have gone the same way; men of daring courage and unbounded ambition have played the demagogue, by abusing the honest officers of government, sounding alarms and crying out to the people, we are oppressed by those who administer the government, pretending a glowing love and an ardent devotion to the people. This course of conduct breaks the harmony of the government, produces discord, confusion, riots and tumults; still advancing, step by step, the climax is capped, by pushing the people into blind anarchy and wild uproar. In this state of things, the government is a prize to the first bold and daring adventurer. The history of all republics proves this assertion. Athens had her Pisistratus; Rome her Caesar; England her Cromwell, and France her Bonaparte."

This, sir, is the warning voice of my honorable colleague, an able and sound statesman of his day, delivered at a time, and upon an occasion, when the whole commonwealth of Kentucky was agitated from one extreme to the other; when mighty spirits on both sides were agitated, when, as it was thought, a destructive movement was made against the judiciary. He and others were standing on the ramparts of the constitution calling on the people to rally in support and defence of the time honored instrument which we are now called on to revise.

I rallied under his standard, as I remarked the other day, side by side, and shoulder to shoulder, in my humble way, aiding and assisting my colleague in implanting in the public mind those sentiments of justice and sound policy, which resulted, after a struggle unparralleled in excitement, in a settlement of this vexed question. I was conversing this morning with an old friend, who played a distinguished part in that conflict, being at that time a member of one branch of the legislature, and an important actor in the whole scene. Time has passed over him; the frost of many winters have caused him to reflect. He said, in his emphatic manner, if we had had then the lever of my colleague, we could have prized from office every judge in the state and triumphed in the struggle.

I invoke my colleague not to put this provision in the constitution; for when the crisis comes, if come it may, and God forbid it should ever come in my day, we may not have his voice to sustain the independence of the three co-ordinate branches of the government; and I ask him now to review his opinion upon this question before he votes upon it. I ask him to compare his opinion now, with the opinion that he formerly held, and tell me which he is willing to stand or fall by.

I have detained the committee longer than I should have done, had I been left to the exercise of my own judgment. I know I have been unable to do justice to the subject, but I have endeavored to present my views without recapitulating the positions that have been more ably

taken by others on this question. My object has been to present specific authorities to show that the existence of this power, as we propose to continue it, has not proved detrimental to the interests of the commonwealth, or of her citizens; and that it is our duty, coming as we do, not to innovate upon great principles, which are intended to secure the liberties of the people, and the independence of the different departments of the government, but to improve them—it is our duty, I say, to adhere to those great principles. Having said thus much, I yield the question to the decision of the committee.

The question was then taken upon the motion to strike out the words "which are not the subjects of impeachment," and it was decided in the negative.

The question then being upon the motion to strike out "two-thirds," and insert "a majority," it also was decided in the negative.

Mr. HARDIN. My object in rising, is to enquire of my worthy colleague, what he means by the words in his report "the governor shall remove any one of them, upon an address of two thirds of both houses of the legislature." Does he mean that the governor is to sign these verdicts, as a part of the law-making power, or what does he mean? If he is to sign it as a resolution passed by both houses, as a component part of the law-making power, then he can veto it, notwithstanding it was passed by a vote of two thirds. I have conversed with some gentlemen here, and there appears to be a diversity of sentiment in regard to the meaning of this clause. It was necessary, perhaps, that the meaning should be distinctly understood. I am aware that it is not proper to refer to his action in committee, but one may guess—and I guess therefore, that the committee on the circuit courts—whether they decide that a majority or two thirds, shall be requisite to the passage of the resolution—intend that its passage shall of itself *ipso facto*, remove the judge, and that the governor shall have no negative power on the subject. If the governor is not to have a negative power, why not say so? If he is to have such a negative power, when and in what way is it to be exercised? Is the legislature to be brought to a stand still, like the legislature of Pennsylvania, in the days of old John McKay? I expect not. I do not design to make a speech but when we come into the house, when I shall have the opportunity of calling for the ayes and nays, I will there bring the question to a test. I move to strike out the words to which I have referred.

Mr. C. A. WICKLIFFE. I had forgotten in my somewhat discursive remarks to refer to the objection indicated by my colleague against the governor having any agency in this matter of impeachment. The committee have adopted the same language as in the present constitution. I do not understand, nor does my colleague I suppose, that the governor or any one else, when the legislature is deciding upon questions of this kind, has any power over the subject. The language of the constitution as preserved in the report of the committee, is imperative that the governor shall remove. It leaves no discretion with the executive as is left with the British crown, or as left to the executive in the Massachusetts constitution—where

it says that a majority may remove when the governor and his council shall concur. It is altogether imperative; and after the passage of such a resolution, the question naturally arises, who is the most appropriate power to execute this judgment of the legislature? If the legislature merely passes the resolution of removal, and then adjourns and goes home, perhaps the judge might, if he choose, hold on to his commission and attempt to exercise the power. As the governor is the chief executive officer of this commonwealth, though my colleague desires, and I think I shall go with him, to strip him of all power save that of appointing a secretary perhaps, or of giving entertaining parties to the legislature when they meet here, I thought at least we might entrust to him the execution of the judgment of this high court of impeachment, or high inquisition of the State. And looking a little further, the governor is to issue writs of election in cases when vacancies occur. And who is there more appropriate than the executive, at the order of the judgment of the legislature, to notify the people by a writ of election that a vacancy has occurred. However, if I can conciliate my colleague, and get him to go with me for a single provision of the bill, I will consent that he may strike the governor's name out of it.

Mr. HARDIN. I would cheerfully yield any thing in the world, and be cap in hand to my worthy cousin and colleague; and his turning around to me and saying that we would perhaps leave the governor the power of appointing a secretary, could not but remind me of what Eneas said to Dido when she required him to relate the taking of Troy—

"Great Queen what you command me to relate,  
But renews the sad remembrance of my fate."

Now I enquired more out of curiosity than any thing else, of the worthy President of this body, who I consider one of the most learned men in law and in constitutional law in Kentucky, what was meant by the clause to which I have referred? He said he thought it gave to the governor a veto power. It was in the most innocent manner that I called his attention to it, and his opinion ascertained, my suspicions were aroused.

The gentleman says the king of Great Britain has a veto upon the address of parliament to remove a judge. I know that is so, but I have examined with a great deal of care and attention the exercise of the veto power by the kings of Great Britain, and if there is a single instance of such exercise since the abdication of James II, it has escaped my attention. There never was a nation in the world, that except in name, and a great many forms perhaps, was more republican than Great Britain. The crown does not interfere with the acts of parliament at all. It is not responsible for any thing that is done at all—for the king, in the language of their government, can do no wrong. The reason is that he does nothing at all. His ministry is responsible for all that is done wrong, and they get the credit for all that is done right. And whenever the nation does not approve of what the ministry has done or is doing at the time, they turn them out—and the signal is, bringing them to a small majority in the house of commons. The curiosity of this house has perhaps often been



excited, why it was that the ministry of Great Britain always resigns when they are brought to a lean majority, say of twenty, thirty, or forty votes in the house of commons. I never could get exactly at the reason until I read a book prepared by a gentleman whose name I regret to have forgotten, who had been a member of parliament for about thirty years. The members of parliament get no pay—not even the pitiful sum of three dollars per diem. Nor are they obliged to submit to the humiliations of having an attorney general or first auditor enquiring whether the sum could not be reduced to two dollars, if they sat too long. Sixty days is the time these two great functionaries seem to have fixed upon as the period during which we are to sit in this house. The members of the British Parliament I say get no pay. The profits of the collections of the internal revenue in Great Britain are worth about three millions a year. Whenever a member of Parliament votes with the Ministry they give to him the appointing power of all the collecting officers of the internal revenue in his county. If there are two members who both vote with the Ministry, then the power is divided among them, or if there is one member from a county for, and another against them, the former gets all the power of appointment. And these appointments, it was notorious they sold, and sometimes they derived therefrom from 50,000 to 100,000 pounds sterling. Now, it will be seen why it is that the Ministry resigns the moment they find themselves in but a small majority in the House of Commons; they know the treasury rats are leaving them, and they do not wish to be left alone, because these rats have an instinctive premonition of a falling house. They are like the rats who come home in a ship from a voyage around the world, and who have an instinctive knowledge as to whether she is seaworthy or not, and if she is not they immediately leave her and go to another vessel; that is the reason.

Now, the king's veto, as I have before said, has never been exercised within my knowledge since the abdication of James II. It is as formal as John Doe, in the trial of an action of ejectment. It is merely necessary to the form of the British government. And whenever the British parliament, by the action of both houses, should remove a judge, the king would never dare exercise his veto power. And why? Because it would produce a ferment in the parliament, and throughout the land, that would end, God only knows where. What was the reason that Louis XVI was dethroned and imprisoned? It was but for the exercise of merely the slightest veto power. And they called him *Monsieur Veto*, and his wife the *Austrian*, and *Madame Veto*. They dethroned Louis and brought his head to the block in France, for thwarting and crossing the popular will.

Now, the governor has no hand in the election of these judges. They are to be elected by, and to be responsible to, the people. Therefore, he has no right to interfere in their removal. I have the utmost confidence in the present governor, and I shall have the utmost confidence, I suppose, in whoever shall be his successor.—And, in relation to the present governor, we should remember, in the language of Queen

Elizabeth, in reference to the Archbishop of Canterbury, “we frocked him and will unfrock him.”

There are a great many motions I mean to make in regard to this bill, and my colleague cannot buy me off. Not at all. I am not to be bought off with a crust of bread or a sop in the pan. I strike at and shall vote against the four judges. I strike at and shall vote against the branching of the court of appeals. I have been looking over the two first volumes of Judge Cranch. The first, I think, has about twenty-three cases, fifteen of which came from the District of Columbia. The second has about twenty cases, and all but five of them came from the District of Columbia. And why? Just because justice was at their very door, and whenever you bring the court of appeals into four districts, they will exhibit, not a District of Columbia in miniature, but in bold relief. I believe that it would so overburden the courts with business, that they would not be able to get through with it. And although, perhaps, it would be a personal benefit to me, by bringing the court nearer to my door, I shall oppose the proposition to branch it.

Mr. GUTHRIE. I hope these words will not be stricken out. The belligerents, from my old native county of Nelson, cannot compromise this constitution. I hope and trust the convention will act discreetly on this subject. The gentleman from Nelson, who has last spoken, asked me what was meant by the clause to which reference has been made. I supposed he was acquainted with the constitution of Kentucky, and I said to him that the governor, as I understood it, would have a right to exercise the veto power in this case—that is, on the supposition that we retained the present provision of the constitution, and which is as follows:

“Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or, being disapproved, shall be re-passed, by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.”

Then, if we remove by address of both houses, it is an order—a resolution; it goes to the executive, and if he approves, he signs and executes it. If he disapproves he sends it back. His disapproval amounts to a call for a re-consideration before the tribunal. And upon that re-consideration, if a majority of both houses insist, the order is executed.

I have made up my mind in relation to my vote on this subject of appointments to office. And that is, we shall take these appointments from the governor and give them to the people of the state at large, or of the districts, counties, &c. To that extent we will strip the executive of all power; but I am not prepared to destroy the office. I do not mean to attempt to make the stool stand on less than three legs. I wish to retain such powers in the executive as is due to an officer elected by the whole people of Kentucky to see her laws faithfully executed. I believe it is just and proper in addition to this two thirds requisition to give the executive the

power of throwing back for re-consideration any hasty act the legislature may have performed in the exercise of their power. The judiciary is the weakest branch in this government. They will always be the weakest, constituting now in the court of appeals, and in the circuit court, and in the chancery court, I believe some twenty three individuals—a number which I have no doubt, instead of increasing, we shall diminish. We have confided to them the power of deciding upon the rights of individuals, of bringing the public justice of the commonwealth to bear upon those who offend against her laws, of deciding the rights of individuals as they arise under the laws and contracts permitted in society, peaceably, quietly, without making any of those appeals to the great interests of the community, or the passions of men that attract to them popularity, and with that popularity, power. And in the discharge of those duties, the losing party attributing too often his defeat to the judge, and thus exciting murmurs among the people, the dissatisfaction of learned and distinguished counsel, all having its influence on the public mind against them, and they not mingling with or taking any interest in the great scenes that lead to popularity and power in this country—they are the weakest power. They will be the weakest power. This constant attrition on the public mind, that is lowering them in the estimation of the people, is constantly going on, and I do not wish to throw down any one of the barriers that is to sustain and shield them from wrong and oppression. If they deserve to be removed, let it be by two thirds of the tribunal we have organized. And let the governor, chosen by the whole people, and the representative in addition of that minority who have voted against the removal, have the power to recall this great tribunal for a re-consideration of their action. Let us show that, in restoring these appointments to the people, we do not intend to strip the executive of all power and consideration—that we expect the individual who attains the proud elevation of governor of the commonwealth of Kentucky to be a man of character, intellect, and integrity, such a one as will never throw back upon the legislature their action for re-consideration, unless in his conscience he believes there is ample cause. In such a case a re-consideration is necessary and proper. The question comes up legitimately and properly when we come to the powers of the executive, and not just in this place; but I am prepared to meet it with my vote now as then.

Mr. TURNER said, with a view to expedite business and to confine the discussion to the topics under consideration, he desired to propose a plan which had met the sanction of those of the leading members of the convention with whom he had consulted. It was a series of amendments, to the report as a whole, on which when discussion was terminated, the question could at once be taken separately. The amendment, which had just been discussed was not included, for he concurred with the president in his views in regard to the veto power. And if that power was retained, another amendment to the report would be needed so as to require two thirds to concur, in reiterating the

decision of the legislature upon which the veto had been brought to bear. The constitution as it now stands only requires a majority to reverse a veto, and this was one reason why he supposed the veto power did not apply in cases of these removals from office. He was very willing that the new constitution should be made so to apply, because he did believe that judges elected for a limited term would have any too much independence of the popular feeling and prejudices. He then expressed a desire to be heard to-morrow on this question, and read a series of amendments to the report, which he intended that he should offer.

Mr. NUTTALL. I thought I discovered a very few days after we assembled here that some three or four gentlemen of this body intended to take upon themselves the privilege of making this constitution, and that the balance of us might exclaim, "we had no part or lot in the house of David," and "to your tents oh Israel." If that be the case, I am willing now to have issued a writ of *de idiota inquirendo* over the balance of the members, and to set these gentlemen apart to revise the organic law of Kentucky.

Mr. MERIWETHER. I rise to a point of order—I may as well make it here as at any other point. Mr. M. then called attention to the rule requiring amendments to be made to the section at the time under consideration, as being the point which he desired to raise.

Mr. NUTTALL. I am very sorry that the gentleman thought proper to bring this motion down on me just as I was about to do something. If the independence of the judiciary is to be lost, it will, if this committee will adopt an amendment to the eighth section that I now propose, at least save its character.

Mr. C. A. WICKLIFFE. I hope we will proceed to take the question on the amendments as they are proposed, and when we come to the 8th section, the amendment indicated by the gentleman will be in order. I barely wish to excuse myself from any imputation of desiring to restrain the gentleman from Henry or any other from participating in this work of framing the constitution. I am very willing that he shall do it, and I know he will whether I am willing or not. I know him very well, and I will venture to say that he will have his full share in making this constitution in some way.

Mr. NUTTALL. Just as certain as the Lord lives I will. [Laughter.]

Mr. HARDIN. I want to meet again this afternoon, so as to give my friend from Henry a chance. I would rather he would take the after part of the day, for he will be in better order then, than at any other time. [Laughter.]

Before Mr. NUTTALL'S amendment was read, or any question taken on Mr. Turner's proposition, the committee rose and reported progress. Leave was granted to sit again.

The convention then adjourned.

WEDNESDAY, OCTOBER 24, 1849.

APPROPRIATIONS BY THE LEGISLATURE.

On the motion of Mr. JAMES, the following resolution was agreed to:

*Resolved*, That the committee on the legislative department be instructed to enquire into the expediency and propriety of so amending the constitution as to prohibit the legislature from passing any bill, or resolution, for the appropriation of money, or creating any debt against the state, or for the payment of money in any way whatever, unless such bill, or resolution, shall be voted for by a majority of all the members then elected to each branch of the legislature, and said vote to be spread upon the journals of each house.

#### THE ELECTION FOR CASEY COUNTY.

Mr. BALLINGER presented a memorial accompanied by a statement of facts signed by some one hundred and twenty five persons, in relation to the election of the sitting delegate for the county of Casey, which he moved to refer to the select committee, having that subject in charge.

Mr. HARDIN made a brief statement of the reasons why the report of the committee on the subject had been delayed so long. On examining the case he found that it involved many difficult questions. He was satisfied that the gentlemen who did not fill up their votes on Monday had no right to do so on Wednesday, but it was alleged that the judges of elections informed them that they would have the right to do so. Important questions consequently arose that would require a report of some length. He would however endeavor to present it in a few days.

The motion to refer was then agreed to.

#### PROPOSITIONS TO AMEND.

Mr. TURNER offered the following amendments to which he yesterday called the attention of the committee of the whole, that they might be printed, and referred to the committee of the whole having in charge the report of the committee on the court of appeals.

1. Strike out of the third section these words—"they shall, at stated times, receive for their services an adequate compensation, to be fixed by law," and insert these words—"each judge shall receive for his services not less than \$—per annum."

2. Strike out the fifth section.

3. Amend the seventh section by striking out these words—"to the district in which such judge was elected," in the second and third lines; and strike out of the fourth line the words "by that district."

4. Amend the eighth section and second and third lines by striking out these words—"and who is a resident of the appellate district for which he may be chosen."

5. Strike out the ninth section and insert in its stead this—"the court of appeals shall hold its sessions at the capital of the state."

6. Amend the tenth section by striking out of the third line these words—"in each district in which a vacancy may occur."

7. Amend the eleventh section by striking out in the first line these words—"in each appellate district;" and in the second line strike out the word "thereof," and insert these words in its place—"of the state;" and strike out of the same line the words "for such district."

8. Amend the twelfth section by striking out

of the second line these words—"the district in which he may be elected;" and inserting in their place the word "state."

9. Amend the thirteenth section by striking out of the second line these words—"in any district;" and out of the third line these words—"to that district" and the word "thereof;" and out of the fourth line these words—"for that district."

10. Strike out the fifteenth section, which is in the amended report, and all the amendments proposed to the fifth section.

Mr. WILLIAMS called for a division, so that the question could first be taken on the motion to refer. He saw no necessity for the printing.

Mr. GRAY asked if it was in order to present these amendments at this time.

The PRESIDENT replied that he thought it was entirely in order; indeed he had no question about it.

Mr. GRAY said it was yesterday decided to be out of order for a member to present diverse and sundry amendments which embrace the entire bill. It seemed to him that each of the amendments should be offered separately to each distinct section to which they apply, and that they could not be presented in mass in this way.

Mr. DIXON did not understand the gentleman from Madison to offer his amendments in mass; he simply offered them in the house that they might be printed, and referred to the committee of the whole, with the view of offering them separately at the proper time. He thought it was perfectly in order.

Mr. TURNER desired to explain: one of the amendments which he had proposed was to do away with the district system in the election of the judges of the court of appeals. The necessity for the other amendments was that the same idea ran through many sections, and when they were printed, it would be perfectly obvious to gentlemen, whether they were in favor of electing by the state at large or by districts. If the convention would order them to be printed, their bearing on the report of the committee on the court of appeals would be readily seen. It was for the convenience of gentlemen that he made this motion, and not with the view of submitting them for the action of the convention in mass. They would be offered separately in committee of the whole to the sections to which they apply.

Mr. C. A. WICKLIFFE enquired whether the adoption of this motion would have the effect of giving precedence to these amendments in committee of the whole.

The PRESIDENT replied that the committee having reported their plan for a court of appeals and having themselves reported distinct amendments, he conceived it was in order for any gentleman to make distinct amendments or propositions to that report. It was in the province of the convention to order such propositions to be printed and referred to some committee; but when in committee of the whole, the rules that govern it would be applied and these propositions would not have any precedence. They might be offered and there was a propriety, when a change was contemplated in the whole aspect of the report, that the member should indicate it, and that it should be printed, so that

its bearing might be seen. Hence the chair deemed this motion to print and refer to be in order.

The motion was agreed to.

Mr. NUTTALL said he also had an amendment of which he wished to make the same disposition. It was designed to be inserted at the foot of the eighth section.

The Secretary read it as follows:

*Provided, however,* That if any candidate for the office of judge of the court of appeals, or any of the circuit courts to be established in this commonwealth, shall engage in public speaking or treating, during his candidacy for such offices, or either of them, upon information, in writing, supported by the oaths of two or more respectable witnesses, to the attorney general of the state, he shall, in the event of the election of such candidate, thereupon cause to be issued from the clerk's office of the circuit court, at the seat of government, a *caveat* against such judge, which shall be returnable to the succeeding general assembly of the commonwealth of Kentucky, who shall try him according to the rules and regulations by this constitution provided for the trial of judges for other offences, and upon conviction thereof, he shall be adjudged disqualified from holding said office, and the governor shall not, before the trial nor after the conviction in such case, commission such judge.

Mr. NUTTALL said it was very evident that the judges were to be elected, and, although his amendment was not couched in the language he could wish, if it were printed the convention would be enabled to see the idea which he wished to embody, and some gentleman might be induced to take some steps to secure a provision which shall prevent the judges from entering into the election contests which would take place under the new constitution.

The motion to print and refer was agreed to.

Mr. DAVIS. I think the convention is now engaged in the most important business upon which it will be called to act during the session. I think the judiciary department is a matter of infinitely more interest than that of any other department or all other departments of the government besides. Now I conceive that an innovation on that department is about to be made by this convention which will be in my judgment fraught with consequences of the greatest mischief to the country. No government—no constitution, that does not secure an able, learned, and impartial judiciary, is worth possessing. And when any principle is about to be introduced into the constitution which would be subversive of those great ends of government and of the judicial department itself, it seems to me it is the duty of every person thus convinced to offer every opposition to the introduction of such a monstrous principle.

I had hoped that the minds of men whose ability and experience in connection with the courts of the country, and with the framing of constitutions, and the introduction of great constitutional principles into such an instrument, would have taken a part in resisting that great and mischievous innovation, which in the absence of a better champion I feel somewhat disposed to offer myself.

I understand that it is the order of proceeding in convention that propositions in relation to the judiciary shall be submitted to the house and have a reference to the committee of the whole, and be printed, that they may have a proper consideration. I did suppose myself that a different mode would have been adopted, but I shall not object to any mode, provided it will enable each member to present his views and have a just consideration of any proposition which he may deem it important to present to the convention.

This affords a more deliberate consideration to the convention, and gives the advantage of having it in print, so that the members of the convention may examine it more carefully and deliberately. In conformity to that course, and to what has been adopted by several members this morning, especially by my friend from Henry (Mr. Nuttall) I will submit a proposition which I intend to offer as a substitute for the report of the committee, in relation to the appellate court; and in doing so I do not propose to make any remarks at large; but I will say to the gentleman from Henry, that he is striking but at some, at a small portion of the inherent evils which will attend the new system of submitting the election of the judges to the popular vote.

I think myself, sir, as we value an able, a learned, and an impartial judiciary—as we estimate the value of the rights of persons, of property, of liberty, and of reputation—and as we expect to secure to the citizens their enjoyment of these rights through the intervention of laws, just laws, properly administered by wise and independent tribunals, that that innovation upon the present system ought to be resisted. I may stand alone in this body, or in this state, in vindication of that position; but whether alone or whether I have allies enough to enable me to maintain it, of which I have no hope, still I intend to maintain it, because I believe that every duty which I owe to my state and to the government of my state, requires that I should attempt, as far as in me lies, to prevent the establishment of any such principle in the constitution of the state of Kentucky.

I will submit and ask that it be printed, a substitute in support of which at a proper time I may say something in committee of the whole. I regret exceedingly that I am called upon to say anything in its support. I regret exceedingly that the mind that conceived such a proposition as has been offered to this convention, and which pointed out so justly and so forcibly its weakness, and the attacks to which it was perpetually accessible—that that mind did not conceive it to be its duty to have entered upon the vindication of the present principle in the constitution which stands sanctioned by time and experience. And I had hoped that if that mind had not felt bound to perform such a work that some other and more experienced mind would have come up to the work. I regret beyond any language I can use to have to perform a task so arduous and so difficult. But still unequal as I feel to the task, I feel bound to undertake the work myself in the absence of a better champion.

The secretary read the amendment as follows:

## ARTICLE —.

*Concerning the Judicial Department.*

SEC. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, and in such inferior courts as the general assembly may, from time to time, erect and establish.

SEC. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

SEC. 3. The judges of the court of appeals shall hold their offices for the term of eight years, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law.

SEC. 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business. The judges shall, by virtue of their office, be conservators of the peace throughout the state. The style of all process shall be, "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky, and conclude, "against the peace and dignity of the same."

SEC. 5. That the governor of the commonwealth shall, from among the judges of the inferior courts, and such persons as shall have been judges thereof, nominate, and by and with the advice and consent of the senate, appoint the judges of the court of appeals.

SEC. 6. That the court of appeals shall appoint its clerk, who shall be a citizen of the state of Kentucky, and who shall hold his appointment for and during the term of years, subject to be removed by said court, upon specific charges, filed by the attorney general. And whenever there may be charges pending against the clerk, the said court shall appoint a clerk to perform the duties of the office for the time.

SEC. 7. That all fees accruing for services rendered by the clerk of the court of appeals, shall be collected from the proper parties under the direction of the auditor of public accounts, and be paid into the treasury of the State, and said clerk shall receive for his compensation an annual salary of \$ . . . . . The number, appointment, and compensation, of his deputies, and the other necessary expenditures of his office, shall be regulated by law.

The motion to refer and print was agreed to.

Mr. C. A. WICKLIFFE said, in consequence of some remarks thrown out a few days ago respecting the increase of counties, he felt bound to ask for the appointment of a select committee,

for which purpose he would offer the following resolution:

*Resolved,* That a committee of five members be appointed, whose duty it shall be to prescribe the mode and manner in which new counties shall be established, so as to prevent the unnecessary increase of counties.

The resolution was agreed to, and the chair appointed as the committee, Messrs. C. A. Wickliffe, Mayes, G. W. Johnston, Boyd, and Apperson.

## HOUR OF MEETING AND ADJOURNMENT.

Mr. RUDD offered the following resolution:

*Resolved,* That this convention will meet from and after this day at 9 o'clock, and continue in session until two o'clock.

He said in support of this resolution that there had been three amendments offered this morning to the report which had been for some days under consideration in committee of the whole, in relation to the court of appeals, and as much more time would be required to discuss these amendments he thought the sittings of the convention should be extended so as to afford more time to gentlemen to discuss them than they had had heretofore. Another reason was that he saw manifested in this house a disposition to hold evening sessions. If, however, this resolution were adopted the convention would be five hours a day in session, which would afford the convention sufficient time to do its business. For these reasons he submitted this resolution, and if there were to be any difficulty about it he would call for the yeas and nays.

The PRESIDENT suggested that it would be necessary that the resolution should lie over for one day under the rules.

Mr. DIXON said the resolution was entirely out of order. The gentleman could not propose to deprive this house of its right to adjourn at any time.

Mr. RUDD was perfectly aware of that. He knew the house had the right to adjourn at any time, and even for three days at a time, but if this resolution were passed it would hold the house to a responsibility which they would not disregard by adjourning at one o'clock or even sooner.

The PRESIDENT explained that by the rules of the house 10 o'clock, A. M., was fixed as the hour of meeting, which could not be changed without a two third vote. That portion of the resolution in relation to the adjournment he held to be out of order.

Mr. RUDD had no desire to be out of order, and therefore he would amend his resolution, so as to embrace that part that was in order, on which he desired the yeas and nays.

Mr. BOYD suggested that as a similar resolution had been heretofore offered, the consideration of which was postponed to Monday next, it would be desirable to postpone this resolution to the same time. He would therefore make that motion.

The motion was agreed to; yeas 42, nays 34.

## LEAVE OF ABSENCE.

On the motion of Mr. MERIWETHER, leave of absence was granted to Mr. Wright, for an indefinite period, that gentleman having been

called home in consequence of sickness in his family.

#### COURT OF APPEALS.

The convention then resolved itself into committee of the whole, Mr. HUSTON in the chair, and resumed the consideration of the report of the committee on the court of appeals.

Mr. TURNER. I understand that although we are restricted in our action to one proposition at a time, yet we are permitted to embrace in the discussion the entire merits of the subject. I have listened to this debate, the ablest I have heard in any deliberative body, with a great deal of interest, but still I think there are views of the subject which as yet have not been fully presented, and it is under this belief that I now trespass on the patience of the committee to express my views on the various propositions touching the judiciary. And I hope the fact, that as the profession in the pursuit of which I have expended the best part of my days, is intimately connected with this subject, will be my excuse for so doing.

I came here determined to remove the power of appointing the judges from the governor, and to go for their election by the people—although it was with great hesitancy that my mind was brought to that point. But I believe the country has settled down in favor of the elective principle, and that the majority of the people of my own county, although there is considerable division of opinion there, are decidedly in favor of it; and there is such a prejudice now existing against executive appointments, as would, in a great measure, do away with their usefulness. There is an opinion prevailing throughout the country, whether right or wrong, that almost every executive that has been elected in this commonwealth of either party, has collected around him from one circumstance or another a great many individuals who keep the great body of the people from having any influence with the executive department of the government. I do not believe this myself, but there is an impression abroad that the executives have been influenced by favoritism and by cliques, and not by considerations of qualification and capacity in their appointments to office. And there have been many appointments made within the last twenty years which would at least give a color to such an impression. I have therefore determined to go for an elective judiciary, but in doing that, I must have those guarantees and safe-guards thrown around it that I think are necessary and essential to secure its independence. It is the judiciary of every country which gives character to its government—and it is in their honesty and purity, their intelligence and independence, that the safety of the life, liberty, and property of the citizen depends. The executive or legislative department to-day may hold one language, and the change in the current of public opinion may cause them to speak another to-morrow. In the congress of the United States, there will be at one election one party, and at the very next election another party in power. It is the same in the governments of the various states of this union. But the judiciary should speak the same language in all times and countries, and to do that it must be independent not only of the other departments of the gov-

ernment, but in some measure of the appointing power itself after the appointment has been bestowed. Is any man's life and liberty secure, where he has a judge to try him, who is the mere index of popular excitement and prejudice, and whose decisions vary as it varies? Would our rights and property be safe under judges of that description—the mere index of the way the popular breezes are blowing—and what would be the consequence to all investments of property and capital, under a judiciary system which every six or twelve months should hold a different doctrine in regard to the rules and contracts in relation thereto? What but utter ruin and destruction? There can be no security or confidence in any thing that relates to such a judiciary.

I have had great doubts about the propriety of appointing a judiciary for a term of years, but the public opinion of the country is so entirely unanimous in favor of it, that, as a matter of course, my own feeble voice hardly ought to be heard as expressing doubts in relation to the subject at all. Yet, I have greater doubts about it than I have as to the propriety of their election by the people—much greater. I believe that an elective judiciary, with proper guards, such as to hold their offices during good behavior, to be rendered independent by the constitution by fixing their salaries, and to be removed by two thirds, and not a bare majority, may be better than any system we have ever had. But, unless we can have all these points secured, the government cannot get along. Look at the government we are about to pull down. I supposed—to use a farmer's simile—that when we came here to perform that work, we were going to leave to the old government, at least, three rails, but I think now the chances are that we shall scarcely leave it one rail. And really a constitution is a fence, a wall thrown around to guard the liberties and rights of property of the people. If the people desired all power in their hands, they could have it without a constitution and without a legislature. The very object of making a constitution, and for which they sent us here, is to guard the people against the results of an unchecked exercise of their own power, and to protect the rights of every citizen in the commonwealth. And, the constitution, instead of being solely for the benefit of the aristocracy and wealthy, is for the great security of the poor man, of the weak against the powerful and the mighty.

The poor and the weak have no security in any government, where the constitution does not restrain within their proper spheres and proper limits, the great and powerful men of the country. It is the poorer portion of the country who are the most interested in having a stable and independent judiciary who is to carry the government into effect? Who, when the legislature or the executive are disposed to trample down the rights of the great body of the community is to protect them? They appeal to the judiciary to come to their aid and to say to these other departments—thus far your power goes and no further. Gentlemen talk to me about the people, and of their possessing all power in themselves. I am aware of that, and the people have sent us here to take away a portion of that power, to



confide it to their agents, and to put restraints on those agents. And one of the great principles which they desire shall not be invaded, is that each department is to be confined in its action, to its own particular duties.

Well, I have indicated that I am going for an elective judiciary. In going for it, I regret separating from my friend from Bourbon, because I believe him to be one of the ablest and purest men in this body. I have had my doubts whether in separating from him I was right, but yet I have determined at this point to do so. I will do it on certain conditions. What have we come here for? And why have any of us desired a seat in this convention? Was it to secure a momentary popularity among the people, to be swept away by the first adverse breeze that comes along? Or was it not to do that which will endear us to posterity for the benefits we have conferred upon them, and give to our names fame and veneration among those who come after us, and at the same time furnish an example in the modeling of a government which other states would be proud to follow.

If the first set of officers that are appointed under this new constitution we are about to create, are not men of the highest standard of intellect, integrity, and purity, then will that new constitution become obnoxious to the people. It will be said by every body, you have made a government that cannot be administered, and which is neither practical nor right. You have done away with the old constitution made by our fathers, and you have given us one in its stead, that does not work well, and that does not realize that amount of benefit to us that we expected when we sent you here to make it. We may get thereby an ephemeral popularity of a few months or year's duration, but its beneficial and practical operation for years to come is what we are sent to secure. And how shall we secure that? We must do it by making the judiciary the great pillar of the government—that branch of the government which is the guardian of liberty and of every right that is dear to man. Its action should always be uniform, and based on principles the same in all ages and at all times. We must make the judiciary stable and independent, and then only shall we make it a benefit to the community. Now, twenty five years ago, when men were struggling with the old and new court question, was it not then manifest that the judiciary was the weakest department of the government? As then organized it was weaker than the legislature or the executive? And in fact the legislature was then more powerful than both of the other departments together. And in what we are now doing we must, in some way, supply those props that support the weakness of the judiciary, which we are now about to take away. We are stripping away all power from the executive, and giving it to the people, so that that department of the government when we get through will not amount to anything. The man who would then take the office would merely have a right to be called governor, and have every old lady and tippler in the country petitioning him to remit fines, and, perhaps in addition, the power to pardon. But he would have no patronage in his hands, and if all that

was proposed here was to be carried out the office would be a mere shadow.

Well, instead of adding strength to the judiciary, we are going to provide for its election, and to change the tenure of their offices from good behaviour to a term of years, and then as a matter of course bring them nearer to the political power, and more under the influence of the legislature. The legislature is composed of individuals mixing with the people, constantly going back to them, and having perpetual connection with them. The judiciary, from the necessities of their avocations, are aloof from the people, and do not associate with them. Indeed it would be considered unbecoming and undignified for them to go into those circles which the political portions of the government go into. Moreover, every decision of a judge makes him one enemy for every friend; and it must also be recollected that the recollection of an enemy is an hundred per cent. more retentive than that of a friend. Then you have all the power of the bar in opposition to the judge. I wish to speak of my profession with respect, but it is in accordance with human nature. But the whole corps of lawyers will be candidates in opposition to the judge, and being therefore interested in rendering him unpopular, will be continually striking at him—those of them at least who desire his situation. The result may be that the country may be influenced to believe him an incompetent judge, and as wanting in all the requisites that enter into the composition of an intelligent judicial officer. You weaken him therefore in his position, and in the very points where he is now most strongly sustained. The judge now holds his office during good behaviour, and what is the effect? Every lawyer is desirous of being friendly with him—for a great many people think, that the best way to gain a cause, though not the best way to act, is to have your judge like you—and the bar are generally disposed to sustain the judge. Again, it must be remembered that there will be an ever-changing current of popular opinion and parties in the country. Elect, at the first election, a judge of one particular party, and by the time he is ready to go out, the popular current will have changed, and another party will be in power. Then political prejudices will begin to be excited in the choice of a judge, and the influences of party will be brought to sustain and oppose him. With all those influences to which I have referred against him, it seems to me that we should sustain him in every way that we can. When we look at the great power that will be brought to bear against a judge, the influence that the bar will be inclined to use against him, and the fact that his duties claim his whole and undivided attention, prevent him from shaking hands with and making friends, giving parties, etc., we are undoubtedly called upon to give him some power to sustain himself against all these influences. If we do not, the government will go down the first year of its operation, or to use a more homely phrase, it will stick in the mud.

I voted yesterday for the two thirds requisition to remove the judge, and I am now in favor of still further sustaining him, by allowing the governor to have a discretionary power after two

thirds of the legislature shall say that he shall give up his office, of returning, for good cause, the question back again to the legislature for reconsideration. And when we come to that clause of the constitution read by the President yesterday, I want instead of a majority to reverse the veto, to have a two thirds vote required also for that purpose. This was one reason that induced me to suppose this veto power, under the present constitution, did not apply to cases of impeachment. It would be a most extraordinary feature in a government to say that in the first instance it should take two thirds to remove a judge, and the governor from good and sufficient reasons gives his veto thereupon, that then a bare majority should be sufficient to affirm the decision notwithstanding that veto. I wish at the proper time, to move to amend this, so as to require a two thirds vote after the veto—and this as a further protection to the judiciary.

And now as to the question of salary. I think it ought to be fixed in the constitution at a sufficient minimum—to do what? To induce the great and distinguished lawyers of the country, who are qualified, and have reputation and talents, and character for honesty and firmness, and all other requisites for a competent judge to offer their services, and go into the judiciary. For I have no wish to fill our benches with a set of little ninepenny judges, under an elective system, with all those powers to which I have referred arrayed against them. They would never be able to get along—the government would go down—and the people would call another convention to reverse what we have done. It is essential to the firmness and independence of the judiciary, that it should possess powerful talents to sustain itself. I want no third rate judges in the court of appeals and in the circuit courts to battle against the mighty power that will surround them at all times. It will never do, and we must offer and pay a salary that will induce the first legal minds of the state to quit the practice of their profession and take the office. As a member of the legislature, I have never been a high salary man, but to secure the first class men we must pay what their services require before you can organize a judiciary here that will not cost more than the present. I believe that with a dozen or fifteen circuit judges, for instance, comprising the ablest, most talented, and hardest working men, that they will do the business better, and in a shorter time than the nineteen we now have. I mean no disrespect, but so far as I am acquainted, there are very few able men among them. I believe we can, by getting better men, have the judicial business performed at as cheap a rate as it now costs the government. We would have fewer men to do it, and better work done than by the many. I would therefore fix in the constitution such a salary as would secure the ablest men in the judiciary; and I believe if we do not, we shall not get along with an elective judiciary. I am satisfied it will not do to give the legislature the power of fixing the salary. If it was left to the next legislature—I have looked over the list and they are very clever men—I do not believe on a call of the ayes and noes they would fix the salary of a judge of the court of appeals at more than \$500. I hope, as the gentleman from Bour-

bon says, that none of us intend to seek for office, and that we all mean to do right. I believe he has some proposition that no member of this convention shall be a candidate for office within ten years. If that is adopted, gentlemen of my years may as well give up all hope. But I am ready to vote for it, if it would not cut off a great many worthy young men, I see around me, from serving the people.

There has been something said about districting and branching the court of appeals. Well you have discovered pretty early in the session that I dare to speak my mind on any subject, and I am going to do it on this. Although I have moved to strike out the provision, I am not very anxious on this subject of districting the court. If I believed that we were to have a judiciary to be composed of the members of one party alone I would not go for it. I believe the court ought to be composed of members of both parties, and it has been my experience in attending court, that it would be better, and I have seen courts organized in that way, at all times, and that there would be less prejudice against it. And if I believed there would be a disposition to make this a political court, and that the two parties would meet and nominate judges of their own party exclusively, though I belong to a party now in a political majority in this state, I would not make this motion. I make it because it seems to be connected with this branching of the court of appeals, because as it is left to the legislature to make the districts they might throw into the court men not so well qualified as we would get having the whole state to elect from. There may be districts in the state, that have no individual sufficiently qualified for the office. In my experience it has been a great while since I thought the court of appeals was an able body. I will not dispute that there are clever men in it, but if there has been any man of transcendent talents there, for a long time, then I have been mistaken. I think there ought to be one man of towering abilities there—one who could take the great questions of boundary between the state and federal power when it comes up there, and grapple with them like a giant. I believe that we ought to frame such a constitution, and offer such a salary as would command such a man at the head of the judiciary of a great and independent state.

As to branching the court I am against it in every way and shape in which it could be named, because then I believe you never will get a set of men to accept the offices, for any salary this government will give. Such a set of men I mean, as ought to fill them. A judge of the court of appeals is not like the circuit judge. For the latter, all that is necessary is that he should be a sensible man, and a good lawyer, and be able to come to correct conclusions. He is not required to write them out for publication. But when you come to the court of appeals, you must have men of learning, education—men of transcendent abilities if you can get them, because the state that pays only for ordinary talents, in these times, throws away its money. You had better give a large, a high salary, and let your judiciary be stable and uniform in its decisions, instead of vacillating and varying with every flare up that public excitement may array against them. Let them have

character, talents, and learning, so as to be able to carry public opinion with them. Let them move on like a torrent, and public opinion will move with them. They have to write out their opinions, to give their reasons, and to print them, and they should have the talents and the learning requisite for this. To secure all these qualifications, we should pay them not only a good salary, but give them the power of sustaining their reputation. A distinguished man at the bar is not going on to the bench, if he did not believe it would increase his reputation. As for salary, you never will give one which of itself, would make it worthy in a pecuniary point of view, to induce the master spirits of the state to take the position. There must be some other thing, and what is that? The honor of the station, the prospect of handing their names down as the great expounders of the law and constitution, and who will be remembered for ages to come for their intelligence and ability. You must give them an opportunity to do all this. And do you suppose that four men—for I do not believe you can get along with three—of the first order of talents, who are making from \$6,000 to \$10,000 a year by their profession, will take a seat on the bench of the court of appeals, and be made a set of mere tinkers to ride around the state from point to point, and place to place. When you and I were boys, there was, Mr. Chairman, before Kentucky became rich, and we got out China ware and plate, and all that—there was a set of men called tinkers, who went around picking up all the old pewter spoons, and running them over again—thus making old spoons new. Now sir, this proposition to branch the court of appeals puts me in mind of these tinkers—and you will have tinkers for your judges, if you adopt this proposition.

How many causes are there now pending in the court of appeals? We have seen it stated in the newspapers, and I know it is so from examination, that out of seven hundred causes in that court, there are about three hundred of them at least, every year, where written opinions are considered necessary to settle and define the rights of property and all other rights, for the courts of this commonwealth. Well, before they come to the facts, there are the principles of law involved in the case to be determined, and the judges have to go to the law library and read, and examine, and decide which of these principles are applicable to the case. And after all this is done, then they have the labor of writing out the opinion. In delivering such opinions, involving as they often do, the rights of property to an enormous amount, not only to the suitors concerned, but to the people generally, how essential it is that every word should be weighed, and every principle thoroughly examined. It should not be put forth as the result of hasty labor, but of the most matured deliberation. They are put in the book, and become in fact a part of the law of Kentucky. If there is a mistake in the opinion thus laid down, it may be the cause of divesting the citizen of his property, or of inducing men to invest their property and engage in contracts, only to be ruined and destroyed. And these opinions thus published too are the guides to the judges of the inferior courts in their administration of the law, and

to the people in their understanding of it. And suppose now that each judge has about one hundred of these opinions a year to write out, if he is put on the bench of the branch court, how is he going to do it? Will it not occupy him one whole year if he stays at home, without riding about from point to point?

I should have no objection to the branching of the court, if only the great lawyers of the state would come before it and argue, in order that the court might thus be sure of all the aid which such distinguished and learned minds could bring to their assistance, in deciding upon great and important cases, involving, as I said before, immense interests. I have no doubt there are able men and lawyers in every part of the state, but you will have a crop of lawyers come in and fill your court house, if it is not pretty large, under the branching system, that will not be so able. And they have as much right to be heard as others; nor do I object to it. And there will be other things taking place. I have argued in the present court of appeals, and I know an instance of a lawyer from the southern part of the state, arguing a case in that court involving a question of property, when he and his client really wanted to lose it. Of course, in deciding against him the court would be doing just what the lawyer and his client desired. But for aught I know, this is a case which might happen under any organization of the court we might adopt. Can you have at each location the court may decide upon the law library that we have here? Those who do not know much about the legal profession may think a library a very unimportant matter, and that the judges ought to know all about the law. I am asked myself, often, 'what are you reading yet? why, I thought you knew all the law?' That is a great mistake. No man ever lived to learn all the law, and even if he did, he might become a little cloudy on the subject, especially when he is called upon to argue or decide a cause, he may find it very necessary to read and refresh his memory. Chief Justice Marshall himself never decided a difficult case, I dare say, without refreshing his memory by a reference to the decisions of the American and English courts. And it is proper that every judge should do the same, if he wishes his decisions to square with the established principles of law. What, then, will be the cost of three law libraries? As stated in the newspapers, \$3000 will not furnish such a library as the court of appeals should have. I believe the library of the law school at Lexington did not cost less than \$10,000, and the court of appeals ought to have one in nowise its inferior. You must have some man and a waggon to carry the books around, or else you must purchase a library for each district. You must build a court house for each district, or else be a tenant of the county, and pay rent for the use of their court house. Then you must have for each court a sergeant, a tipstaff, a man to make fires, etc., and all the other attendants to a court. The increased expense is therefore a great objection to the system. It would be much more expensive than the present system, of which the people complain, and that is one evil among others in regard to it, which they desire to have obviated.

There is another point of view—I hope I shall not be misunderstood. I have the highest respect for the profession of which I am a member, and I believe it to be an honorable and a useful one, that it has stood up for the rights of the people whenever they have been attacked. But like all other avocations, self-interest has some little influence over them. The elder gentleman from Nelson and myself had some conversation in relation to the federal court.—We counted the number of causes in the United States supreme court, and we found that the District of Columbia, small in population and territorial extent as it is, has about one-fifth of the whole number. Such would be the effect in the districts if you branch the court. Do we not now see when a court house is located in a little neighborhood, however peaceable it has been before, very soon every body gets to law, and litigation increases rapidly and to a great extent. Carry a branch of the court of appeals to every neighborhood, and what will be the effect? Instead of bringing up such causes as engage the attention of that court here, cases involving the interests and rights, very often, of the whole people, a lawyer, when his client's case is lost, would perhaps tell him that the merits of the case were in doubt, but there was a technical error, by which, if carried up, the other party could be put to an expense of from \$50 to \$100, as he would have to pay all the clerk's and lawyer's fees on both sides. The man who was defeated, feeling hurt and excited, would agree at once to carry up the cause, as a matter of spite. And the result will be, that a host of causes will be carried up, to result in the benefit of no person, except the clerk and others who attend at the court house. Now all will agree that this is a condition of things which ought not to be encouraged.

There are other bearings of this question which might be referred to, but as others intend to speak, I will not occupy time by touching upon them.

Now as to the number of judges. For many years—I dislike to tell how many, because I am told that I look like a younger man than I am really—I have practiced in the court of appeals, and my experience has been that these judges at present have not the time to write out their opinions as they should do. As the court is now organized without branching, they have not time fully to examine the subject, and mature and write out their opinions thereon. And one cause of the confusion in practice, and the frequency of appeals, is that too often these opinions do not settle any point of law. I once heard Judge Ewing say, and he was a sensible man, "that the court had not time to write out short opinions." It looks a little paradoxical, but it is as much a truism as any thing that was ever said. In such an opinion generally the law points are all thoroughly sifted, and fully examined, and stated clearly and distinctly. Read the opinions in the court of appeals where they have been hurried out by a press of business, although they may have been written by able men, of reasonable capacity, who understood their business, and you will find that one quarter of their opinions are rather of the character of a review of arguments than of a decision with

the reasons therefor fully and distinctly set forth. All this results from a want of time. I shall be in favor of the four judges, and for another reason—for the very reason the gentleman from Nelson gave as influencing him to oppose it. He says if a cause comes up and the court is equally divided and it is therefore affirmed, and if the same question comes up in a reverse view, that the court being again divided it is also affirmed, and thus a contrary decision on the same principle is established. I have always supposed that when the first cause was decided it would be considered as establishing the precedent, and be the law, unless there should be cause for the whole court unanimously to reverse it. And if the court of appeals did stand two and two, there would be the circuit judge on one side, and thus the case would be decided by three against two. On the other hand with three judges, unless the court was unanimous, every decision would, counting in the circuit judge, stand two and two.

There has been something said in reference to an election by ballot. I do not consider it an important matter. Most of our people have inherited from Virginia the custom of voting openly and manly by *viva voce*. And the idea that a citizen would be afraid to vote against the judge because he might be influenced thereby against him, seems to me rather a degrading idea. I do not believe that our population is composed of any such material. I believe there is a fearless independence in the disposition of the elective franchise among our people, and that no man cares who knows how he votes. But there are a set of slanderers who go about attacking candidates although they may be as pure as the angels; but I will not refer to that. As to giving the vote by ballot, a great portion of our people unfortunately are not capable of filling out their ballots, and we should under that system have at every election fifty or one hundred political managers, who would be inducing men to come to them, and get their votes filled out. Such a system I do not desire to see introduced in this state.

Something has been said about the competency of the people to elect their officers. It is, I believe, pretty generally admitted that they are fully competent to elect their judges and clerks of the courts. But, as regards the fitness of clerks for office, I would not only require a certificate of competency, but I would require the further guarantee that the candidate for a clerkship had served two years apprenticeship before presenting himself as a candidate for office. It is an office that should be filled only by competent persons, those who are acquainted with the duties of the office by experience.

A great deal depends upon the accuracy of a clerk, a large amount of property may depend on his correctness in drawing up the records of the court in which important papers are embraced. A slip of the pen may bring entire ruin upon a man who has business before the court.

In drawing up the records of the court the utmost precision is requisite, for, although they are read over in the morning, it is seldom that the judge pays attention to their correctness, owing to the interruptions that constantly occur. If you have a clerk, who is not acquainted with

his duties, you are in danger of doing irreparable injury to persons having business before the court. A mere slip of the pen, in drawing up an order of court, may ruin a man. It is very important, therefore, that there should be a form of proceedings which should be perfectly understood by every candidate for a clerkship. I am in favor of having some guarantee when a man comes before the community as a candidate for clerkship, that he has the requisite qualifications. You might as well permit a man to undertake the business of a silversmith or watchmaker, without having any knowledge of the business, as to permit him to undertake the duties of a clerk without the proper qualifications. It is a trade by itself, which ought to be understood in all its parts. I suggest, therefore, for the consideration of the committee, that the candidate for a clerkship ought not only to be required to procure a certificate of qualification, but he should be required to serve for two years, at least, before presenting himself for election. I have, myself, assisted many young men in obtaining a clerkship by putting them in possession of the proper formula of business. But, in a few weeks after their appointment they had forgotten the routine, and they were no more capable of performing the duties of clerk than a man who had never had anything to do with office. I would provide, if I had my way, that the candidate for a clerkship should previously serve a two years apprenticeship.

Mr. W. JOHNSON. I do not desire my position to be misunderstood, and therefore I will occupy the time of the committee for a very few minutes to state the views I entertain. I am opposed to the election of judges altogether, though I will not dwell on that point now. There is another question to which I shall address myself, and if that can be secured my objection to the elective principle will be somewhat diminished. The independence of the judiciary has ever been preserved by a life tenure. It has been so preserved in England as well as in this country; and the destruction of the life tenure will be the destruction of the independence of the judiciary, unless you make the judges ineligible for a re-election. A long term of service and ineligibility alone can preserve that independence which is so essential to the proper administration of justice, if the life tenure be destroyed. Gentlemen must decide between a dependent and an independent judiciary. I know it has been said that the judges in England, being dependent on the crown for their appointment, were the obsequious tools of the reigning monarch. And what will be the condition of things here if you make your judges dependent on the people in a popular election? What, sir, were the views of the convention party on this subject, which they published to the people of Kentucky upwards of a year ago, to induce them to call a convention for the purpose of framing a new constitution? Were they not unequivocally in favor of an independent judiciary? They were. And were it not that such sentiments were put forth in the published manifesto of that party, this convention would not have been called by the people. I have before me the language which the convention party used in addressing the people on this subject; and hence, sir, there can be no mistake about it,

for it is susceptible of but one interpretation. From that manifesto I make the following quotation:

"Whilst we are in favor of such modes of appointment of judges as will strictly preserve the independence of the judiciary, and opposed to any mode which would be calculated to weaken or destroy the independence of that department, we hold that the members of the courts should be amenable to practicable responsibility—we are decidedly in favor of limiting the term a judge shall hold his office—good behavior for a limited term of years should be the tenure of judicial station."

Such was their language sir; and it was the language of some fifteen or twenty delegates on this floor, for they signed that document, and I cannot be brought to believe that they will disregard and do violence to so solemn a pledge. I am aware that the gentleman from Nelson, (Mr. Hardin,) has here reiterated his intention to maintain the principle of the ineligibility of the judges after one term of service; and on no other principle can their independence be maintained. Frequent elections of a judge would be pernicious in their consequences, for they would thus be made more solicitous to meet popular favor than to administer righteous judgments. Sir, ought our judicial bench to seek instruction from the people? Ought they not rather to administer the laws of the land uninfluenced by an approaching election? If it were otherwise, they ought to leave the judicial bench and mingle among the people to ascertain how they are required to decide a particular case? And are there any gentlemen in this convention who are willing to reduce our judicial officers to such a degrading and disgraceful condition? I fear there are extreme opinions held here on this subject, and I say it with regret. One honorable gentleman frankly told me that he saw no distinction between the office of a representative of the people in the halls of legislation, and the judge on the bench, and that if the representative was dependent on the will of the people, the judge should be put in the same position. But sir, is there not a marked difference between the two. The representatives of the people are to make laws in accordance with the sentiment of the community, which those laws are to protect; but when made, it is the duty of the judge to administer the laws with impartiality until they shall be changed by the same popular will that gave them being. In the making of laws, therefore, the popular voice must be heard, but no influence should swerve a judge from the upright administration of those laws which have thus been made.

The rights, the persons, and the property of the citizens of this commonwealth, are dependent on the proper administration of justice, and hence there is a deep necessity that the judges should be removed from all improper influences, and from the tendency to court popular applause, to which a re-election would subject them. The judiciary, I repeat, must be independent, if our rights and liberties are to be secured; and the life tenure is well calculated to preserve that independence. But make the judiciary removable by a majority of the legislature, and on the legislature they become dependent. Their inde-

pendence will also be gone if they shall be compelled to court popular favor after a short time of service. What is it sir, that protects the weak against the strong? What is it that protects the poor against the rich and the powerful? Certainly sir, not a dependent judiciary. I am in favor of an independent judiciary, and I am willing to agree to a long term of service and ineligibility for a re-election, by which I hope it may be maintained. And why sir, should judges be re-elected? We are to have twelve circuit judges and three judges of the court of appeals, which will be one man to a population of about 10,000. Now suppose we say to this one man in 10,000, having held the office for eight years, having been sucking at the treasury pail during that time, you must now stand aside and give place to one of the 9,999. What hardship will be inflicted? Is rotation in office so very objectionable? In my judgment it will be a means whereby we may secure our safety.

It is a well settled principle, that a judge should not decide nor a witness testify in a case in which either has a personal interest; nor should a judge be placed in a position in which he may be tempted to pervert the administration of justice to secure a re-election to the bench, which may be worth to him some \$10,000. He should not be tempted, in times of popular excitement, to meet by his decisions popular favor, and to guard against this, I implore the committee to preserve the independence of the judiciary.

Mr. NUTTALL. I have a small proposition to make, by way of amendment to this bill. I do not claim to belong to that class of the profession who occupy, or are supposed to occupy, such a distinguished position in the country as some gentlemen in this convention. I have had all my life a limited practice in one of the circuit courts on the border of the State; and I suppose that my friend from Oldham knows that some times I get a fifteen shillings fee. I have never yet had the honor to appear in this court of appeals. The idea of coming before so enlightened a tribunal has always had a marked effect upon me. I know nothing else, save my modesty, that has produced it. I came into the legislature in 1823, and I met on that occasion more distinguished men—this body excepted—than I have on any other occasion; such men as the lamented Rowan, a man whose fame will live in the recollection of his countrymen as long as any other shall live. I met here a Green, a Hardin, a Robertson, a Wickliffe, with many other distinguished gentlemen, as I conceive, forming the brightest galaxy of statesmen that have, in any age, or in the history of this country, assembled together. And last, not least, I met a man whose thrilling eloquence in the other end of the capitol, had an influence throughout the commonwealth of Kentucky, that will scarcely die so long as it shall last. But, from that time to this, since those men have passed off the stage of action, I have been hunting about for a great man to whom the gentleman alluded in his speech. But, where to find him, if we undertook it with a search warrant, God only knows, unless you go up into the caves of Madison county.

Now, Mr. Chairman, I think, when we district this State, as I hope will be done, that

there is sufficient material—if not in this house, there is, at least, certainly out of it, and of the right sort too—gentlemen of the bar, who are well qualified to fill the office of judge in the court of appeals. I disagree with one of my friends from Nelson on the subject of districting the State and making the court of appeals branchable, and the very reason the gentleman from Nelson and the gentleman from Madison urged against it, is the most cogent reason with me that it is the most practicable and best. And what is that objection? It is, that out of the cases that have been decided in the supreme court of the United States, the greatest amount of business has been brought up from the district of Columbia. And why is this? Because justice is brought nearer to the door of the suitors.—Now, that is the very reason why I will go for branching the court of appeals, that the people of the State may have an appellate tribunal nearer their doors, where justice may be administered.

With regard to the cost for libraries, court houses, and many other things that will arise from branching the court of appeals, that is a matter of very little consideration with me; for the people who desire that the court of appeals should be thus branched are the very people who will pay the expenses. The whole people of the state of Kentucky are now taxed, in common, for these expenses. The civil list is swelled for the purpose of keeping up and separating the court of appeals, as it now stands, while some of those who contribute to its support, live hundreds of miles off. And the poor man who has a case which he desires should be tried before the appellate court, is alarmed when he is told that he will have to go some two hundred miles with his witnesses to attend court. I am for branching the court, and I shall vote for it. There is no constitutional question now in the way, and I desire the distribution of justice equally throughout the commonwealth.

I shall therefore vote for branching the court of appeals, and I shall go for the four judges. The gentleman from Nelson assumed that if a case came up before four judges, and they disagree, the decision of the circuit judge is held to be the law of the land, and other cases will be governed by the principle thus settled. Well sir, thus far I am understood. Now as to the section about clerks. The gentleman from Nelson understands thoroughly the duties of the clerk's office, I have no doubt; at all events, he knows something on the subject; but there is a difficulty which seems to haunt his mind in regard to the judges' decisions. The gentleman from Madison says, that he knows a judge who could not write a short decision, because he had not time. Well, if our judges instead of trying to show so much learning, instead of running into every book on the face of the earth, that has the name of a law book, if, instead of doing this, they would take a little time to write their opinions, there would be no difficulty about it. If they would prepare their opinions as Lord Mansfield was accustomed to do, or Lord Hardwicke, from whose decisions not more than three appeals were ever taken, and these were affirmed—if he would write them out on one page, there would be no objection on that ground. If they would—as judge Scott



used to do in the court of admiralty—if they would write out their opinions in a few lines, no difficulty would arise on that subject. Whether they wish to build up a reputation by giving long decisions, I do not know, but it seems that our judges have got into the habit of giving decisions that will fill entire books. Yes sir, books. They must enlarge, dilate, run into every sort of legal ramification, do every thing to show to the bar and the country, that they are men of profound learning. I do not pretend to be a judge of their decisions—I never wade through them. As far as the points at issue in law cases are concerned, the examination of these long decisions is too often an unnecessary work.

With regard to the term for which they are appointed, the gentleman has discussed that with his usual ability. I have already said as much on the subject as I wish to say, although I have said nothing yet on the subject of balloting for these judges. It seems to me, though I do not know myself which way to vote upon that, I am very much like a justice of the peace in our county by the name of Searcy. There was a trial concerning the right of property, and the constable got him to come and act as one of the appraisers and sit as judge. While there, a question came up, whether such and such evidence should be permitted to go to the jury. Henderson, a distinguished lawyer, argued that the evidence ought not to be admitted. "To be sure," said the magistrate to Mr. Henderson, "you seem to take very correct ground on this subject. I think as you do that this evidence ought not to be admitted." Chas. Allen, the lawyer on the other side then interposed. "Don't decide the point until you have heard me," said he. "Certainly I will hear you," replied he. Allen went on for fifteen or twenty minutes, and the magistrate observed, "Allen seems to be right." Henderson says, "don't decide yet, you were right at first," and he argued the point over again, and the magistrate again came to the conclusion that he was right. Allen then insisted upon arguing it over again, and the magistrate became at last so confused, that he said to the lawyers, "come up and decide it for yourselves." Some gentlemen have argued so ably on the ballot side of the question, and others so ably on the *viva voce* side, that I cannot tell which way I ought to go, and perhaps I had better reserve my opinion until the yeas and nays are called, for I have great difficulties on both sides. I did think that a man of my boldness, or the gentleman's boldness, would hate to go up and vote against a judge right full in his face, and perhaps too, when he had an important case of ours pending before him; while on the other side, it does seem to me, that the independent character of our people would be lessened very much, by saying that if the gentleman from Madison, (Mr. Turner,) has not himself moral courage sufficient to go up and vote against the judge, the great balance of the people of the state would not have.

On the subject of the clerks, I do not know whether I am radical or not. I believe I am about like the balance—not of the members on this floor—but of the people generally. I believe I am as often wrong as right. I do not

claim to be perfection in matters connected with my legislative duties; but it rather seems to me, that if we are determined, and if it is right that we should do so, and if we have the capacity to elect our judges we have the capacity to elect the clerks; and I go for electing them—without taking lessons from any man—for I take lessons from no man on earth. The gentleman says, license is required before you can practice law. That is true, but did that ever make a man qualified on the face of the earth? How many men will appear with the certificate or license of the judges, recommending him to the community, who can not bring or try a suit to save his life? It takes, as Coke said—no I won't quote authority—it takes, according to my experience, a man at least twenty years, steady, continuous training to become anything like qualified to hold the situation of circuit judge, or judge of the court of appeals. And sir, let the people judge of the qualifications of candidates for office—whether for a clerkship or a judgeship. I have come out for the people. I am a people's man, and I say if we elect one officer let us elect all; and let us not say to the people in one breath that they are qualified to elect every officer provided for by this constitution, and in the same breath tell them there are some officers whom they are not to be permitted to elect, unless they have a certificate of qualification. Do not the people vote for President of the United States? Does the President have to undergo an examination? Has he to pass the ordeal of some political junta, to ascertain whether he is qualified or not? I know many Presidents who have been elected within the last twenty five years, who, as old Ben. Craig said, "If they had had to get a *Deplorium*, they never would have been Presidents of the United States." I think the "toiling million" that we hear so much of before the election and so little after, are as capable of electing a clerk without his having a certificate of qualification from a judge, or from any body else, as they would be if he had ever so many certificates. Has not the gentleman from Madison (Mr. Turner) told you, that he has procured clerkships for persons who were not qualified? He helped them through by his ingenuity, although they were not qualified for the office before they got it, and were not qualified afterwards. I suppose from what he said, that for a good fee he could put in a stock or a stone. Whether he took his fee from these men, I don't know: I suppose he did not, for I am told he doesn't love money. Sir, there is a more important consideration than that. If you will convince me that the judges who are to be elected to the court of appeals bench will be infallible—that they will have none of the imperfections of our nature—none of our affections or partialities, then sir, I have no difficulty with regard to giving them the power of licensing clerks or of throwing around them these restrictions. But suppose that two or three gentlemen of the court of appeals should have some son, or brother, or other connexion, whom they wanted to make clerk. Why they would refuse to grant a certificate to every other man who applied to them, or else they would certify that they were not qualified. How long is it since the office of reporter to the court of appeals became vacant, when one judge insisted

upon having his nephew appointed, and another had a friend he wished to give the office to, and it was a long time before we knew whether we would have a reporter at all or not. If a judge of the court of appeals be guilty of a proceeding like this in the face of the country, might he not be influenced in the same way in relation to the clerkship? How would it be with the circuit court judge? You would have perhaps twenty men who could get certificates, and not one of them qualified for the office. Do gentlemen desire to put the judges in a position that would subject them to suspicion? If we throw the whole responsibility of electing public officers upon the people, let them judge of the qualification of the candidates, and I have no doubt it will have a happy influence in making the people themselves investigate the pretensions and claims of the various gentlemen offering their services to fill the offices that we intend to provide for in this constitution. The great object that we all have in view, is to secure for the country an enlightened, learned judicial tribunal—a tribunal that is intended to protect the weak against the strong—to protect the rights of the poor man against the powerful. If this can be done, and I have no doubt it can, the amendment I have offered, proposes that any gentleman who has offered for judgeship, shall be found treating or speaking in public during the canvass, he shall be wholly disqualified for holding office.

I am not afraid to trust the people—not at all. It has not only been so here, but it has been so from the foundation of the government down to the present day, that when a person undertakes to defend the rights of the people against any sort of oppression, he is denounced as a demagogue. I have heard the cry of demagoguism from one end of this body to the other? Well, gentlemen and myself differ with regard to the origin of the word "demagogue." I am going with the convention men, particularly with those who are not for stealing any of the rights of the people away from them. I am for taking the right to elect the officers of this government boldly and fearlessly from the department to which it has been entrusted, and for restoring it back into the hands of the people, where it of right belongs. Every great man in the world that has raised his voice in behalf of the people against the oppressions of the few, has been denounced as a demagogue. Those who have been the friends of the poor man have been proclaimed as demagogues. Now sir, I do not wish to see anything of this kind in this country if it could be avoided. The greatest evil that can arise from electing our judiciary would be, that we should have the judges of the circuit court defending themselves against the decisions of the supreme court and *vice versa*. My amendment contemplates that the man who will enter upon a system of public speaking or canvassing a district or the state, shall be disqualified from holding office, and that the governor shall not commission him. I do not wish to see the time arrive in the history of this country, when this state of things will exist. I have no idea that the people will be misled. It is not that I have an objection to allowing the people to elect their judges, but I have an objec-

tion to see a man canvassing for an office of this sort, where he is to have in his keeping, the rights, the liberties, and even the life, property, and happiness of the people.

I sir, shall have nothing to regret if my amendment gets no vote at all; but if I find out that I cannot get a pretty hearty support for it, I believe I will withdraw it; and I intend whenever I have a proposition that I do not like, to back out myself; and I intend to do it boldly, so that every man may know what I am at. Not like the gentleman who last addressed the house. He is climbing down faster than any man I ever saw.

Now, I hope I am going to speak some sober sense! I do not know that I shall have credit for it, however, for I rarely get credit for any thing. I am not going to draw any invidious distinctions, and I consult no gentleman as to what I shall say. I am neither to be led nor unled. I did not consult the leading men of this convention whether I ought to introduce my proposition, and I am not going to consult them whether I shall withdraw it. There is one leading gentleman who, I know, was not consulted, and that is, I myself. Now, if we are going to make a constitution, I think it is time we set about it; and I want my two friends from Nelson, and the distinguished President of the convention, and all the balance of the distinguished members of the convention—for we are all distinguished alike—and when I say distinguished, I do not mean to say that one is distinguished above another—I desire that we shall harmonize, consult together, and determine upon a constitution that will be acceptable to the people. For myself, sir, I am not ambitious of fame. I do not care that in twenty five years from now, or fifty, when I shall be lying under the cold sod of the valley, in all probability, and when no mortal can find out the spot where I lie, my name shall be remembered. I have no ambition of extending my fame beyond the lids of the coffin, or my winding sheet. Nothing of the sort. But I want to unite in making a constitution that will be acceptable to the people because other men's fame is involved in it. I would make it live in eternal freshness in the memory of our countrymen. I care nothing for such considerations as those of personal celebrity. They do not influence me. The great breakers that are before us, are, that we have too many great men among us. I am willing, for the balance of the session, to lay down all my pretensions. I think I have had my full share now; and I do not wish to act the part of a glutton, who does not know when to quit. I am going to deliver up into the hands of the balance of this convention the further conduct of the business. I only hope they will not crowd the constitution too much with details. The great object is to have it made, and have it made in short order, and not to have too much put in it. I know that I have wearied the convention, but this is the last time, perhaps, that I shall trespass upon their patience; if I do not get into so bad a humor as I did last evening, and for acting so bad on that occasion, I ask the pardon of this house.

Mr. APPERSON. I do not know that I should have risen on this occasion, but for the heavy

blow that was aimed by the gentleman from Madison against one of the provisions embraced in the report. I supposed that we had assembled here for a special purpose; that there were a few things that we had to do; and in saying this much, I hope it will not be considered that I am reading a lecture to this committee. I supposed that the people had demanded that our organic law should be remodelled. And, as far as I can learn, the great principle which the people have insisted is erroneous and requires change is, the life tenure of office of the judges. There are some gentlemen who seem disposed to concede that the people shall have the right to elect their judicial officers, but at the same time they seem to think that it is granting too much to permit the tenure of office to be limited. I supposed, sir, that this was a fact, a fixed fact, on which the people had determined all over the land, that there should be a limitation upon the term of office. With regard to other matters, as that the judiciary should be elected by the people, there was a general concurrence, and I thought there was also a concurrence that the tenure of office should be limited. I understood that this was the great object for which this convention was called, and as the people had generally declared in favor of electing the judges, we had nothing to do in reference to that matter, but to carry out the will of the people. Having done that, and having said that the election should take place in one day, there was but little else for this convention to do, and it was wholly unnecessary that we should be here three weeks, discussing abstract principles. I think my friend from Henry alluded to me when he said that three or four gentlemen seemed determined to have the business of making the constitution in their own hands. If he had said nine or ten I should certainly have concluded that he meant to embrace me among the number. We have had nothing tangible before the convention till the committee on the court of appeals made their report. Since we have had something tangible as the result of that report, and as I was one of the committee who made that report, I take his remark as applying to myself.

I did not design to discuss the whole argument presented to the committee, but there were some heavy blows administered by the gentleman from Madison, and by the elder gentleman from Nelson, (Mr. Hardin,) and especially on the subject of branching this court. But this is nothing new certainly. So long ago as 1816 this principle was introduced, and there we find in favor of it some of the first names of that period. Subsequently, it has been introduced here and favorably received. But how frequently have we heard the objection that we have no right to do this, because it is not recognized by the constitution. There is the stumbling block. There has been an expression all over the country that the court of appeals should be branched, and hence the legislature itself has frequently undertaken to branch this court. Now, I am not at all surprised that the gentleman from Madison is opposed to it, not that I would impute to him any improper motive, and I would hope that I have a proper estimate of his talents, for he was my teacher, and I confess that that esti-

mation for him is very high. But he does not undergo any of those inconveniences which those meet who live at a great distance from Frankfort. He lives near the centre of the state, within a few hours ride of the capital, and I will show that it is those who live immediately around the capital that are in the habit of doing the business of the court of appeals. We were told more than once that the docket of the supreme court in the district of Columbia was crowded. But there are more reasons than one for that. It was said that it was because the sitting of the court being there, made it so convenient, and that is one of the strongest reasons that could possibly be given why the court should sit in more places than one. But there is another reason that has not been alluded to. In all the circuit courts of the United States we have a judge who is a judge of the supreme court also, but in the district of Columbia they have their own judges who have no voice and no seat upon the bench of the supreme court. And the presumption is, that where a judge of the supreme court presides, more satisfaction is given, and there are fewer appeals. But the other reason is the main one, because the court is held at the very doors of the suitors, and they are put to no inconvenience in having justice administered to them.

But it is said, here is to be an increase of cost. Cost of what? Of court houses to be built? Many counties will say send it to us, and it will not cost the state a cent. It is said there must be a library. I know that the gentleman from Madison has a library little inferior to the public library here. Will not the library of every lawyer where the court may be established be opened to the service of the court, and will they not thus have every possible facility for consulting authorities? This looks like a kind of scare crow, to deter us from branching the court, because it is to cost something. It is said you will have to carry books about, or have a library in every place. But it is not so. I want to show to the counties in the vicinity of Frankfort that if you will examine the docket of the court of appeals you will see a great disproportion between the number of cases brought from the counties in the vicinity and those more remote. If it be said that if you branch the court there will be more courts held, and more litigation, I reply, that if that is a good reason against branching the court, it is equally good for abolishing it altogether. If it be objected that the court of appeals should not be branched on account of the cost; the same reason applies for not having any court of appeals. I want to show another thing, it is, that as you go away from the capital the disproportion of suits brought to the court of appeals is most manifest. I have a little table of statistics on this point, and if any gentleman will just take the docket of the court of appeals and look at it, and compare it impartially, it will be impossible for him to come to the conclusion that it is not proper to sit in more than one locality. I have taken first five counties where there are four judges. Now it cannot be possible that they are all the worst judges in the state. In these five counties of Woodford, Fayette, Bourbon, Nicholas and Fleming, there were fifty cases sent to the

last court of appeals, which is equivalent to one hundred cases in a year. But there were thirteen hundred and twelve new suits in the circuit courts in those counties during the year 1848. Now look at the same number of counties on the borders of Tennessee, and remote from Frankfort, and see what is the number of cases brought to this court. From the counties of Pulaski, Green, Barren, Warren, and Logan, where there were nine hundred and seventy one cases brought in the circuit courts in 1848, there were ten whole cases sent to the court of appeals at the last term, and ten only. If we compare the number of voters in these counties, we find that in the five first named counties, from which fifty cases were sent to the court of appeals at the last term, there are nine thousand six hundred and thirty six, and in the last named five counties, there are eleven thousand seven hundred and fifty six voters, making a balance of some twenty one hundred more voters in those counties from which only ten cases were sent to the last court of appeals.

Again, take the counties of Estill, Madison, Garrard, and Mercer, which are comparatively near to Frankfort, and you find that they sent fifty one cases at the last term, to the court of appeals, while they had during the year 1848 seven hundred and fifty two new suits brought in the circuit courts. Now, in opposition to these four counties, take the four counties of Caldwell, Hopkins, Henderson, and Daviess, and you find that while they had during the year 1848 seven hundred and seventy six new cases in the circuit courts, they had only three cases come up to the court of appeals at the last term. Here were three judges, and only three appearances in the last court.

I will now take a number of counties in the neighborhood of my friend from Nelson; taking Washington, Marion, Nelson, Jefferson, and Meade, counties that are not distant from Frankfort, and I find that there were seventy nine cases sent up at the last term, and to the court of appeals, while ten counties, at the extreme southern border of the state, viz: Fulton, Hickman, Graves, Calhoun, Marshall, Ballard, McCracken, Trigg, Crittenden, and Livingston, sent only ten cases to the court of appeals; ten counties, and only ten cases. Now, sir, I can take fourteen counties in the state that have brought more cases to the court of appeals than all the other counties in the state. To what other conclusion then, can we come, than that here in the centre of the state is the centre of the talent, and hence arises the amount of business of the appellate court. Is it possible to conclude otherwise, when we see that in the remote parts of the state, the rights of the citizens are as frequently contested in the circuit courts as in the centre, while in the appellate courts, the rights of litigants from those counties are scarcely ever heard.

I know that the gentleman from Madison has a most extensive practice, because we have a very accommodating law allowing suits to be brought from all the circuit courts. How does it happen, when this may be done, and when we are told that it may be done by brief, and that a brief is all that is necessary, that so few cases come from remote counties to this court?

It may be said, that in the comparison which I have instituted, I have selected the pauper counties, and that the counties nearer the capital have the wealth. But on a comparison of Mercer with Daviess, or of Garrard with Henderson, and it will be found that there is a preponderance of wealth in the two latter counties, and yet from Garrard there were nineteen cases in the last court of appeals, and from Mercer ten, while from each of the counties of Daviess and Henderson there was only one. Does not this prove something? If you look at the voting population, if you look at the wealth, you find that in those counties where the least business has come to the court of appeals, there is the greatest number of the voting population, the greatest amount of wealth, and the most business done in the circuit courts. But when you go from Frankfort, then the business, except that in the circuit court, ceases. How is this, if the business may be done in the court of appeals by a brief as well as by actual attendance? Gentlemen know that it is necessary to make oral motions, and that a lawyer must be present for this purpose.

Mr. Chairman, I am becoming hoarse, and I find it inconvenient to proceed with my remarks.

Mr. C. A. WICKLIFFE. I move, as a favor to my colleague on the committee on the court of appeals, that the committee now rise.

The committee then rose, reported progress, and had leave to sit again.

The convention then adjourned.

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THURSDAY, OCTOBER 25, 1849.

Prayer by the Rev. G. W. BRUSH.

#### CIRCUIT COURTS.

Mr. HARDIN, from the committee on circuit courts, made the following report:

#### ARTICLE —

SEC. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, circuit courts.

SEC. 2. The jurisdiction of said courts shall be and remain as it now exists, hereby giving to the legislature the power to change or alter it.

SEC. 3. The right to take an appeal, or sue out a writ of error to the court of appeals, is hereby given in the same manner and to the same extent as it now exists, giving to the legislature the power to change, alter, or modify, said right.

SEC. 4. At the first session of the legislature after this constitution shall go into effect, the legislature shall lay off the commonwealth into twelve judicial districts, having due regard to business and population: *Provided*, That no county shall be divided.

SEC. 5. The legislature shall, at the same time that the judicial districts are laid off, direct elections to be held in each district to elect a judge for said district, and shall prescribe how and in what manner the elections shall be held and conducted, and how the governor shall be noti-

fied of the result of the election, and who has been chosen: *Provided*, That such election shall be held at a different time from that at which elections are held for governor, lieutenant governor and members of the legislature.

SEC. 6. All persons qualified to vote for members of the legislature, in each district, shall have the right to vote for judges.

SEC. 7. No person shall be elected judge who has not attained the age of thirty five years at the time of his election, and been a practicing lawyer eight years, and resided in the district five years immediately preceding his election.

SEC. 8. The person elected as judge shall continue in office for — years, unless he shall move out of the district for which he is elected, or be removed from office as hereinafter prescribed.

SEC. 9. The governor, so soon as he is notified of the election of a judge, shall issue a commission to the person, so elected, for the term of — years from the date of the commission.

SEC. 10. If the judicial business of this state shall so increase, from time to time, as to make it necessary for other judicial districts to be created, the legislature is hereby authorized to create one district every — years, but in no event shall there ever be more than — judicial districts.

SEC. 11. The legislature shall provide by law a competent and adequate compensation to be paid to the judges out of the public treasury, but in no event shall the compensation of each judge be less than sixteen hundred dollars.

SEC. 12. The judges of the circuit court shall be removed from office by a resolution of the general assembly, passed by — of all the members of each house. The reasons for the resolution shall be entered at large on the journal of each house.

SEC. 13. The judges shall likewise be subject to impeachment, to be instituted, carried on, and tried in the same manner that impeachments are directed under our present constitution, and for the same offences as therein pointed out, and a conviction shall have the same effect.

SEC. 14. There shall be an attorney for each judicial district, elected by the qualified voters of each district at the time the election is held for judge, whose duty it shall be to attend to the business of the commonwealth as now prescribed by law, and such other business as the legislature may, from time to time, direct and prescribe.

SEC. 15. No person shall be elected attorney for the commonwealth unless he shall have attained, at the time of his election, the age of twenty-five years, and been — years a resident of the district for which he is elected, and — years a practicing lawyer.

SEC. 16. The election for commonwealth's attorney, after the result shall be ascertained in the manner the legislature may direct, shall be certified to the governor, who shall issue a commission to the person elected, to serve for — years from the date of the commission.

SEC. 17. The legislature shall, from time to time, fix and regulate the annual compensation of the attorneys, but in no event shall it be less than three hundred dollars.

SEC. 18. Upon every conviction on a presentment or indictment for a misdemeanor, there

shall be allowed to the commonwealth's attorney, to be fixed and regulated by law, not less than two dollars and one half.

SEC. 19. The governor shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney, in penal and criminal cases.

SEC. 20. The commonwealth's attorney shall, after his election, continue to reside in the district for which he is elected, during his continuance in office, and if he shall move out of the district he shall forfeit his office, and the vacancy shall be filled in the same manner as if he had resigned.

SEC. 21. At the same time that judges and attorneys for the commonwealth are elected for each district, each county of the district shall, by the qualified voters thereof, elect a clerk for the circuit court of said county, whose duties, fees, and responsibilities shall be the same as now fixed and regulated by law; but the legislature may, from time to time, change, modify, and alter the same, and regulate how, and in what manner, the governor shall be notified of the result of the elections.

SEC. 22. No person shall be elected clerk of the circuit court, unless he has attained the age of twenty-one years, been a resident of the county for which he may be elected — years, and have a certificate from the judges of the court of appeals, that he is qualified to discharge the duties of clerk.

SEC. 23. When the governor is notified, in the manner prescribed by law, he shall issue a commission to the person elected clerk, to serve as clerk for said circuit court for — years, from the date of his commission.

SEC. 24. If a vacancy shall occur in the office of judge of the circuit court, or in the office of attorney for the district, or in the office of clerk of a circuit court, the governor shall issue a writ of election to fill such vacancy, and the person elected shall continue in office during the unexpired portion of the time which he may be elected to fill, and until his successor shall be duly qualified.

SEC. 25. The judges, attorneys, and clerks, provided for in this article, shall not only continue in office the times herein prescribed, but until their successors are duly qualified to enter upon the discharge of the duties of their respective offices.

SEC. 26. The judges of the circuit courts, attorneys, and clerks, who are now in office, or who may be put into office under the present constitution, shall continue in office until their successors, as are prescribed in this article, shall not only be elected, but qualified to enter upon the discharge of the duties of their respective offices.

SEC. 27. The legislature shall not have power to change the venue in any prosecution for treason, felony, or a misdemeanor; but upon the accused presenting a petition to the judge of the court where the prosecution may be depending, out of term time or to the court when in session, which petition shall be verified upon oath, stating in said petition that he does not believe he can have a fair and impartial trial by a jury of the county, to direct a *venire facias* to any adjoining county the judge may select, and the sheriff of the county to which the *venire facias*

may be directed shall summon twelve good and lawful men as jurors to try the accused, who shall, at the time appointed in said writ, repair to the court as therein directed, and who shall be a jury to try the accused unless challenged by him, and if challenged, the place of the person challenged shall be supplied with bystanders: *Provided*, They live out of the county where the trial is about to be had; and if bystanders, as herein prescribed, cannot be had, the court shall have the power to send the sheriff into the adjoining counties to summon bystanders.

SEC: 28. The legislature shall have power, and is hereby directed, to provide, by law, for the pay of the jurors and sheriffs for the services herein required.

Mr. HARDIN. Before I sit down I shall move to have the report printed, and referred to the committee of the whole and made the special order for Monday next. It is proper, perhaps, that I should give some explanation in regard to some of the provisions of the report. The committee have convened on a great many occasions, and as was to be expected, on some propositions they agreed almost unanimously, while on others they were divided. There was no question on which the division was so exactly equal, as in regard to eligibility. It was agreed last night that we should not report on that point, but leave it open until we might collect the judgment of the house, and then to report in accordance with that judgment.

There are at present nineteen circuit judges in the State; and this report proposes that there shall be only twelve. The circuit judges now get \$1200 each per annum; this plan proposes to give them \$1600. This plan proposes to add largely to the duties of the judge, and to increase his pay \$400 per annum. We believe that take the average of the judges under the present system, and their duties do not engage them over 80 days in the year. And they have not considered \$1200 so adequate a compensation as to exempt them from the necessity of following other pursuits. We desire to relieve them from that necessity, and the report proposes that they shall sit 150 days in the year, and receive \$1600 a year, to be increased, if it is not enough, by the legislature.

We have not raised the salaries of the commonwealth's attorneys, but by way of inducing the best lawyers in the State to take the office, we have restored the old law in relation to the collection of fees on indictments, and presentments for misdemeanor. I had between the years 1807 and 1815, the duties of commonwealth's attorney to perform, and during that time the court appointed me for four counties and after that, the law being altered, the governor appointed me for five counties. My receipts from the taxing of fees amounted to something like \$1500 to \$2000 per annum. The fees do not come from the people, but from those who violate the law, and they will not amount in most instances to more than fifteen shillings each. We were very much embarrassed in our action on the subject of attorneys and clerks, as we found the matter had been referred to another committee, yet connected as it was with the duties devolving on our committee, we must be excused for reporting on the

subject. The committee of course could decide between the two reports.

The circuit court system as it now exists, including commonwealth's attorneys' salary, costs the State \$28,600. Under the system we propose, including also the pay of the commonwealth's attorneys, it will cost the State but \$22,800. Thus if it goes into operation, it will save the State \$5,700 per annum. One ground of complaint on the part of the people, was that the government was too expensive, and the desire was that if practicable we should retrace our steps in this particular. These complaints the committee have endeavored to remedy, and at the same time to secure a more efficient system of circuit courts. I have no fault to find with the present judges that I am aware of—either of the court of appeals or of the circuit judges.—They are about as able men as we can get; but I want to give them such a compensation as will obviate any necessity of their resorting to other business to secure a living. I am acquainted with all the circuit judges in the country, and with all the appellate judges, except the last gentleman appointed, whom I hear very favorably spoken of. I do not desire a change in the system because I have any objection to the judges, for I have no idea that we shall get better men than chief justice Marshall and his associate judge Simpson, or the gentleman last appointed, but I desire that it shall be improved. This report relates to what I consider the most important branch of the judiciary, who have our lives and liberties in their care, and the committee have bestowed the utmost care and labor on their report. I therefore move that the report be referred to the committee of the whole, made the special order of the day for Monday next, and that 500 copies of it be printed.

This motion prevailed.

#### COURT OF APPEALS.

The convention then resolved itself into committee of the whole, Mr. HUSTON in the chair, and resumed the consideration of the report of the committee on the court of appeals.

Mr. APPERSON having the floor, said: I feel myself under obligations to the committee for the courtesy it displayed towards me yesterday in rising and adjourning until to-day, so as to afford me an opportunity further to address them on the subject which occupied my attention at the time of the adjournment.

I had dwelt more particularly on the subject of branching the court, and although it was not then wholly disposed of, yet I was so nearly through with it, that I will not undertake to travel over the ground again. It may be said, and perhaps since I closed yesterday it has been said, that in making out the table I then submitted, I had selected a particular portion of the state most suitable to my purpose, and that perhaps other counties lying nearer Frankfort would not have presented the same inequality. That I deny. I laid down yesterday as one of my propositions, this inequality; and that one of the reasons I referred to the particular counties I did, was to have as many different judges in the counties as possible, so as to obviate the objection that it was a bad judge whose district was selected. Hence it was that I selected as many



judges as I could. But to satisfy the committee on this point—there was the county of Nicholas which had but four causes in the court of appeals. Had I chosen, I could have selected counties immediately adjacent to Nicholas—one with eight, another with ten, and another with the same number—eight and twenty cases in all. Why did I not do it? Because they were not in the way of the line I was drawing. I did not undertake to present a one-sided view. There were the counties of Harrison, Mason, and Bath, not one of which brought up to the court less than eight cases, and unitedly twenty eight causes. Yet I omitted them and put in the county of Nicholas, sending but four causes. That appeared to me, at any rate, to be fair. But I can extend my tables a little further. If every gentleman could look at that map (of the State of Kentucky) I would desire him to trace a line with me. I will take a section of the state, of which I have made a table, commencing with the county of Whitley, and embracing Pulaski, Casey, Green and Taylor, Hardin and Breckinridge, and down the Ohio and Mississippi rivers and around the Tennessee line to the beginning, and embracing forty two counties of the southern portion of the state. And how many cases were brought up to the court at its last term from that whole region of country? The whole number at the June term of the court was three hundred and sixty five for the whole state, and out of that number, this region, embracing almost half the population of the state, had only sixty four causes—leaving to the other portion of the state three hundred and one causes. Take more than half the territory, and nearly one half of the voting population of the state, and they had brought up just sixty four causes, whereas the remaining portion of the state brought up three hundred and one! But if I were disposed to make it appear still worse than that, I might have gone to the head of the Big Sandy river, the great Chatteroi of the Indians, and beginning at Harlan, have included also the counties of Harlan, Knox, Letcher, Perry, Clay and Laurel. You will see at once what an immense territory it comprises, and yet those counties, so distant are they from the seat of government, have sent up but one cause here. Sixty five causes only have come from two thirds of the state so far as territory is concerned, and embracing upwards of sixty thousand voters, out of one hundred and forty one thousand, the whole number in the state as reported by the auditor last year. This is almost half of the voting population of the state, and while they have sent up but sixty five causes, the remaining portion of the state has sent up exactly three hundred. Now am I to be told that this table is a partial one, and does not truly represent the facts? My object was to select the counties so that they would run regularly and have as many judges as possible, that it could be seen whether the fault was on the part of the judges, or whether there were not some other reasons for this disparity. Suppose on the other hand that I had selected a class of counties with the least possible business, I should make a different sort of table from what I did. The counties of Adair, Allen, Ballard, Butler, Caldwell, Casey, Calloway, Edmonson,

Grayson, Hart, Hickman, Marshall, Monroe and Whitley, did not have a single cause in the court of appeals. Now if I had been disposed to make as bad a comparison as possible, I could have made the selection from these particular counties. And I might have named counties adjacent to these and have one continuous line too, with even still fewer causes at the court of appeals. I mean by this, counties lying on the south of those I have named.

Now some gentleman may say that this proves too much—that there is too much litigation, and that these counties are better off if they do not enjoy the facilities within the reach of those immediately around the capital. If their lot is so blessed in being distant from the court of appeals, let us at once say to the people here, this is a great curse to central Kentucky—you have to pay all this expense—the costs come out of you, and this court is a great curse. Why if there be all these objections to it—if it is not a blessing, why are we making provision that there shall be a court of appeals? I insist it is a blessing, and those who live at remote parts of the state, should, as near as may be, have the same facilities to have their rights adjudicated upon, as those immediately around the capital. My attention was called to the question as to how the court would stand in regard to the affirmance or reversal of cases brought there from the different circuits. Without undertaking to refer to any particular causes, I will state that the court of appeals commenced its session on the 5th day of June, and up to the 2d July, on looking at the record, I find that there were sixty reversals and seventy affirmances. Well, we must suppose that in these sixty cases thus reversed, there was something to reverse, and some error in the court below; and if these counties in the neighborhood are thus to enjoy the privilege of having their rights maintained, do, if you please, extend the same privilege to the distant portions of the state. Give us the same facilities as near as may be, for, of course, I do not expect they will travel into every county.

An objection has been urged in regard to the furnishing of law libraries; and we were told that the public library has cost the state about \$3,000. I presume there are very few county towns in the state, where the libraries of the lawyers residing there did not cost much more than that amount. There was a time when such men as Trimble, Boyle, Bibb, Mills, and divers others who have never been surpassed in Kentucky, so far as I have any knowledge, sat on the bench of that court, and where was the state library then? And there were as learned and as eminent lawyers in those days as now, but where was the public library then? And yet the absence of one is now one of the greatest objections urged against branching the court of appeals, if we shall decide to have one. Another objection was the cost, and yet has any gentleman, who has advanced it, told the committee how it was to cost a single dollar more. Are the people to be taxed? No, the expenses are to be paid by the litigants just as at present. Not a dollar is to be drawn from the treasury. What else is there? There is the tipstaff. How will he be an additional expense. He is hired by the day, and will not there be just the same expense to be

incurred, whether they sit in one or four places? What other expenses are there? I have heard it said this system is to be more expensive, and yet wherein it is to be so, has not as yet been pointed out. I have heard it said, also, that to branch the court, would be to crowd the court houses with lawyers—but is that so? The gentleman comes here to the court of appeals—he goes into a fine room, finely carpeted, and furnished with every convenience, and sometimes he may find two lawyers there—one on each side of the case—and the three judges, a clerk, and tipstaff. Sometimes that is all the company in the court room. When was there ever seen as many as twenty lawyers in the court at one time? I have been in the habit of attending every term for the last few years, and I am certain that I have never seen twenty assembled there at a time. Branch the court, and if every lawyer in the district attended they would not fill the court house. We have no need of the attendance of any other than lawyers, though of course all who desire it, have the privilege of coming. One gentleman has said, you may be permitted to practice by brief, and that the legislature has so determined. But those in the habit of practicing in, or of frequenting this court, are aware that motions are to be made, which even if a lawyer at a distance is practicing by brief, he must employ a lawyer residing here to make. So much for the question of cost. And when a gentleman again asserts that this branching system is to cost more, I am fond of figures and I want to see it proved to me. It is a mathematical proposition, and therefore can be easily put down in figures; but a mere declaration that it is to be so, amounts to nothing. There was one remark made by the gentleman from Madison, (Mr. Turner,) which I very much regretted to hear. It was, that the court of appeals was not as it ought to be. I do not know how that is so. They are eminent judges, and have given as much satisfaction to the people, perhaps, as any other three men who could have been selected.

Mr. TURNER. The gentleman has misunderstood me. I said that the salary ought to be such as always to secure the very best men on the bench of that court. I said that the present judges were men of capacity and industry, and filled the office very well.

Mr. APPERSON. I am exceedingly gratified that the gentleman has made this explanation, for I am sure he did not design to do injustice to the judges. And as I certainly misunderstood the gentleman, I will let the matter pass. But the gentleman did say that they could not do all the business, and there we agree exactly. I think three judges cannot do the business, and those who have been in the habit of attending here, may be aware that they are compelled to sit up almost every night during the winter until twelve o'clock. That is imposing too much labor upon them.

It was objected to having four judges, that it was an equal number, and that the decisions, when the court should divide, would not be uniform. No proposition I suppose can be stated, which will be entirely perfect. Let us suppose a case where there are three judges. A farmer is sued in ejectment for his land. The circuit judge instructs the jury so that they find in

favor of the tenant in possession, but the claimant to the land, brings the case to the court of appeals, and two of the judges going in favor of the claimant, the decision is reversed, and the occupant is turned off the land. Yet he had two judges and the plaintiff had but two. The circuit judge who ought to be qualified—and I know some who are admirably so—and one of the appellate judges are on one side, and their opinions are overruled by the two other judges of the court of appeals. I think a man would have a right to feel in tolerably bad humor at losing his land in such a case. This same objection will apply to any even number, and yet I believe a majority of the states have an even number. The rule is that if the court is equally divided the judgment of the court below shall stand.

We hear very much about the expense of putting a fourth judge on the bench. Why when we had not near the business, perhaps not half that is now before the court of appeals, we had four judges. We were told the other day by the chairman of the committee, (Mr. C. A. Wickliffe,) that for something like twelve years, we had four judges on the appellate bench. And there were very many states in this Union who had exactly that number, and many had six and New York had eight. The expense would be just that of adding one judge more to the bench, which I believe to be entirely necessary, and in that particular also I agree with the gentleman from Madison. We shall probably have a great deal said on this matter of expense. The elder gentleman from Nelson, (Mr. Hardin,) is very fond of talking about the enormous expenditures of our government. We have heard him declare that our government once has been carried on on a tax of six cents on the \$100 when the valuation was much less than at present, and when many articles that are now taxed were not then—and that now our taxation is nineteen cents on the \$100. It is easy to account for much of it. Two cents of it goes to pay us, the expenses of this convention—two more for educational purposes—and five more for the sinking fund, to extinguish the interest on the public debt. If we look at the growth and prosperity of the state, if we regard the increase in its population, we shall see the necessity for this additional judge.

With regard to the subject of re-elegibility, I know that I shall be separating from some of my best friends, for whose opinions I have the highest respect. But let me call the attention of gentlemen on this floor to a few facts. Where is the state out of the thirty in this Union, whose judges are ineligible for a second term? Where is it adopted, with all the experience we have acquired since the foundation of this government, since state constitutions have been made, a period now between sixty and seventy years? If it be true that it is so radical a principle, that a good officer should be re-elegible, how is it we never found the contrary principle to have been adopted? It may have been discussed on divers occasions, but so far as I have been able to discover, there is not a state constitution where the officers are not re-elegible. Why should it not be so? From whom do they get their appointment? From the people. I know that when you begin

to talk about the people, you will hear some one spring up and saying that is demagoguism. Those who made our constitution did not think so. Had I made the remark that I am about to read from that instrument, it would have been said directly that I was resorting to demagoguism:

"All power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness."

This is a correct principle, and we feel and know that it is. And now we are endeavoring to return in some degree to that principle thus declared in 1799. And as all power is inherent in the people, let us undertake to trust the people. They have elected us here, and I know that there are very many of us, myself among the number, who once had prejudices against the election of judges by the people. We have never been accustomed to it, and perhaps have always thought that the judiciary should be placed as far as possible from the people and not as in England, as far as possible from the crown. Now inasmuch as all power is inherent in the people, they certainly should be trusted to select all their officers, whether judicial or executive. We say that they shall elect the governor—his duties are to see that the laws are executed. They elect also the legislature, the law-making power, and are they not competent to indicate the particular individual who shall administer those laws? It is but another form of the exercise of the same power. And inasmuch as it is conceded that all power is inherent in the people, why not go to the source at once, when you are about to provide for the appointment of officers? I confess that my prejudices were early enlisted against the system, but when I come to reflect upon it, and learn its effects in other states, my mind becomes more reconciled to it. I learned from a particular friend of mine who has removed from Montgomery county to Illinois, that in that state, under the new constitution, the people elect their judges, and he believes it to be the wisest plan in the world, and that it secures the ablest judiciary. I lately met a gentleman from Louisiana who studied law with me, and he states that there is a great desire prevailing there to have their judges elected by the people. He resides near the Mississippi line, and the testimony of all the lawyers who go into that state to practice, is that they have much better judges, and that the business is far better done than in Louisiana. How is it in Tennessee? They have been appointed there by the Legislature, and they have recently decided that the people shall elect them. And if this principle is so dangerous a one—it has been in operation for a considerable time—how is it that its dangers have never been discovered? And there seems to be a tendency all over the Union to adopt it. As the people are the source of all power, let us therefore require those who desire office, to seek it from that source.

I have omitted one thing on the subject of branching the court, and I must now beg the indulgence of the house, to return to that subject. If this idea of branching the court is so very objectionable, how is it that so many of our sister states have adopted that very plan? In New

Hampshire, the supreme court sits in every county; in Vermont, the same; in Massachusetts, in eight different places; in Connecticut, in every county; in New York, in every other year, in each judicial district, there being four of them; in Pennsylvania, in four districts, at such places as are pointed out by the constitution; in Delaware, there are but three counties, and the supreme court sits in every one of them; in Virginia, it sits in two places; in South Carolina, the same; in Georgia, in every county; in Alabama and Mississippi, it is not branched; in Louisiana, uncertain; in Texas there are three branches, and in Tennessee there are branches. In Kentucky, we know there are none yet, but we hope to have them very soon. In Ohio, they sit in each county, but they have a right to adjourn questions in bank where they all sit. In Illinois, there are three branches; in Missouri, four; in Wisconsin, five, and in Indiana, they seem not to have any. Thus it will be seen, that there are a great majority of the states, in which the supreme court is branched. There is the old state of Pennsylvania, for many a long year, the court has sat at Philadelphia, at Harrisburg, at Sunbury, and at Pittsburg. Have they a state library travelling about in a cart? In old times here, a wheelbarrow or two would have carried all the law books the judges had to consult. But they had to reflect more and read less in forming their decisions. And one objection that I have to the court of appeals is, that they write rather too much. The old opinions of years ago, were very short, and came directly to the point, and when they disposed of that they wrote no more. With regard to the manner of selecting judges in other states, in Vermont, they are elected by the legislature every year, or oftener if the legislature choose. Well, did you ever hear that they were not re-eligible there? In reading the biography of the present Post Master General, (Collamer,) I found that he had filled the office of Judge, and as his biography said, he was re-elected every six months for years until he went to congress. From those who know the Post Master General, I learn that he is admirably qualified for the station, and that he was always re-elected without opposition. In Rhode Island, the judges are elected by the legislature, and are to hold their seats until the legislature declares them vacant, which may be done at once. In Connecticut, they are elected by the legislature, and hold during good behavior. In New Jersey, they are appointed by the governor and senate, and hold their offices for seven years, and are then re-eligible. In Pennsylvania, the governor and senate appoint; they hold their offices for fifteen years, and are then re-eligible. In Michigan, by the governor and senate, for seven years, and re-eligible. In Arkansas—by the legislature, to hold for eight years, and re-eligible. In Texas, the judges are appointed by the governor and senate, to hold for six years, and re-eligible. In Louisiana, they are appointed by the governor and senate for eight years, and re-eligible. In Mississippi, the people elect for six years, and they are re-eligible. In Ohio, they are elected by the legislature for seven years, and are re-eligible. In Tennessee, they are appointed by the legislature, and hold for three years, and they are re-

eligible. In Georgia, by the legislature, for three years, and re-eligible. In New York, they have eight judges, four of whom have been elected in one particular way, and four in another way. There is a travelling court. Pennsylvania is the same; and what objection is there to our adopting the same plan? We only ask that the same judicial facilities may be extended to the people of the exterior portions of the state, as are enjoyed by those of the interior. They are not compelled to be dissatisfied with the decision of the circuit judge, but let them have the same facilities for reaching the appellate court, if they desire to do so.

Now, these judges in New York have a distinguished reputation. Go into your state library, and you will find there about one hundred volumes of the New York reports. And are these celebrated judges a set of travelling tinkers? Are they going about, as the tinkers of old, for the purpose of running up old spoons and basons? Are not their decisions among the highest legal authorities in the land? The old constitution of New York, it is true, provided that after a judge had arrived at the age of sixty, he should vacate his office, but what regrets had the people that such a provision drove chancellor Kent from the bench. What a great loss was it to the jurisprudence of the state, nay, to the union, that he was not permitted to continue in the discharge of his high duties? What, under such a provision, would have become of Chief Justice Marshall, the brightest ornament of the American bench? He lived to be a very old man, and up to the last retained full possession of the finest intellect in the land. And to declare that a judge should not be eligible, was it not to say to the people, we are better qualified to judge of his capacity than you?—We are not going to permit you to select these old men, or to re-elect those men who have served you for eight years, and whom you are satisfied have served you well. That is the amount of the declaration of ineligibility.

There has been a wide range taken in the discussion of this report of the committee, and particularly on the proposition that the legislature shall have the power to remove the judge by a majority. And it does strike me as remarkable, that my old friend, the old patriarch, whom I have delighted to follow, should desire to have the legislature supreme, and that a majority should have the power to do—what? To turn out—not an officer selected by another power than the one from whom they derive their own authority—but that a majority of the people's representatives should turn out of office a man whom the people themselves have elected. Let us see how it would work. A district selects their judge and he comes up here, and in the legislature charges are preferred against him.—Every representative from his district is aware that the people there know him to be honest and qualified, and they accordingly vote against turning him out. But the majority, who know nothing of him, vote him out. There is a direct disregard of the voice of the people. The time once was, when that same old friend of mine—he is now a patriarch—stood up most manfully and battled most resolutely against this principle. He once contended that officers

appointed not by the people, but far removed from the people and appointed by the executive, should require two-thirds of the people's representatives to turn them out. What is his position now, when connected with that which he held then? Why that when the officers were removed as far as possible from the people, it ought to require two-thirds of the people's representatives to remove them, but if you bring their appointment directly to the people themselves, then a majority of the people's representatives ought to be sufficient to remove them! That is the position. But as was enquired by the chairman of the committee, (Mr. C. A. Wickliffe) where is the instance that has occurred under the two-thirds principle, of a judge not being broken when he deserved it? I have heard it said that there were never removals at all under the two-thirds principle, yet my friend gave an instance where a judge was removed by a nearly unanimous vote. My old friend, the patriarch to whom I have referred, has a happy tact of bringing every man to his support. His arguments on the subject of removal by the legislature, brings to his support a gentleman who was, at first, opposed to the election of judges, yet he now advocates their election, and wants a majority of the legislature to turn them out! My friend from Fleming (Mr. M. P. Marshall,) was just as much opposed to the majority turning out as possible, yet he goes against branching the court, and therefore he is also a supporter of my old friend. It seems to be wholly immaterial to him how he does it, but he is sure to gather around him a host of supporters. The old patriarch has been a leader all his life, and I have no doubt always will be. I, myself, have heretofore been happy to follow his lead, but we shall have to separate now.

Let us examine the objections to the re-eligibility of the officer. Nearly everybody who has spoken has been a lawyer, and all have praised the judiciary. I think it is the strong arm of government. It is the weak department, but the strong arm. If a judge is not to be re-eligible, where is the lawyer willing to leave his lucrative practice, and break up all his business connections to accept the office? A man, pretty well advanced in years, and rich, might, perhaps, be willing to take it; but where is the man of from thirty five to forty years of age, with a good practice, who would be willing to surrender that practice to go on the bench, and there to serve for eight years and not to be re-eligible? The judge, under such a system, would be at the end of eight years, after having lost all his customers, and got out of his traces, as it were, in the practice of law, and having become more familiar with the drawing up of decisions and opinions than of declarations and bills in chancery, in a most unenviable position. Here is at once a powerful reason why the judge should be re-eligible. There is another reason. He is to return, again, to the appointing power—the people, who are the sources of all power, and if he has not acted properly, if he has been corrupt in any way, or discharged his duties in a partial manner, I ask you if he will be re-elected? I have heard it said that this proposition for re-eligibility is a radical one. It seems to me a most conservative one, and further, it is leaving the office

open to the greatest number. The gentleman from Scott (Mr. W. Johnson,) says he is for rotation in office, and for that reason, it seems, he is not willing that the people shall say whom they prefer for office. It is not proposed to say to the people that these men shall be elected, or that they must re-elect them. It is only casting their lot among the claims of other citizens whom the people are to pass upon. If they think the former judge to be the best man, give them a chance to re-elect him.

It has been inquired of me whether or not, in the division of the state into districts, I did not expect a branch of the court would be brought near to me. I have not looked forward to this, but the county in which I live is the Piedmont of Kentucky—it is right at the foot of the hills—and if it should so turn out that it will come there, it will be received with open hearts and open doors. It will never be necessary to call upon the state to build a court house, and so far as expense of living is concerned, I do not see that it will cost the judges any more than to come and sit at Frankfort. Some there was who call such a court migratory, but I do not think the term applicable to a court that is to sit in four different places in the state. It would not be a roving or wandering court, but would have stated points of meeting.

Objection has been made to the vote by ballot. I have not much to say about this, but as we have got to vote very shortly on the question—let me make one inquiry. Has there ever been a state in the Union that ever adopted the ballot system, and abandoned it, for the *viva voce* system? Are there not many states who once practiced the *viva voce* system, who have abandoned it for the ballot, and never again returned to it? The ballot system therefore, would appear to be the better one. In regard to political offices, I do not care any thing about it. It is, perhaps, not so manly a plan to go and deposit a vote in a ballot box, so that the candidate cannot know whether you voted for, or against him, as to come out and declare your preference. I believe that our constituents are entirely satisfied—so far as the election of the judicial officers is concerned—that they shall be elected by ballot. Indeed, there are, throughout the state, very many, we know, who are in favor of balloting for all the officers. But whatever complaints are made upon other subjects, there are no complaints, so far as I am aware, as to *viva voce* voting; therefore, I would be disposed to leave it as it stands at present. I would leave that point untouched altogether.

The amendment which I desire should be made to the report of the committee, and which I intend to offer when the proper time arrives—and I suppose it will be more appropriate to do so in the house than in committee—is this: I want a general election of the judges. And here it is I shall have to separate I suppose from some of my friends. I insist that these judges as they are to pass upon the rights of the people of the whole state, ought to be elected by the people of the whole state; that you should not elect one in the north and have him pass upon the rights of the people of the south, who had no hand in electing him. He is under no responsibility to them. I would have each candidate brought be-

fore all the people, and let them vote for the men of their choice. When you bring them before all the people of the state you will not find so great a tendency to centralize; but they will be diffused through the state. I say that, inasmuch as the judge has to pass upon the rights of all the people of the state, let us give all the people the same privilege in electing him. I insist that it is but right to give all parts of the state, as nearly as can be, equal facilities and an equal opportunity of voting for all the judges. And, in regard to the matter of expense, it is not a tax that is to be levied upon the community; it is a voluntary contribution on the part of those who have cases to be tried before the judges of the appellate court. Let an opportunity then be offered to the people in every part of the state, south as well as north, to carry their cases into that court. There is no mathematical proposition that can be more easily proved than that professional men, residing at the capital, do the greater part of the business in that court. I believe that I have said about all that I intended to say. I feel grateful that I have had an opportunity to address this committee; and as I have been a very silent member heretofore, I may be permitted perhaps to add a few remarks. It seems to me that we have not got a great deal to do. We may talk a great deal about abstract propositions upon slavery, but will not the subject remain exactly as it is now? So far as I can learn from conversations with delegates around me, we are not going to disturb it. There are certain purposes, however, for which the people have sent us here. There are certain reforms which they desire shall be made. Prominent among those is a change in the tenure of the offices of the judges; that is one of the great objects for which we are assembled: their tenure of office being now for life, and it being desirable to change that tenure to a term of years. Another great object is that the judges shall be elected by the people. And another change that is required to be made is a change in the county court system. Another is, that we shall provide for biennial sessions of the legislature, and that there shall be no special legislation, such as the granting of divorces. If there be anything else of great importance that the people have required to be done, I am not prepared at this time to say what it is. In regard to the branching of the court of appeals, if we effect those other great objects that I have referred to, which ever way we may determine that question, I think we shall have made a pretty good constitution after all. This self-constituted county court will not be in existence. There will be a general election of all the officers by the people, and if nothing more be done, though there may be a few other changes which I would be pleased to see made, yet, upon the whole, I shall be content, and even if I shall be overruled in this matter of the general election I shall still be satisfied.

The following tables, alluded to in Mr. Aperson's remarks, are appended, for the better understanding of the subject discussed by him. The tables are made up from the court of appeals docket at the last spring term.

## COUNTIES NEAR TO FRANKFORT.

FIRST CLASS.			
	Causes at spr. term 1849.	Causes in cir. court 1848.	No. of vo- ters in 1848.
Woodford,	9	248	1255
Fayette,	10	415	2584
Bourbon,	11	241	1773
Nicholas,	4	219	1713
Fleming,	16	189	2311
	<u>50</u>	<u>1312</u>	<u>9636</u>
SECOND CLASS.			
Estill,	8	102	1011
Madison,	14	152	2566
Garrard,	19	215	1563
Mercer,	10	283	2125
	<u>51</u>	<u>752</u>	<u>7265</u>
THIRD CLASS.			
Washington,	9	269	1770
Marion,	8	168	1768
Nelson,	7	179	2007
Jefferson,	45	1225	6774
Meade,	10	100	1022
	<u>79</u>	<u>1841</u>	<u>13341</u>
Grand total,	<u>180</u>	<u>3905</u>	<u>30242</u>

## COUNTIES DISTANT FROM FRANKFORT.

FIRST CLASS.			
	Causes at spr. term 1849.	Causes in cir. court 1848.	No. of vo- ters in 1848.
Pulaski,	2	132	2305
Green,	1	190	2365
Barren,	3	256	2939
Warren,	2	201	2131
Logan,	2	192	2016
	<u>10</u>	<u>971</u>	<u>11756</u>
SECOND CLASS.			
Caldwell,	0	229	1860
Hopkins,	1	194	1813
Henderson,	1	177	1467
Daviess,	1	176	1933
	<u>3</u>	<u>776</u>	<u>7073</u>
THIRD CLASS.			
Fulton,	2	163	631
Hickman,	0	81	656
Graves,	1	120	1576
Calloway,	0	79	1206
Marshall,	0	32	824
Ballard,	0	146	728
McCracken,	3	160	742
Trigg,	1	176	1381
Crittenden,	1	159	947
Livingston,	2	120	808
	<u>10</u>	<u>1236</u>	<u>9499</u>
Grand total,	<u>23</u>	<u>2983</u>	<u>28328</u>

Mr. DIXON. I am anxious sir to make a few remarks upon two other propositions which have grown up in the course of this debate, although I am not disposed to discuss any other questions than those which came fairly and legitimately before this committee, and I shall not therefore, say anything upon the abstract question of slavery, to which my friend who has just preceded me has alluded. I am no flatterer of the people. I am the people's friend, however, and I trust in God I ever shall be their friend; and if I could be their protector, I would employ such feeble abilities as I possess to that end. I am among those who think it right that in some respects, the people should be protected against themselves. Not sir, that I have not the utmost confidence in the capability of the people for self government. I have every confidence in their ability to govern themselves, and I take occasion here to remark, that I am very decidedly in favor of the people electing most, if not all, the officers of government. I am for electing the judges: but although I am for electing the judges, I am not for weakening the judiciary department. I am not for making it dependent. I am for placing it in an elevated position, such as may enable it to administer justice in the very spirit of the constitution without sale, denial, or delay. These are the principles to which I hold. I am for electing the judges because I believe it is better to elect the judges than to have them appointed in the manner in which they have been heretofore appointed under the present constitution of Kentucky. I believe that the appointing power has been abused, and it was from the idea, whether correct or not, that the appointing power had been abused, that I became a convert to the doctrine of electing the judges by the people. I confess that the time was when I entertained a different opinion, and I confess that I approached this great subject with fear and trembling, because I had been taught from my infancy to believe that upon the independence of the judiciary depended the safety of the people of this commonwealth. I have cast my mind back to the history of that people from whom we are descended, and there I have discovered, that the judiciary has been prostrated at the feet of power, and made the mere registers of the edicts and decrees of the ruling monarch. I have beheld the judicial power of England prostrated at the foot of the king, and made the mere organ of the dictations of the despot, instead of being as they ought to have been, the protectors of the freedom of the people. I beheld the struggle going on between the oppressed people and their kingly oppressor, and I saw that the purpose of the struggle was to relieve the judiciary from their continued servility to those in power. I traced the struggle on, until at length the intelligence and love of liberty of the people of England, triumphed over the despotism which had so long kept them in slavery, and made the judicial officers of the government independent of the appointing power. When its independence was established, it arose to a high elevation and dignity, which it had never before attained. It arose in all its great and lofty attributes until it acquired the character of being the protector of the freedom of the people. It was no longer the servile tool of power, moving at the will of a



despot, to the shedding of blood, and under the constructive doctrines of treason, making victims of the innocent, in obedience to the behests of power. It saved the people from the scourge of despotism. Such sir, was the influence that it exerted over the liberties of England. I was taught to reverence this great department of the government—great in its results—having for its object the enforcement and illustration of the laws and the vindication of the constitution of the country. And as I remarked before when this question came up as to the election of the judges by the people, it was a question which I approached with fear and trembling. If the effect of electing the judiciary by the people will be to prostrate it at the feet of any other department—I care not what department—if prostrated and enslaved, the people will be the victims. I asked myself the question, whether or not the election of the judges by the people, was to enslave the judges and render them dependent. And sir, if it was to render them dependent, I for one, declared that I would not subscribe to a constitution which contained that feature. I would not aid in the adoption of a constitution which would render them the slaves of any power within this commonwealth. I satisfied myself however that the judges could be elected by the people, and their independence still be maintained, and having satisfied myself on that point, I yielded at once to the propriety of changing the mode of appointment. I thought the present mode bad because it might be abused, and I was apprehensive that the election of the judges by the legislature would be worse; but I came to the conclusion that the true source to which this matter should be referred was to the people themselves. But whilst I am in favor of throwing it back upon the people and giving them the right to elect the judges, let no man say that because I differ with him upon abstract propositions of preserving their purity in office. I am therefore opposed to a change in the organic law of the state. I am for everything which is to protect the people of the state—for everything which is calculated to build up the defences of human freedom.

We are assembled here because it is believed there are important improvements that may be made in our constitution. We have solemn duties to perform, and instead of constituting a judiciary that shall be dependent upon another department of the government, let us make them the guardians of the people's liberties. I would rather sink into utter oblivion, than be instrumental in bringing about any other result. I say sir, that I came here to provide for the election of the officers by the people, but I came here to render the judicial power independent of the people. I do not mean sir, that they shall not be properly responsible somewhere, but I mean to assert that I am opposed to making them responsible merely to the power that creates them. I am, like the gentleman from Nelson, and like the honorable president of the convention, and like many distinguished gentlemen who have addressed this committee, I am for making them responsible to the legislative department in the manner indicated by the report of the committee, and I shall not pause here to discuss the plan proposed by them. It is proposed to make the

judges responsible to the legislature. Is that the proper department to which they should be held responsible? If you mean to make them responsible to that department, let it be so; but if you do not mean to make them responsible, where is the necessity of spreading out in the report the responsibility of the judges to the legislature?—There was some design in it. Those who framed the report must have understood it themselves. They must have intended that there the responsibility should rest, and I for one sir, am decidedly of their opinion, that to that tribunal the responsibility of the judges should belong. Then sir, if we make them responsible to that tribunal, are we also to make them responsible to another? If that is the tribunal before which they are to be arraigned, and by which sentence is to be pronounced upon them for malfeasance in office, or for misfeasance, or any other act that amounts to disqualification, why, I ask again, the necessity that any other responsibility should be indicated? We have directed that the judges shall be elected by the people. So far it is right. We have declared that there shall be responsibility, and we have indicated where it shall be. Sir, if this is not a proper tribunal before which the judges shall be tried, strike it out, and proclaim that the true tribunal, and the only one before which the judges shall be tried, is the people at large. I say strike it out, let it fall, because it has no business there at all. But I am for that tribunal, it is the right one, and I am not for any other. I am not for making them responsible directly to the people, and although the people might desire that they should be made responsible directly to them, it ought not to be so; for it would be ruinous to the people and destructive of every thing that is most dear to them.

I am then for an independent judiciary. Independent of whom? Independent of the power which appoints them. In England the judges are not responsible to the appointing power. In Kentucky, the governor nominates and the senate confirms the nomination—not the people. They are responsible to the legislature collectively, a power different from that which appoints. In all the states, they are made responsible to a power different from the appointing power.

Having decided how they shall be appointed, and how they shall be tried, let us see what sort of safe-guard we can throw around our judiciary, because that is a matter which touches us all. It is a matter that concerns not only us, but our posterity—those in high places and those in low places—all have a deep interest in protecting the judiciary. What are the various plans that have been suggested, by which the independence of the judiciary shall be maintained? I have not heard any man contend that the independence of the judiciary ought to be destroyed. I like the remarks that were made by the gentleman from Scott, (Mr. W. Johnson) on this subject. There was wisdom in every word he uttered. He spoke like an honest man and a patriot. There was that in his manner and his remarks, which indicated that he would not

"Flatter Neptune for his trident,  
Nor Jove for his power to thunder."

I love the man, because he rose here in the midst of the confusion and strife, and proclaimed those noble sentiments in defence of the inde-

pendence of the judiciary. I think there is no one here who is opposed to their independence; but what is to bring about that independence? Is it to be done by making the judicial department directly responsible to the people? Do gentlemen mean to maintain that that will make them independent? Will it not prostrate the judicial power at the very feet of the people, and if the judicial power of the state is to be prostrated at the feet of the people, who are to be the sufferers? Not the rich and the powerful. They will escape—there can be no doubt about that. Who, then, are to suffer? The poor and the defenceless. Well has it been said, by that greatest of English poets:

Through tatter'd clothes small vices do appear—  
Robes and fur'd gowns hide all. Plate sin with gold,  
And the strong lance of justice hurtless breaks:  
Arm it in rags, a pigmy's straw doth pierce it.

I advocate the independence of the judiciary, and I do so upon this ground among others; and I know that in this respect I am in a hopeless minority. It matters not to me, however. I utter what I think is right, and whether it meets with favor or not, I shall not refrain from uttering the honest sentiments of my heart. I believe that the judges, if elected by the people, ought not to be re-eligible, because I believe their power might be used for the very worst purposes. Let not gentlemen tell me, when I contend against the re-eligibility of the judges, that I am contending against their election by the people. The influences which operate upon a judge before his election will operate after it, and at a time when his conduct will affect the rights of every citizen in the commonwealth. It is only when he is called to administer justice, that his power, if he be corrupt, is felt; and it tells with withering influence upon the people of the state, crushing the last hope of the poor man, who seeks protection from oppression, at the hands of the judiciary. Will gentlemen tell me that judges are incorruptible? Will they tell me that a judge has not the frailties to which all human nature is subject? Will they proclaim such a sentiment as this? If they do, they must have read the book of human nature to little advantage. Let them cast their eyes to the judicial records of England, and there behold the judiciary prostrate at the feet of the monarch, and let gentlemen not tell me that because the people are competent to self-government, they may not select unworthy agents, that they may not be deceived, that they may not select such persons to administer justice as will be subject to the influence of bribery and corruption. Let it not be proclaimed that such will not be the fact. Such will be the fact, unless human nature greatly changes from what it has been.

The day of re-election approaches, and with it, comes the temptation to mingle with the crowd, and discuss those questions in which the people are interested, men of power and influence arrayed on one side, and men of neither power nor influence on the other; the man of fortune and influence comes to the candidate for the judgeship, and demands of him that he shall avow his opinions upon a question; he then infuses the poison into his soul, and drops the consolation that he will be instrumental in bringing about his election. A man on

the other side makes the same insinuation: the judge weighs the comparative influence opposed by the two, and he inclines in favor of the most powerful. Does any gentleman mean to say that this will not be the current of events, upon which will glide away the independence of the judiciary of the state? Will any gentleman contend that such will not be the effect? Figure to yourself a judge going down from the judgment seat, mingling with the populace, mounting the hustings, and proclaiming his opinions upon the subjects that are agitated. Will any gentleman say that he is willing to have such influences operate upon the candidates for this office? He must be more than man if he can rise above them. Why then will you make the judges re-eligible? What is the object of it?

I ask where is the necessity for making them re-eligible? I am told that unless they are re-eligible you cannot get another one to supply the place, and I am told again, that you deprive the people of the right to select their officers according to their wishes. Why do you declare in the constitution, that the governor of your state shall not be re-eligible for a certain period of years? What is the reason of that? Because they believed that he might prostitute the power of his office, in order that he might secure his return to office. They intended that he should not be permitted to pander to the popular passions and prejudices, with a view to again being placed in power. That was the great principle. That is why it was declared in that instrument, which we are about to change and alter, that the governor shall not be re-eligible. It was intended to guard against the corrupt influences that might be brought to bear upon the weakness of human nature; and though the principle was not incorporated in the constitution of the United States, yet throughout the land, from the centre to its extremity, has been proclaimed the propriety of incorporating such a principle, in reference to the office of President of the United States. It was feared that the power confided to him, by the people, might be used in such a manner, as would be destructive of the very ends of justice, in order to secure a re-election, and it was proclaimed to the whole democratic party of the nation, that it was wrong in principle that the president should be re-eligible to office. I ask every man, is it to be believed that when Jackson proclaimed this sentiment, he meant to deny that the people were capable of self-government? Such was not the intention. Such is not the legitimate construction of the language he used. The principle has been asserted time and again. It is a principle which is dear to the democratic party of the nation, and it should be dear to the hearts of the whole nation. Let it not be disregarded here. What have you gained by making the judges re-eligible? Is it true we have no other men capable of filling those offices? Give your judges salaries commensurate to the important services to be performed; place them above improper influences, and then you will have what is so desirable in every community, justice administered without denial or delay. Why do you want this principle of re-eligibility? Surely not because you are afraid of depriving the people of the right to select the officers they may desire.

No such thing. You have created an officer to discharge certain duties, and you wish him to discharge them fairly and honestly. Is it wrong toward the people to protect them from those corrupting influences which would drag him down from the high position in which they have placed him? They will thank you in their hearts, should you have saved them from those corrupting influences.

I have thrown out these remarks, desultory as they may be, for the consideration of the committee. They contain truths that come gushing from my heart and that are sanctioned by my judgment. I have thrown them out because I thought it due to myself, and to the question. I know not whether they will find a response in the judgment of others. It is enough for me to say, in the language of that distinguished man, the elder Adams, amidst the storms of the revolution, on the very day when the declaration of independence was signed, and when he had placed his signature to that instrument, "while conscience claps let the world hiss."

There are some two or three propositions to which I desire briefly to refer—not for the purpose of discussing them, but merely to call the attention of the committee to them. I like the principle that is contained in the bill that was reported by the chairman of the committee on the court of appeals. I believe it a great conservative principle, the judges being elected as it is conceded on all hands they will be, by the people; and I, myself, am decidedly in favor of electing them. That being conceded, the great conservative principle starts up and strikes my mind with powerful force. What is that principle? You elect one judge from each separate district. If you have but one court of appeals, or rather of the court sit but at one single point, as for instance at the seat of government, and you have but four judges, and you and I, sir, come up from a single district with our causes to this tribunal, but one of those four judges will have been voted for by us, the other three will be wholly elected by others. And whether favorable to us or opposed to us, they will be wholly irresponsible to us, and the main reason which gentlemen assign for being opposed to the elective principle will be entirely swept away. I am therefore for the election of all the judges by the whole people of the state; and I believe there will be no difficulty in finding suitable men. I believe there is talent enough to be found in every district, and that men may be selected who are abundantly competent to discharge the duties of the office properly. I do not entertain a doubt on the subject. I am therefore in favor of this particular principle because I believe it is right in itself and conservative in its influence.

There is another principle engrafted in the report to which I give my assent, and do so from the necessity of the case. I believe it will be found to be the public sentiment. I believe that the people desire that that principle shall be established—I mean that the courts shall sit at different points. This is no new thing, sir, with me. While a member of the legislature I advocated the proposition, and the only obstacle in the way of carrying it out was a want of constitutional power on the part of the legislature. But I will

tell gentlemen with whom I agree as to the propriety of incorporating that principle, I am not sure but that it would be better to leave the constitution open, so that the legislature may hereafter act as it may be deemed advisable. When you have laid off twenty five counties together, you have got either by yourself or by the legislature to designate some point where the court is to be held; the question then comes up whether some of the parties would not rather come here than to go to some place in the interior. I will suppose the counties lying on the Ohio river. Take the lowest county and trace up to Louisville, and the question is whether they will not find it more convenient to come to the seat of government than go to the interior, with all the attending inconveniences of bad roads. I merely throw out to gentlemen this suggestion for their consideration.

There is another reason why it would be preferable to leave it open, rather than to incorporate the principle in the constitution, and it is this. Suppose that hereafter, you may wish to change the system, and bring back the sittings of the court to the seat of Government, gentlemen will perceive that it will be too late to make that change. They will have made a constitutional provision from which they cannot escape. There is another difficulty. I have said to you in all honesty, for I feel it, that I am for making a constitution that will be acceptable to the people of Kentucky. I feel that not only my character as a delegate to this convention, but that the character of the whole state is involved in it. It will not only be disgraceful to us if we make a constitution that will be rejected by the people, but it will be a disgrace to the state itself. We shall be a laughing stock to the people of all other states. The people of Kentucky have said we will change the organic law of the state, but after having assembled for that purpose, it was found that there was not wisdom enough in the state to frame a constitution. I want no such imputation as this to be cast upon us. And I want no such imputation to be thrown upon the state at large. Well then, I put the question in this form, do you not see that by incorporating this provision in the constitution, you may array a powerful party against that constitution? Does not every man see that you run the risk of destroying the very instrument that it is so very desirable we should protect and defend. But if you leave it to the legislature, can you not accomplish all that you desire in regard to this important matter? By leaving it open what do you do? You merely leave it to a majority of the people of the state to determine whether they will have the court of appeals brought near to their respective homes, or whether they will have it remain at the seat of government. Why not leave it to them to determine? Are you afraid to trust a majority of the people? Why, is not the very court intended as a safe-guard for the rights and liberties of the people? Why not let them decide whether the court of appeals shall be branched or not? That is the question which I submit for the consideration of this committee. You will lose nothing by it, because if the people want the court, they will have it carried to the districts; and if you incorporate it in the constitution, you cannot afterwards get clear of

it. It cannot weaken the constitution, if you leave it open; and you will, by doing so, avoid arraying a formidable party against you. This is a matter that ought to be looked to.

If it is not best to refer the whole matter to the decision of the people through the legislature, at least let such a provision as this be inserted, that the legislature may, when any district desires it, have power to direct that the court of appeals shall no longer be holden in such district. You may do this, and it will relieve you of the great difficulty which stands in the way of making this principle a permanent provision in the constitution.

Mr. PRESTON. I was glad that the discussion of the subject of the appellate court came up, and though it will seem that a great deal of time has been consumed, yet the great principles in the report itself will probably regulate the other articles in regard to the judiciary that will be subsequently brought before the convention. Various principles are embraced in it, but they have been so irregularly discussed that I am in some doubt what part of the bill is properly under consideration. I know that the amendment of the gentleman from Nelson, that the majority of the legislature should dismiss the judges, has been voted down, and if I understand the proposition of the gentleman from Madison, I conceive these questions to be within the scope of his proposed amendments—first as to the number of the courts, second as to whether the judges shall be elected by general ticket or by districts, third whether the court shall hold sessions at one or more places, fourth whether the judges shall be re-eligible, and fifth, whether they shall be chosen by ballot or the ancient *viva voce* system.

These I regard as the questions involved in the bill before us; but as they are too numerous to discuss here unless in a speech longer than I propose to make, I will allude to that portion of the bill only which contemplates the re-eligibility of the judges. On this subject I differ with the gentleman from Henderson as well as with others on this floor. I have been accustomed to attend with too much reverence probably to the lessons of experience which the past has given us, and am too much disinclined to differ from the settled course of things, to adopt with facility new suggestions as regards the mode of appointing the judiciary or to apprehend the full force of the objections levelled against the plan indicated in the report even when urged with all the eloquence which has distinguished the effort made by the gentleman from Henderson.

That the mode is novel is true, for throughout this confederacy, now numbering thirty states, there is not, so far as I am informed, a single member of it that has required such a feature in its constitution. In framing their organic law all have been moved by a similar desire to secure an independent judiciary; but none have deemed it necessary to insert such a safe-guard in their constitutions; and shall Kentucky then first undertake to do this, and to do it rather impelled by the eloquence of its advocates than by the solidity of the reasons urged? Or shall we adopt blindly and insert this feature without knowing whither it tends or what is its use.

I heard a part of the remarks of my friend

from Fleming (Mr. M. P. Marshall) in whose simple, truthful, yet strong and argumentative mind I have the utmost confidence, and in whom I can see a mental resemblance to his great kinsman, who so long distinguished the bench of the supreme court of the United States. But I see no valid reason advanced by the gentleman to whom I allude, to sustain this assault upon the report of the committee on the court of appeals. But it is asked, on the other side, what is the use of re-eligibility, and whether the independence of the judiciary will not be better secured by ineligibility than re-eligibility. Sir, there is no good ground why any faithful servant who has discharged his duties to the country and earned its gratitude, should be excluded from the subsequent confidence of his fellow citizens. This is the general principle, and if there is any exception to it it must be shown that it is necessary to secure the independence of the judiciary. This cannot be done.

From the first establishment of the government of this country, no such principle has been adopted in our state or Federal constitution, except as relates to the office of governor of Kentucky. The president of the United States, congressmen, judges and all other officers are re-eligible. The provision in our constitution in relation to the governor is the only precedent that I know to the contrary. Sir, the principle of ineligibility is founded on fear, and should only apply to those officers who are clothed with great powers—the president of the United States should possibly be declared ineligible. Why? The president of the United States holds the army of the country in one hand, and the navy in the other. He has thirty millions of revenue to be distributed among the officers of the government. He holds a veto on all the laws of Congress, and at this time he exercises as great power as any limited monarch in Europe. Is there then no difference between him and the defenceless judge of the appellate court? One possesses the patronage of thirty thousand offices, of salaries for these offices—has the third navy in the world under his control—and has an executive veto upon the representatives of twenty millions of people. The other wields no such patronage, controls no such power, the check of ineligibility, even if necessary to control an office of such vast powers, as the president is wholly unnecessary in regard to a judge. The gentleman from Henderson says, that the judge will be seen descending from his place mixing with the populace, seducing their affections, disturbing their judgments, and finally by a sort of reciprocal corruption, destroying not only his own independence, but the honesty of the people.

Mr. DIXON. The gentleman is mistaken. I did not say that he would destroy the honesty of the people, but that corrupt men would destroy his honesty, if he had any.

Mr. PRESTON. If it does not destroy their honesty then there is nothing to fear. If it does not destroy the honesty of the people they will have intelligence enough to rebuke any such attempts on the part of an electioneering judge.

But I will pursue the parallel which I would draw between the President of the United States

and a judge. Will the gentleman say that a judge can in fact ascertain who is to have an influence upon his election, or if he could, that it would be of much importance? Let us examine what this bill actually proposes to do. It proposes to divide this state into four great parts, and in each part to establish a judicial district. It is not a court of original but only of appellate jurisdiction. We find, as was stated by the gentleman from Montgomery, more than two hundred to one of the cases which arise in circuit courts never reach the court of appeals. A judge is appointed by the electors of a judicial district containing two hundred and fifty thousand souls, and has only one vote out of four on the appellate bench, when the court is organized. He has no clerks to appoint, no patronage to bestow, no army within his grasp, no fleet under his control, but he is simply an unarmed and powerless officer of the law—a man shorn of influence, but chosen by the people to sit and determine on their rights and their property. The statistics in relation to this matter, show that there are about six hundred cases in the appellate courts in one term, and that this number of appeals is taken from about thirteen thousand appearances in the circuit courts; which makes about one appeal in two hundred appearances. If so the chance that any particular individual's case will come before the court of appeals, is remote indeed. If it does, the judge will only have one vote in four, and that after the decision of the tribunal below. The assertion, therefore, that the judge would sacrifice his independence to secure personal support, based upon such remote contingencies, is contrary to every fair presumption. Is not the apprehension so remote that it may be called fanciful? But, sir, engraft this principle in your constitution and you destroy the whole theory of an elective judiciary—you blow hot and cold with the same breath. You say at one moment that the people are sufficiently honest, intelligent, and incorruptible, to elect their judges; in the next, that they are too corruptible to re-elect them. Put it on the ground that the gentleman from Henderson does—that is, that the judge might be corrupted by the people—then he should never be elected by the people. Admit the argument, and you admit that the judge, when he is thirty years old and first a candidate, is incapable of corrupting the people, and assert the next moment that he becomes capable after he has been eight years in office. I do not think that any investigation will show that there is any solid objection to the report on this account. No, sir, there are more real evils that will spring up from the ineligibility of the judiciary than from their re-eligibility. It is claimed that an ineligible judiciary will be honest, but let me ask the gentleman one thing—whether it depends so much on the mode of appointment as upon the character of the man himself. I believe that if a man is a good man he will be a good judge. If he is a bad man he will be a bad judge. If he is an independent man he will be an independent judge. If he is a servile man he will be a servile judge. The mode of the appointment will not alter the character of the man.

Well sir, if the gentleman's proposition was to go into effect and the election should fall on a

man so servile that he would sacrifice his independence, what would be the result? Would ineligibility make his character pure? No sir. A man of such a character would leave his docket encumbered with the most important cases, so that he might be employed in the same cases when he should come to the bar; so that he might obtain practice so soon as he should be excluded from the bench. And the fact would be that you would have an encumbered docket, and you would inflict an evil without obtaining a corresponding benefit. The eligibility of the judges has been permitted in every state in the union, and if we prohibit it now, it will be the first time that it has been done in this country. I have seen no reason why we should thus deviate from the practice of our sister states. We will not secure more fully by such a course that independence in the judges which is both necessary and desirable. The court of appeals is not so constituted that it can affect directly the people themselves. Even if we preserve the feature which is now engrafted in it, we shall sufficiently secure the independence of the judiciary, and meet the approbation of the people themselves. And if we place their salaries beyond the reach of the legislature we shall be enabled to carry out the great principles which are contended for by the friends of progress in every part of this union, and establish an independent elective judiciary.

The gentleman has given us a quotation from Shakspeare. He tells us in the language of Lear that

"Through tattered clothes small vices do appear."

And that the rags of the beggar are but a poor shield against injustice. But sir, if you let the poor man have the power of telling by his vote at the polls whether he believes his judge just or unjust, you will never hear of the rags of the beggar being a poor shield against the injustice of the judge. For myself I want to halt at no half way house in the election of the judiciary. Let us either have the judges appointed by the governor, or elected by, and responsible to, the people. Let us have no legislative election, but let us come up fully and fairly to the question.

In Ohio they have halted at the half way house. A distinguished gentleman yesterday gave me an account of the condition of the judiciary in that state. The judges have heretofore been appointed by the legislature. But the people are now seeking to substitute popular elections, and it will be done. We cannot, in my opinion, by any mode of reasoning, arrive at the conclusion that if the judges should be elected by the people they should not be re-eligible. There are no reasons for entertaining fears that the judges will be servile to the people, which would not apply with equal force if we were to render them ineligible. We should not, I think, Mr. Chairman, deviate from the established rule which exists in thirty states of this confederacy, without more cogent arguments than have yet been advanced.

On the motion of Mr. MITCHELL the committee rose and reported progress, and obtained leave to sit again.

LEAVE OF ABSENCE.

On the motion of Mr. DESHA leave of ab-

sence was granted to Mr. Talbott, till Monday next.

The convention then adjourned.

FRIDAY, OCTOBER 26, 1849.

Prayer by the Rev. GEORGE W. BRUSH.

LEAVE OF ABSENCE.

On the motion of Mr. GAITHER leave of absence was granted to Mr. W. N. Marshall to Monday next.

RESOLUTIONS.

Mr. TAYLOR offered the following resolution, and it was adopted:

*Resolved*, That the Second Auditor be requested to furnish to the convention a statement showing the whole number of parents and guardians, in the State of Kentucky, by counties, who have children between five and sixteen years of age, as follows: 1st. Those that have no property entered for taxation, and number of children. 2d. Those who are worth less than \$100 in property, and number of children. 3d. Those who are worth from \$100 to \$400 in property, and number of children. 4th. Those who are worth from \$400 to \$600 in property, and number of children. 5th. Those who are worth over \$600 in property, and number of children, for the year 1849.

Mr. HARGIS offered the following, and it was adopted:

*Resolved*, That the Second Auditor be requested to furnish this convention with a tabular statement of the receipts and expenditures, annually, of the government of the State of Kentucky, from the year 1823 until the end of the fiscal year 1849: showing the receipts and expenditures from each source.

PETITIONS—COMMON SCHOOLS.

Mr. WALLER presented a petition from sundry citizens of Fayette and Clarke counties, on the subject of common schools, which on his motion was referred to the committee on education, and ordered to be printed.

THE COURT OF APPEALS.

The convention again resolved itself into committee of the whole, Mr. HUSTON in the chair, on the article in relation to the court of appeals:

Mr. MITCHELL. The few remarks which I propose to submit for the consideration of the committee, will be addressed to the subject of judicial re-eligibility. This, although not the immediate question upon which a vote is about to be taken, is embraced in the series of amendments offered to the report under discussion, and because it involves principles of higher and greater moment than any other amendment proposed, is, I apprehend, the most important matter to be discussed.

I listened with the greatest pleasure to the gentleman from Henderson on yesterday, while addressing the committee on this subject. His stormy eloquence, to employ the beautiful and appropriate figure which he himself used, was to me like light bursting from a dark cloud. It

led my imagination captive, but it failed to convince my judgment. The positions which he assumed, if tenable, and the arguments deduced from them, apply with equal force to the election and re-election of judges. I regard the principle of re-eligibility as inseparable from, and identical with, that of the election of the judiciary. If re-eligibility be wrong in principle, it would, I conceive, be wrong to elect by the people judicial officers. In the examination of this subject, it will be necessary to go back and see upon what principles the proposed reform extending the elective franchise, so as to embrace the judiciary, is predicated. I will endeavor to show, that if it be right to make this proposed reform, it will not be right to stop short at the point which the gentleman from Henderson indicates as a proper terminus to it. I will endeavor to show that we shall be compromising a great principle in pausing at that point; and instead of obeying the popular impulse—instead of obeying the will of the people as expressed throughout Kentucky on this subject, we, by adopting the views of the honorable gentleman from Henderson, should be but making a concession to popular prejudice, which would contain in itself a compromise of the principles upon which we profess to act. That that form of government is best which secures the exercise of the greatest amount of power to the people, compatible with successful progress, is a postulate which I apprehend few in this country are disposed to controvert. There is no doubt a difference of opinion, and an honest difference of opinion as to the exact point at which the exercise of power on the part of the people, should terminate, and the exercise of delegated power should commence, or, in other words, when the people should cease to act by themselves and begin to act by their representatives.

In a government like ours, with a population such as we have, want of intelligence in the masses can in no event be alleged as a reason for withholding from them the exercise of power. To make such an assertion would be to deny the truth of that political maxim upon which our whole system reposes—the capacity of man for self-government. This, sir, is the atlas upon whose broad shoulders our political globe is sustained. To say that the people are the fountain of all power—that their wisdom, intelligence, and virtue are equal to any political emergency which may arise, and yet to deny to them the exercise of that power on the score of incapacity, would, in my humble judgment, be to perpetrate an absurdity.

Our political theory presupposes popular capacity adequate to the conduct and management of all the operations of government. But at the same time it concedes the necessity of representation—a necessity arising not from the want of intelligence on the part of the people, but from the impracticability, in many instances, of direct popular action. It is impossible, sir, with a population as great as ours, extending over so large an area, for the people, as in democratic Athens, to legislate primarily, and hence the representative feature from necessity is engrafted on our system. This great cardinal principle should ever be kept in view, that representation in popular governments is a concession



to necessity. And hence, therefore, whenever representation is carried beyond the point of necessity in a government which assumes to be popular in its structure, its practice *pro tanto* departs from its theory, and to that extent is a direct attack upon the capacity of the people for self-government. That the tendency of power is ever from the many to the few is a political proverb which has come down to us sanctioned by the sad experience of the world. The chains which bind enslaved nations are but so many links of power, stolen one by one from the popular grasp. Popular concession is the material out of which have been constructed the loftiest thrones that despotism ever reared. The only sure guaranty for the preservation of popular rights is the vigilant and continued exercise of popular power. As in the physical, so in the moral world, inaction is the parent of weakness. As our physical nature requires activity to preserve its vigor, so does our moral being, our political existence. The arm whose muscles swell with strength, if kept in a state of inaction shrivels away and becomes a thing of weakness. Even the tongue itself by disuse forgets its cunning, and the power of speech which indicates our kindred to divinity, is lost.

Out of the curse pronounced on man's first disobedience, by the beneficence of divine providence, grow the issues of human prosperity. When the lesson of activity is so impressively taught in every department of life—when we behold health and strength, yielding to the paralyzing influence of indolence—when we see intellect moulded in the god-like proportions of genius sinking into driveling inanity, are we not admonished that from the same cause our liberty may lose somewhat of its swelling proportions—may shrink into a shadowy phantom that shall mock the patriot's hopes. It is not, sir, on the disastrous battle field that a people's liberties are cloven down. Greece, it is true, had her Cheronea and Rome her Pharsalia; and although the proud note of the war trumpet which proclaimed ambition's triumph may have told that Grecian liberty and Roman liberty were no more, yet long before had it perished, expiring in the fatal embraces of popular inactivity. The liberties of a free people fall not by the sword. A nation's gratitude may mingle civic wreaths with the laurel that clusters around the successful warrior's steel-clad brow—the glittering cohorts of hereditary power may seek to trample the rights of man under the iron heel of military force—the sword of faction may leap from its scabbard—civil dissension under the guidance of unhallowed ambition may imbrue its hand in kindred blood—but unavailing are all the dazzling attributes of military glory, the fierce ukase of imperial despotism, the internal strifes that blood-stained faction may generate to overturn the liberties of a free people, so long as they are found vigilantly exercising the power which of right belongs to them. So long as this is the case we need not despair of freedom. Our institutions are now in their youthful vigor. Shall we pause, sir, till we sink into political decrepitude—until the vital energies of our government shall have been exhausted—until its recuperative powers shall have been lost? Is not this the propitious period to infuse the

great principle of popular activity into the institutions of the country, and thus build up its intelligence and its patriotism. The more direct control the people take in the management of their government the greater will be their interest in it. The exercise of political rights cultivates political knowledge, cultivates popular patriotism. The love of country, sir, exists no doubt to some extent every where. It is found amid the snows of Lapland—it exists on the arid plains of India—it dwells in the tent of the Bedouin—it is the only gleam of sunshine that cheers the dark fate of the Russian serf. But this love of place and of the associations connected with place is rather a social than a political feeling. Who that does not bow at the domestic altar around which the holiest and purest feelings of our nature cling—who that does not worship his own household gods—who that does not carry with him through all his wanderings a fond remembrance of the spot marked by the footprints of his infancy? This is mere love of place—alone engendered by early and intimate association. But patriotism, that high souled patriotism which soars above domestic affections, nestles no where save in the heart which throbs with the strong pulsations of freedom.

Now, sir, is the time, relying on the firm basis of popular intelligence, to rear the judicial superstructure with a boldness of architecture commensurate with the strength of its foundation. Now is the time for the people to resume the full power to which their intelligence entitles them. They have striden forward to the accomplishment of this object with a giant step, trampling as they went the dogmas which conservatism had thrown in their path. I am not unmindful, sir, that the subject of judicial reform has presented difficulties to those who from their patriotism and their wisdom are entitled to our highest respect. But sir, I am not to be deterred from carrying out what I conceive to be a great principle by the timid warnings even of those who claim to be guided by the light of experience.

According to the theory of popular government, which I have endeavored to state to the committee, the first inquiry which presents itself is as to the necessity of delegating power in the election of judges, for it will be remembered that representation is the result of necessity. This inquiry involves another question—the practicability of their direct appointment by the people. And if sir, direct appointment be practicable, of which I presume there cannot be a doubt, then any other mode of appointment is a departure, a practical departure, from the theory of popular government, and therefore a direct attack, if I am correct in the position which I have assumed, upon popular rights.

I am aware, sir, that those who object to re-eligibility as well as those who object to the election of the judge, hang that objection not upon the want of popular intelligence, not upon the incapacity of the people for making wise and judicious selections, but upon the baneful influences that are to be exercised upon the judge himself. They concede popular intelligence. They concede ability upon the part of the people to meet this emergency. They contest the propriety

of such a course upon the ground that the officer himself will become corrupt. Now I take it that these two propositions are the converse of each other. The objection overcomes the concession. The objection which goes to the conduct of the judge is in fact an objection to the ability of the people. Let us for a moment examine the question. If the people are capable of electing their judges, then must they be equally capable of deciding upon the manner in which the judicial functions have been discharged. The capacity to elect officers pre-supposes the ability to judge of the qualifications for office before appointment, and the manner in which its duties are performed during incumbency. The two things are inseparable. To say that the judge by courting the rich, by discriminating among suitors, by prostituting his office, can secure his re-election, is in effect saying that the people are so corrupt as to be conciliated by dishonesty; or else so foolish as to be gulled by it. If dishonest courses can secure the re-election of the judge, the same dishonest courses would secure his election in the first instance. The objection applies as well to election as to re-election—to one set of influences as to the other. If it prove that the judge should not be re-elected, it equally proves that the judge should not be elected. If it prove that the people are incapable of re-electing, it equally proves that they are incapable of electing in the first instance; and as I before remarked, it is but stating the same proposition in two forms. Besides the reasoning by which this objection is attempted to be sustained, if it can be established, makes a direct attack upon the whole elective franchise. It goes to show that popular elections are corrupting in their influence. It goes to show that popular responsibility is degrading and therefore no officer should be elected by the people. If the same judge be honest when he does not look to the people for a continuance of his official existence, and dishonest from necessity, in order to continue it, then the degradation of the officer is the result of the low standard of popular morals—a standard so low as to unfit the people for the exercise of political power.

Something has been said in relation to the independence of the judiciary, and we have been referred to England. Now sir, as I understand it, the independence of the English judiciary depends on no principle which is controverted in the report of the committee. Originally, the crown had not only the bestowal of judicial office, but that office was held at its will and pleasure. The king was a part of the government. He constituted the executive branch. He placed his creatures in judicial stations. They were dependent on his smile for the continuance of their official existence. The judiciary then became a part of the executive, and all its energies and powers were exerted to build up the royal prerogative. When afterwards, the judges held their office by a certain tenure, and were placed beyond the influence of the executive, it was declared that they were independent; and that is the independent judiciary of which Englishmen boast.

Now, it is proposed that our judges shall hold their offices by a certain tenure—for a certain term of years—that they shall be during that

time, independent of the power that created them, and of every department of the government, so long as they are faithful in the discharge of their duties. But, says the gentleman from Henderson, the only way to secure the independence of the judge is, to make him entirely independent of the power from whom he received his office. The crown, he said, in England, made the judge, and he was therefore placed above the influence of the crown. The people make the judge here, and he should be placed above the influence of the people. The honorable gentleman, in defining judicial independence, and reasoning as to what should exist here, from what exists in England, has certainly lost sight of the fact, that the English judge, although independent of the crown, which is but one department of the British government, still holds his office at the will and pleasure of the parliament, in which the sovereign power resides. It is apparent then that the judge, under our system, will be more independent than the English judge, for instead of a bare majority, two thirds of the legislature are required to evict him from office, and they are required to exhibit on their journal the causes of his removal. While the gentleman approves of this responsibility, he does not seem to take the distinction that here the legislature are but the representatives of the people, and should reflect their will, so that their action is presumed to be the people's, the power which is interposed between the judge and the people being a delegated power.

I therefore regard it as a new principle as applied to our political system, to say that the judge shall be entirely independent of the power that created him. All our officers are created directly or indirectly by the people; and they are held directly or indirectly responsible to the people. The question, so far as judicial responsibility is concerned, is to whom the delegated power shall be entrusted, because in this instance it is impossible for it to be held by the people and exercised by them. But, says the gentleman, the effect of re-eligibility will be to drag down the judge at the feet of the people. Why that was one of the great objects for which this convention was called. For my part I should say that the haughtiest nature that was ever stamped on the human soul could ask for office without humiliation or degradation at the hand of a free and enlightened people.

The gentleman indulges the fear that if re-eligibility becomes a feature in our judicial system, the judge will mount the hustings and that the discussions of private rights will become the medium through which public office is sought. Well, I do not perceive that that would not as well be the case if we permit the judges to be elected by the people as it will should they be made re-eligible. Enlightened public opinion must control this subject, and that is the only control, that is the only safe-guard we have for our whole political system.

Our institutions rest upon the intelligence of the people, which is the only guaranty for the perpetuity of free governments. He says, and says perhaps correctly, that it may occasionally occur that a bad man will be placed in high judicial station. Grant that it is so; it will not

be contended that, let the appointment come from what quarter it may, bad men will not sometimes be placed in high stations. This may occur in any state of things. A bad man placed on the bench to serve his own base purposes, whether he be re-eligible or not, will be tempted to employ sinister means to accomplish his sinister ends. I cannot perceive that re-eligibility will produce this effect. Besides, this very argument wars against the very principle on which, as I conceive, our whole system rests. If the employment of such means as these is to operate on the public mind, then the public mind has not the capacity to elect or to re-elect. Talk about the judge lending himself officially to influential men for the purpose of securing their aid. I ask you what is the number of the litigants compared with the whole voting population? Scarcely a tenth. And of this number how many would become the subjects of judicial bounty, and the creatures of the judge? Not a tithe of that tithe. And for every friend that is created there will be an enemy made. Favors cannot be bestowed on some without making enemies of those at whose expense they are obtained. Granting that the rich and influential will be favored by this corrupt judge, we all know, who know the character of the people of Kentucky, that the complaints of the humble and obscure will always find a listening ear, and a ready sympathy, and a spirit of indignation in the public mind that would trample under foot such baseness.

But sir, you prove nothing by showing that a bad man would go on to perpetrate his evil deeds. You must show that the good man becomes a bad one. It is necessary that this violent presumption be indulged before it can be presumed that evil will result from re-eligibility. Men that are good before their appointment will not be led to commit evil deeds without some strong and powerful motive. What then would be the motive? To gain popular favor and influence, and their conduct would be predicated on a presumption of popular weakness; and the belief that by corruption, and by converting office into an engine which should be made to effect evil to some and good to others, with a view to secure re-election, they could accomplish success. I say the whole argument is predicated on popular ignorance. If the people have the intelligence that is attributed to them they could see the influences which were brought to bear, and would visit, as they ought, upon the judges the indignation which they would merit. On the other hand, supposing the people to possess that intelligence and virtue which are requisite to make judicious selections, the judge looks forward, as the means of securing his re-election—to what? To the faithful discharge of his official duties. He regards the public as an enlightened tribunal, before which he is again to come; and he knows that unless he brings evidence to show that he has been a good officer he will be rejected. But shall we say that it would be impolitic to re-elect, but that it would be judicious to elect our judges? In the first instance they present themselves before the people who have to take them on their reputation. They are then untried; but the next time they present themselves their whole official course is known, and the

people are better prepared to judge. They have more material out of which to form a correct judgment, supposing they are capable of judging. But on the other hand, the officer who is placed in a judicial station, and looks to the end of his term as the termination of his official existence—who knows that let his course of conduct be what it may, there is for him no longer the hope of official life—who knows that he is to sink again to the popular level, from which he cannot, according to the iron rule of the constitution, arise, let his merits be what they may. I say what stimulus, what incentive is there to industry, to the building up of a high judicial reputation, to the acquisition of large judicial attainments—what stimulus is there? He may sink into indolence, he may neglect his official duties, and the result is the same. Sir, it was regarded by the inspiration of heaven as a curse upon man that he should labor. It is, therefore, a part of the constitution of man to be indolent. You have to stimulate him. You have to hold out to him inducements. Exertion is not voluntary. It is dragged forth by some powerful extraneous cause. Our holy system of religion is a system of rewards and punishments, constituted according to the nature of man.—Man by that system is held in check. He is constrained to pursue the path of rectitude. He is taught to walk in the ways in which he should go by rewards held out for good conduct, and punishment denounced for evil deeds. Yet we are told that re-eligibility, although it holds out rewards for faithful service, would destroy the independence of the judge, and therefore render him corrupt, and that by prostrating the judiciary at the feet of the people the crime would be soiled, the station degraded. In the language of Shakspeare, my friend from Henderson exclaims:

"Plate sin in gold, and the strong lance of justice hurtless breaks—  
Clothe it in beggar's rags, a pigmy's straw will pierce it."

This language might have suited the English court in the days of Henry the VIII, and his daughters the bloody Mary, the imperious Elizabeth. It may have suited the days when the English judiciary was the creature of the English crown, but it can scarcely apply with any force in this enlightened age, either to the tribunals of that country or this, nor can I think that it portrays the course of popular action in our country. Sir, if I wanted to excite the public mind—if I wanted to concentrate indignation on any object, I would charge that object with having perpetrated injustice, not on the rich, and the proud, and the influential, but on the man who wears the rags. Such is my experience of Kentucky character.

I have perhaps said as much on this subject as I ought to say. I have given my views in a very imperfect manner in reference to these questions. I conceive that the two are inseparably connected, and that they cannot be severed. If you say the judge should not be re-eligible, you say in fact that the judge should not be elected. It seems to be on all hands agreed that an elective judiciary will be established by this convention. I have endeavored to show that it will be in accordance with the true principle of a popular

government—that the people are to exercise the power because there is no necessity to delegate it. I have endeavored to show that re-eligibility rests on the same principle, and having done so, I shall close my remarks.

Mr. DAVIS. I am in very feeble health, and I have thought that I should take no part in the debate on this question. I will, however, endeavor if my strength will enable me to maintain the floor, in some measure to redeem the pledge which I have given. In coming to this discussion I regret that I do not possess my usual amount of physical health, but much more deeply do I regret the absence of that intellectual strength, which will enable me to vindicate my position, not only to the house, but to the country. I am happy to know from the published debate, so far as I have attended to it, that we all agree in one position; that is, that the judiciary department of the government should be able, learned, honest, and independent. Now, any system of appointment of the courts that will secure these great and essential ends of the judiciary, would be satisfactory to me; and if my reason could be convinced that the mode of popular election would secure to the country these most important and essential ends of government, I would withdraw the feeble opposition which I shall endeavor to present. But I go in this matter of an able, honest, and independent judiciary, for an essence, for a thing that will exist in practice and in effect, not for an abstraction or a theoretical ideal. I am not satisfied with the declaration of gentlemen, that they are pledged and devoted to such a judiciary as I have indicated. I want them to convince me that they propose to give to the country that judiciary, and that mode of constituting it, which will secure these ends. And it is because I am wholly incredulous as to the results of the system which the committee has proposed, and which I have no doubt the convention will give to the country. It is because of my utter scepticism in regard to the practicability and the aptitude of the system to its great ends, that I am induced to oppose it here, as I will elsewhere. The great improvement of modern political science and statesmanship over that of ancient times and the middle ages, is the division of the government into departments, and its distribution among various officers and classes of officers, who shall be co-ordinate, and who shall be a check against the encroachment of each other. These form a protection to the people, and to the rights which are reserved by the constitution for the people, and which are not at all intended to be given into the political scheme.

Now, the chief advantage of our American system of governments over all that exist elsewhere, and over all that preceded them, through the long lapse of political history, in my judgment, resolves itself into these two general principles. We, the representatives of the people of Kentucky assembled, ought to preserve and guard, with the most sedulous vigilance and watchfulness, these important principles, and if it be a matter of doubt whether any provision which we are about to adopt and incorporate into the constitution, or any mode of appointing the magistracy, which we are about to establish,

will jeopardise these principles, it seems to me that every member of this convention should feel it incumbent upon him to repudiate all such propositions. We have three co-ordinate departments of the government, according to the understanding of the country, and according to the constitution itself; a legislative, executive, and judicial department. We have been taught by the sages of the law, not only in our own country, but in that from which we sprung, and by all the experience of mankind, that that man or body of men, who engross all these functions and exercise them all in their own persons, is the government, and it is essentially and practically a despotism.

Now take the projects and schemes, not of reform, not of amendment, which seem to be engrossing the attention of this body, but of destruction and revolution, especially in regard to the judiciary, and adopt them in the new constitution, and you swallow up and engross all the departments of the government in the legislative department; you subvert and overthrow the judiciary, and practically take away that protection to the citizens of the state, which the constitution and the laws have provided for them, and I would go home to my people, and I would proclaim from the stump, and every where, that such a constitution was not worth their confidence nor their acceptance, and I would invoke them to reject it. We are asked, and particularly by my friend from Henderson, (Mr. Dixon,) who made us a most eloquent and forcible address yesterday, “are you afraid to trust the people? are not the people competent to do their own business?”

I answer in the most precise and unequivocal language, I am afraid to trust the people in all things, I am afraid to trust myself. The people themselves, our fathers, who had as much wisdom and patriotism as we have, acted on that principle in forming the instrument now under consideration, and which we are to say whether we will amend, or whether we will subvert. They adopted a constitution that was to be paramount not only to the legislature, but to the entire government, the fundamental law of government, the law of laws. They prescribed and defined the powers of the three branches. They erected limits and barriers, beyond which they were not to pass. They withheld expressly from the political scheme of government, great fundamental rights which they were resolved the government should never have cognizance of, and without which reservation our social fabric never could have been reared in that beautiful proportion in which it now exists.

I have said that the people distrusted themselves, that they were not willing to confide to themselves, much less to either the legislature, the executive, or the judicial departments, certain great and fundamental rights which they have declared in the most explicit language, shall not be the subject of governmental cognizance. Take the definition of treason, take your bill of rights, and read them carefully, and ponder upon them. Treason is to consist in levying war by overt act, to establish which, there must be two positive witnesses to the same fact. This was a great subject which those who framed the constitution were resolved to regulate, and they

have said that the legislature shall not infringe on that definition of treason, nor change the law of evidence upon which the charge shall be established. They have laid down great and broad principles of natural right in our bill of rights; they have assured to us the freedom of speech, the right to meet together to deliberate upon, and condemn the action of our popular authorities; the freedom of the press, the right to worship God according to reason and conscience, and the security of property and person; exception from *ex post facto* laws, and laws violating the obligation of contracts, and other rights fundamental and proper. They have laid down the mode, and a difficult and tardy mode it is, in which they themselves, the only source of power that exists upon God's globe, will amend the fundamental law, the constitution of the land. And what does the concluding article in the bill of rights say, in regard to these and other rights quite as important?

"To guard against transgressions of the high powers which we have delegated, we declare, that every thing in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void."

Now I ask my friend, and I ask the house, if the people were not afraid to trust themselves, if they were not afraid to trust that majority, which might get possession of the government, and control its action? The people have said that these rights are inalienable, and that they shall forever remain inviolate; that all laws contrary thereto shall be void.

Now, I will illustrate this important position, this great and fundamental truth, by one or two examples. Private property shall not be taken for public use without the consent of the representatives of the owner, nor without just compensation being made to him for it. That, in the last twelve months in one of its modes and forms, has been a most exciting question in this commonwealth. Suppose that every adult male in Kentucky should meet and resolve that emancipation should take place without compensation, and this in opposition to the constitution of the state. I ask my friend, and I ask this convention, what would be the legal and practical effect of such a resolution, adopted unanimously by the freemen of the whole state? It would be unconstitutional, and it would be void: and a judiciary, able, understanding the principles of the constitution, impartial, independent, would rise above the raging storm, and would not allow this great principle in the constitution to be violated, that the people of the state of Kentucky cannot wrest from any man his property, without just compensation being made to him.

I ask again then, if in this most important juncture, the people have not shown a distrust of themselves, and have not refused to confide the exercise of sovereign power, even to a sovereign majority itself? I will put another instance, and but one more. What was it but the principle of freedom of conscience, and the right to worship God according to the dictates of reason, that inalienable and invaluable right which produced the settlement of this North American

continent? Suppose now, that the hordes of immigration from Catholic Europe shall come on in such increasing waves as to constitute the balance of power in this Union. They are now coming at the rate of half a million yearly, and in a short time these tides may rise and swell, till they reach a million annually. How many such annual influxes will it take to enable a catholic league in times of excitement, to seize upon the balance of political power, not only in the United States, but of most of the states? Suppose that state of things should come upon us, and then in obedience to, and in conformity with the principles of a united faith, and despotic religion, they should resolve to put down protestantism, and that the infallible catholic religion should be the only faith, and that all should bow to it in sending up orisons to their Omniscent Creator? I ask if a majority thus derived and constituted, should meet in defiance of the constitution, and that great principle which secures freedom of conscience to the citizen, and should resolve that this should be the all-pervading religion of the land, what legal effect and validity would it have? None sir, none whatever.

Now sir, the wise men who framed this constitution, and the people who have lived under it so long, knew that we were all frail and infirm beings, liable to error and passion, to oppression and wrong; they knew that when such was the character of the individual action of mankind, that its aggregate action by states and nations must be of the same character. Why, there is not a man in this hall, however enlightened in mind, however pure in intention, however sublimated in morals, that does not err from day to day, and grievously err; how, when we all individually so err, can our collective action be invariably free from error, free from the infirmities that beset, and always will beset our frail and fallen nature. The people knew that they were liable to be misled and to commit error, to be led by faction to perpetrate wrong, and in times of high excitement to use their power oppressively on the minority. And it was because of this deep and philosophical knowledge of our infirmity and liability to err in all things in government, in the formation of a constitution, and especially in the enactment of laws, that they established this constitution, that they laid broad and deep the fundamental rights in the article of the constitution from which I have just read; and they proclaimed that all laws which violate these great and inappreciable rights should be held void and of no effect. Then I am not to be deterred from this position, by being asked if I am afraid to trust the people. I am afraid to trust the people, I am afraid to trust myself. But when you enlighten the people, when you give them facts, and time to deliberate, to act advisedly and with mature reflection, I bow to their will with as much submission as any man in this hall. But I am not for bringing about a state of things which shall deprive the people of those lights and that deliberation.

I think my position argues more confidence in the people than that of any gentleman who has spoken his sentiments in the course of this debate. The people know that they are the only legitimate source of power. Why when they

adopted the principle in the constitution, by which they bound themselves that two successive votes should be taken at a general election, upon the question of calling a convention, and a majority should be had each time before they could call a convention, did they incorporate that principle? They knew they had the right upon the instant and at all times to change, amend or wholly subvert our constitution and our form of government. But they reasoned, they reflected like moral and accountable beings, they considered that such would not be the best mode of changing that constitution, and that time and reflection would be necessary to inform them, even upon this great question. From such considerations they chose to prescribe for themselves the time which the existing constitution requires for its amendment. Why sir, the people want a government, not merely for the purpose of exercising their power, not merely to display to the world that they are the authors of the government, that it exists by their will, and that they have a right to change it as they please; they do not want a government with officers and with all consequent expenditures, simply for the ostentatious display of this power. They want it for their convenience, their security, and their protection. I have this confidence in the intelligence and virtue of the people in relation to this question and all other questions of government, if you can satisfy them that there is a mode of filling the judicial offices, different from that of popular election, by which a greater amount of ability, honesty, and independence can be secured, they will have the reason and good sense to cast the exercise of power from themselves, and to delegate it where it may more certainly secure those great ends.

We all agree as I before said, in one general principle, and that is, that we must have an able, honest, impartial, and independent judiciary. The question on which we differ is, as to the best manner of securing such tribunals. I propose to compare opinions with gentlemen in relation to two modes. I deny that it has been any where established by time and experience, that the principle of popular election of judges is the best or will secure the great purposes for which a judiciary is to be constituted. We have no such experience in our country, or elsewhere, to establish that political truth. I have met with men, democrats too, who have lived in Mississippi and have practiced law under an elective judiciary system, and of all men whom I have met they were the most thorough and uncompromising in their opposition to the system. Such a system in that state has resulted in the courts being deterred from holding their terms by the clamor of debtors, and in bringing upon it the foul and indelible dishonor of state repudiation. It has been adopted but recently in the state of New York. Certainly it has not been there long enough in operation to afford any thing like a practical test that is to be relied upon in carrying out our deliberations in the business of forming a constitution. Why sir, a system like that would require an age to prove it; we should have to run through two or three judicial cycles before we could say we had the lights of experience in relation to that prob-

lem. How had it worked, and how is it working in that state for the short period of its existence? In any other way than I could desire it to work in my state, if the principle is to be introduced here.

You propose to elect the judge by the people. What will be not only the manifest, but the inevitable consequence of the adoption in practice of such a principle? You will make your courts and your judges partizan and political, as certain as that the sun shines, or as the night succeeds the day, and you will draw these offices into the absorbing maelstrom of political partizan politics. Gentlemen hug to themselves a contrary delusion. But we all know the people are wholly divided, into two great political parties. The candidates for these offices will not have the virtue and self-denying capacity to hold themselves aloof from the scramble of party politics. In my judgment, men never deluded themselves with a greater fallacy. Your system, in a short time after the judges are to be elected by the popular vote, will inevitably force the selection of every candidate for a judgeship from political partizans; indeed there will be none others from whom to select these candidates, and the very same means which fill other political partizan offices will be resorted to, and will fill the office of judge. We recollect that about two years ago the first election was held for supreme judges in the state of New York. When the two parties made their nominations for supreme court judges, Mr. Gardiner received the nomination of the democratic party, and he being an anti-renter in principle, that party took him up and voted for him, and he was elected, running ahead of his ticket some twenty thousand votes. What power and influence gave him such a great majority over his associates on the ticket? It was believed beforehand that if elected to the supreme bench, in that high judgment seat he would be anti-renter, and would decide against the rights of the landlords. We recollect a few years ago, that we sent a commission to the state of Ohio, consisting of two of the most talented and prominent men in Kentucky, to endeavor to have re-modeled the laws of Ohio for the reclamation of fugitive slaves. This mission produced the passage by the Ohio legislature of what was called the "black law." The subject excited the people of that state, and divided them into parties. An abolitionist became a candidate for the office of judge before the legislature of the state, and he declared beforehand that he regarded those laws unconstitutional, and if elected would declare them null and void—and it was upon this previous declaration of principle, that he was supported and elected to the office. But what is going on in the state of New York at this time? New York—the empire state as she is called—great in her population, in her resources, in elements of wealth, and national power, and great but most mischievous in the example she sets to her sister states, and in no example more mischievous than in the constitution that she has lately adopted—what is going on in that great state? I read from the New York Evening Post an account of what is doing in the second judicial district:

"The judicial convention in this district met at Newburgh on the 11th inst., and nominated



' John W. Brown, Esq., vice S. B. Strong, whose term expires."

I have served in congress with one of these gentlemen, and I suppose my venerable friend (Mr. Hardin) has served with the other, and we both know that Strong is a man of greatly more ability and legal attainment than Brown. And on what considerations is Mr. Strong now superseded, and another democrat brought out to fill his place? The Post says:

"A more acceptable nomination could not have been made, either to his district or to the state. Mr. Brown is one of the first lawyers at the New York bar, and enjoys the entire confidence of his professional brethren. He is, besides, a man of unwearied industry; has been the architect of his own fortunes; was honored with a seat in congress for two successive terms, and was one of the most efficient members of the constitutional convention of 1846.

"His antagonist, Mr. Hasbrouck, also of Newburgh, is better known as a politician than a lawyer, and will not probably receive the entire support of his party against a candidate so desirable, in every point of view, as a judge to the people of his district."

I make this declaration without regard to politics—be he whig or be he democrat—keep your political partizans out of your courts, as you would keep a pestilence from this hall. But the cause for the overslaugh of judge Strong will appear in the continuation of the extract:

"The following very appropriate tribute was paid by the convention to the Hon. S. B. Strong, whose term of office expires this winter.

"Resolved unanimously, That Hon. Selah B. Strong, whose term as justice of the supreme court will expire on the first of January next, has discharged the duties of his station with pre-eminent ability, and to the entire satisfaction of the members of the bar, and the people of the district. That nothing but the peculiar situation of the district, and the location of three judges in a single part of it, has induced us to nominate another person to fill his place."

What was the controlling consideration then? Not talents, not legal attainments, not impartiality, not integrity, not every talent and virtue that can adorn the judicial bench, but a favorable local position gave the inferior man more strength, and therefore he was selected by the convention, to displace a vastly superior man. Availability! But this is only one of the districts. I read from the same paper:

"JUDICIAL NOMINATIONS.—The democratic candidates for the supreme court in the eighth judicial district of the state are as follows."

The democratic candidates for the supreme court! A court that supervises the legislation and the action of the executive of the Empire State—that declares what is law, and what is not law—that secures to the citizen his life, his liberty, his reputation, and his property—this august and all powerful tribunal, that ought to be a type of divinity itself, as much as frail and erring man can be—how is it to be selected? By the meeting of democratic and whig cabals and juntos, and the bringing forward of men, not for their virtue, intelligence or legal attainments, but because of their political popularity and availability. And what do these cabals do? They

nominate upon strict party and partizan grounds, eight candidates under the name of the democratic candidates for the offices of supreme judge in the Empire State of New York. What a spectacle!

"The democratic candidates for the supreme court in the eight judicial districts of the state are as follows:—District No. 1, Samuel Jones, of New York; district No. 2, John W. Brown, of Orange."

Mr. Jones is an able man. I am informed that Mr. Brown has received the nomination of the two segments of the democratic party, the Barnburners and the Old Hunkers. They have settled their family quarrels, and the two parties after living separate a while, have done away with their partial divorce, and have got together again, and are living in tolerable harmony, I suppose. But before that was effected, Mr. Brown received the nomination of one section, and now he receives it from the other. That is not all—the Anti-renters—powerful and determined in purpose, casting their votes and exerting themselves in all the elections as a unit, probably hold the balance of power in some of these judicial districts, and it becomes a matter of great party interest, with both parties, to enlist the Anti-renters in the support of their cause and candidates. The Anti-renters made efforts, and I believe they succeeded in getting such pledges and assurances from Mr. Brown, as Mr. Young, the whig candidate for governor, and as Mr. Gardiner, the democratic candidate for lieutenant governor, gave them at a former election. The consequence is, that the three parties unite in the nomination and the election of Mr. Brown is placed almost beyond the power of fate itself. The third district has nominated Henry Hogeboom, of Columbia; the fourth, John Fine, of St. Laurence—whom I have the pleasure to know, and who is a very worthy and intelligent gentleman—the fifth, Joshua A. Moore and Robert Lansing, of Jefferson; the sixth, William H. Shankland, of Cortland; the seventh, Theron R. Strong, of Wayne; and the eighth, Nathan Dayton, of Niagara. The nomination in the fifth district was made before the re-union of the Barnburners and the Old Hunkers—and of these two sections of locofocoism I do not know which bears the best name. The editor says:

"The nominations in the fifth district were made before the union of the democracy in the State was completed.

"We presume the necessary steps will be taken to present but one candidate there. The district is strongly democratic, having given a majority of over ten thousand against Taylor; and it ought not to be lost by divisions."

Now I ask any man here if he is so credulous as to believe that these offices of judge, under our proposed system, will not become politically partizan? And if they are to become so, what are to be the inevitable consequences but inefficiency, degradation and corruption? What office is there in all America—in any state or territory within the United States, that is filled by the popular vote or by an electoral college of any number, but what has been thus degraded and become politically partizan in its character? How is it with your President—with your members of congress—with your governors of the states and

state legislators? How is it with your county courts—your coroners and petty constables? All have become political partizan, all have been degraded into this sink of corruption and iniquity, and all are soiled more or less by its filth.

How can you expect to preserve the ermine of a judge pure and uncontaminated when it is dragged into such an association? Never, never! You might as soon expect to find chastity in a brothel. How is it that your political and partizan offices are filled—and how is it that these judicial offices will be filled when they are degraded to that character? Go to some of the districts now in my mind, and you will see partizan leaders, months before the election organizing, so as to make perjury, and subornation of perjury, inevitable. You will see sums of money scattered broad cast for purposes of bribery and corruption, and of buying the elective franchise itself—the highest prerogative of political sovereignty that can appertain to man. Go to the stables and the barns—contiguous to the places of voting a few days before the election—and you will see debased men herding together like cattle, drinking and carousing, fiddling and dancing, and in their revolting orgies, violating the Sabbath itself. You will see \$50 and \$100 as publicly paid for votes as for a horse in open market, and all for political partizan victory. You will see your partizan leaders—your high priests of democracy and whigism—passing their slogan and their war cry, their henchmen and followers, calling out their forces and preparing for the conflict, and making every appliance that can be devised, for the purpose of accomplishing their ends. Think you not that the sacred ermine of the judge will thus be brought down to degradation and infamy? It is so in New York, and it will be so in Kentucky, whenever you make these officers elective by the people. One thing is certain, the people are about as often mistaken and abused, cheated and defrauded out of proper men in electing to political offices, as otherwise. I imagine that the actual statistics upon this subject will present at least one half unfit from ignorance or want of capacity and principle, or some other cause.

The same causes that bring such a proportion of unfit, inefficient and improper men into your purely political offices, will also operate upon your judiciary. Their fixed salary and their longer tenure of office will aggravate this state of things, as to them. But we are answered again by the cry of the demagogues, "are you afraid to trust the people with the people's business?" I say if the people's business can be better done by agents selected by them and directly responsible to them, the people themselves will not only sanction, but will require you to trust their business—not to themselves, but to those agencies. And here I will say to my respected friend from Henderson, that upon this point I have not the remotest intention to apply my remarks to him, but to one not present—a native red-republican, a natural born, constitutional, inherent red-republican, of which party I am not. That there are some functions of government which can be better performed by agents appointed by the people, than by the people themselves, and which ought to be entrusted to such agents. You cannot get the people together to make laws,

acting in general assembly. It is physically impossible. But if there were small communities, such as Athens, or the republic of ancient Greece, or the republics of Italy of the middle ages, and if it were possible to assemble the body of the people for that purpose, a few able, experienced, and discreet men, properly selected by the people, would be better fitted and more competent to devise laws than the people themselves. If it were possible to get the people together to sit in judgment, and to apply legal and constitutional principles to the multitude of cases that come before the judges, it could be better done through the medium of judges, enlightened and virtuous men, than it could by the body of the people themselves. But it is said the people elect their president and governor, and why should they not elect their judges? The people do not elect a foreign ambassador, a secretary of state, or a commander of their armies, and if they had had the power to elect the commander of the army to take charge of the late Mexican war, the results of which shed so much glory and lustre upon the American arms—not upon the American government—but upon the American soldiery—who would have been probably called upon to lead our armies in the conduct of that war? Where would have been the hero of Buena Vista? The man whose valor, and whose military genius created his own fortune, a most brilliant one, in one campaign. Where would have been the hero of Chippewa and Lundy's Lane, whose military genius conceived and executed in this Mexican war, one of the most brilliant campaigns on record? Even the immortal Scott would have been saved the work, and his country would have lost one of the brightest pages of her history, the record of the greatest of modern campaigns, from the castle of St. Juan de Ulloa to the city of Mexico by the selection of another and less able military leader. It is in the nature of things, that there should be an inherent irremediable unfitness and impropriety in the people electing such officers as these. That unfitness is much more palpable, and applies with much more force to the office of judge. Gentlemen say we live in a progressive age. I am not a very old man—not so old probably as I seem to be—I am not a sexagenarian at any rate, but still these modern wiseacres would persuade me that I am behind the times; that I do not keep up with the intellectual improvements of the day, and particularly in the science of government; that although I studied in the schools of Washington, of Hamilton, and of Jefferson, and of the sages who formed our institutions, that still I am a vast distance behind the advancing political sciences of the day.

Now there are some things that cannot be improved, among them are the process of procreation, the Lord's prayer, and some of the fundamental and immutable principles of our constitution, and I say that the man is a novice himself who attempts to prove and establish that I am a dotard and behind the wisdom of the present generation, because I will not repudiate great principles like these. When you put your system in operation, how will you elect your judges and who will elect them. I have seen it stated as a political axiom that the independence of the judiciary is the assurance which the sover-

eign of the state gives to its justice against its power. This is a great principle in our system, and I will examine the proposition a single moment. The constitution and wise and just laws under it, are the essence of free institutions and of true popular liberty. What is it that constitutes liberty? It is not the power of doing what we please; but it is the security which good institutions and just laws give. The rights of life, of liberty, of reputation, and property, are assured to us, by our constitution and our laws, and this is American liberty. This constitution and these laws are not self-acting and self-executing machinery. The shield of the law is said to protect the citizen, but how is its protection secured to him? How is it then with the humble man, and how does it become a panoply and security to him? It is by the intervention of judges who are learned, who are independent, and who are honest. If you have not a judiciary so constituted, you might as well have no laws, for the security and protection of our essential rights is only to be had through the medium of courts, and without judges who have the ability and the virtue to apply those laws, the laws might as well not exist—indeed they do not practically exist. We all concede this truth; how shall we make it practically good to the country? How will you give assurance to the people that they have such laws, and such tribunals thus to administer them, because it is not enough that we provide and pass laws, it is requisite and necessary that the people should have full confidence, full belief and faith that they have such laws and such tribunals to administer them, but you never will attain this in my judgment by means of your courts elected by popular vote. We all concede that our judges must be honest and independent. How are you to make them independent? They must be able and learned in the law; if they are not, they cannot be independent, because they will have to lean upon the intellect of some trusted lawyer, who will be called upon to guide them in their dark and bewildered path. Ability and learning in a judge is just as necessary as virtue, integrity and impartiality. The history of political officers, and you propose to make the judiciary a political office, proves, that in a majority of cases at least, this requisite, ability and learning, will not be secured for the bench *as it is not* for other descriptions of offices.

In the great state of New York have we not seen that these requisites are not the touchstone; that they do not guide those who make the nominations, and who mediate, at least, confer the appointment itself; that they are not the motives which control the action of those cabals and conventions that nominate the candidate for judge? They look to availability, to a man's popularity, to the number and activity and power of his connections, to his wealth; to his golden coffers, and to his disposition to spend and scatter their contents for the purposes of corruption. They will pass around the party watch-words, and in bringing their candidates into the field, they will invariably have whig and democratic candidates for judge. Who will fill these offices? The men that can get the nomination of the convention, of the intriguing and corrupt cabal that bring out the candidates and present them to the voters of the district. They will succeed,

and they alone. Is it not so in offices purely political? And if it is so, is not the conclusion inevitable that it will be so in relation to the judges, when you make them partizan political officers? Now my democratic friends may answer me on this branch of the subject, by saying that the whole of your judges now are partizan judges; they are whig judges. I am sorry that all of them are. It is this total interdiction and exclusion of the democratic party from these offices, that has given this question of electing the judges by the popular vote its strength.

If the democratic party always had had an equal or just share of these offices, and if election to them by popular vote had not been recommended to us by the example of New York, this question never would have existed here in its present imposing strength. You have seen the powerful argument that this exclusion of their men of talents addresses to their party. Here is our party, constituting nearly a majority of the people of Kentucky, possessing an equal amount of intelligence, virtue, and fitness for these offices, and are we not inexorably excluded from them under the present system. That system is unjust and oppressive to us, and therefore let us overthrow it. And the rank and file have marched with their leaders and are ready to overthrow such a system and substitute any other that promises them a fair proportion of the honors and emoluments in this department of the government. I deny that the people of Kentucky ever demanded an elective judiciary. I deny that they now do it. I say if this question is fairly made and ably discussed in every county and district in the state of Kentucky, the people themselves will sustain a contrary principle, if you will hold out to the democratic party a system that will give them a just and equal share of these offices. How then did the question acquire this strength? Because the country was divided into two parties, each party zealous and anxious for the patronage and power of the government rather than for the success of its principles and the great practical benefits which they believe are to flow from those principles, and consequently determined to take no position to jeopardize their party strength. The democrats go for change, because change is favorable to them. The whigs, because they think that their malcontents, with the democrats, will become a majority, and they are determined not to be left on this question in a party minority, and for that reason they fall in and swell the multitude that is ringing this cry for change in the judiciary over the state.

Now, what do I propose? I propose to avoid the evils, the great, inevitable, unappreciable evils, that cannot be too much deprecated, which must result from this system of electing by the popular vote. And what is my plan? I have to speak of it in its application to the circuit courts also, as in that connection it attaches itself necessarily to the court of appeals. I suppose our friends, the democrats, as a general rule, will only expect to get the judges in districts in which they have the majority; and it is fit and just that they should there have them. I imagine they do not expect, and probably all of them do not desire more; but whether they do or not, I presume they

will hardly get more as a general rule. Well, how do I propose to organize the courts and to appoint the judges? You may call them circuit or district courts, or whatever you please, but you divide the state into districts. I propose to constitute the members of the house of representatives of the legislature, from each district, into an electoral college, and as soon as the legislature convenes, the seven, eight or ten men constituting the representatives from a district, shall get together and form an electoral college, whenever there is a vacancy in the office of judge in the district, and shall name two men to the senate. The senate shall nominate one of them to the governor, and he shall commission him as judge of the circuit or inferior court of that district. In this way, ten, fifteen, or twenty judges, as may be decided upon, will be selected. When the court of appeals is to be filled, the governor shall select from among the circuit judges, or such persons as have filled that office, a sufficient number, and shall nominate them to the senate, and by and with their advice and consent, he shall appoint them to that high station. But he shall be limited and restricted to only such persons as are or have been judges of the circuit or inferior courts. These inferior courts shall be filled, in the mode and on the principle which I have described. How is that going to work? The executive branch of our government is rather in low repute now. It has been cried down, till it has lost the popular affection, and not only that, but the system of the government itself—the constitution—has been cried down. And gentlemen who thus assail the executive, say there have been great abuses in the exercise of its discretion and power.

I will concede that there has been at least some abuses, but not so much as there has been on the part of the legislative branch of government, though more I admit than there has been on the part of the judicial department. You cut off all agency and possible abuse of the executive power in filling the inferior courts, and upon whom will it be devolved? Upon the members of the house, men chosen by the people for whom the judge is to act, and who are most interested in having proper men to be their judges—representatives who for their intelligence and knowledge of public men, and business, will be chosen by their constituency for this in connection with other high duties. Would not they select proper judges? They would know to a reasonable extent all the men in their several districts fit for the office of judge, while eight tenths of the people of the district do not and cannot have such knowledge of men. The quiet of the profession and the seclusion of the law library leads the very men who are best qualified to fill the office away from the vortex of politics. The best men especially for judicial offices, are not mixing in political affairs, they are away from them, calmly pursuing their legal studies, improving their minds and cultivating a system of moral principles and moderation of character, that eminently qualifies them for the discharge of the duties of the bench. The people, out of their particular counties, are generally strangers to such men. The men whom they send to the legislature as their representatives would probably know all such men in their districts. Those rep-

resentatives will in most cases name two men of the party in a majority in their districts to the senate, and the senate will nominate one of them to the governor, who will commission him as a judge. In this way the popular voice of the district would be represented, and a man of the same political sentiment with the majority would be their judge, and he would in all probability be the ablest man of their party in the district. By this mode what an incentive would you offer to the electors, for choosing their best men—a prospect of ultimate promotion to the bench of the appellate court. They would look forward to the time when a limited term of office in that court would bring about a probable promotion, and they would select men of the first legal attainments, fitness and capabilities, with a view to promotion to that high station. When the judges came to fill their stations in the circuit courts, they would know that within the course of seven, eight, ten or twelve years there would be a periodical series of nominations to the appellate bench, and these nominations would be restricted entirely to themselves, and the few who had filled their offices. The most industrious judges, the men of the most ability and fitness for the office, would in all probability be called to fill the higher places. What powerful incentive do you offer to these judges to withdraw entirely from the turmoil of politics, to appropriate their talents, their time, and their energies to the exclusive study of the law as a science, and the improvement of all the necessary qualities that enter into the character of a great judge. I ask you if this system would not inevitably work to the improvement of our judiciary, and to the encouragement of application and industry among the circuit court judges, by holding out to their ambition a reasonable prospect of reward and promotion? Look at the principle where it is operative in the general government. I propose a line of regular promotion in the courts. We have that principle acting from the foundation of our government in its military and naval services. But for the existence of that principle, and the emulation to which it gave rise among our naval and military officers, Scott himself never would have been fitted to have planned and executed the brilliant campaign which throws a halo of glory around his name. You bring the principle into our courts, and you secure thereby in the legal profession, the same results which vindicate it in the military and naval professions.

But I have a few other cursory remarks as to the defects of this system of electing judges. As I said; the people would not select their judges, but a few active and intriguing politicians, who manage the conventions and political caucuses, and get control of the political parties of the district, would direct the whole affair. Yes, in a judicial district, a half dozen men would control the nominations, and thus decide who should be judge and who should not. I know it is intended to limit the tenure of the judicial officer. I am in favor of that principle, and every evil of the existing judiciary system, which requires correction, in my judgment would be corrected by its introduction. And so far as we innovate beyond that, it is wholly for mischief. You bring down the terms—say

of the appellate judges to eight years, and the circuit judges to four or six years. Now the men who are nominated to office will be elected and placed there by those who make the nomination, because the candidates so nominated will certainly and inevitably receive the support and entire vote of their party. Whoever does this work of nomination therefore will essentially and practically make the judge. And who will do it? Not the people, not the mass of the voters, but the political wire-workers, the jugglers, the active electioneers, the enterprising, the bold and the unscrupulous political managers. They will usurp this power of nominating the judge, and in that way they will dictate to the people whom they shall elect. Think you not the man thus nominated and elected will not know who put him in office—that he will not “remember his creator in the days of his youth?” And if you give him a short term, think you not that he will look to the power, to the men, ah to the man who placed him in office for the purpose of securing a renewal of his term? Why just as certain as destiny.

Under the existing system a judge is appointed by the governor and senate. He feels the sanctity of his office, the purity of the ermine which he figuratively wears, and he with draws from politics, stands aloof from active partisanship, and becomes a non-combatant in this war for political power. His independence is assured to him by a life tenure. But when candidates are brought out as the whig and democratic candidates are, nominated by whig and democratic conventions and cabals, and a nomination is equivalent to an election, and that nomination is made and decided by a few, and the judges then go into the canvass, and in defiance of the resolution and purpose of my friend from Henry, (Mr. Nuttall,) make speeches from the stump, mingle with the people, visit from house to house, draw themselves into controversies, declare themselves opposed to black laws or similar questions, when they go into pot houses and grogeries, and come reeking from the brandy bar to the bar of justice—what sort of administration of justice will you have? Will not its pure streams become contaminated and corrupt, defiled and polluted? Who is there that wants such streams of justice to flow through the land to desolate the sacred rights of life and liberty, reputation and property? Do you want your courts to be thus constituted, and made the supervisors of the government of the country, to set limits to the exercise of executive and legislative power—yes, to stand as a barrier against the sovereign people themselves, whenever they seek to invade great and fundamental principles, as those contained in our bill of rights? What do the sovereign people say in relation to the judges? We elect them as a defence and a bulwark of our justice, against our power. What sort of security would they be when a half dozen intriguing and corrupt political managers in a district give his office to the judge, when he has a short term, and when he is looking for a renewal of that term, to the men and power that placed him there? He would become a suppliant tool, and submit his own mind and his own intellect—if mind and intelligence he had—and his own will,

impartiality and virtue to the interests, the caprices, or the passions of the men who placed him in power. The system is corrupt in its essence and nature, and in its inevitable results, and you might put pure men in it, but you would necessarily in most cases debase and corrupt them.

I will give you another instance if you please. I have heard of a gentleman who has instituted in this state, a thousand actions of ejectment for land, and I know other gentlemen who claim thousands of acres, worth hundreds of thousands. The election of a judge is coming on. We all know, who are acquainted with courts of law, the weakness of the courts for the purposes of self-defence. We know also the capacity even of circuit or inferior judges, for mischief, aggression and wrong on private rights, and whenever there is a partial or corrupt judge, he may, in many cases, suppress and pervert justice. There is a vast deal confided to his discretion, especially in making up bills of exception, through the medium of which his decisions are submitted to the superior court. We all know that when circuit judges become so corrupt, and debased as to pervert and prostitute their power, they may in this way subvert justice. An election is about to take place in a judicial district—these one thousand ejectments are filed, or suits are commenced, each involving some two or three hundred thousand dollars—and there is a democratic and a whig candidate—something like an equal division of parties in the district—and there is to be a severe and doubtful contest. I tell you there are many of the districts, where ten thousand dollars of gold would carry the election, and enable the man who had a large interest at stake to place his creature in the office of judge. Give the candidate a short term, and submit, not to the people, but to the cabals and managers, the question of his re-election, and you expose him to this influence. From the mode of his constitution, the tenure of his office, the uncertainty and insufficiency of his salary, he is weak, and is known to be weak. He that is suspected is liable to assault, or she either; and he or she either, who pauses when assaulted, is lost, and I tell you that these men who have such immense interests depending on the decision of these courts, will make the approach, and many judges will pause and sell themselves too. And they will know beforehand, from which of the candidates they can expect most. There are men in this state, having suits in the courts, and interests large enough involved in them to authorize that expenditure, and who would make it judiciously and effectually too, to carry the election of a judge, and place his man and creature in the seat, to exercise not only the justice of the sovereign people, but the mockery of that justice which should be an emanation of the divinity itself. And are you going to drag down the judiciary system to that depth of degradation? I give you another example. My friend who sits before me, (Mr. Hardin,) who now has the frosts of sixty-five winters on his brow, has an intellect as vigorous, comprehensive, active, and daring as any of which I have ever had knowledge. Through his life, he has always exercised, and always would exercise a

vast influence, the influence of mind, of great and towering intellect over inferior minds, the influence of an iron will and purpose that never sleeps, over a will and purpose more feeble and enervated. In a canvass for judge, the support of my friend would control the election, as certain as that he would give his favorite candidate that active, energetic, and all-powerful support he gives to every cause he advocates. When he places his friend in office, and practices in every court in his district, I ask you, if my friend would not have a more favorable ear in court than the man who opposed the judge? By the present mode of appointment, a governor who has made a judge, having a suit in court, would before him, in a majority of cases, have decidedly the vantage ground against any adversary whatever. And the general safety of suitors in court, is in the fact that the governor is not the opposing party; but under the elective system, those who make the judges, would at all times, and in all courts, be parties litigant or their advocates and lawyers. And it would not be in human nature for the judge to escape from their thralldom.

When political parties nominate party candidates, and on party views and party considerations sustain and vote for them, and when there has to be borne the heat and burthen of many a long and fatiguing day in the canvass of one of them by his political friends, would not his party, when he came upon the bench, exact a return from him, and require him to submit himself to their interests and purposes and passions so far as he could, without the prospect of punishment—and he might so administer the laws within that pale to a most fearful extent. It is so with all other officers, and it would be equally so with the office of judge. Suppose an election in a judicial district, if you please. We have just passed through an excited and violent gubernatorial, presidential, or general canvass, such as has often characterized the state of Kentucky, in which men array themselves as it were, in hostile strife; and every angry passion in our nature is aroused, and every power of the intellectual and physical man is brought into requisition. The parties meet, discuss, and bring up voters to the polls, and every appliance of bribery, corruption, or intimidation is used. In the course of such a contest as this, a private brawl arises, and a whig and a democrat meet in mortal combat, and one of them falls. Does not his case in the criminal court immediately become the cause of his party? and think you not they will require their judge to become the instrument in shielding and saving the man who crimsoned his hands in blood to advance the interests and secure the success of the party? But I have named as yet, a small portion of the disorders and deplorable consequences which this monstrous power of electing judges by the people would necessarily bring with it. To have an able judge, you must necessarily have an able man for a candidate. If you adopt the system, in my humble judgment, they ought not to be re-eligible. The judge, if not able, ought at least to have the sustaining principle of official independence and the purpose to discharge his duties solely with regard to his oath, and the constitution and laws, and not with reference to

the chances of re-election. If you render him ineligible, you ought to give him a longer term—ten or twelve years at least—because you will not get a man of second rate talents and legal learning to accept the office for a term of four, six or eight years. We all know, those of us who are lawyers, that when a man abandons his practice to take a seat on the bench, he loses it, and when he returns to the practice again it takes him years and years of painful toil and labor to regain it. Men in full and lucrative practice, and such a practice have they who are competent in ability and learning to be judges, will never consent to give up that practice for a short term on the bench. They would know full well the degrading means to which they would have to submit to secure election and re-election, and often as ruinously expensive as degrading. And men in any degree qualified could not be induced to take the places for short terms. Such as would act otherwise, would want the talents and attainments to get business as lawyers, and they would not possess one of the high qualities of a great and virtuous judge. To secure the services of men even remotely approximating to the requisite amount of mind, of law learning, of independence and rectitude, you would have to give them, both in superior and inferior courts, long terms—ten years at least. But whatever be the length of the term, men of the best ability, and of the highest qualifications and qualities for the bench, will never submit themselves to arduous, doubtful, and debasing partizan political canvasses, with all their debasing and revolting concomitants, to become judges; and yet this will be the one impossible condition upon which the place is to be won.

And when your courts are filled, as they will be, with party hacks, without talents or legal attainments, poor and needy, looking to their salaries for bread and to party or a few party leaders or powerful and influential men for a continuance of this bread—low and grovelling in mind, depraved in moral sense, broken down in spirit and independence, and destitute of self-respect, what then becomes of the protection which the constitution and laws promise the citizen? What security has life, liberty, reputation and property against the violence of the strong and lawless? What defences have the weak and the lowly against the wealthy and the powerful? Such I believe will be the fruits, and but a portion of the bitter fruits, which this mischievous innovation will bring us, and there will be no escape from them. It is in sorrow and despondency that I make this dark prediction, and I know it will be treated with the same incredulity and contempt as the predictions of Cassandra of old. I would hope, if I could, that my prognostics of this great evil deserved to be so treated. This change in the mode of filling the office of judge, being I apprehend inevitable, my earnest and sincere wish is that it may produce the best results, better indeed than its most sanguine friends promise for it. Yet I have no faith—none. But whatever be the constitution and forms of our public offices, and the modes of filling them, I have the sincerest desire, that they shall result in the greatest good to the greatest number. But if it were possible to place fit men on the bench in



the first instance—the system is so inherent in its vitiating effects, so essentially corrupting in its nature, that it will necessarily drag down these pure and better men to its own level. What is it that secures the independence of a judge? My friend from Henderson (Mr. Dixon) has debated this point; and though his entire speech, which evinced great powers of mind, was nominally on the other side of this question, yet I felt myself that the chief force and power of his argument was on our side, and it was so of necessity, because no man can make a just, a logical and appropriate argument in favor of the independence of the judges without striking at this principle of popular election. The thing is utterly impossible. You cannot have an independent judiciary elected by popular vote. What said my friend in reference to and in illustration of this part of the subject. He spoke of the judges of England, and the change made in their tenure of office, and of the separate powers which would appoint the judges here, and that which would adjudge them—being in the one case the legislature and in the other the people; and he argued the independence of the judges from the separate and independent existence of those two powers.

What was the great judicial reform in England that gave to the courts of that country an elevation and independence to which before they were entirely strangers? It was making the judge independent of the appointing power. The crown appointed the judge, who held the place during the pleasure of the crown. Whenever the king spoke his fiat, the judge, whose independent spirit had made him obnoxious, went out of office, and some more flexible royal minion took the vacant seat. The necessary consequence was, that but few judges opposed the royal will, or refused to become the tools of its oppressive tyranny. Hence the history of the previous crown trials are marked by the most revolting judicial prostitution, and the shedding of the blood of martyrs in the cause of their country's liberties. But at length the tenure of the judge's office in England was declared by law to be during good behavior, subject to removal by the king upon the address of two thirds of the two houses of parliament. Then it was that the spirit of independence enthroned itself on the benches of the English courts, and in the serene strength and power of law and justice looked down upon royalty itself. Then it was that her courts for the first time threw the shield of liberty and law over the prostrate subject, and sheltered him from the heavy blows of a tyrant king. But how will it be here under the proposed change? The judge every four years is to go crawling back in the slime of his own and his party's filth, not to the people, not to the hard handed, strong-sensed, honest hearted, well employed masses, but to the brawling demagogue, the politicians by trade, the party hacks, the ever active and intriguing wire-workers, and the men who have thousands to give to the work of bribery and corruption, for a renewal of his term. He is subject all the time to be removed by legislative impeachment and legislative address. And who but the people, or rather parties and politicians, make the legislature? Whose mind, whose will

and purpose but those who make the judges does the legislature reflect and execute? What power regulates the quantity of bread this judge shall eat, by declaring what shall be his salary but this same legislature, this general committee of arrangement, not of the country, not of the body of a great party, but of a junto of political partizans? I ask my friend if the cases are parallel? If the assurance of judicial independence in England is not more satisfactory than it would be under his system in Kentucky. No where on the globe is there at present more just, enlightened, independent and inflexible administration of the civil and criminal law than by the courts of England. There are ten instances at least of the escape of felons and of the failure of a redress of private wrongs in our courts to one in those of England. It is the security which this state of things gives to her subjects, the certainty of judicial justice which gives to her government its tranquility and its chief stability. More than is secured by her largest standing army and unequalled navy.

How, I ask, in the name of common sense and reason, could a judge, thus constituted and thus holding the office, selected necessarily from a class of inferior men, because from the tenure of the office and the mode of election, you will get none but inferior men to accept it—his salary depending on the legislature, and having given up what little practice he had, if he had any, and looking for support, for food and raiment for himself and his children, solely to his salary—how could he, by the laws of human nature, be independent? Why, he would be the merest and vilest dependent minion that ever disgraced the ermine or the name of a judge. The suitors in court make the judge—or rather in part make him, a part being opposed to his election. The lawyers who practice in his court in part elect the judge, and in part oppose his election. And would not those suitors and lawyers who had made the judge have a power and claim over his good will and favor, that those who opposed him would not have? It is the immutable law of our frail and fallen nature, and no shifts we can devise will enable us to escape from it. None.

How then I ask my friends again are you to secure a pure and independent judiciary under such a system? The thing is impossible, and if it is impossible, we ought to fly from it, and at once to repudiate it. You have a good system now, as clear as the noonday sun, and it has existed in the wise and just administration of free and equal laws in this country for half a century. If you have a doubt in regard to the other project then, let your doubt cause you to reject it. This is not a subject for experiment, or a matter upon which we are to doubt or put forth beautiful theories that we know from the experience of every day, and of ages will work wrong. Let us throw ourselves back on experience, and be guided and controlled by its safe lessons.

I have said that I do not believe the people demand this change—and I am candid in that opinion. I have never seen a man in my social intercourse and conversation on the subject, that is for the change unless he was a democrat. And I never have conversed freely in confidence

and friendship with a democrat, that he did not avow his reason for being against the present system—and I admit it is a sufficient one—was that it deprived his party of all judicial office, both in the inferior and superior courts. I feel the force and justice of that argument. Now the only abuses which I have ever heard urged by the people against the judiciary department, as it exists, were of a very limited and trivial nature. They brought up instances of judges appointing their relatives to clerkships, and of the clerks making sales of offices, and of these judges ratifying those sales by appointing the purchasers to the office. And that is the extent, all told, of the complaint of abuses against the judiciary as it exists, and is constituted under the present constitution, so far as I know. Now just look at the clamors and indignation of the people against the legislative department of the government for its frequent and numerous abuses of power—look at the like condemnation by the people of the executive department—and compare the volume, the matter of these complaints, their truth and justice, with the few and trivial complaints made against the judiciary, and tell me which of the departments of government has most sinned against propriety, against justice, and against the people? And yet the fury of this convention is to be directed mainly against that department of government which has offended least, in the proper constitution and security of which the people are most interested, and the organization and proper adjustment of which is the most difficult task that the convention is called upon to perform.

I do not believe the popular feeling required the call of this convention. I do not believe it, strange as it may appear to some of my friends here. There were a few things complained of, which ought to be corrected, and I would like to see them reformed. But I do not want to see any revolution or subversion of the existing system—any overthrow of the great, time-honored, and well tested principles of our constitution. Let it, and its great outlines remain, a monument of the wisdom and patriotism of our ancestors, to guide and enlighten posterity to the latest generation. If there are a few defects in it, let them be obviated and improved. In relation to the judiciary, the only essential defect ever brought under my knowledge has been this: there have been incompetent judges, who could not be got out either by address or impeachment. And whose fault was it? Not that of the judiciary, or its organization, but of their triers—of the tribunal which is required to supervise that department, to keep it pure and incorrupt, able and competent—the legislative department. Why do they not impeach the judge, if he is corrupt? Why have they not removed by address, the incompetent? It is not true that it is the sin of the judiciary, but a dereliction of duty on the part of the legislature. I have seen the salary of the judges increased, for the purpose of constraining certain incompetent judges to resign. I have seen the better portion of the judges, men of mind, virtue, intellect and unsullied character, respond to such an insulting call upon them, and at once surrender their places to the executive. I have seen the incompetent, and those who ought to be out,

cling tenaciously to the office, and I have seen the legislature march forward, and bring up the salaries of these inefficient and incompetent judges, to the high mark to which the legislature had raised those salaries. Whose sin was that? If there was a tithe of the cause of complaint, and of just complaint, against the judicial department, that are brought against the legislature and the executive, I would share in that spirit of indignant hostility which urges on some in this convention, in the crusade, the remorseless crusade they are making against it. But it has had no such short comings, it has not perpetrated a tithe of the wrong against the country which the legislature has. But still there are things in the constitution of the judiciary, I would like to see changed. I admit that from the unchangeable principles of our nature, our sympathy with infirmity, which prevents us from removing incompetent judges, and induces us to raise their salaries to the same point as those who are competent—will forever prevent us from removing by impeachment or address. I do not want an incompetent judge fastened on the people for life; and the only remedy that I believe would possibly work any good, would be limitation in office. This is secured in the system I have proposed. You are to get the best materials for a judge, and when you have filled the office in that way, you might permit the incumbent to be re-eligible—as when the department is properly organized he ought to be. But if you follow out the mode by which it is proposed to fill it, I tell you that like the strong man, you will get deeper and deeper into the mire, and finally be engulfed in its depths, as certain as time and man exists.

I propose to withdraw from this corrupting political scramble a portion of the talents, the virtue and the ambition of the country, and turn it to the pursuit of legal science and judicial promotion. Everything is now swept along by that all engrossing political current. Every man of mind and ambition, who hopes for an elevated or an honorable position among his countrymen, through the superiority of his talents, and by the exercise of his virtues and patriotism is called by the only course of preferment and honor to enter the political arena. You will give to the members of the house of representative, representing a judicial district, the right to name the two men from whom the judge shall be chosen for that district—they of course would select men of their party politics, unless more powerful considerations should control, and if they existed they ought to control. Let the senate take one of them and nominate him to the governor, and the governor commission him as judge; and then from this class of judges, let the governor select the appellate court. Tell the young men of mind and promise in these judicial districts—withdraw yourselves from politics, there is no man that contributes anything to his own personal virtue and happiness, or to his moral sense, his general intelligence, or to his dignity as a man, by going into the arena of politics. None. No man can venture into that vortex without being more or less injured. Tell the man of pure well regulated mind which desires distinction, that it is not to be driven to the necessity of leaping into that

tumultuous arena, for the purpose of realizing their cherished hopes. Tell them to aim higher in qualifying themselves by study in the noiseless recesses of the library, and in the cultivation of that moral sense and elevation of character which prepares them to become the repositories of the high powers which the constitution reposes in the judiciary of the country. Tell them that by taking this course, they are to minister to a purer and a nobler ambition, than if they were to rush into this turmoil of politics. Tell the men who are to make the selection for office, choose your best and most promising men—choose them with a view to their powers of mind, their moral worth, their habits of diligence and application, and their capability for improvement in legal science.

Select your men with a view to these high qualities, for those inferior judgeships, and in a few short years, in the course of judicial promotion, they will be translated to a higher and nobler and more responsible station—one in which they are to figure before and act for the whole, and become members of your highest judicial tribunal. What a powerful stimulus do you offer to the man of genius and of virtue and noble ambition to withdraw from the corruption of politics, and dedicate himself to more elevated duties and objects, and by which he may render higher and more difficult service to his country.

I had proposed to urge some other points and arguments, but I find my strength a good deal exhausted. Indeed I have now spoken longer than I thought I should possibly be able to do when I commenced. For the patience of this committee in bearing with me so long, I return it my sincere thanks. I came here to act for my state without regard to party politics. I would have been extremely gratified if a stouter and an abler champion had appeared here to support the cause which I have attempted to uphold, but in the absence of allies, of a single coadjutor, and indeed of even one having with me in this matter a heartfelt sympathy, still I felt that unaided, with my single arm, it was due from me to strike one blow at least against this great and monstrous innovation. I came here to reform the constitution. I would be willing to elect the inferior executive and ministerial officers, as clerks, sheriffs, constables, coroners, etc. I would be willing also to do away with the county courts. I want to prohibit local and private legislation, such as divorces, etc., and to secure some other slight reforms, but I want to do nothing else. As long as there is a ray of reason in my head, or a pulsation in this feeble heart, I shall feel it the most sacred duty I owe my country to oppose this principle of electing judges by the popular vote. I will oppose this attempt to desecrate and drag down this greatest and most important and yet most defenceless department of the government. In addition to that, I am for maintaining inviolate the rights of property. I am also against an open clause in the constitution. I am against the perpetual agitation and constitutional tinkering which such a principle would introduce. And I am in favor of requiring the foreign voter to reside as long within the state, as our own native born children before they exercise the right of suffrage. Upon this latter question, I shall ask the indul-

gence of the convention at a future time, and I promise to trouble it no further in set speeches. But to ensure success to either of the cardinal positions which I have here declared, there is no amount of popular applause, no place or honor in the prospective, no vision of my ambition, that I would not bring into this hall, and lay down cheerfully as a sacrifice—not only to carry either of these principles, but to give them any strength. And not only to gain them a modicum of strength, but to do my duty, by declaring my deep, abiding and undimmed devotion to each and all of them.

The convention then adjourned.

#### SATURDAY, OCTOBER 27, 1849.

Prayer by the Rev. GEO. W. BRUSH.

DEATH OF THE HON. BRYAN Y. OWSLEY.

Mr. MCCLURE offered the following preamble and resolution:

WHEREAS, It is represented to this convention, that the Hon. BRYAN Y. OWSLEY departed this life about 12 o'clock on the night of the 26th inst., in the town of Frankfort, and that his friends will proceed with his remains to Boyle county, the place of interment, at 10 o'clock, a. m., today: *therefore*, as a token of respect to the memory of the dead,

*Resolved*, That this convention will accompany the procession which takes charge of his remains, across the bridge over the Kentucky river, on the route to his interment; and that the convention, for the purpose aforesaid, will take a recess of half an hour.

The resolution was adopted, and the convention proceeded to join the funeral cortege.

At half past 10 o'clock, the convention re-assembled.

#### PARENTS AND PROPERTY.

The PRESIDENT presented to the convention the following statement from the second auditor, in answer to a resolution offered yesterday by Mr. Taylor:

A statement showing the total number of parents and guardians, with the amount of their property, and the number of children between 5 and 16 years of age, taken from the commissioners' books returned to the Second Auditor for the year 1849:

	Parents. Child'n.	
1st. Those that have no property entered for taxation and number of children	8,028	19,467
2d. Those who are worth less than \$100 in property and number of children	13,755	36,764
3d. Those who are worth from \$100 to \$400 in property and number of children	12,757	35,035
4th. Those who are worth from \$400 to \$600 in property and number of children	5,904	16,409
5th. Those who are worth over \$600 in property and number of children	30,263	85,315
Total	70,707	192,990

On motion, it was referred to the committee on education.

## REVENUES AND EXPENDITURES.

The PRESIDENT also presented the following letter, in relation to a resolution passed yesterday on the motion of Mr. Hargis:

HON. JAMES GUTHRIE, *President State Convention:*

SIR: I enclose a statement of receipts and expenditures from 1829 to 1849. Upon receiving the resolution of the convention on yesterday, requiring me to furnish "the receipts and expenditures from 1823 to 1849 from each source," I found it would be impossible to furnish that statement in time for the use of the convention. I then saw Mr. Hargis, the mover of said resolution, and he is willing to accept the statement now enclosed.

I am sir, very respectfully,

THOS. S. PAGE,  
*Second Auditor.*

Auditor's Office, Frankfort, Oct. 27, 1849.

Mr. HARGIS said it was important that the convention should have the information which his resolution had called for, and he hoped the document now presented would be printed and referred.

The motion to print was withdrawn, after a few words from Mr. Triplett, and the communication was referred to the select committee on the State debt.

## NEW COUNTIES.

Mr. C. A. WICKLIFFE, from the select committee on that subject, made the following report, which, on his motion, was referred to the committee of the whole and ordered to be printed:

## ARTICLE —.

SEC. 1. No new county shall be formed with an area of less than three hundred and fifty square miles; nor shall such new county be formed, if by doing so it reduces any county out of which it shall be formed, in whole or in part, below an area of four hundred square miles; and in running the lines or boundary of such new county, no such line shall run nearer than ten miles of the county seat of any county.

## INSTRUCTION TO CLOSE DEBATE.

Mr. MERIWETHER offered the following resolution:

*Resolved*, That the committee of the whole be instructed to close the debate upon the report of the committee on the court of appeals on Monday the 29th inst., at 12 o'clock, m., and that said committee of the whole proceed to vote at that time upon the pending amendments, and such as may be proposed.

Mr. MERIWETHER said he apprehended the resolution wanted no explanation, for it explained itself. He thought sufficient latitude would have been allowed for debate by 12 o'clock on Monday.

Mr. C. A. WICKLIFFE suggested to the gentleman from Jefferson, that his resolution should be somewhat modified. Amendments might be sprung upon them after the time had arrived at which the resolution would stop debate, and he enquired whether it would be proper that they should be called upon to vote on such amendments without due reflection or explanation. He would suggest, though he would not make any

motion for that purpose, that ten minutes should be allowed for debate on any amendment that may be offered.

Mr. MERIWETHER was aware of the objection to which the gentleman from Nelson alluded, but if it was intended to give ten minutes to each gentleman for an explanation, he apprehended they had better not pass the resolution.

Mr. C. A. WICKLIFFE did not suppose that many members would desire to speak or to explain. It might be proper at least to allow a gentleman to give his views on the amendment that might be offered, and also to allow some member of the committee from which the report came, to give reasons why it ought not to be adopted. Now suppose twenty members should consume ten minutes, not in discussion, but in explanation; would that be too much time to give to it? In the house of representatives of the congress of the United States he believed time was allowed to explain amendments, and he thought such a privilege should be retained here.

Mr. MERIWETHER said, in reference to the rule in Congress, it was confined he believed to the mover of the amendment. He had no objection to give the mover of an amendment ten minutes for explanation, and the chairman or a member of the committee that reported the article, ten minutes for reply.

The following words were therefore added to his resolution: "allowing the mover of any amendment ten minutes to explain the same, and to a member of the committee making the report, ten minutes to reply."

Mr. HARDIN enquired from the gentleman from Jefferson, if he meant to preclude any remarks when the report should come from the committee of the whole to the house?

Mr. MERIWETHER. Certainly not.

Mr. HARDIN continued. He made the enquiry because he designed to say something himself, but he should take up as little time as possible.

The PRESIDENT put the question, and a division was called for.

Mr. MERIWETHER said as there seemed to be some doubt about it, he would ask for the yeas and nays.

Mr. GRAY thought this resolution was rather making a discrimination between the members of the convention. It appeared to him that every member of the house ought to have the same privilege; and he saw no reason why it should be confined to a member of the committee from which the report came. He moved to amend the resolution, so as to give ten minutes for explanation to every member who desired to explain.

The amendment was agreed to.

Mr. IRWIN said, he did not like the resolution as it was amended. A good many had addressed the convention and it might be that others desired to do so too. He desired to do so himself. He had been trying for several days to have sufficient confidence in himself to do it. It seemed to him that after fifteen or twenty gentlemen had occupied the whole time of the convention from its commencement to the present time, other gentlemen should have an opportunity to speak. He did not think the time had been spent unprofitably that had been spent in discussion. He thought important

views had been presented to the house and he thought this discussion would do a great deal of good to the country. They learned from each other the views that gentlemen entertained, and he could not see why it was necessary that they should say that at this particular day the debate should be closed. He thought they had been getting along very well, and that in two or three weeks they should be ready to vote, as by that time many of the most prominent subjects would have been discussed. He thought it better to lay the resolution on the table at present. He made that motion.

The motion was not agreed to.

Mr. MERIWETHER withdrew his call for the yeas and nays, and the resolution was adopted.

#### COURT OF APPEALS.

The convention then again resolved itself into committee of the whole, Mr. HUSTON in the chair, and resumed the consideration of the report of the committee on the court of appeals.

Mr. WOODSON. Mr. Chairman, when I indicated my intention last evening to address the committee this morning, it was more from the impulse of the moment than any pre-conceived or settled determination on my part to give my views upon the interesting topics presented in the course of this discussion. At the time, sir, I was laboring under the influence of that general excitement which pervaded the whole committee at the conclusion of the thrillingly eloquent and interesting speech of the gentleman from Bourbon, (Mr. Garrett Davis.) I felt, sir, whilst that distinguished delegate was speaking, with a zeal so characteristic and with a power so peculiar to himself, that it was a singular misfortune to the country and to the party to which he belongs, that he did not utter sentiments which were more in accordance with the wishes and feelings of that party—as well as with the age in which we live—as well as the circumstances by which we are surrounded. I felt the force of the remark that the gentleman said had been applied to him viz: that he was behind the times—that he was living and acting with the past rather than the present—that he was expressing the sentiments of the eighteenth rather than the nineteenth century. I regret that the gentleman has not resumed his seat this morning as I shall take occasion to notice some of the positions he assumed, and make such replies to them as they merit, in my judgment. Allow me to say though, sir, that nothing is further from my intention than to say anything which, in the slightest degree, is calculated to reflect upon the motives or intentions which superinduced any remark that fell from him—far from it. On the contrary, I entertain the very highest possible regard for his personal as well as political integrity.

We were all forcibly struck, and I am sure, sir, that the whole country will be when the gentleman's speech, delivered on yesterday, is published, with the graphic description which he gave of the great abuses and corruptions of the elective franchise in Kentucky—men lying in our stables and barns—drinking, violating the sabbath, selling their votes—a picture that I will repeat no further, but refer you, this committee, and the country, to the gentleman's speech for

Scenes, sir, which, if they have ever been witnessed in Kentucky, I thank God have never come within my observation—they may have been witnessed in Bourbon. But I am charitable enough to hope that the gentleman's unapproachable purity has revolted at small matters, and has so wrought upon his gifted imagination as to cause him to manufacture mole hills into mountains, in the excitement of debate. He says that money and other corrupting influences will control the elections of our judges; that no one, however pure, ever passed through the ordeal of an exciting political contest, and came out of it, as pure as when he entered it. Sir, I need no more powerful refutation of this assertion than to point to the gentleman; he, sir, has passed through many such ordeals, and he still is but another name for purity.

But allow me, Mr. Chairman, to ask what was the whole of the gentleman's speech an effort to prove? Nothing more nor less, sir, than man's corruption and incompetency for self-government. Strip that speech of the bright, glowing and burning words with which it is clothed—let it stand in its naked simplicity before the country, and nine-tenths of all who read it will see but that one idea in it. I am happy to say that it is the first speech I ever heard on that side of the question. I have read many. I could but think of the days of 1776 when such speeches were common. At that time the enquiry, can man govern himself? was an interesting one indeed—the purest patriots—the most sagacious statesmen doubted—the experiment had never been successfully made—the fallen splendors of the republics of antiquity were poor arguments in its favor—the pomp, power and circumstance of monarchical Europe—the literature of the age, and, I may with propriety say, except in the colonies, the patriotism of the age all stood in hostile array against it. Still our ancestors acted—they determined to try the great experiment in defiance of the experience of the past—they proclaimed the long obsolete idea, man has purity, intelligence and prudence sufficient to govern himself—of the glorious, the happy results of that determination I need not speak—they are subjects with which the world is familiar. And I had thought that even the crowned heads of Europe had at last acknowledged the truth of the maxim “man can govern himself.” But, sir, what do I find here in Kentucky—yes, sir, in Kentucky, where I had supposed every heart would bleed and every head would fall in the maintenance of this great truth? I am told by one of Kentucky's most distinguished and gifted sons that he is afraid to trust the people—that he is afraid to trust himself. And we are now called upon to demonstrate the fact that the people are capable of electing their own servants. We are now triumphantly asked if we wish to destroy the symmetry of our government—to set at defiance the experience of the past—to overturn a government which has so happily and so signally blessed us—and under which so few abuses have occurred in the executive or judicial departments of the government?

I answer for myself, sir, that if to take from the governor of Kentucky—the judiciary of the country, and the legislature, the power to ap-

point to, and fill the offices of the country, is to be regarded as a destruction of the government, I am prepared to see it fall—and instead of shedding tears over its untimely grave, I shall only regret that it has not fallen long ago. So far, however, from wishing to destroy, I only wish to build up and perfect the government.

Allow me though, Mr. Chairman, to ask if there have been no abuses under the present constitution of the powers exercised by the different departments of the government? And can I answer that question more conclusively in the affirmative, in any other manner than by calling to your recollection the admission of the gentleman from Bourbon (Mr. Davis) that the present convention would never have been called had the democratic party been treated justly in the bestowment of the offices of the country within the gift of the governor? I think not. He says that partizan considerations have been too generally regarded in the bestowment of office. I would ask if any other than a blind adhesion to party, in the great majority of cases, has ever been regarded at all? To be sure there are some honorable exceptions, but they are few. Do not understand me, however, sir, as wishing to censure the whig party particularly upon this score; they, if possible, are less guilty, in the state and nation than there great rivals the democrats. But we all know, sir, that a whig governor or a whig president will fill the offices of the government with whigs, and that a democratic governor or president will fill them with democrats. Exceptions I know may be found, but isolated exceptions to a rule only prove its general truth. If this is so, and no man can doubt it—and the preservation of the judiciary of the country from party politics is essential, and I am told and believe it is—I ask you how we are to be worsted by changing the mode of appointment? It, per possibility, may be so under an elective system. We know that it is contaminated in its very creation under the present system.

The question, sir, the practical question I mean, has the governor of Kentucky more discernment, more purity, more intelligence than one half of the voting population of Kentucky? For myself I will venture to say he has not. The appointing power to office ought to be pure, intelligent, above improper influences, able to set at defiance the combinations and conspiracies of the designing, to resist the unjust encroachments of the bold and designing, to appreciate as well as to ascertain the merits and qualifications of the retiring and independent, in contrast with the unbridled pretensions of the arrogant and sycophantic—who generally beset governors and presidents for office—not the retiring student or the man of business generally, but on the contrary, the lazy, idle, noisy partizans, who infest the country. The people on the other hand, and I say it to their credit, will reward merit when they find it; and they can but find it, if it is in the country. The people combine to a greater extent, in my humble judgment, all of the requirements of an efficient and desirable appointing power than can be found any where else in this or any other government; and, hence, I desire to see the people retain in their own hands the appointment of every officer in the state.

Various reasons, Mr. Chairman, have brought me to this conclusion, and thoroughly satisfied my mind that I am correct. I will give a few of them. First contrast the talents, virtues, in a word, the qualifications of men in high office, placed there by the people, with those in correspondingly high and responsible positions by executive favor, and I feel confident that the discernment and the judgment of the people will stand fully justified before the world. Congress has been filled by the people, our judges appointed by the governor. I do not know how it is in other states, but this I do verily believe, that in point of talents, morals and fitness for office, the members of congress from Kentucky have invariably surpassed our circuit judges.

Yes, but gentlemen say there is a difference in political and judicial offices; the people are very well qualified, say they, to elect their president, members of congress, &c., but then to think of allowing the people to elect a judge, the idea is ridiculous. What do the people know of the qualifications of a judge? I will tell you what they know; they know who is honest; they know to whom they would entrust their business in a court of justice; in a word they know that honesty, intelligence and business habits, to the exclusion of their opposites, are essential to the proper discharge of important private or public trusts. I tell you though, sir, that the judgment and discrimination of the people, as well as their incorruptibility, are greatly underrated. Go to any common farmer and ask him who is the best lawyer, the most successful, the most honest, that practices at the bar in his county, and I will venture that in nine cases out of every ten, where the enquiry is made, not only a satisfactory, but the correct answer is given. How could this be otherwise, as society is organized and business carried on in Kentucky. The great body of the people attend the courts of the county occasionally, especially when important and exciting causes are to be tried. They see the lawyers arrayed on either side, witness their mental conflicts, listen to their discussion of propositions of law before the court, their addresses to the jury, hear judges and lawyers talking of each others standing and attainments in the profession; these things being so, sir, how can the people be at a loss to know who of the lawyers at the bar is qualified to discharge the duties of judge? Has common sense left the world and taken up its abode with office holders alone? Are the people so steeped in ignorance, barbarism and mental night, that they are wholly unable to discriminate between the pretensions of the pettifogger, on the one hand, and the real merits, sound legal learning and abilities of the lawyer on the other? So far from it I venture that the people, a majority of them, in any one of the districts proposed by the report on your table would be able to designate, with invariable certainty, the very best man in it for the bench. At least they would know more about the lawyers of the district than any governor could possibly know. Let me ask you, sir, what the governor of Kentucky knows about the qualifications of men for office in the remote parts of the state? Nothing, literally nothing. Why, sir, when an office is to be filled, we see those who desire it, riding over the country pro-



curing letters and recommendations of them to the executive, and, generally, without them, he would not know any thing more about the claims or fitness of the aspirants for office than I know of the relative sprightliness of any two of the numerous offspring of the queen of England. At last, sir, under the present constitution, his excellency has to be, from the very necessity of the case, governed in his appointments to office by the information of the neighbors of the aspirant, leading whigs or democrats as the case may demand.

Well, but there is another serious, irremediable objection, to an elective judiciary urged by gentlemen. What is it? Why sir, it is, that they can be corrupted; that money—the charmed tongue of the artful demagogue will mislead them—involve them in error. And here sir, is the Thermopylæ of the gentleman from Bourbon—here it was that his eloquent voice swelled to its full height and his indignant eye flashed its keenest fires,—yes sir, in the effort to demonstrate the ease with which the people could be seduced and led away. If there was any one point in his great effort where he exhibited more fully than any where else, the full grown dimensions of Kentucky's orator, it was there. But sir, I will ask, did he convince any one that he was right in the views which he presented—in the assertion he made, that he was afraid to trust the people? If so, I can only say to you, whoever you are, then sir you are convinced that the very foundations upon which our government rests are but sands to be swept away by the breath of the first demagogue who breathes upon them. Our government rests upon the intelligence—the purity of the people; and I need not say that if they can be rendered vicious and corrupt in the election of the judiciary, that they can in the election of the legislature, state and national. And if so, what is our government worth? Not the paper sir upon which the charter of our liberties is written. And if I were fully satisfied that the people were corrupt—the majority I mean,—that those who have all power, according to the theory of our government, could be bought and sold—and the government of the country thus made the emblem of corruption and iniquity—I would invoke the shades of our departed ancestry to return to earth, form a procession, with Jefferson and Madison at their head, take the declaration of independence which declares the equality of man, the constitution of the United States which provides for a popular government, and together with all the State constitutions which secure the same great and heretofore thought inappreciable boon to man, march to the foot of the British throne, confess the divine right of kings, make a bon fire of those unmeaning, false, delusive charters of our boasted liberty, and pray her majesty to give us a sprig of royalty to reign over us and our children for ever. But, Mr. Chairman, I thank my God that I yet have confidence in the purity and the incorruptibility of the people, and consequently in man's ability to govern himself. And deprive me of that confidence, and sir when you have done so, allow me to say that you have deprived the world, as well as myself, of the brightest hope that gilds the patriot's dreams.

At last, however, I am told sir, that even ad-

mitting the people would elect good judges, that they cannot be corrupted, and all that, yet that unless the judges are independent that the country is destined to decay and ruin,—and we have had long, eloquent and able speeches in vindication of an independent judiciary. The mother country, old England, (I wonder if we will never get done going to her for precedents to prove how a Republic ought to be governed?) has been referred to—her independent judiciary has been pointed at—the high wrought praises of a Blackstone, of an independent judge, have been cited. There I admit its necessity—the liberty, the property, the reputation of the subject, are all dependent upon the independence of the judge; that is, provided *dependence* makes a man a slave, and I know that it does to a greater or less extent.

There sir, the king appoints the judge—there the reigning monarch is considered the source of power and honor; here the people—here in short, the government was made for the people—offices erected for the benefit of the people, and the duties thereof are to be discharged for the benefit of the people; there the government was made for the king—offices created by him and for his favorites to fill, and the laws of the realm administered to suit his royal pleasure, and often to the oppression and ruin of the British subject. Hence it was that the people demanded, and at length succeeded in effecting, the independence of the judge, who was to decide upon their most sacred rights. Prior to this time, the commission of the judge in England was during the pleasure of the crown; this being the case, we all can but see at once that there was no independence in the judiciary, and we can all see the necessity for it. There the effort was to make the judge independent of the king; here, strange absurdity, the effort is to make him independent of the people; there the king fought against the independence of the judiciary—the people for it.

Mr. Chairman, here allow me to advert to first principles for a moment or too. All human governments have had an origin, different theories characterize them. And it is our good fortune in America to differ from all of the governments of the world which are older than ours. In what does this great distinguishing difference consist? Most conspicuously in two respects—first in other governments the executive originates the theory and appoints the officers who are to administer it. Here the people originated the government and prescribed the duty of those who are to administer it. Secondly, here we have a written theory—dividing the government into different departments and assigning to each department particular functions—such was not the case in any other government upon earth when the constitution of the United States was formed. Why I may be asked, do I advert to these first principles? I do it to show the want of analogy between our government and all others—and to assert that this convention has all power in its hands, which has been lying dormant in the present constitution of Kentucky, or which has been exercised under it by the different departments of the government. That it is legitimate and right in us, either to increase or diminish the powers of the legislative, executive or judiciary branches of the government as we may think right or the people demand, whose

majesty we represent. The question then presents itself, what ought we to do? Ought we to allow each department to retain its present powers or ought we to increase the powers of one and lessen that of another? One fact is obvious to all who have reflected upon this subject as we *increase* the powers of government we lessen our own, as we take from the different departments we increase our own—I mean the people. If for instance we make no provision for a legislature to meet under the amended constitution, none can ever meet—if we take from the executive all of his powers and from the judiciary all of its powers, what then is the government? Why the people most assuredly. Why then to the extent that we diminish the powers of the different departments of the government, without vesting the powers we take away in some other department, we increase the powers of the people. This being so, my impression is, that we ought not to increase the powers of government in any of its departments—but that we ought to decrease it in all and restore the strength we take from these different powers to the people. For instance, let us deprive the legislature of the power to meet as often as heretofore. Let us deprive the governor of the power to appoint any officer of the government—and let us take from the judiciary the right to continue in office save for a limited period. It will be seen that I have stripped each department of the government of great powers—but if I have it has only been to give them to the people to be exercised by them. Now there is only one sort of independence that I recognise under our theory of government, as properly belonging to the judiciary or either of the other departments of the government—and that is let each be perfectly independent of the other—that is never allow the legislature to infringe upon the executive, or the executive upon the judiciary—keep them all separate—exercising their delegated functions each in its own sphere perfectly independent of all the rest—and all dependent upon the people within constitutional limits. Thus far, sir, and no farther am I willing to subscribe to the doctrine of an independent judiciary.

There is another idea which I wish to present. I understand that this is a free people, that we live in a republican government, and that the people have a right to govern themselves. We have a senate, and house of representatives in Kentucky as well as in the United States government. Why is it that the members of the lower house are elected for a short period, and the senate for a longer one? It is to prevent the effect of hasty legislation under the influence of popular excitement. Look now at the report of the committee on the court of appeals, and we see there is a provision that the judges shall be elected for eight years, the first being elected for two years, another for four, another for six, and the fourth for eight years, so that after the first election only one judge is elected in two years. We have the same conservative principle here then, which is found in the manner in which our senators are chosen. Suppose now any undue excitement should originate in the country. Only one member of the court will be chosen at any one election. Four years will have to pass away before any improper influence from popu-

lar excitement can be brought to bear on the decisions of that court. Well, if a people shall persist for four long years in one course of policy, my impression is it will be right. I do not believe that any people will continue for four years in any undue excitement. We have a safe guard then in the bill itself, which will secure us against any excitement to which the people are liable. My impression is that this is a mere contest between the friends of a popular government, and the friends of the old order of things.

But, said my friend, (Mr. G. Davis) the people are unwilling to trust themselves; and he is unwilling to trust himself, and he is unwilling to trust the people. How did he attempt to show that? Why he read from the constitution of 1799 where it is said that private property shall not be taken for public use without just compensation. He read the section relating to the inalienability of the rights which are reserved in this constitution, and then declared that the people were afraid to trust themselves. Whom did they trust? Did they confide any of these powers of which the gentleman read, to the legislature, or to the executive? They trusted nobody but themselves with these powers. To show this point, I will read from the 28th section of the 10th article.

"To guard against transgressions of the high powers which we have delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate."

Now these sacred rights were excepted out of the general powers of government, and where were they reserved? In the hands of the people; and this convention is nothing more nor less than the body of the people of Kentucky, called here for the purpose of amending the organic law, and to make such improvements as time has pointed out to be necessary. How are we created? By the people. Can the power that creates create any thing, having greater purity than the creating power? Suppose this convention appoints all the judges in the state, would any gentleman be afraid to trust this convention? And yet I do not think that this convention would appoint better judges than the great body of the people would appoint. This convention is the reflex of the intelligence of the people, and if they were capable of electing us they are capable of electing their officers, and they will exercise it. The gentleman regrets that New York has set us so baneful an example, but I can tell you the time has come when the people of Kentucky too intend to take the power into their own hands. I am glad that New York has set the example, and I am only sorry that the honor of this great movement, this first step in modern times in a great state, does not belong to Kentucky. New York has set the example, Pennsylvania is about to follow. Tennessee intends to do it, Kentucky intends to do it, and I tell you that the time is not far distant when in all the thirty states of this Union the people will elect every officer. And we will go higher, we will not stop there; we will take it upon ourselves to elect every officer in the state and nation. We can do it with as much propriety, and as much benefit to the people as it has been done, or is likely to be done, under the old order

of things. I have much respect for past history, but am not so wedded to it as not to be willing to open my eyes to the light which is everywhere beaming around me.

I was sorry sir, to hear the gentleman say that he would go home and oppose this principle before the people, the principle that the people have the right to govern themselves. I trust he will take that back. I trust he will take the example of those who framed the constitution of the United States. There was a Hamilton in that body, who fought the great battle for the aristocrats and monarchists; he opposed the constitution through every step of its progress; and when he had struggled and struggled in vain, that magnanimous, that great and illustrious man surrendered his own opinion and he went to his state and with all the powers of that mind which had not been surpassed in that or any other age, he labored for the adoption of that constitution and it was adopted. I trust Mr. Davis will go home and retract what he has said here, and come into the support of this principle. But if he should not, I will still hope that he will not be able to defeat what the people have done here. I know his powers, his genius, and ability, but I trust that hereafter he will be disposed to act with the friends of constitutional reform in carrying out what they have determined to carry out.

My friend from Mason, the other day said, there were three sorts of aristocracies; the aristocracy of intellect, of wealth, and of office. Let me suggest to him that there is another sort of aristocracy, and one that will swallow up all other aristocracies that are not compatible with it, and that is the aristocracy of numbers. The people, sir, form the aristocracy of numbers, and they are coming to take the place of these other aristocracies, that have enjoyed all the benefits of the government, to their own exclusive advantage, and to the entire expulsion of the great body of the people.

I know that I have spoken discursively, but be pleased to remember, this is my first effort in this body, and I felt a little like a gentleman who has never courted, but who is desperately in love. He has good and pure intentions, but when the time comes, he is greatly embarrassed to communicate them. I am only sorry, to use the language of the gentleman from Bourbon, that the people whose advocate I am, should not have had an abler champion; whilst I have been speaking, but I can use a different expression from that which the gentleman used. He said he had no aid, he takes it on himself, that he is the only champion of the rights of the few, to the exclusion of the rights of the many. But sir, I have many compeers, and I thank God, much abler ones than myself, who are willing to do all they can to bring back the government to the hands of the people. I rejoice that it should be so, for I know that every step we take in that direction will meet with favor from the people. I know that the people are capable of the high destiny that awaits them. We have taken our position, nothing shall deter us from it, and in the language of one of Scott's heroes,

"Come one, come all,  
"This house shall fly  
"From its firm base,  
"As soon as I."

I do not profess to be a leader of the people, but one of them, and with them we have our eye fixed on victory; and we intend to march forward. We intend to seize that prize, popular liberty, and enjoy it sir, when we have it.

Allow me to return my thanks for the very kind attention with which I have been listened to.

Mr. GUTHRIE. I desire to avail myself of the rule which prevails in committee of the whole, to express my opinions upon some of the amendments proposed, and which I shall be precluded from doing when the report comes before the convention.

It might be profitable to mark the position which we now occupy. The popular and free governments has existed from the time of the first settlement on these shores by those noble spirits who were driven hither to seek refuge from tyranny and oppression, now more than three hundred years. The government of all the colonies was more or less popular and free in their construction up to the date of our glorious revolution, and since our independence. The form of the government of all colonies as separate states, have become more popular and free with constitutions securing personal liberty and private right, and the choice of the agents of the government with greater or less restrictions in the hands of the people.

When Kentucky separated from Virginia and formed her first constitution in 1792, the right of suffrage was extended to all the free white male citizens over the age of twenty one years. A decided step as to the right of suffrage in advance of the other states of the union, but influenced by the same distrust of the people which was expressed by the gentleman (Mr. Davis) from Bourbon, on yesterday, she provided electors to choose a governor and select a senate, and to the governor, with the advice and consent of the senate, confided the appointment of the judges of the superior and inferior courts, and most of the other important officers, and to other agencies the appointment of most of the county and district officers, and only gave to the people entitled to the right of suffrage the choice of representatives to the lower branch of the general assembly, and the electors of governor and senators, and the sheriffs and coroners.

After the lapse of eight years another convention was called, and another step in advance was made, and the right of the people to choose their own governor and senators, as well as their representatives, was secured, but the appointment of judges, &c. was given to the governor, with the advice and consent of the senate, and to the courts the appointment of their own clerks and to the county courts the nomination of justices of the peace with the rotation among the members of that court of the sheriffalty, and the appointment of all the county officers.

How did the system work? Was the country satisfied with its operations? Did the governor in making nominations seek the senators, converse with them, and obtain their advice as to the best man to be appointed? No sir, his nominations were determined on in secret cabinet, and the senate only asked to register and confirm them. How has it been with regard to such nominations? Have the favorites of the governor been

such as were the favorites of the people? Have they been selected for their intelligence, integrity and capacity for the station, or have they been selected from family and party considerations, without regard to their qualifications for the office? We know that family and party considerations have but too often prevailed without regard to qualifications, and that great dissatisfaction has long prevailed in the country, and that the people are no longer satisfied to have the appointment of their officers in the hands of the executive.

How has it operated with the courts? The judges nominated by the governor. Have such men been selected as were best qualified for clerks for the discharge of the great trusts and important duties confided to that class of officers, or have they been the mere favorites of the judges and their influential friends—perhaps a relation—and but too often without qualification for the office?

I leave it to the knowledge of those acquainted with how the appointments have been made, and the manner the business has been transacted, to answer the question.

How have the county courts fulfilled the trust of selecting the officers confided to their appointment? The offices have not been bestowed on those best qualified to discharge the duties. The offices have been conferred upon family connexions, the favorites of cliques and mere partisans. The interest of the public has not been consulted, and the people have suffered from neglect and want of capacity on the part of those officers. It is to provide a remedy for these evils, to make a reform in this selection of all their officers, more than for any other purpose, that this convention has been called; and let me tell the gentleman from Bourbon, it is because these trusts have been violated by the agents to whom the people confided them in order to have the offices bestowed on those best qualified to discharge the duties more than any other cause, that this convention is now assembled. It is not, so far as the democracy is concerned, because they have been excluded from offices of trust and profit in the commonwealth by whig executives. It is because the evils have been long continued and festering in the public mind, until the people have resolved that a remedy shall be found and a remedy applied.

The first time I had the honor of a seat in the house of representatives, the question of a convention was before the legislature, and the question of limiting the tenure of the judicial offices of the state was raised by me as a reason for calling a convention, and in consequence of my advocating the limitation I was denounced as a radical and looked upon with dread by those who deemed our constitution perfect. I have lived to see the day when a limitation to the judicial term has the sanction of all.

Having called the attention of the convention to the position in which we now stand, I will submit some remarks upon the subject of the tribunal which we propose to select the judicial officers. It is well to be acquainted with history, but it is far better to understand the lessons which history teaches. The necessity for an independent judiciary is a lesson which we derive from English history. The judiciary of Eng-

land was not deemed independent, while the appointment of the judges and their continuance in office rested with the monarch, whilst their offices and salaries depended on his pleasure. They were not and could not be independent. It is deemed essential to the liberties and rights of the people to take from the crown the control of the judiciary. His prerogatives and his interests sustained and enlarged by a judiciary subject to his will, acted oppressively upon the people and constituted a judicial despotism, and English freeman learnt that power was stealing from the many to the few by means of the judicial tribunals. All kings that ever have or will exist, have or will seek to have, their powers enlarged and strengthened by open or secret means, and one of the greatest sources of power is judicial construction, and he who has a suppliant judiciary at his control, is master of the liberties and rights of the people. The king as to the tenure of their offices, and subject to English made the judges independent of the removal by parliament. This was done that the judges should stand indifferent between the king and the people. From that time we find the prerogatives of the king restrained by the judicial tribunals, and the people better secured from the oppressions of the crown, and justice and right more sure to prevail. In this country the powers of government, according to our republican theory, reside with the people. From the people proceeds all the powers that are exercised in the various departments of government. There is no antagonist interest between the government and the people. We want no judiciary independent of the people. We want the constitution upheld, and the liberty and rights of the people secured, and what is the interest of one is the interest of all. Whatever change we may make in our constitution—however we may direct the judiciary shall be appointed and how removed, I hope that the principles that secure the rights of personal liberty, of private property, and the pursuit of happiness, will find a place in our constitutional law, and that the judges shall never be independent, but always responsible to the people. A judiciary responsible to people in this country is essentially different from a judiciary in England, and other monarchical governments, where the interest of the king and the people is separate and distinct. I want to have no judiciary in this country that shall be independent of the people.

The arguments in favor of the ability or capacity of the people to select their own executive and representatives in both branches of the legislature, apply as well to the selection of judges. It is conceded the people have capacity to select their governor and representatives—why are they not equally capable of selecting their judges? The president of the United States, notwithstanding the machinery of the electoral colleges, is elected substantially by the people, and the candidates for electors, in practice, are only the advocates of particular candidates, and the organ of the people to cast their votes as indicated at the polls. In our state our chief executive magistrate is chosen by the people themselves. Those who enact our laws—our senators and our representatives, are also chosen by the peo-

ple. They are the direct agents of the people; the first execute the laws and all enact those laws. We confide to them powers as important and as essential as those we confide to the judges. Why have the people capacity to choose one set of their agents and not the other? The interests, powers, and duties confided to the president of the United States is far more important than that confided to any of our judicial officers, and the many able and distinguished statesmen who have held that office by the votes of the people, afford satisfactory evidence that there can be no want of capacity on the part of the people to select that high officer. The same may be said in relation to the many distinguished men who have filled the office of governor of Kentucky, and the other states, by the votes of the people. And with pride we may refer to the many distinguished men we have had in our national and state legislatures; and the prosperity that we have enjoyed as a people, in our national and state governments, and the wisdom and justice of our laws. Those that make our laws and those that execute them are chosen by the people, and why should not those who administer the laws also be chosen by the people? They are the people's, and not the governor's nor the legislature's judges. If it is contended that the people are not competent to choose their judges, neither are they competent to choose the executive and legislative agents of the state and nation.

Gentlemen contend that the present mode, namely, nomination by the governor and confirmation by the senate, is best calculated to secure the appointment of competent and able men. The governor of the state never has, and never will be, more than a man, possessing passions and frailties, liable to be influenced by proper and improper impulses. He may be deceived, or have unjust prejudices and partialities; and how much more liable is an individual to be mistaken, or led astray by improper influences, than the whole body of the people? How much more likely is he to be influenced by private interest, partiality, and prejudice, than that the whole people should be so swayed? Honesty of purpose and integrity of action are always greater with the masses than individuals, and particularly with individuals armed with power. There will always be greater security in having good judges when the selection is made by the whole body of the community, than when it is made by an individual. Do gentlemen mistrust the people? Do they believe their feelings may be wrought upon and their judgments misled, and that they will be influenced to do what they ought not, and place improper and incompetent persons in office? Who are the parties to suffer, should such be the case? Will it not be the people themselves? Who are most interested in having good judges? The life, the liberty, the property, and the pursuit of happiness, of each and of all, is at stake. No individual can have a separate interest from the whole mass. The liberty and rights of one cannot be trampled upon without hazarding the liberty and the rights of all.

It is true that the education of the masses is not so far advanced as we might desire. Still, the public mind is sufficiently enlightened to be

able to understand and comprehend all the great interests of society and government. There is no people on earth more thoroughly enlightened on the principles and sciences of free government, nor on the personal and private rights of the citizens. All, or nearly all, read the bible and the newspapers. They hear, in the several courts, constitutional, criminal, and civil law, discussed by able and ingenious counsel, and they hear the impartial decisions of the courts. The actions of men and their rights are openly discussed in our courts and before our jurors, and all brought to that legal and correct standard of right and wrong which constitutes one of the distinguished blessings of a free people. Our tribunals of justice and trials by jury are high schools for the dissemination of legal information, and the true principles of right and wrong among the people. The law and the justice of every case of great importance is fully discussed and known in the several counties when they arise, and thousands upon thousands of cases are ruled amongst an enlightened and just people, form the lessons learned in our courts and thus disseminated amongst the people.

Our annual elections and our habit of publicly discussing all great and important questions of government and public policy, and the conduct and principles of our public men, are also high schools for the dissemination of political information amongst the people, and for a critical and searching examination of the principles of government, the action of the government, the conduct and actions of public men. Our sessions of the legislature are also high schools for the discussion of the great principles and policy of free government, and are calculated to perfect that knowledge that is acquired from history, and render permanent and lasting the principles of equal laws and rights. The pursuits of agriculture, commerce, manufactures, and mechanical arts, are high schools for acquiring information, and the habit of judging men and things. The freedom of our religion, the instruction of the ministers of the gospel, the Sunday school, the cheering consolation brought to the domestic circle by these messengers of peace, the sublime lesson of morals that flows almost daily from the pulpit, these, with the influence of woman's gentler nature in the domestic circle, and her breathings of love, and right, and justice to her offspring, constitute high schools for the morals of the people.

It is to a people thus enlightened and thus instructed, that we propose to entrust the selection of judges to enforce the laws. There is no people on earth better informed as to the rights, the principles of their government, its policy and its action, the conduct and principles of its public men. They are both thinkers and actors in the great drama of life, and look to their energies and exertions for comfort, for wealth, and station in life, with a full knowledge that all offices are open to their attainment, their ambition, and their virtues. Gentlemen mistrust this tribunal of the people—they mistrust themselves—they have no confidence. Now, confidence may be a plant of slow growth in old men and old politicians, and with the party to which the gentleman belongs. The results of free gov-

ernment—a government of and by the people, in the choice of their agents to conduct it, has given to me confidence that they are to be trusted, implicitly; and I am unwilling longer to pay brokerage to the executive and the other trustees of the present constitution, for bestowing offices in the shape of appointments and places for relations, of the agents and their influential and family friends. The offices are created for the benefit of the people, and if any favors are to be bestowed in the grant of these offices, it is the people's right to bestow them, and to whom they please. The shades of suspicion that gentlemen cast upon the action of the people, in the selection of officers, by the high-drawn pictures of our elections, are but fancy sketches. The great mass are intelligent, honest, upright, thinking and acting men, in the various pursuits of life; and they constitute an overwhelming majority in the electoral college. And we may proudly point to the selections made by the people, through a long series of years, in disproof of the conclusions that gentlemen draw from the spots they see on the sun. The people of Kentucky have decreed this change and I have confidence in the decree, and I wish to carry it out fully and fairly, to the best of my judgment.

I desire to strengthen the judiciary by taking from them the suspicion that they owe their stations to executive favor, or to the influence of great men, or to party considerations. I desire to give them the authority of the people to preside in the halls of justice, and administer the laws of a free people. With the warrant of the people, and sustained by their suffrages, they will have a strength and popularity that they have not hitherto possessed, and can with more confidence and animated with brighter hopes preside in the halls of justice.

Gentlemen fear the influence of great lawyers and subtle litigants will secure the election of judges who will be swayed by the influence that promoted them. The bar of Kentucky is crowded with bold and fearless lawyers, and no judge who is dependent on the public will, can dare to be unjust or partial in his conduct on the bench, or in his decisions. His conduct and his decisions are public property, and scrutinized with boldness. Injustice or partiality will be sure to bring his condemnation before the tribunal of public opinion, and if unjustly or il-liberally treated by the bar or the litigants, that same tribunal of public opinion will be sure to be his guard and his shield.

There is a charm in the life and conduct of an intelligent, learned, and upright judge, that wins the confidence and esteem of the people, and is a sure guaranty to public favor. Such a judge will live down the excitements of the moment, and give sanctity to the laws, and confidence in the public justice of the country.

It is proposed to amend the report so as to make these judges ineligible. All I have urged in favor of the election of the judges by the people, is applicable to their re-election with increased force. The judge has been tried; he has been found capable; he knows the laws; he is impartial; his integrity is without impeachment; he is kind and urbane in his deportment to the bar, to the litigants, jurors, witnesses,

and people; he administers the laws with firmness, yet with mercy. The people see and know all this. They desire to retain so good a judge. Why will you deprive them of the right? You fear they have not capacity to know a good judge; that improper influences will be brought to bear on the minds and judgments of the people. You cannot conceive that the people can appreciate the high qualities which constitute a good judge, and that their favor is only to be won by bad men and sinister practices. With all that so judge the people, I have no power to reason, I can offer nothing to persuade—nothing to convince. I believe the people will also know a bad judge, and will mark all the qualities to constitute one, and they will have the intelligence and virtue to reject such, should they come before them for re-election. Bad men are not the recipients of the favors of the people. The sample of our public men prove it. The rejection of all such by the people prove it; and bad judges will have less favor with the people than any other class of public officers. Should the people in the first instance select a bad judge, or in the second trial should he prove such, we shall provide for removal by impeachment or address, so that any mistake in this matter shall be promptly redressed.

The report of the committee provides for four judges of the court of appeals, and that they shall be elected in four separate districts, and shall hold their offices for eight years, and one is to be elected every two years. It is proposed to reduce the number to three, and that the election shall be by general ticket. I shall vote to retain the four judges. I have practiced for many years in the court appeals, and believe the labors are too great for three judges. There has been for the last ten years an average of more than six hundred causes in the court of appeals every year, and some of them immensely complicated, involving intricate questions of law, and involved in doubtful facts. To understand and decide these causes as they should be, requires great time, great labor, and an extensive examination of authorities. There should be ample time and ability to decide the causes which go to that court, and I am satisfied the labor of a fourth judge is required, and that it is due to the litigants of the state that we should provide a supreme court all sufficient to decide well and understandingly all causes that shall be brought to that tribunal.

I shall also vote for the election of the judges of the court of appeals by districts in preference to electing them by the state at large. In electing these judges by districts we shall always have three judges on the bench who have not been voted for by the litigants whose cases are before the tribunal, and to whom the objection which is made to the election of judges, that they will be swayed in their decisions by those who voted against or for them, will not apply. In electing them by districts we shall have the best lawyer of the district selected for the judge, and one who, by his character and legal attainments will be known to the whole district, and which would not, except in rare instances, be the case were the elections by general ticket. We should also have each section of the state represented on the bench of that court, which



has not been the case heretofore, and get clear of that charge of partiality in the selection of the court that has prevailed.

Gentlemen say we will have a party court, and that the two great parties will array themselves and choose their candidates from their respective ranks. Grant it; but it will be the same if we elect by general ticket. If we elect by districts each party will present their ablest and best man, and whichever party prevails we shall have an able judge. If we elect by general ticket it is not probable the whole four of either ticket will be equal to the whole four selected for the district tickets, and in all probability we shall not have as many able men on the bench, nor have them so well distributed, and many of the citizens will have to vote for men who they do not personally know.

We have a party court now, and the court will not be more a party court if we elect by districts than it is selected by the governor and senate, or that it would be if selected by general ticket. It might be less so. The governor always puts in his party in office. He cannot and does not rise above party influences; but the people are more liberal and rise above party prejudices, and select men for public office in gratitude for past public services, and on account of high character and capacity for the station. In the office of judge the people do not want a partizan. They want a man of character and high legal attainments, and a just, true and impartial man. Such a man they will elect and break down all party rules. Such men they have elected to political stations in defiance of party trammels, and they are far more likely to elect such to the office of judge.

To the people we desire to restore the appointment of the judges, and to the people in districts who will personally know the men they are called on to vote for. We have looked too much to party and too little to qualification. The people, I verily believe, will look more to qualifications, and less to party in the selection of judges.

We propose to make the sessions of our legislature biennial, and have our representatives elected once in every two years, and to elect our judges in those years that we do not elect our representatives, and to have the election in one day, and in convenient election precincts. The minds of the people will be called to the qualifications of the judge, to the requisites proper for that office and to nothing else; and if the candidate mingles with and addresses the people, he must sustain the character suitable to the dignity of the judge. He must manifest intelligence and capacity suitable for the station. His reputation and character must be pure and without stain. As to a party court we cannot be worsted, and we may be bettered.

I do not consider the plan of the gentleman from Bourbon calculated to give us as able men on the bench. I dislike his electors to come between the people in the choice of the judge. The presidential electors are only advocates of the candidate of the party, and bound in honor to give force to the party nomination. His electors for judges will in some measure lose their character of representatives, and become the advocates of particular men for office, or they would come in upon mixed considerations.

I do not think the judges of the circuit court best calculated to make appellate judges. They are prompt men in general with their legal knowledge; but they are in the habit of deciding on the spur of the occasion, without the examination of authorities, and without proper reflection upon the bearings of the facts, and of the opinions they give. This off-hand and hasty mode of decision they carry on the appellate bench, and habits of this nature it is difficult to get rid of.

I understand it is proposed to amend the report so as to fix a minimum for the salaries of judges; to that course I strongly incline. I believe the people are more liberal in fixing salaries than their representatives, and I believe if we give good salaries the people will take this constitution because they are to fill the offices, and that they will fill the offices with men according to the salaries. If you give salaries adequate to command the best talents and legal attainments, that the people will not put inferior men in the office; but if the salaries are not sufficient to command the services of her best men, that the best men will not be selected; and I believe the success of our constitution depends upon the character and ability of the men selected to carry out its principles.

It is also proposed to amend the report so that the judges shall be elected by ballot, and I am decidedly in favor of the ballot in the selection of judges. In our first constitution we adopted the ballot, and in our second we adopted the *viva voce* system. Most of the states vote by ballot, and if examples in our sister states is entitled to consideration we have it in favor of the ballot.

The objection made to the election of judges is, that the knowledge of the judge of those who voted for or against him, would influence his action on the bench. I have no fear of that. The character, learning, and intelligence of the men qualified for a judge with the eyes of the people upon him, would place him above such influences; but the suspicion might rest on the minds of the litigants, and that I would provide against by the ballot. Gentlemen declare that voting openly and in the face of the world, makes our people more manly and more independent. I do not think so. It may give the habit of violating the opinions and sentiments for favors expected or for fear of consequences from those in whose employ or power they may chance to be. I have heard men say that they felt they had a right to control the votes of those that were indebted to them and of those in their employ, and again of those with whom they dealt, and have known men sued forthwith for not giving such votes, and dismissed from employment for the same cause, and politics made the open cause for ceasing to be a customer.

We have a lesson to learn in our march to perfect freedom, and in the exercise of the rights of freemen. We must learn to tolerate each other in our political sentiments, and what we claim for ourselves, in judging of men and principles, we must learn to grant, without interference, to all others, or we are not good whigs or good democrats. We still have a remnant of the tyrant in our nature, which it is our duty, as the free men of a free government, to eradicate and

destroy. I would give the ballot as one great step towards this toleration. I desire every man to understand the principles of his government, and to take an interest in its action and in its public men, and when election day comes to feel every inch a sovereign, and be able to cast his vote without fear of consequences. I call for the election of judges, and I call for the ballot.

I thank the committee for their patient and attentive hearing.

#### — EVENING SESSION. —

The Convention re-assembled at 3 o'clock, P. M., and again resolved itself into committee of the whole. Mr. HUSTON in the chair, on the article in relation to the court of appeals.

Mr. BRISTOW. I should be very willing if I could to add to the correctness of the conclusions of the convention or hasten the progress of the business thereby, to be merely content with recording my vote. But as I shall not interfere with either of these objects by making a few remarks, to add my mite to the correctness of the conclusions to which the standing committee have arrived, and to express my indebtedness and gratitude to them that they did report such a bill as they have. Not agreeing perhaps in all its details, yet the great principles asserted in that report, I do freely endorse. So far as the business of this convention is concerned, I have adopted for myself the rule that I will struggle for unity on all matters of principle, essentially important, to ask for liberality on all subjects not important and not essential; and I am sure of the ready response of every delegate when I ask for charity in all things. Politicians have a habit when they commence their career, or are about to act in reference to a great principle, of defining their position; and in a very few words, sir, I wish to define mine before this committee.

I do not mean to say much in regard to abuses in our government. That there have been abuses seen by all, there can be no question. There have been many abuses which serve as a finger board to point out their origin, and the danger which exists that may grow into graver and more serious ones; and it is a matter of surprise to me that in the history of our government, under our present organization, they have not been greater. Had our official functionaries acted up to the limits of their power under that organization, and without regard to the spirit of the age or of the people, then our evils would have been great indeed, and long since by revolution or otherwise would have been obviated. But we are indebted to the officers of the commonwealth, from the foundation of our government to the present time, for having done as well as they have; and there is not a solitary officer in the state, against whom I have had, so far as I have engaged in the political reforms of the day, a private pique or malignant feeling—having met at the hands of all the best treatment in the social and official relations, and in the discharge of my duty before them. I have received from their hands no particular favor, neither have I sought for any, therefore I am not disappointed. Hence, no such influences operate on my mind. But some abuses have sprung up—and those

abuses directed my mind to the source from which they sprung—the tenure by which they held their offices, and I then thought we had better provide against them, lest in an unfavorable hour these abuses might grow up to the extent to which we have conferred authority on our officers to increase them. It sometimes happens that the people in a small district will desire some functionary, who has charge of some especial duties, to discharge them in a particular way. Most generally they do it, but sometimes they fail, and this directs me to the authority and source of such an abuse. In a district near where I live, there was a vacancy in the office of justice of the peace, and the people in that district got together and elected one. They did it with as much form and ceremony and as well, as if they had been authorized to do so under the laws. But the tribunal to which an appeal was made (the county court,) felt it to be an insult to their dignity that the people should have dared to do it, and would not appoint the man of the people's choice. This induced me to look at the authority under which the court acted, and whence they derived it. The people in the authority, and the organic law as it now exists, authorized them to act as they thus saw proper to act. Another view led me to conclude that some reform ought to be made in the organic law. The greater number of offices seemed, to a great extent at least, from accident of course, to fall into the hands of particular individuals, who did not, as my friend from Mason most eloquently described, depend on their personal merit for the positions to which they were elevated. They were not offices attainable by those in the humbler and less wealthy walks of life. The leveling up principle, referred to by my friend, therefore struck my mind with great force. That great moral principle in reform for which I contend, struck more forcibly than any of the small or great charges made against the officers themselves. I may subject myself to the charge of being a demagogue, but I express my own sentiments. The great moral principle which makes the people feel that this is their government, that they bear it on their shoulders, elevates them in the scale of being, and makes them each feel that they may each attain the highest destiny.

This great moral principle was one of the grounds upon which I come to the conclusion that reform in our organic law was necessary. It was to secure equal rights and equal privileges, to hold out an inducement to the children of the poor and humble as well as the rich and powerful, that if they qualify themselves they may stand a chance to fill the best offices in the country. We have the power to do this now, and I am greatly gratified that since I formed this opinion, I have had no occasion to doubt its correctness, except for a short time last summer when an excitement sprung up on one question. I was a little alarmed, and I was afraid this convention would not come here prepared to work out all those reforms which I honestly thought they should. All that fear has been wiped away. I find the people competent to the task, even when excited from one border of the state to the other, and I bear testimony to the fact, they have sent individuals here well qualified

to the discharge of these duties. Then the great consideration is, what are these duties? They have sent us here with authority to yield some of their sovereign power. It is a very high responsibility which rests upon us, and for myself, I will yield up no power into the hands of any department of the government, except so far as is consistent with the necessary restraint and protection of the people and their rights. The great question then comes up, what shall we yield? Some say that we must yield the election of officers, and some regard the people as not qualified to discharge that duty. It is true that all power is inherent in the people—there is no controversy about that. But the question is, how much of that power shall we yield and give up to the different departments of government? It is regarded that the science of government has not progressed further than the organization of three distinct departments. But how much power will you yield up? Just that which is inconvenient to the people to exercise themselves—just that and no more will I consent to yield up; nor are we authorized to yield up any more. Just so far as the people can conveniently attend to the great duties of the government, let them so attend, and thereby feel the elevating influence of thus discharging that duty. But it is said that the election of judges is a thing the people have not talked over or thought of. Elect a judge—the man whom we are in the habit of looking upon as superior, and as hardly forming a part of human nature. Elect a judge? Yes sir. But there are various collateral questions growing out of this main question. It seems to strike the minds of some of the delegates, and some others with great alarm that this power will be exercised by the mob. And some gentlemen say we want a court independent of the people, and some that they are not willing to trust the people. Nay says the gentleman from Bourbon, “I am not willing to trust myself!” If he has that distrust of himself, which should pertain to men who are called upon to discharge high duties, in view of the responsibilities which press upon them, it is right and proper; but if he means, in the abstract, that the court would not be independent because it was elected by the people, or that the court must in the abstract be independent of the people, and the people ought not to be trusted with the discharge of that duty—then I must differ with the gentleman. The question of the independence of the judiciary and its origin has been fully argued and settled in this committee. It was independence of the king. What is the meaning of dependence upon the king? If it means anything it is that the judges in the discharge of the high duties of their office regarded the will and wishes of the king more than the protection and safety of the liberties and lives of the people whose rights they adjudicated upon; that they were looking to, and were guided by the wishes of the king.

How does the principle apply in the election of judges by the people? Is it really a subject of alarm, that the judges should regard the people to such an extent, as in the discharge of their duties to be willing to protect their liberties, and to guard against innovations upon their rights, except in accordance with law? That is

the question I ask. Then if there is any dependence at all, I want it to be on the people. I see a difference between dependence on the people and dependence upon a party, or those in power. I am not for that. Who is the judge to depend upon? He is to look somewhere for his bread, and that is to come from the people. He is to look somewhere for approbation, and that is to come from the people.

There are always two sides to a picture—a bright and a dark side. The constitution of some minds leads them always to look to the dark side of things, whilst others regard the bright side. Now I believe that the yeomanry of Kentucky, the great body of them, are practical and sensible men, and that when they go into an election it is with a sense of the great responsibility that rests upon them, and that they would vote with an eye single to the prosperity and the happiness of the country.

I know that there is a dark side of the picture, and that there are those of the people who are ignorant and liable to be misled. Let them feel the responsibility which rests upon them, and that the government is not safe unless they turn their attention to it. It has been said that improper influences will be brought to bear upon the people in the election of a judge, and the gentleman from Bourbon, in his glowing description of the evils to result therefrom, among others suggested that some powerful and influential lawyer would induce the people to elect a judge who ought not to be elected. I am aware that these high wrought figures of my friend from Bourbon have been well studied, but still I desire to explain in my own way the influence of a lawyer. I know the lawyers have not a higher reputation for honesty than they ought to have, and yet I believe they are an honest and honorable profession generally. But even put it upon the principle that in the elections the lawyers will be governed in their action by sordid, self-interested motives, what then will be the result? If I understand the workings of the human heart, it will be the desire of every lawyer to get out of practice the ablest members of the bar, as it would leave more business for the balance. Then, even if they are influenced solely by selfish motives, it will be their object to get upon the bench the ablest of their number. So there is no danger of any improper influence upon the people from that source.

Again: it is said that the judge would be influenced to give improper and illegal decisions in favor of the lawyer who aided him in his election. Is that the character of Kentuckians? Would such individuals be made judges? If an individual has aided us in an election to office, and then seeks to induce us to prostitute that office to his advantage, and to the violation of our oaths, it annuls at once all obligation to him, under which we might be placed. And so far from exerting any influence over the functionary, the man would not be further trusted himself. We are sent here as delegates to this convention, and we strike for high principles, and we say that we would sink into oblivion rather than abandon a principle, and that if unaided, and in a minority of one, we shall still battle for that principle. Is it not then assuming

too much to say that the people will not elect equally as honest and independent men to other high stations, equally as important as the office we fill? The living examples given by all the members of this convention is a proof to my mind that the people will not fill these offices under such influences as have been indicated by gentlemen on the other side.

We have heard a great deal said about renters and anti-renters, in New York, and about party nominations; and to my judgment, gentlemen are using arguments derived from that source which operates against any and every mode of appointment ever suggested to my mind. We are all aware that these things will have their effect, but the question is how shall we remove the officer farthest from such influences? By keeping the appointing power where it is? All will answer in the negative—that will not do. Then it is the people who will best discharge that duty, and yet I am aware that generally speaking, the people are more or less governed by considerations of that sort. Be it so. We have not arrived at that point when we can expect always to have done that which belongs to a brighter and purer clime above us. The spirit may occasionally make itself visible in our dark and benighted land, but only so rarely as to induce us to hope for its more frequent return. It is never sufficiently evident to arrive at perfection in any of these tribunals. Then the question is not which is the perfect mode, but comparatively speaking, which is the best mode? I contend that from my observation, the best mode is the election by the people. The change would not be so radical as some think; although it is in language and words, yet in practice it is not so radical, and just so far as the change goes in practice, just so far is it useful and beneficial and better than the other mode. Say, for instance, that a certain officer is desired in a particular portion of the state, and by a particular district; and that every man in that district entitled to vote, petitions to the appointing power, that he shall be appointed. Generally speaking he would be; but suppose the appointing power in this instance, should refuse to listen to the wishes of the people. What would be the result? A conviction is produced at once among the people that the appointing power has done wrong, and that would be the conclusion throughout the commonwealth of Kentucky. We are in an imperfect state, and there is no question but the people themselves would do wrong sometimes, but a wrong is supportable, when we bring it upon ourselves; and when we may live to retrieve ourselves from the consequences of our own action, then it is to some extent bearable. Not so when it is brought upon us by others, contrary to our own wishes and will.

And upon the election of the judges there is a difference from what frequently happens in political agitations. It is sometimes the case that politicians bring about a particular result, by urging and pressing certain matters, before the people have advanced to their consideration; but in the present instance the people chose to think in the first place, and the politicians have been obliged to follow, and as some have said with no little alarm and trepidation—

especially among those filling the offices—has been created. But the people have said that they desire this power to elect their own officers, in their own hands. I desire just here, to read some little authority on the subject, and in regard to the origin of the difference between the two great parties in the United States. I read from the writings of an individual who was at least forty or fifty years ahead of the times in which he lived, and a more direct answer to many of the appeals made by gentlemen on this floor could not probably be framed. In speaking of the two parties Mr. Jefferson says:

"One fears most the ignorance of the people, the other the selfishness of rulers, independent of them—one side has been fairly tried, the other not."

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"I drafted a constitution annexed to the notes on Virginia, the infancy of the subject at that moment, and our inexperience of self-government, occasioned gross departures from genuine republican canons. In truth the abuses of monarchy had so filled all the space of political contemplation, that we imagined everything republican which was not monarchy; we had not yet penetrated to the mother principle, that governments are republican only in proportion as they embody the will of their people, and execute it."

"In England, where judges were named and removable at the will of an hereditary executive, from which branch most misrule was feared and has flowed, it was a great point gained, by fixing them for life, to make them independent of that executive. But in a government founded on the public will, this principle operates in an opposite direction, and against that will, we have made them independent of the nation itself."

"The justices of the inferior courts, are self-chosen, are for life, and perpetuate their own body in succession forever. They tax us at will, fill the office of sheriff, the most important of all the executive offices of the county."

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"Some men look at constitutions with sanctimonious reverence, and deem them, like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did, to be beyond amendment. I know that age well. I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years experience in government is worth a century of book reading, and this they would say themselves, were they to rise from the dead. Laws and institutions must go hand in hand with the progress of the human mind."

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"Let the future appointment of judges be for four or six years. This will bring their conduct, at regular periods, under revision and probation. We have erred on this point, by copying England, where certainly it is a good thing to have judges independent of the king. That there should be public functionaries independent of the nation, is a solecism in a republic, of the first order of absurdity."

That is the theory of Jefferson. I am aware that it is not very good authority with some, but I believe him to have been one of the purest and ablest politicians that ever lived. On this same subject I am favored with a beautiful extract furnished by the research of a lady:

"There is only one cure for the evils which newly acquired freedom produces—and that cure is *freedom*! When a prisoner leaves his cell, he cannot bear the light of day; he is unable to discriminate colors, or recognize faces. But the remedy is not to remand him into his dungeon, but to accustom him to the rays of the sun. The blaze of truth and liberty may at first dazzle and bewilder nations which have become half blind in the house of bondage. But let them gaze on, and they will soon be able to bear it. In a few years men learn to reason. The extreme violence of opinion subsides. Hostile theories correct each other. The scattered elements of truth cease to conflict and begin to coalesce. And at length a system of justice and order is educed out of the chaos.

"Many politicians of our time are in the habit of laying it down as a self-evident proposition, that the people ought not to be free till they are fit to use their freedom. The maxim is worthy of the fool in the old story, who resolved not to go into the water till he had learnt to swim! If men are to wait for liberty till they become wise and good in slavery, they may indeed wait forever.

Gentlemen have said that we are without experience on this subject; that the people should be enlightened, and that they are not now qualified to elect their judges. And how are they to be? Do gentlemen expect that upon the mere talking of a convention the people will put themselves at great pains to qualify themselves to do that in which they have had no interest. They are however a plain sensible people, and as politicians they are equal to any emergency. Then throw the responsibility upon them, and let them feel that that responsibility is resting upon them, and what will be the result? If politicians are correct they will discharge these high duties, and well discharge them. Thus much upon the general subject of electing the judges.

I have said that I am in the habit of looking at the bright side of things. It may be a good or it may be a bad quality, but I always prefer to look at that side of the picture, and I believe that the spirit and genius of the age will carry me through safely. I believe that if this power be given to the people it will be safely exercised, and that the result in regard to the judiciary, will be all that can be desired. But the mode and manner in which this report is framed, meets many of the objections against the elective principle itself, as contained in it. Gentlemen say that it will not do to have the judges of the court of appeals elected by the people, because of the influence that may be exercised over him by some powerful individual, who may have favored his election, when he comes in contact with a poor man—and that thereby the poor man will be deprived of justice. I will just here remark before I refer to the report itself, which obviates the difficulty, that the argument excites no alarm in my mind. I have

understood the course of politicians for a long time, though it is true that I have not been engaged in much political life myself, but I have heard of them, and that is not their way of acting. Politicians generally think remarkably well of poor people, and I suppose it is because a great majority of the people are poor. And when we are told of the power and influence of money in the hands of men who will bring it to bear upon the people, I always remember that in our country, so far as my experience has gone, there is always two sides to a question. Therefore while one undertakes to make his money tell, another is always telling on him, and thus these things will out, and correct themselves. And while therefore the assumption that the rich will impose upon the poor through the influence of the judge upon the bench, excites no alarm in my mind, it is also guarded against by the mode and manner in which the report is framed. Indeed there are three safeguards on the subject. There are to be four judges, and if one of them from the first district should be subjected to any such influence, there would still be the other three uninfluenced. If there were to be three judges, still there would be the two who held over; and who could not be influenced by the causes which entered into the election of the third. So I conceive that difficulty is obviated by this provision of the report.

The district system of election, I believe, will produce a wholesome emulation between the several districts, as to which shall select the best men. It is the feeling of our nature, and with that pride of locality that always exists in the breasts of men, to a greater or less extent, each district will endeavor to send their best men, and superior men, if they can find them, to those that any other district may send. I am doubly in favor of the district system therefore, for the reasons, to which I have just referred. Here, it is as I before remarked, that as to other matters of expediency, I am not disposed to quarrel with members, as to whether they shall be carried out or not. It meets my hearty approbation, that one of the judges shall be elected in each of the four districts. In assuming there are to be four, I acknowledge that I am governed by the arguments of those who ought to know more in regard to the subject than myself. I have conversed with some of the judges themselves, and with others conversant with the business done in that court, and it seems to be conceded, that the business is more than three judges can do with deliberation, and with an eye that justice should always be administered. I am also satisfied that the business will be increased, and I want to provide for that contingency. Let there then be four judges elected, one in each of the four districts. But if it will increase business, is it not also another objection? Not to my mind. It is very true that I may be considered in the category of those who are governed by selfishness, and if nothing is to be considered but the interests of the lawyers of the country, then let those benefits be equally distributed by means of branch courts. But there is a principle involved beyond that consideration. It is of course, a judicial tribunal for the benefit of the whole state, and if the people any where are dissatisfied with the

decision of a circuit judge, let them have the advantage of this tribunal composed of the ablest men in the state. If it is of no use abolish the court, but if it is beneficial to the people, then let those benefits be equally distributed, and not confined to any particular locality. But gentlemen say, if those at a distance cannot conveniently come to court, there are those on the ground who will attend to their business for them. But they cannot be so well accommodated. A man feels of course a deeper interest in his own matters than any body else, and my experience teaches me, that if you want your counsel to feel like yourself, you must try and infuse into him the same spirit and feeling with which you are animated. If a man has been oppressed and trampled upon, let him try and infuse such a spirit into the lawyer, that he will feel that it is he himself who is the injured party. Can that be done by men who live three or four hundred miles off and have never seen the lawyer? Whenever an important case was brought to me, I have always advised my client that it was best for him, not only to have a lawyer who resided here, and understood the practice in the court of appeals, but that he himself should go in person and see his lawyer, and *mesmerize* him, if you can, by infusing into him the spirit which actuates yourself in the pursuit of justice. At a casual view, it may be supposed that it will do well enough to write to the lawyer, and furnish him with the facts; but it is not so well as to infuse into him, by personal application, the feelings to which I have referred. Besides, it is more to the satisfaction of the client to know that his case is in the hands of a man with whom he is acquainted—who is no imaginary person, but one with whom he has conversed, shaken hands with, and of whose character and position he has fully enquired, and is thoroughly satisfied.

The fact that appeals are not taken from different parts of the state in proportion to the amount of business transacted on account of the increased expense thereby imposed on those residing in distant portions of the state, was happily shown by my friend from Montgomery, (Mr. Apperson.) It clearly demonstrates that if there are any advantages to be derived from the court of appeals, the opportunities of having them are not equally distributed. If it is a good tribunal, let us place it within the reach of all, if it is not a good tribunal let us abolish it at once. Considering as I do, that it is a settled question that the judges will be elected by the people, I believe therefore that it is best for each of the four districts to elect one judge. They will be better acquainted with the candidates, than if they were to select from the whole state. But gentlemen say that we must throw some guards around this mode of election if it is adopted at all. And one of the great guards they propose is that the individual should not be re-eligible to a second election. They give as a precedent for this, the fact that the governor is not re-eligible to a second term; but they are very far from convincing me that he ought not to be if the people desire it. I am well aware of the mighty power and influence exerted by the distribution of offices in the hands of the governor, but that objection does not ap-

ply to the judge at all, as he has no such power to wield. But I am yet to be convinced that it is not right for the the appointing power to say in every case that it may desire, "we approve your official conduct." I cannot see the force of the reasoning that when an individual has well discharged his duties, he shall not be rewarded. It is said that the officer would be influenced by improper motives. Why say that the people are qualified to make the appointment, and in the same breath say the people cannot distinguish between those who deserve a second election and those who do not. It seems to me a contradiction, the principle is absurd and I am not satisfied that it shall be declared in the organic law of the land, that any officer shall not be re-eligible, if he fills the office and discharges the high duties imposed upon him, to the satisfaction and advantage of the people. The dark side of the picture is, that he will prostitute his office to abuses for the purpose of securing a re-election. I believe no such thing. I fully believe that there is virtue and intelligence enough in the people of Kentucky fairly to estimate the manner in which the officers have discharged their duties; and when they have ably and faithfully discharged them, I want the people to have the right to say if they choose to, each and all, "well done good and faithful servant," we trust you and desire you to go on. So in regard to the governor, if I had the power myself, and it was an original question, I should say that he should be re-eligible, and this with the full conviction in my mind that the present officer would be re-elected, although I should do every thing to defeat his re-election. But the judges have no such patronage as the governor, no such offices, and an objection that would be applicable to the governor would not apply to the judge.

And shall we establish a principle in our organic law that we will have no more distinguished men in the tribunals of the country? Will you establish the principle that six or eight years shall be the full limit of the time that any individual who shall fill a judicial station in Kentucky, shall be allowed to distinguish himself and benefit his countrymen? Shall we say to them that no matter how much you may struggle to qualify yourselves, it is all lost? It seems to me the very thing itself operates directly to contradict itself. They want an independent, a virtuous and a talented judiciary and how do they propose to get it? By saying to the judge, when you have had some experience and qualified yourself in the duties you are to perform; when you have got far enough to be distinguished, we prohibit you from serving longer. This principle of human nature would spring up and operate on the individual. He would at once say, I will not undertake to be a shining light in the tribunals of the country; I have but a few years to serve, and then I must seek for other business, and after I have lost all the practice I had, and to a great extent unfitted myself for other pursuits, then I must quit this to which you have called me and find some other way to earn a subsistence. Is it not in fact saying that the appointing power were not qualified for the exercise of that high duty with the influence of the officer operating upon them. Or rather it would be saying to them, you have all the



knowledge and ability requisite to decide as to the integrity and virtue of a candidate in the first instance, but in the second you have not, because of the influence the officer would exert over you by the prostitution of his office?—Would it not make the judges more industrious and studious, if they are such individuals as I hope we shall obtain, if we give them an opportunity of showing to the people their ability and qualifications to discharge the duties assigned them under the stimulus afforded by the prospect of a re-election? As was very pertinently remarked, all the reasons that operate on the popular mind favorable to first election, would operate favorable to the re-election. And they would operate even to a greater degree. When we first vote for a man we have had no opportunity of seeing how he will discharge the duties we are about to impose on him; but in the case of a candidate who comes up for re-election, the people have seen and understood his abilities and his qualifications. If they are satisfied then they may continue the worthy officer in the discharge of his duties, and afford him the opportunity still further to inform himself in legal knowledge. There is no such thing as getting to the end of this information—it is progressive. Then let him progress in its acquisition, and if he becomes an honor to the station, let the people have the opportunity of continuing him in their employment. If the officer has been incompetent or failed in the faithful discharge of his duties, the people will at once condemn him.

We are not to expect perfection in any system, and I am aware that the elective system will not be an entirely perfect one. But it has been tested in other states and with success, and while I regret that to Kentucky does not belong the honor of having first adopted the principle, still I am willing to follow in the footsteps, and thus not be obliged to travel over unexplored ground. But the gentleman from Bourbon says that the system has not been tested long enough to satisfy the considerate mind of its success, and then he gives an instance of what particular individuals say on the subject. What they say should have very little influence as an argument, but we have also information as to the working of the system in other states. We have information from Mississippi, and it demonstrates that an elective judiciary in that state, has been entirely successful, in securing the most able, talented, and virtuous judiciary officers. There and elsewhere the system has been fully tested, and we see none who have tried it returning to that system which they abandoned.

I have said what I intended to say on this subject. I have tried to make myself plain, and practical, and easy to be understood. I have not dealt in abstractions. Let logicians do that. I know that the people of this country desire no such reasoning; at least in my section of the state they do not, and to them I desire to discharge my duty. In closing my remarks permit me to express the hope that the labors of this convention will be continued and closed in peace and harmony. Let the good of our constituents and our state be our polar star, and may we each hear, when we retire from our labors, the grateful gratulation, "well done good and faithful servant."

Mr. IRWIN. Differing as I do from the gentleman from Todd in the position which I occupy, I feel it due to myself and due to those I represent, that I should express the opinions I entertain, but I regret that I cannot speak with that clearness and deliberation that he has done. I do not expect that I shall succeed in changing the vote of any gentleman on this important subject. I am one of the few gentlemen elected to this house who were opposed to what is *now termed* constitutional reform, and in my county it was one of the objections urged against me, that I would be opposed to all reforms that might be proposed in this convention. This however was an error. I am not opposed to all the propositions which have been presented, for some of them contain principles for which I shall vote. In the first place I am opposed to the election of the judges of the court of appeals, as proposed by the committee, but would be willing to vote for a judiciary elected by the people for a single term. I want them to be ineligible. I want them to be independent.

In the organization of a government I have been taught that the different departments should operate as checks upon each other, and I very greatly fear, that the mode proposed will so operate as to centralize all the departments, and produce a despotism on the part of the majority that may in time subvert the rights of the minority—one of the great objects for which governments are created.

What check will the court of appeals be upon the legislative department, when both are placed in power by the same electors. Can you suppose that a majority of the electors who might place representatives in power favorable to the enactment of an unconstitutional law, will place judges on the bench who will reverse the enactment, or declare it null and void. No sir. Elect your appellate judges. Elect your representatives. Let both emanate from the same source, and they act in concert; they will be a unit, and if checks and balances are necessary in a government, you will destroy them. Does any gentleman believe that at the time the appellate judges of Kentucky declared the relief laws unconstitutional, and were hurled from office by the representatives of the people, that judges would not have been elected who would have sustained the legislature?

An incorruptible and enlightened administration of justice is indispensable to a free government, and the question comes up, will the judges of your appellate court, elected by the people, (and that by districts, a very objectionable feature,) be as independent, as free from bias, personal as well as political, as they would be if they were placed in power by some other process? Judges are but men. If they get into a heated controversy, and questions of great magnitude are presented and discussed, their personal, partisan, and political friends mingling in the canvass, and by their powerful exertions securing their election—do you suppose they will forget their obligations; that they will fail to reward their friends and partizans? It will be too much to require of human nature—that they should forget their friends or their enemies.

Gentlemen seem to think that any other process than by a direct vote of the people, is in

opposition to the principle that from the people must emanate all authority. Now, we all know that a pure democracy cannot exist, that the powers of the government must be delegated to agents, and the first and great question is, will the interest of society be better promoted by the election of the judges directly by the people, or indirectly by the people, through an agent selected by them and responsible to them.

I incline to the opinion that you will best subserve the interest of the people of Kentucky, by giving to the governor the appointing power of the appellate court, and the senate the power of rejecting or confirming the appointment, limiting the tenure of office to eight years.

By this process you will secure constant responsibility, and destroy the life tenure as it is called, in the judicial offices of the country. I feel satisfied that the objection to the present organization of the judicial department of the government, consists more in the tenure than in the mode of appointment. All men seem to think, that of all the safeguards to human liberty, to the safety of our rights, personal as well as political, the judicial department is more to be relied on than either of the others. If this is so, we should so organize it as to secure efficient, independent and enlightened administrators of the law, and the question comes up, will an election, directly by the people, best subserve our purposes? Sir, from what you have seen and felt, can you, or you, sir, conscientiously say from your own knowledge that elections, as carried on in Kentucky, and indeed elsewhere, are not so conducted as to place the recipients of place and power in a position dangerous to his independence. Is it not in the nature of man to be rewarded than either of the others. If this is so, we should so organize it as to secure efficient, independent and enlightened administrators of the law, and the question comes up, will an election, directly by the people, best subserve our purposes? Sir, from what you have seen and felt, can you, or you, sir, conscientiously say from your own knowledge that elections, as carried on in Kentucky, and indeed elsewhere, are not so conducted as to place the recipients of place and power in a position dangerous to his independence. Is it not in the nature of man to be rewarded his friends and punish his enemies—and does not all history prove that men yield to the power that places them in office? As long as the chancellors of England held office at the will and pleasure of the crown, were they the administrators of justice or the blood-thirsty agents of tyranny? Let any gentleman look into the history of England, through the entire reign of James II, and he will see that the judges were the most profligate and unscrupulous scoundrels that ever disgraced humanity.

Elect the judges now of the court of appeals in four different sections of your state, one district will have one set of political views—another the reverse, and this division may be produced by a decision of the judges themselves—their election is coming on—they are in the canvass, and ardently seeking a re-election—it is over, and they meet on the bench divided in feelings, in interest—and future rewards and future elections are to be secured by the tenacity with which they subserve the party purposes of those who elected them. Do you, can you believe, that these judges thus elected can calmly and dispassionately decide upon the constitutionality of your laws? Why, sir, an elective judiciary system, is yet, I think I may say, an experiment that the best men in the land look upon with fear. Yes sir, the people themselves, many, very many of them, distrust and fear the exercise of power which may prove fatal to their interests, fatal to their hopes of peace and quiet, fatal to liberty itself.

In these United States, how many have

tried the experiment? Four or five I believe—New York, Mississippi and some others—and the experiment is of such recent date that I think gentlemen will not rely upon it as conclusive evidence that the system is much improved. Another feature in this report is most objectionable, that is the election by districts. Sir, if you must elect them, surely you will let the people share in that election. I can have no objection to requiring one judge to live in each district of the state, but surely all sir, as all the people of this state are to participate in the benefits of this court, you will let them have some share in its organization. I think I see in this division of the state into districts, some squinting at party supremacy. I hope sincerely that party will have nothing to do in this judge making business; it will be fatal to our peace and fatal to our happiness. I, like the gentleman from Bourbon, (Mr. Davis,) think that party should not influence the organization of the supreme court, and that the minority in the state should not be deprived of all share in the judicial or other offices of the country. But sir, how will you prevent it? Put your state into districts, and my word for it, you will elect the judges of the supreme court from the predilections which they may indicate—upon the subject of national politics.

Elect your judges of the court of appeals, as proposed by the committee on the appellate court, and it is admitted by the honorable President, it will be a partizan court, it will be more sir, it will be so organized that litigation will increase four fold, and it will simply be a court for the benefit of the lawyers of the country, at the expense of immense litigation and cost. He says the strongest men of each party will be candidates, and this argument shows that it is obliged to be a political partizan court, and of all the organizations for the distribution of justice, a partizan court is the last one in the world that the people will have confidence in, and it is the last one that I think we ought to organize.

I am told that judges for the supreme court will not canvass. That the dignity of the office, the amount of the salary, and the magnitude of the interests involved will preclude the idea. Why, my dear sir, this district system will, in my opinion secure the election of judges who have a mere local, or neighborhood popularity—and that men will be elected who, if the whole state had the right to vote, would never, no never be thought of—and this local popularity would depend upon his political predilections.

I am also opposed to that principle which makes the judges re-eligible. It has been said that an elective judiciary would protect the rights of all equally. This may be doubted. I know that the rich and powerful can always be secure; if a man has wealth he always has power. Bring two litigants into court in antagonism to each other; one a poor but honest man; he has his home, his fire-side, in fact his all are at stake; he has but one vote to give, he is unknown to fame, and his whole reliance is upon God and his country. But sir, who is his opponent? He is rich, he is powerful, his cause is argued by the most learned counsel. He can by means of his wealth and connexions have the ability to carry his county in favor of the judge who is

to decide upon this important case. I ask you Mr. Chairman, if you were placed in the position of this poor man, if you would not fear for your rights.

But sir, suppose he does decide rightfully—and he decides in favor of his rich friend—do you not believe that this poor man would distrust the correctness of the decision? So you see two evils may arise from the operation of this principle of re-eligibility: one, that there is great danger that the judge, to secure his reelection, will lean to some extent, in favor of the rich litigant; and another, that if he decides rightfully in his favor, the poor man will distrust his judgment. Both evils are to be apprehended; either will be fatal to the character of the judiciary, which like Cæsar's wife, should not only be pure, but unsuspected. Surely if we have an elective judiciary, it does not follow that the officers shall be re-eligible.

Sir, I have made up my mind to vote against the election of the judges of the appellate court. I fear its centralizing effects, and I fear for the independence of its officers. I fear that they will fraternize with the legislative department. I fear that a dominant party in the legislature, backed by the judiciary department, may forget that the people created them, or that they are responsible to them. Sir, I have been told that this course was not in accordance with the progress of the age in which we live, and that the people would hold me to fearful responsibility. Sir, I intend to meet that responsibility, and if I am to be sacrificed, I shall have the proud consciousness of knowing that my actions have been prompted by my best judgment of what are the interests of the people.

On the motion of Mr. PROCTOR, the committee rose, reported progress, and obtained leave to sit again.

#### LEAVE OF ABSENCE.

On the motion of Mr. PROCTOR, leave of absence was granted to Mr. Newcum indefinitely. The Convention then adjourned.

MONDAY, OCTOBER 29, 1849.

#### RESOLUTIONS.

Mr. MOORE submitted the following resolution, which was agreed to.

*Resolved*, That the select committee on the public debt be instructed to inquire into the expediency of depriving the legislature of the power to borrow, or to authorize the borrowing of any sum or sums of money exceeding in all fifty thousand dollars, without the consent of a majority of the voters in this commonwealth previously obtained, except for the public defence in cases of insurrection or foreign war.

This committee consisted of Messrs. Hardin, Meriwether, Barlow, M. P. Marshall, McHenry, Gholson, Coffey, Lisle, and A. Hood.

Mr. MOORE offered the following resolutions, which were agreed to.

*Resolved*, That the committee on the legislative department be instructed to inquire into the

expediency of making provision for the real and *bona fide* representation in the general assembly of the people of each and every county in the state, and to inquire whether this end is attainable without giving to each county in the state at least one member in the house of representatives, increasing the number in the larger counties by a fixed ratio.

*Resolved*, That all the people in the state ought to enjoy as nearly as may be an equal representation in the senate of this state, and in the congress of the United States by means of districts of convenient form and equal population, and that the power of the legislature ought to be restricted in districting the state so as to accomplish that end.

Mr. BOYD offered the following resolution, and it was referred to the committee on the revision of the constitution and slavery.

*Resolved*, That the legislature should have the power (a majority of all elected to both branches concurring) to submit amendments to the constitution, to the people; and if a majority of all the qualified voters of the state should vote in favor of such amendments at two successive general elections, it should be a part of the constitution, *Provided*, that but one amendment should be proposed at the same session of the legislature. *And, provided further*, that no amendment should ever be so proposed, or submitted, which will give power to the legislature to emancipate slaves, without the consent of the owners.

Mr. BOYD submitted the following, and it was referred to the committee on the legislative department.

1. *Resolved*, That the legislature should have no power to incorporate companies, with general banking or trading powers, without providing that the private property of each individual stockholder should be made liable for all the debts and obligations of such incorporation, without submitting it to the people for their approval.

2. *Resolved*, That the legislature should have no power to borrow money (except for the purpose of repelling invasion or suppressing insurrection), without submitting the question, together with the amount to be borrowed and the purposes for which it may be wanted, to the people for their approval or rejection.

Mr. MACHEN offered the following which was referred to the committee of the whole.

*Resolved*, That the legislature at its first session, after the adoption of the new constitution, be required to provide for the compilation of a book of forms for the government and direction of the clerks of the different courts of record within this commonwealth, in the manner of keeping their records.

#### HOOR OF MEETING CHANGED.

The resolution some time since laid upon the table until this day, proposing to change the hour of meeting to 9 o'clock A. M., and to hold an evening session, commencing at 3 o'clock P. M., came up in its order.

Mr. PROCTOR, who moved the original resolution, now urged its adoption. In reference to the objection urged when he first submitted the resolution, that it was necessary to give the com-

mittees time to discharge the duties devolving upon them in their committee rooms, he said he believed that objection no longer existed; but if it was not entirely removed, he suggested to the committees the propriety of a more industrious devotion to their duties.

Mr. C. A. WICKLIFFE said he should now cheerfully vote for the gentleman's resolution; but he rose principally to say, in reference to the closing remark of the gentleman, that the committee of which he was the chairman—the committee on the court of appeals—had not been otherwise than industrious in the discharge of their duties, frequently holding two sessions a day of four hours duration, besides attending the session of the convention.

Mr. WOODSON was of opinion that the business of the convention was not sufficiently advanced to justify them in holding evening sessions; he therefore moved to strike out that branch of the resolution which provided for an evening session, which would leave it to the convention to meet in the evening whenever it might be found to be necessary.

Mr. CLARKE defended the standing committees against any imputation on their industry. He said they had been more industrious than the committees of any legislative body of which he had ever been a member. For some ten days longer he thought they should not commence evening sessions, for they had still many consultations to hold, the constitutions of many of the States to read in reference to particular sections, and much labor to be undertaken in making the articles of the new constitution as perspicuous as possible. He suggested that this resolution should be still further postponed.

Mr. BRISTOW also defended the committee of which he was the chairman, against any imputation on their industry.

Mr. McHENRY, in the absence of the chairman of the committee of which he was a member, also justified that committee by a recapitulation of their labors.

Mr. GHOLSON briefly spoke in favor of evening sessions.

Mr. PROCTOR disclaimed any intention of casting imputations on the members of the committees. But he reminded the convention that they had been a month in session, and in that time the committees should have managed to get through their business, and the convention itself should show to their constituents that they were in earnest in the business which had been confided to them.

Mr. HARDIN briefly explained the progress and present condition of the business before the committee of which he was chairman, and expressed the opinion that now they should be enabled to proceed rapidly with the business of the convention, and meet the expectation of the people. He confessed that he was of opinion, that they had hitherto done very well. They had interchanged opinions and become acquainted with each other's views, and in the course of another week, they should be enabled to vote upon some of the most important questions upon which they should be called to act.

The motion to strike out that branch of the resolution in relation to evening sessions was agreed to, and the resolution, as amended, was

adopted. The convention will therefore meet for the future at 9 o'clock, A. M.

#### THE CONTESTED ELECTION CASE.

Mr. ROOT stated that, as chairman of the committee on elections, he had received a communication from Mr. Lecompte, the contestant for the seat occupied by Mr. Nuttall, but as that case was not now before the committee he had been advised to present it to the convention.

Mr. GARRARD objected to the reception of the communication. He thought it should not be placed upon the journal. The gentleman from whom that communication came, was the claimant of the seat of the gentleman from Henry, and he had had a fair opportunity to sustain his case by any proof in his possession; but in the progress of the case, Major Lecompte withdrew his claim to the seat, and the sitting member was declared by the committee, to be rightfully here. That gentleman however, now sent here a document of some eight pages, which he (Mr. Garrard) did not suppose Major Lecompte had written, which should not under the circumstances of the case, be received by the convention, and spread out on their journal.

The PRESIDENT enquired if he rightly understood the chairman of the committee on elections to say that it was not a communication addressed to the convention.

Mr. ROOT replied that it was addressed to the committee on elections.

The PRESIDENT then decided that it was not properly before the convention.

Mr. ROOT withdrew the communication.

#### COURT OF APPEALS.

The convention again resolved itself into committee of the whole, Mr. HUSTON in the chair, and resumed the consideration of the report of the committee on the court of appeals.

Mr. PROCTOR. As I am perhaps the youngest member upon the floor of the convention—and as I am conscious of the age, ability, experience, and talents of those with whom I am associated in the great task of making for the people of Kentucky a constitution, it is with no ordinary degree of diffidence that I have summoned to my aid, the courage that will enable me to address the committee. But I do not intend to enter into an elaborate discussion of the various propositions before the committee, nor would I have been found intruding myself upon the time and patience of the convention, had it not been for the tenor of certain remarks which have fallen from gentlemen during the progress of this discussion, which I hold to be at war with the genius and spirit of the age in which we live.

And you will permit me, Mr. Chairman, here to remark, that while I have ever been conservative in my views in relation to constitutional reform, and while I have ever been opposed to that radical doctrine which would unsettle and destroy the great conservative influences of the different departments of the government, I am at the same time not one of those who are so wedded to the old order of things as not to see the errors and defects with which that system is surrounded. While I venerate that which is venerable, and while I admire that which comes

down to us sanctioned by our fathers and rendered sacred by time-honored custom—and while I appreciate as I should the labor of those venerable men who have gone before us, and to whose devoted patriotism and love of country we are indebted for so many of the privileges which we enjoy, I am not one of those who believe that no improvement can be made in the science of government.

Mr. Chairman, seventy three years ago our fathers proclaimed to the world the important truth that man was capable of self-government; the people of this union have been demonstrating that great principle ever since; and the free voters of Kentucky have elected us to this convention for the purpose of giving to this union and to the world a practical illustration of this great principle. In making a government for the people of Kentucky it should be remembered that we are not now just emerging from the savage state, but that we are surrounded by all the lights and experience of other ages and other countries and have the advantage of all the benefit which is to be acquired in the great school of experience. It is our duty in forming a government for the free and intelligent people of Kentucky to make that government harmonize as near as may be with the spirit and genius of the people. And what, Mr. Chairman, let me ask is now the condition of mankind; and what is the aspect of human affairs? It is that of alternate struggles and triumphs. And yet I venture the assertion that never in the history of man, with all his chronicled glory and ancient renown, has there been witnessed a period so interesting in the history of man as the present. I know, sir, that we may perhaps discover in the history of certain nations specific acts and achievements more glorious than any of which we boast; but, sir, in coming to a correct conclusion as to the intelligence and capacity of a people for self-government, we must withdraw ourselves from narrow compasses and individual instances, and we must look abroad upon the whole human family; and where I ask was there ever a period so interesting in the history of man as the present? But a few short years ago the lordly prerogative of the few over the many was the settled and recognized doctrine of all Christendom. A few bold and gallant spirits, however, there were who repudiated this doctrine and asserted the great principle that to the people belongs all power and all sovereignty.

It was this great principle that enabled the British subject to wrest from the hands of the British crown the magna charta of English liberty. And, sir, it was but the working of this great spirit that enabled our fathers to shake off the yoke of a tyrant, and to seek an asylum here in this mighty empire of a new world, where, bearing with them the spirit of this great principle, proclaimed to the world the important and hitherto disputed truth that all free government was founded on the authority of the people. Acting upon that great principle ever since, we have given to the world a practical illustration of its truth. The great advancement which the American people have been making in all the various sciences and departments of government is but a proof and confirmation to my mind that man is indeed and in truth capable of govern-

ing himself. Under the spirit and genius of our institutions and the age in which we live our people have marched onwards, and have been demonstrating the beauty, grandeur and power of a government founded on the virtue and intelligence of a free and independent people.

Then sir, in forming the constitution which we have assembled to make, we should make that instrument correspond, as nearly as possible, to the genius of the people, and the age in which we live. For myself, sir, I shall vote for every proposition which will tend to produce such a result.

In forming a constitution for the government of a free people, it is well for that government to harmonize with the feelings of the people, because sir, all governments and all free institutions must be sustained and supported by the great majority of the people. The question naturally arises then, what are the sentiments and feelings of the people of Kentucky, in relation to the election of the judiciary, by the people. If sir, I am any judge of the indication of public sentiment upon this subject, there is a vast and overwhelming majority of the people of Kentucky in favor of electing their judicial officers. And sir, while I am frank to admit, that for a long time I doubted the propriety and expediency of electing the judges by the popular voice, yet sir, I am also as frank to confess that upon mature reflection and consideration of this great question, my mind has undergone a radical and perfect change. I confess sir, that having been early taught to look upon the independence of the judiciary as the only safe-guard to the rights of the citizen, I had imbibed the notion that this independence was inconsistent with popular elections by the people. Not sir, that, like my friend from Bourbon, I feared to trust the people; but I did fear that the influence which might be brought to bear upon popular elections might warp the judgment of him who was to decide upon the various rights of the citizen. But when I came to look upon this question in all its various bearings, my better judgment has convinced me, that there is no power to which the selection of the judicial officers can be so well trusted as to that of the sovereign people themselves. The gentleman from Logan on Saturday, remarked that he was opposed to the election of the judges by the people, from the fact, that if the judges were elected by the same electors by which the legislature and the executive were elected, they would form a unit in the several departments of the government that would be dangerous to the rights and interests of the citizen. May I not ask, Mr. Chairman, if there would not be a unit formed in the different departments of the government, if you still permit the executive to appoint the judicial officers of the government—a unit far more dangerous to the rights of the people than if you retain in the hands of the people, the power to make these appointments themselves. I think so, sir. I believe as was remarked by my aged and venerable friend from Nelson (Mr. Hardin) upon another occasion, that “all men love power from the Autocrat of Russia down to the petty constable who struts your streets with his saddlebags upon his arm.” And if you confide too much power to the hands of one man, that power will

be abused; whereas, if you retain it in the hands of the people, the many, to whom, and from whom all power emanates and belongs, there cannot be that danger that would result from concentrating all power in the hands of one man.

I know that it is a difficult task to form a government that will be perfect in all its parts. Man is a frail and erring being; he is subject to all the passions and prejudices of frail, erring nature; but sir, when we come to make a government, we should endeavor, as near as may be, to make that government harmonize with the condition of man as man, and to harmonize with the great principles of civil liberty.

How then, sir, is this to be done, if you want to elevate man in the scale of human existence? Can you do it by telling him that you are distrustful of his capacity to select his own agents, and the officers of government? Would it not rather be done by holding out to him the idea that he was an intelligent being, created for high and noble purposes, and endowed with great and mighty privileges? What sir, was it that nerved the arm of Kentucky soldiers when bearing aloft the flag of their country upon the heights of Cerro Gordo, and upon the plains of Buena Vista, but the recollection of the noble ancestry from which they sprang. We, sir, then are to make a government for a brave, a patriotic, and an intelligent people, and in making that government, we should not indicate to that great people, that we distrusted their capacity for any emergency. Again sir, if you elect all the officers of your government, you say to the humble and obscure (and sir, having commenced my career in life without friends or fortune, I confess I have a very great respect for this class of the community,) that the door is open, be virtuous, be honest, be industrious, and a virtuous and intelligent people will reward your exertions.

Mr. Chairman, I will say no more upon this branch of the subject. But I will just here remark, that I shall support the proposition as reported by the committee, with but few exceptions. I shall support the proposition to elect the judges by districts, because sir, I believe that by that plan, we shall be more likely to get a court free from prejudice than by any other plan that has been proposed. By that plan, three of the judges will be removed from the consequences which have been so much deprecated upon this floor by gentlemen, who fear that the excitement of an election by the people might be brought to bear upon the decisions of the judge. I shall vote for branching the court, because I believe that if this court is demanded by the interest of the people, and is necessary to carry out the great ends of government, it should be so arranged as to give to all the people, as near as possible, an opportunity to avail themselves of the advantage of that court. And again sir, as was well remarked by my friend from Todd, if you want a suit well managed and well attended to, you must have an attorney that partakes of the spirit of the client—one who will become interested in the issue and result of the cause; and no attorney is so apt to become so as one who lives in the client's own county, and who has been engaged in the cause from its commencement. It will also have the effect of

making better lawyers, as it will open to the lawyers of each county a wider field for the display of their talents. I shall also vote for the re-eligibility of the judges. Without giving my reasons at length upon this branch of the subject, I will only remark that in my humble judgment, if an individual who has been elevated to a high judicial station should so far forget his position and calling, as gentlemen have indicated they fear he would, I believe there is virtue and intelligence enough among the people of this commonwealth to detect and condemn such a course, and to elect some more honorable man in his place. Upon the subject of electing the judges by ballot, I am somewhat like my friend from Henry, my mind is in doubting castle. But sir, as this is a question that was not discussed before the people, and as I doubt very much whether the people of Kentucky would favor such a plan, and as I am satisfied that the people of Kentucky have independence enough to vote fearlessly for any officer they may choose, and as I am satisfied that equally as many, if not more frauds could and would be practiced under the ballot system, than under the *viva voce* system, I shall vote against that proposition.

Mr. Chairman, one other remark and I have done. Notwithstanding sir we have been a little tardy in the discussion of the various propositions before the convention, I have been pleased to see the two great political divisions in this house harmonize so well. And when I see around me men of both political parties—men of age, and experience, and virtue—men who have passed the meridian of life, and who are laden with the fruits of experience, I cannot but hope for the most auspicious results from our labors. But sir, whilst I am thus gratified, I have regretted, deeply regretted, that gentlemen belonging to the great political church that I do, should have thought proper in the discussions now before the committee, to allude to the calling of a convention, as a matter which had originated from party feelings. And sir, when the gentleman from Logan, a few days ago, made the startling annunciation to this convention, that the democrats and emancipationists had united together for the purpose of calling this convention, I admit sir, that I felt a good deal surprised; but sir, when on Saturday, he announced to the house, that he had been elected because of his opposition to any constitutional reform whatever, then sir, the secret of my astonishment was made manifest. Sir, I have just this to say to the gentleman from Logan. He may speak the sentiments of the people of Logan, but sir, if his be whig doctrine—if his be the sentiments which agitate and control the great whig heart—then sir, I am ready, like my friend from Knox, to tap at the door of the democratic church for admission. So far however, Mr. Chairman, from the calling of this convention having been a party measure, it was called for by the people—whigs and democrats have hitherto battled, shoulder to shoulder, upon this great question. I stand here as a living witness, that so far as the democrats of my county are concerned, the imputation of the gentleman is not chargeable to them; and I do hope that we shall be actuated by a common sentiment, and a common spirit, and as we are



to make a constitution for a free and intelligent people, that we shall bury our party feelings, and party prejudices, and that we shall make a constitution that will remedy the evils of which the people have complained.

Mr. KAVANAUGH. I desire to submit a few suggestions to the committee before the vote is taken, upon so much of the report as is yet undisposed of, and the amendments proposed thereto; and in this I promise to be brief. The report and amendments yet undisposed of, propose that the court of appeals shall consist of four judges, and that this court shall hold its sessions in different districts in the state. It proposes further, re-eligibility and minimum salaries. The last proposition, I believe, was made by the gentleman from Madison, (Mr. Turner.) Before going into details upon any provision to be incorporated into the constitution, it seems to me that this committee and the convention, should well consider the results and consequences which may flow from such details; and especially should they well consider such results, if the question has not been discussed before the people, and decided by them in their elections at the polls. There were some four or five important and radical changes which the people seemed desirous to have made when they called this convention. One was that the legislature should meet only once in two years; another great and fundamental change insisted upon was, that all the officers in the commonwealth should be elected directly by the people themselves; another was, that when the legislature was assembled, some restriction should be placed upon the power of that body, especially as to local and private legislation relative to matters and things which could be more cheaply and conveniently done in other departments; and further, that some limit should be fixed as to the power of the same body in contracting debts. These were some of the reasons and objects for which this convention was called, and permit me to remark that at no time, during the two years canvass before the people on the question of calling a convention, did I hear any one say that it was to be called for the purpose of increasing the expenses of the government and multiplying offices. On the contrary, it was expected that if any change were made in this respect it would be to curtail expenditures and diminish the number of offices.

Now, in this, the very first report which is brought to the attention of the convention, it is proposed to increase the number of the appellate judges by one, and that the court shall hold its sessions in different districts in the state. You, by the constitution as it were, issue your mandate to the legislature to district the state into four judicial districts, and declare that these courts shall hold their sessions where the legislature may prescribe.

The gentleman from Montgomery, (Mr. Apperson,) made an able speech to convince the committee that this court should be branched, and he demanded of those opposed to branching to show wherein any expense would accrue against the state in case this were done. Now, I ask for nothing better than the arguments of the gentleman himself, to show that the expense of this court will be increased, and that if his posi-

tions be true, the annual expense will even be doubled. That gentleman told us, that no additional court houses nor additional libraries would be needed in the different districts, in which the court of appeals would be required to sit. He also told us that a great number of causes were carried to the court of appeals, and that nearly half of them were reversed, and insisted that to obtain these reversals the court ought to be brought within convenient distance to every part of the state; and that the border counties now carried a much less proportional number of causes to the appellate court than those within the vicinity of the capital. Now to obtain correct decisions resulting in these reversals, it is necessary to have learning, ability and talents on the appellate bench of the highest order—yet it is proposed to send the appellate judges out into the state to correct errors, without a court house and without a library. But is it a fact that the state of Kentucky will establish in any district a court of appeals without a court house? Is it a fact that she will appoint three or four judges, and require them to perform their duties in different districts without a library? But the gentleman says they can have the libraries of the lawyers. This may be, but when the thing is finally tested it will be seen that the state will have the libraries and court houses to furnish and such other conveniences as the wants of the court may require; and if the branches ought, in point of fact, to do so that every facility may be given to secure correct decisions. It would be better to have no court of appeals than to have a weak one. One great object in a court of last resort is to attain uniformity of decision, and to settle general legal principles, since the decisions of such a court are not only to affect the rights of the parties in a given instance, but the rights of hundreds and thousands in similar circumstances. It will be impossible to put this system into operation without an expense to the state of thirty thousand dollars, made up of the cost of three or four court houses and as many libraries besides the salary of the additional judge. But why is it another judge is wanted? It is to meet the facts of the gentleman from Montgomery, (Mr. Apperson,) that you will double the amount of business by branching. But when you get four judges and branch the court into four or five districts, you will need eight instead of four, because of the accumulation of business caused thereby; for according to the argument of that gentleman, I consider it as proved conclusively, that whenever you branch the court and hold it in different districts, you will have, instead of six hundred causes, about double that number to decide. And from the intimations already given in this convention, there seems to be a strong party in favor of framing a constitution, in which the doctrine of specific amendments is not to be allowed, and that the door is to be shut, bolted and barred against that principle. Suppose the number of the appellate judges be fixed and limited to four, and in the course of coming years, it becomes desirable to increase or to diminish that number, but on consulting the constitution, you find that the door to any amendment is shut, and bolted and barred. In view of these considerations, I ask if gentlemen are willing to go into details

of this sort? I, for one, am opposed to going into this branching of the court of appeals, when the people have not instructed us to do so. It was not one of the questions decided by the people at the polls.

Why is it that the court of appeals was not branched before? It is said that the legislature had constitutional scruples. Sir it was easy to have constitutional scruples in order to shrink behind them to avoid the difficulties which presented themselves. But that was not the reason that hindered the legislature from branching this court, for in fact there was no constitutional barrier, what then is the conclusion to which we must come? It is this, that it was not the will of the people to have this court branched. We must certainly come to this and no other conclusion, otherwise the legislature at some period in the last fifty years, would have done it. The legislature had the power during all this time, and the only reason that can be given why they did not exercise it was, that they were not willing to shoulder the responsibility when the people had not required it.

I am willing that this question of branching should go before the people. If they decide in favor of it by their representatives in the legislature, I have no sort of objection. If any barrier exists in the present constitution I am willing to remove it; but protest against putting it in the new constitution. We do not know how it will work. According to the argument of the gentleman from Montgomery it will increase the business of the court perhaps, beyond the power of that tribunal properly to decide and dispose of the causes which may come before it. I am willing this question of branching should have a fair trial before the country, but I shall not consent here to this unnecessary increase of offices and expenses. The fact that the committee propose an additional judge, is evidence that they considered that the business of the court would be increased by branching, above what might be expected if the court were held at one point.

Some gentleman has proposed that a minimum salary should be fixed in the constitution, I believe it was the gentleman from Madison, and who contended that it should be so, because the salary should be beyond the power of those who elected the judge. I was struck with the remark of some gentleman the other day, that the people of Kentucky were generally more liberal in making compensation to those who served them—to their agents in an official capacity, than the legislature itself. I am willing to leave that whole matter to the people, and let them say by the legislature, who are their representatives what the salary shall be. It is impossible for us to say what may be requisite in the long future. I would ask are you making a constitution to last but a few years, or one to last half a century? As the present one has done. No man can tell what will be a fit salary to be paid fifty years hence, or whether three or four judges will be required, or whether three, four or more districts will best accommodate the people. Yet you propose to go into all these details, and then bolt and bar the door, and say that these judges and districts shall never be diminished nor increased in number,

until the people come up and lay down their sovereign power at the feet of a convention. We have already seen some of the effects of placing the whole sovereign power of the state in the hands of a single body of men, yet I believe this convention will make such a constitution as the people of Kentucky will accept. They may go counter to the public will in some respects, but in the main, I believe, the constitution will be such as will meet the expectations of the country. I say then to gentlemen, let us not, in making this instrument, go into detail if we are to shut it up against specific amendments. I shall go against a fixed salary for the reasons I have given.

Much has been said respecting an independent judiciary. I am in favor of an independent judiciary, and at the same time in favor of responsibility to the people, but in a given way; and that is, that when the judge has been elected, he shall continue in office till the time for which he was chosen has expired. That my vote will show, and I am in favor of this other independence of the judiciary, that when a judge has been elected, the tenure of office shall not depend on the popular will; or rather on popular preference during the time for which he may have been elected—but on causes presented on fair trial. For such of these causes as would not be sufficient ground of impeachment you have already determined on a mode of removal; but without legal cause, even though every man who may have voted for a judge should change his opinion and prefer another, such judge cannot be removed, but will hold the office for the time he was chosen. At the end of that period I wish the people to have the right to elect or reject him at their pleasure. That is independence enough for me, and the kind of responsibility I am for.

There is one other matter to which I wish to call the attention of the committee though it has been discussed much more ably than I can hope to discuss it. I will therefore, in a word or two only, present the views which I hold on the subject. There have been some able speeches made in this house against an elective judiciary, speeches utterly opposed to my opinions, but which I have no disposition to reply to, because they have been well answered by others. I will only say, that the people have decided that question, and unlike another gentleman who has spoken, I cannot come to the conclusion that they decided lightly and hastily.—They have had two whole years before them to consider the matter, and they have determined that they have not only the right to elect their officers, but that it is expedient to elect them, and all of them. The question now is, whether it is expedient for them to do it themselves or to delegate the power to others. They have tried the latter mode for fifty years, they have tried it fully and thoroughly and they have now deliberately determined that they can exercise that high privilege as well as any agent can do it for them. They have come to the conclusion that they will have as learned, as pure, and as intelligent a judiciary if they appoint the judges as they will if they give that power to the executive; and further, that they will not only have as intelligent, as pure, and as learned

a judiciary thus appointed, but one much more in harmony with public feeling and the popular voice. They have determined to withdraw this delegated power, which is recognized under the present constitution, and that they will exercise that power themselves, and they are now determining that when the judge is elected, whether for eight or ten years, that the election shall be in the nature of a contract between him and the people, and that if he discharge the duties of the office properly, he shall not be subject to be removed simply by the popular voice, but only for misdemeanors in office for which he may be impeached, or for any other reasonable cause, for which a majority of two thirds of the legislature may remove.

But gentlemen seem to think that if the judges are re-eligible they will be responsible to the people, and therefore not independent, under the old mode, they were as independent of the appointing power as they will be under the new, and not more so. But according to the mode now proposed they will hold their offices only for a limited term. If the people are capable of determining who ought to be their judge in the first, they are equally capable in the second instance. All agree that the judge should hold his office only for a limited term. Now, if you do not place the appointing power in the hands of the people, will you place in the hands of the executive, and if so, how does it stand, will not the judge court the executive, and bow to him or to whatever source may hold the re-appointing power, for the purpose of securing a re-appointment, as certainly as if the power is in the hands of the people? But the idea is at war with the fundamental principles of our government, that if the people have a sufficient amount of public virtue and intelligence to govern themselves, and select their own officers, they will not always know by what motives, in a general point of view, the judge is influenced in deciding causes which are brought before him, and whether he has an eye to his re-election in the decisions he may make. If the people are not capable of resisting the wily attacks by a judge when he presents himself before them, either in the first or the second instance, then your form of popular government is an abortion, and you may as well at once abandon it.

As I have seen no good reason for changing my opinion in the arguments of the gentlemen, I shall vote for re-eligibility. The arguments presented by the gentleman from Todd (Mr. Bristow,) were such as perfectly satisfied my mind, that one of the most powerful inducements to strict justice and purity in a judge, before an enlightened people, is re-eligibility. Before such a people, his hope of re-election hangs not on playing the demagogue or corrupt judge, but on the independent and upright discharge of his duties in an official capacity—knowing at the time that his official conduct and motives will be duly appreciated by the people—and that if he is found leaning to the rich and influential, or to the strong lawyer of talent and weight of character, as has been intimated, or to any other power whatever, that his fellow citizens would rise up and vote him down. Gentlemen insist that this principle of re-eligibility will bring the judge under the sway of the rich and influential.

Yet the poor man's vote counts as many as that of the rich. Besides, there is a sense of justice among the people of Kentucky, before which the reputation of any judge would be blasted, whenever he should be found deciding a cause, or in any official capacity acting in such manner as to convince the people that he thus acted for electioneering purposes. It would secure his defeat in any coming contest.

I hope the committee will be content, without putting the provision for branching the court of appeals in the constitution. If there be any constitutional barrier which prevents it, let that be stricken out, and let the whole question go to the people to be decided by them. I am willing that the border counties should have justice done them—it is right that they should; but I imagine that this committee are not ready to say that the people have decided this question. If they have not decided it, and the action of the legislature shows that the popular will is against it, let the whole matter remain for the people to pass upon, and let them say whether the court of appeals shall be branched or not. As I have said, I shall vote against a fourth judge, and against branching the court of appeals, but for leaving it in the power of the legislature to make this provision by statute hereafter, if they choose to do so. And I protest against going into these details, while it is uncertain whether the public will will sanction them. The gentleman from Louisville said, this branching of the court would be of great convenience to the members of the legal profession, and probably of some convenience to the people at large. If this is gotten up for the sake of the legal profession, and without reference to the people at large, I would say, let the gentlemen of that profession appeal to the people at large for this convenience, and if a majority are in favor of it, I am willing that majority should rule.

But I do hope that the responsibility of this expense of branching the court of appeals will not be incurred by the convention, and that the fact that it may be made a make-weight against the final adoption of the constitution by the people, will also be considered. Have we an overflowing treasury that the matter of cost may be passed lightly? It was said last winter that the public debt was growing less. But if we examine the tables we shall find that this debt is constantly increasing. It is true that the public debt, aside from the school fund, has been something reduced—say one hundred thousand dollars. On the other hand, the people have determined that that fund should remain inviolate. The interest on which was funded on the first January, 1848, and the bond of the state taken therefor, amounting to upwards of three hundred thousand dollars, not only increasing the debt of the state by that amount, but since the date of this bond the accruing interest on the entire school fund, including the bond, has continued to run up and accumulate against the state, till the additional outstanding interest on this fund to-day is not less than one hundred thousand dollars—so that if the faith of the state to the school fund is preserved, unless we diminish and retrench the expenditures of the state, instead of increasing them, an increase in taxation is inevitable. This gradual increase of the

public debt is not understood by the great body of the people, but the reverse is generally believed by them. I have no doubt the convention will preserve the school fund inviolate. True, our attempt at common schools has been but a faint, a feeble imitation of a school system, and has in truth amounted to nothing *as yet*; and in point of fact was a perfect failure till the people came to the rescue and taxed themselves in a sum amounting annually to near sixty thousand dollars, which is in addition to that fund which they had before said should be set apart and secured to the schools of the state.

I make no doubt the convention will, in obedience to the will of the people thus manifested, consecrate the whole school fund under the new constitution to the purposes of education, and hope that in future we will have an efficient system and not a mere imitation or attempt at a system as heretofore. The people have decided that they will go forward on the subject of common schools. I hope they will. But I have called the attention of the committee to the state of the treasury only to show that we cannot now meet accruing liabilities. And that if we would avoid further taxation, every possible item of expense must be kept down. But, sir, without adding more, I would only again say, leave details as far as possible out of the constitution, especially if it is the intention of the convention to vote down specific amendments. If it is, let the constitution consist of general principles and a general organization of the government only, as it was in this respect before, and leave to the legislature the power to fill out minute details. Such as fixing salaries, as well as the number of judges, and the points at which the courts shall be held. I have no objection to settling things of this kind now if you intend allowing the new constitution to be amended specifically. If you do not so intend, but still go on filling up the new constitution with such provisions, the time may soon come for us to regret their existence without a mode to get clear of them, short of calling another convention.

Mr. HARGIS. It is the first time in two weeks that I have been able to speak, or scarcely to think, on account of the state of my health; and I do not know that I shall be able to do so now. As much as I prize and value the right of the people to govern themselves, and to elect their own officers to preside or rule over them, and who receive pay for the services, in the present form of the report of the committee on the court of appeals, I shall be compelled to vote against it, because I believe that it will be injurious to the interest of the state, and the best interests of the people. The subject of branching the court of appeals is not new to us. From the best examination that I can make, this subject has been before the legislature, during the last fifty years, no less than twenty-four times. In one instance only eight votes were wanting to its passage in that body. I have heard no argument advanced by any gentleman, which has satisfied me that the legal power does not exist in the legislature to branch the court of appeals, if they wished to do it. I have examined the constitution, and from the best lights I could obtain, I concede it as a fact that the legislature has had no real constitutional objection to

branching the court of appeals. The objection has really been on the part of the people; they have never required it. I know gentlemen in the district adjoining mine come out boldly, and say that this branching of the court of appeals would not increase the expenses of the state; that it would permit judges to bring justice nearer the doors of those engaged in litigation. I have examined the different constitutions—among others that of Texas, and what was the consequence? No state in the union has branched the court of appeals, where they have paid less than two thousand dollars as a salary to the judges. In Louisiana they pay six thousand dollars to the judge, and to the associate judge five thousand five hundred dollars. In Tennessee the judge is paid three thousand five hundred dollars, and the associate judge two thousand five hundred dollars. Now, gentlemen tell me that branching this court will not increase the expense, but will any sensible man believe that if these judges are appointed and compelled to ride throughout the state and hold courts, it will not cost more than fifteen hundred dollars? Would any man, who is capable of sitting upon the bench of the appellate court, run the risk of travelling over the state and attending to the duties of his station for such a compensation? And would Kentucky, patriotic Kentucky, say that her judges should be behind the new and little state of Texas? Would she send her men of the best talents throughout the state, to four different points, and then be behind the little state of Texas, and say that they must perform these important services for the pitiful sum of fifteen hundred dollars? No sir, she would not do it. Now, whatever gentlemen may try to palm on this convention, I tell you that when this court is branched, and our judges have to ride over the whole state, you will find that we must pay them as much as is paid any where else. I should hate to live in Kentucky and have it said we did not pay our judges what is fair and liberal. And where is the man that would risk his cause under such a system, where the judge rides over the whole state, and when he gets to the place of holding the court, may not find a library worth five hundred dollars. And these books the lawyers will own, and it will be very natural that they should want them for their own use.

The CHAIRMAN. The hour of twelve has arrived, at which time this debate must close.

Mr. HARGIS. Well then, I shall have to vote against the whole of the proposition.

Mr. C. A. WICKLIFFE. As the hour has arrived which is assigned for the purpose of taking the vote, I ask the consent of my colleagues, before we vote on the principal amendment, to submit a few verbal amendments, which do not change the principal bill.

Mr. C. A. WICKLIFFE then offered a series of verbal amendments to the article as follows:

Section 3, line 2, after the word "years" add the words "from and after their election."

Section 4, line 3, add to the word "office" the letter "s."

Section 5, line 2, strike out the words "appellate court."

Line 3, strike out the words "districts" and "therein."

Section 6, line 2, strike out the 1st, 2d, and 3d lines to the word "years" inclusive, and insert "the judges first elected shall serve as follows, viz: one shall serve two, one four, one six, and one eight years."

Section 7, line 1, strike out after the word "court" the words "by death, resignation, removal, or otherwise."

Section 7, line 2, and 3, strike out the words, "to the district in which such judge was elected," and insert "to fill such vacancy for the residue of the term."

Section 8, line 2, strike out the word "appellate."

Section 9, line 1, strike out the word "appellate."

Line 2, strike out the words "times and places," and insert "place and times."

Section 11, line 1, strike out the word "appellate."

Line 3, after the word "years," insert "from and after his election."

Section 12, line 1, strike out the words "as clerk," and insert "to the office of clerk of the court of appeals."

Line 2, strike out the word "elected," and insert "a candidate."

Line 3, strike out "have at the time of such election," and insert "has."

Section 13, line 1, strike out the word "the," and insert "a."

Line 2, strike out the words "for any cause."

Line 4, strike out the words "for that district."

Section 14, line 1, strike out the word "provide," and insert "direct."

Line 1, strike out the word "for."

Line 4, strike out the word "those," and insert "these."

The amendments were agreed to.

The CHAIR announced the question to be on the motion of the gentleman from Nelson (Mr. Hardin) to strike out from the fourth line of the third section after the word "impeachment" the words "the governor shall remove;" and in the fifth line after "them" insert "shall be removed."

Mr. HARDIN remarked that he had never offered those amendments. He had merely made an enquiry to ascertain whether it was the intention to vest in the governor the veto power in this case. If so, then there would be exhibited in the constitution the incongruity of first requiring two thirds of the legislature to remove a judge, and then allowing a majority to overrule the governor's veto on that action. He had supposed it to be an oversight on the part of the committee, and had risen to enquire if it was not so.

The fourth section was then read.

Mr. HARDIN moved to strike out the word "four" and insert "three." So that there should be three instead of four judges of the court of appeals. It was the very improper haste and hurry to get through, on the part of the judges, that kept them at work so late at night, to which reference had been made and not the press of business. If there were to be four judges this evil would not be obviated. He had obtained a statement which exhibited the following facts: In 1843, the number of juridical days the court of appeals was in session, was 106; in 1844, it

was 96; in 1845, it was 107; in 1846, it was 110; in 1847, it was 112; in 1848, it was 107; and in 1849, it was 50 days. Now if they would set about as long as they ought, say 150 days, they could do all their business very conveniently. And to increase the number would not tend to secure any reform.

Mr. C. A. WICKLIFFE said the committee had taken counsel from other states, in a large majority of which, the appellate court consisted of four judges and upwards. They had also looked forward to an increase in the population and business of the country. And he thought that public opinion was satisfied that four judges were not too many to transact the business even at the present time.

Mr. HARDIN conceded that there had been some little increase of business, but not to a considerable extent. The number of cases in 1843 was 661, of which 468 cases were decided; in 1844, 627, of which 426 were decided; in 1845, 753, of which 550 were decided; in 1846, 758, of which 510 were decided; in 1847, 818, of which 628 were decided; in 1848, 763, of which 598 were decided; in 1849, 369, of which 288 were decided; but there has been only one term held during the present year. In 1802 or '3 or '4, we had four judges, but it was found to be more than was necessary, and in 1813 the legislature reduced the number to three, and since that time there had not been more than that number.

Mr. TURNER desired to obviate the impression which might be created by the gentleman's (Mr. Hardin) remarks that the court were not engaged in the duties of their office during the time that they were not sitting in the court room. When the court was not in session the judges were engaged at home in the examination of authorities, and in the preparation of opinions on cases which had been submitted to them. The easier cases, it was true, were decided at once, but those embodying difficult questions, the judges were in the habit of taking home for examination. He believed, however, that if the court was branched, there would be a great accession to the business before them. And as the court could not hold their sessions at four places, and sit more than once a year in each place, therefore, instead of causes being decided directly, in difficult cases, two or three years would elapse before the decision was rendered. He was for increasing the number of judges, and believed that the reduction of expenses proposed in the circuit court system would more than balance the increased expense that would be incurred by the addition of one judge. From 1804 to 1812, there were four judges, but the legislature in 1813, when one of the judges resigned, that they might be justified before the country in raising salaries, dropped one judge and gave his salary to the other three.

Mr. HARDIN said that his understanding was that the judges went home to attend to their own business, and not to examine authorities or to write out opinions. Some of the most important cases have been argued before them, with great ability, and in less than four days a new judge had an opinion ready on the case. And as to the large library of which the gentleman had spoken, and the want of which he had urged as

a reason against branching the court, where did the judges find that at home? The gentleman must not give up that argument, for we shall want it to use against branching the court. And as for the little saving in regard to the circuit courts, we want that to apply to the state debt.

Mr. TURNER said that as far as he knew, every judge had an excellent library at home, nor did he think any man should be appointed to that station who did not have such a library. And he would not branch the court for the reason that it might be called to sit at places where there were not lawyers who had such libraries. The judge now, if he had not a sufficient library at home, would postpone the case for further examination when he came where there was a competent library. There were some important cases decided, and he knew of one in which the gentleman from Nelson was concerned, where great and complex constitutional questions were involved—where it was a matter of great difficulty to come to a decision, and where numerous authorities had to be examined. In settling a case of that importance it was necessary that the judge should have every authority which could shed any light upon it, even if he had to send abroad for books.

Mr. HARGIS said he was opposed to the increase of the number of judges and to the branching of the court. Three judges were just as competent to discharge the duties as four, or five, or six. The court, as constituted, had been almost the only tribunal in the land that had given satisfaction, and there was less complaint against it on the part of the people. To branch the court, he believed, would be to lower the high character it had always borne; as it would overwhelm them with business to such an extent as to prevent their giving it that attention which was requisite, in deciding upon questions of the importance as those which generally came before them. He should go for the district system and the election by the people, and believed that to be all that was necessary in the way of amendment, so far as the appellate court is concerned. The propriety of branching the court was a question for the legislature to decide, and not the subject of organic law. Their duty, in framing a constitution, was to lay a foundation of broad and far reaching principle as a guidance to future legislation.

Mr. DAVIS preferred the number of three judges to four. Every judge ought to understand not only every question but every record, connected with it. To multiply the number of judges would of course increase the difficulty. He was opposed to branching the court, and for the same reasons. He was opposed also to creating another officer, unless it was unavoidable. He wanted as few offices, and as few men looking for office, as possible. To continue the number of the court at three, to increase their salaries to about two thousand five hundred dollars, to require the terms of the court, one commencing the first of January, and the other the first of June, and to continue their sessions until the general business was got through with, he thought to be a better system than that proposed by the committee.

Mr. MAYES was in favor of retaining the

four judges. According to the reasoning of the gentleman who had just spoken one judge would do the business better than three. The opinion of four judges would carry more weight with them than that of a less number; and on the principle that in a multitude of counsellors there was wisdom, four judges would be of more aid to each other, in consultation and forming opinions, than three. To substitute three for four judges, would, in a great measure, defeat the purpose the committee had in view in restricting the court of appeals. He was for the branching of the court, and he cared not if it did increase the expense of the tribunal, so long as it had a tendency more generally to diffuse its benefits. The reason that so few appeals were brought from remote parts of the state was the expense attendant thereon, which would, in a great measure, be obviated by bringing the court nearer to them, and this, therefore, was one of the advantages to be derived from branching the court. As to the library, how was it in the days of Judge Bibb? There was no public library then, and he got along without one, and judges generally in that day resorted to their private libraries. No gentleman, it was fair to suppose, would be elected a judge of the court of appeals who was not a man of great legal attainments, nor did he suppose that the court would be required to sit in any place where there was not a library. He could see no force in that objection, so far as libraries were concerned.

Mr. CLARKE agreed that if the people were furnished with convenient courts in each of the four districts that there would be an increase of litigation, but he apprehended it would not be maintained that the people would go to law without good and sufficient reason. If it was proper to have but one court, and to locate it in a remote part of the state so as to prevent litigation, and to prevent an impartial administration of justice, that end could be better accomplished by at once allowing the court to sit in but one place, and fixing it at some remote point of the state. The whole argument resolves itself into this—you must have courts so arranged as to prevent the people having access thereto, and in that way prevent an increase of litigation. If it was desired to withhold from the people the right to come into the sanctuary of justice and there demand its impartial administration, the most efficient means to accomplish it would be to locate the court as he had instanced. How often did it happen that causes in the remote parts of the state where the lawyer believed the decision to be wrong were not brought to the court of appeals, on account of the increased expense? He had in 1843 voted against the law restricting the magistrates of the state to the holding of but four courts a year, and he always acted on the principle that justice ought to be carried as near every man's door as is possible, and consistent with the public interests. And the people of Kentucky will not withhold a small expense to secure that end. As it was now, it was almost an impossibility for a poor man in the remote part of the state to bring his cause to the court of appeals on account of the heavy expense. If the citizens want to go to law let them have the means of redressing the



injuries they have received, and let those means be placed within their reach. As to the library, it had been well remarked that no judge would be elected in a district who had not a good one, and who was not a lawyer of experience and learning. But if a library should be needed at any point and the legislature should hesitate about making an appropriation for one, the judge elected by the district would furnish one himself, for not one of them would hazard an opinion and publish it to the world without due investigation of the facts and authorities.

The PRESIDENT said, with a view to correct any misapprehension as to the course pursued by the judges of the court of appeals with the records, after the cases were argued or submitted on briefs, the practice is to refer a record to a single judge to ascertain and report the facts and law questions arising on the record, and where there were disputed facts and great contestation about them, the record was read before all the judges, and the facts and law settled, and the record referred to one of the judges to draft the opinion; and when the opinion was drafted, it is read and approved by all the judges. There are many records in which there are no disputed facts, therefore there would be no more difficulty with four than with three judges.

Mr. WILLIAMS said that gentlemen argued this question of branching the court, as if there had been a bar to justice in, and a difficulty of getting access to, the court of appeals in any part of the state, which was to be remedied by branching the court. The gentleman from Montgomery, (Mr. Apperson), had also presented some statistics calculated to confirm this impression, yet those statistics were most fallacious. He (Mr. W.) held in his hand some statistics prepared from the auditor's report which he thought presented the facts in a more favorable light. The whole number of causes arising in the inferior courts as exhibited by that report for the year, was 13,249, of which there came up to the court of appeals 447, or one out of every thirty. He had made an estimate of the number of causes which each county would have been entitled to bring up to the court of appeals, and then compared it with the number each county had actually brought up to that court, and the result was that there appeared to be no difficulty of access on the part of the remote counties. Indeed many of them had brought up more than their proportion. For instance, Allen county, according to the estimate should have brought up two suits and came up with one, just half as many as it ought. Henderson was entitled to three, and brought up six; Bullitt three, and brought up ten; Caldwell thirteen, and brought up eleven; Carter one, and brought up two; Cumberland two and brought up three; Hardin three and brought up eight; Fulton three and brought up six; Calloway three and brought up two; Clay one and brought up five; Hickman, one of the most remote counties in the state, two and brought up ten; Johnson one and brought up two; Knox two and brought up four; Laurel one and brought up three; Lawrence one and brought up six; Livingston five and brought up six; McCracken two and brought up twelve; Morgan three and brought up three; Nelson eight and brought up twelve; Whitley

one and brought up ten; Todd six and brought up eight; Shelby fourteen and brought up seven; Pike two and brought up four; Pulaski two and brought up four.

The whole table goes to show conclusively, that the argument on the other side, based on statistics, is utterly without force, and that there is really no difficulty of access to the court of appeals from any section of the state. He was opposed to the branching of the court of appeals and for these reasons: After laying out the state into four districts, and requiring a judge to be elected in each district, it might so happen that in a particular district, there was no man possessing the high qualifications necessary for a judge of the court of appeals. The people therefore, in the selection of those judges, should be unrestricted except by the limits of the state. Again, it would be impossible for the court to hold its sessions in the district more than once in each year, and thus they could not, as now, holding two terms in a year, call over the docket twice in a year, and the result would be, that the docket would not be cleared at all, and there would be great delay. And causes would be delayed through that cause expressly by those who so desired. But what was the object of the court of appeals? To obtain uniformity of decision. This being the great object, what necessity was there then to have the court sitting all over the state, and deciding differently, in different places? A circuit court, if its decisions were final, would be quite as good a court of final resort as that. What was then to be gained in the branching of the court in the correction of flagrant errors and conduct in the subordinate tribunals, another part of its duties? Nothing. There was clearly, as he had shown from the statistics, no difficulty in getting access to the court, and all the great purposes for which a court of last resort was established could be better obtained by requiring the court to hold its sessions at one point. Besides, he believed, even conceding that it was desirable to branch the court, it would be far preferable to leave the matter to the future regulation of the people, through the legislature, than to tie it up beyond control in the constitution. Nor did he believe that in calling this convention, the people had expressed any desire to have this measure adopted.

Mr. LINDSEY said that having been absent during nearly all of the discussion which had taken place on the formation of the appellate tribunal of the state, he had not had an opportunity to express his views on the several subjects that had been discussed. And having but ten minutes time allowed him now, he could only express one or two reasons that would induce him not to vote for striking out four and inserting three judges of the court of appeals. In this section of the state, however it may have been elsewhere, the attention of the people was directed to this subject, and it was generally thought that another judge added to that court would lighten the immense labor now performed by the three judges. That an additional judge added would require a concurrence of three in deciding a cause where there was not unanimity, and in such cases, would give more confidence in the principles settled by the adjudications.

This popular indication had great weight with him, even if his own convictions did not fully concur; as he did earnestly seek amendments in the present constitution, and being thus anxious he was not willing to insert any matter that had not had the sanction of the people, by their having had it fully discussed and made a question before them in the canvass.

Nor was he unwilling to leave any thing in the present constitution which the people had desired changed. He was in favor of the four judges therefore, and that they be elected by the people in four districts, into which the legislature shall divide the state. The reason that influenced him to favor the district mode of electing the judges of the court of appeals, in preference to electing them by the state at large, in addition to many other reasons he had heard stated this morning, was this: the convention have decided that the people shall elect them, and to keep them aloof from the general politics that operate in selecting all officers for the state at large, the district plan to his mind was best. The districts will be of size sufficiently small to enable all the citizens therein to know, or learn pretty well for whom they are to vote, and not be compelled, as they would be, if the election was by the state at large, to trust to the guidance of others, and in that way bring to operate in their election all the party machinery and tactics used in the election of other officers, and so odious in its influences.

These were some of the reasons that operated on him as an inducement to favor four instead of three judges, and the plan of electing them by districts.

In relation to branching the court, he was opposed to it, and might perhaps, if the opportunity occurred, give his reasons at length for that opposition. In this section of the state, the proposition to branch was not agitated, and this, with him, was a reason, as he had said, for not disturbing the present constitution in relation to the place of holding the court. It had been urged by the delegate from Simpson, that persons at a distant part of the state, were often deterred by the necessary expense to be incurred, from bringing up their cases. His experience had been, that men who want to go to law, or continue when at it, are not deterred by expense. Suppose, however, a court established two or three counties off from the gentleman, in what way could a record of a case get to the appellate tribunal cheaper than it comes now. At all distances over 30 miles the postage is the same, consequently by mail, there would be no more expense than there is now. This is the cheapest mode of conveying a record, even cheaper than sending a messenger with it to an adjoining county, when he would have to be paid for his services. It would be seen that not one sixteenth of the cases now in the court of appeals were attended to by lawyers residing at the capital. Where counsel did not choose to attend in person, they practice by brief or written argument. The largest portion of causes are managed in this way. The idea of some gentlemen, that motions may have to be made requiring personal attention, had but little weight, for no counsel of any practice, familiar as counsel in the circuit courts are with their causes, who cannot

readily foresee all motions that can arise on records in the appellate court and provide as well by brief therefor, as by personal attendance.

Mr. APPERSON said that this table just presented by the gentleman, answered his purpose nearly as well as the one he had presented himself the other day. Three hundred of these cases were those which had remained over on the docket, from previous years, and this of itself was an argument to show the necessity of adding another judge to the court to secure the dispatch of business. As to the gentleman's list, he had stated only extreme cases, and had not, as he (Mr. A.) did the other day, selected a region of country, without reference to particular counties. Let us see how the matter stands according to the gentleman's own list. Anderson county was entitled to send up three causes, and brought up six; Bullitt three, and brought up ten; Bourbon thirteen, and brought up fourteen; Bath seven, and brought up twelve; Clarke five, and brought up twelve; Estill three, and brought up ten; Franklin eleven, and brought up twenty one; Fayette fourteen, and brought up seventeen; Fleming six, and brought up twenty-two; Garrard eight, and brought up twenty-seven; Harrison six, and brought up sixteen; Jefferson twenty-four, and brought up twenty-eight; the Louisville chancery court thirteen, and only brought up fifty; Lincoln four, and brought up ten; Marion three, and brought up nine; Washington six, and brought up six. Now just look a little further. Trigg was entitled to eight, and brought up one; Simpson three, and brought up one; Monroe one, and brought up none; Logan six, and brought up one; Warren five, and brought up four. But he might go clear through the table, and it would establish every fact for which he had contended in introducing his own table the other day. Nor had the authenticity and correctness of that table been at all questioned.

Mr. TRIPLETT said the whole question was one of convenience—shall the judges go to our constituents, or shall our constituents come to the court? Shall Mahomet go to the mountain, or shall the mountain come to Mahomet? For fifty years our constituents have been in the habit of coming to the capital. The mountain has come to Mahomet for fifty years, and he thought it was time now that Mahomet should go to the mountain. Suppose the branching of the court would cost the state a few hundred dollars more, how much would it save to the people—by bringing the court of appeals nearer to them, instead of compelling them to go to the capital—in the matter of travelling expenses, lawyers' fees, &c. It was a mere question of convenience, and as it had been tried for fifty years one way, let it now be tried for a time the other way. But the convenience of the people of the state may hereafter require that the number of districts shall be increased, and he had come to the conclusion that it was better to leave the subject with the legislature, rather than to place it beyond control, by incorporating it in the constitution. He would require the legislature, and not merely authorize them to provide.

The question being then taken, the motion of Mr. Hardin to strike out "four" and insert "three" was rejected.

Mr. TRIPLETT suggested that the last clause in the fourth section, as follows—"all prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky," and conclude, "against the peace and dignity of the same"—did not properly belong to this article. It related to criminal prosecutions, with which, of all the departments of government, the court of appeals had the least to do. The gentleman from Nelson would recollect that that particular clause in the present constitution lay dormant for forty-one years, and until about eight or nine years ago, when the court of appeals decided that a *scire facias* issued on a bail bond must have those words in it. It was placed in such a part of the constitution, that for forty-one years neither lawyers, clerks, or sheriffs had found it.

Mr. C. A. WICKLIFFE suggested that it should be passed over for the present, to which Mr. TRIPLETT assented.

Mr. KAVANAUGH enquired if the question had been taken as yet on the adoption of the third section?

The CHAIR said that it had not.

Mr. R. N. WICKLIFFE moved to amend the third section, by striking out the words "two-thirds of each house," and insert the words, "by the joint vote of both houses, two-thirds concurring." There are one hundred members of the lower house, every member of which might vote for the removal of a judge, and the question goes to the senate. That body is now constituted of thirty-eight members, and twenty-five may vote to remove him and the other thirteen to retain him. There would be one hundred and twenty-five votes to remove him, and thirteen to retain him, and he would be retained. So far from that being a two-third principle it was rather a nine-tenth principle. His proposition was, that out of the one hundred and thirty-eight members, ninety-three should be sufficient to remove the judge, and forty-six should retain him. If the two-third principle was to be adopted, let it be fairly carried out.

Mr. PRESTON said this was but a phase of the majority proposition already decided by the house. The two third principle might be adopted in regard to several other matters which would come before the convention, and the gentleman from Fayette, like a skilful general when defeated at one falls back on another battery. The proposition was without a precedent in practice within the thirty States of the Union or in England. The principle that a majority should govern was proper in legislative bodies, but should never apply to trials. It was a principle that did not prevail in juries, and should not in impeachments or address, which are in the nature of trials. When it was proposed that the legislature should not except by a vote of two thirds of *each* house, grant the credit of the state to corporations or undertake the building of rail roads or any thing of that kind, was there any reason for prescribing a rule that would bring the senate and the house into one common mob in order to act on a subject so important as the propriety of trying and degrading a judge. It struck at the principle of that deliberation, which the division of the general assembly into two houses proposed to secure, and

in fact was but a phase of the proposition which was once nearly unanimously voted down in committee.

Mr. MERIWETHER said that there would always first have to be an investigation into the facts of the case before it was decided to remove the judge. Did the gentleman mean that one house should be waiters on the other, or that the whole matter should be decided in joint session. If so, it was without a precedent in any state constitution.

The amendment of Mr. R. N. Wickliffe was rejected.

Mr. TURNER moved to amend the third section—so as to provide that the salaries of the judges should be fixed by the legislature at a sum not less than—in amount.

Mr. HARGIS was opposed to fixing their salaries in the Constitution. It was better to leave it to the legislature, who would be governed by the circumstances in the discharge of that duty.

Mr. BULLITT moved as an amendment to the amendment that the blank should be filled with \$2,500. He withdrew his motion, however, at the request of Mr. TURNER, who suggested that it would be better first to adopt the principle before the sum was decided upon.

Mr. C. A. WICKLIFFE was opposed to fixing salaries in the constitution, and would state his reasons therefor. He was perfectly satisfied that there was out of this convention an organized party of office holders, who, in connection with those opposed at the start to any change in the constitution, will seek every opportunity to prejudice the result of the labors of the convention before the people; and in substitution of any argument of his own on this subject, he would just refer to a conversation he had with a gentleman the other day on this very topic of salaries. The gentleman was opposed to the call of a convention and not a member of this body, but he seemed anxious that adequate and liberal salaries should be fixed for the officers, but was unwilling to vote for the new constitution even if that was done, and finally when asked if he would use it as an argument against the adoption of the instrument before the people, he replied that he thought it would be a fair argument to use to defeat what he considered to be a bad measure. Therefore he (Mr. W.) would rather trust the matter to the next legislature, believing that they would be imbued with the spirit of the new constitution, and be prepared to fix the salaries at fair and proper amounts. It was a strong argument to use before a free people, to tell them that the salaries of the officers had been fixed beyond their control. And certainly those gentlemen who have manifested so much confidence in the purity of the legislature in regard to placing the power of removal in the hands of a majority of them, should be willing to trust them in this matter of salaries.

Mr. HARDIN was willing that the gentleman's remarks should apply to the court of appeals, but not to the circuit court. The committee on that subject had adopted the minimum principle. They proposed to restrict the legislature from fixing on a less sum than \$1600 per annum, and less than that would fail to secure judges to discharge the amount of business it is

proposed to impose on them. He would go for \$1500 to the court of appeals judges, but not more. They had shown such a disposition not to hear arguments and to hurry to their homes, that he would not, even if he was in the legislature, go for giving them a cent more.

Mr. TURNER was in favor of amending the constitution, and of making such a one as would be acceptable to the people. And the people have sense enough, he believed, to know that unless the judges are paid proper salaries, no system that we can adopt will succeed. He desired to secure the slave property beyond the reach of the legislature, and even to restrict the agitation of the slavery question itself. This he believed would secure the vote for the new constitution of a great many who opposed the call for a convention. The extension of popular power would also secure the votes of those who had desired a reform in that particular. These measures would combine all the great interests of the State in the support of the new constitution, and thus secure its adoption. As for the office holders, he did not expect to please them. He had nothing to say against them, but the people have willed that they must all go out—and that not one shall be left to tell the tale of their woes.

Mr. CLARKE said that of the different State constitutions, there were about eighteen or twenty-three in which the proposition of the gentleman from Madison had been omitted, and indeed so far as he had been able to discover, there were but four or five in which any amount of salary had been fixed. He could perceive no very good reason why this convention was called upon to deviate from that rule. There are various circumstances which govern the amount that a judge should receive. In 1842 and '43 such was the scarcity of money, and the general reduction of the value of property and labor throughout the State, that the people demanded that the salaries of their officials should be reduced. This state of things may occur again, and if a minimum be fixed in the constitution, this remedy could not again be applied. Another reason against the proposition was, that he did not desire further to encumber the original convention men. They would have enough to do, without being obliged to sustain these high salaries, in explaining the reduction of the number of circuit judges, and the increase of the court of appeals, and other changes that may be made in the constitution. He preferred to leave the question of salaries to the legislature, and leave them to fix the amount, as the circumstances of the case and the condition of the country may require.

The committee then rose and reported progress and had leave to sit again.

And then the convention adjourned to nine o'clock to-morrow morning.

TUESDAY, OCTOBER 30, 1849.

#### REPORT FROM A COMMITTEE.

Mr. McHENRY, from the committee on miscellaneous provisions, made the following report, which, on his motion, was ordered to be printed and referred to the committee of the whole:

#### ARTICLE —.

##### *Concerning Impeachments.*

SEC. 1. The house of representatives shall have the sole power of impeachment.

SEC. 2. All impeachments shall be tried by the senate; when sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 3. The governor, and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit, under this commonwealth; but the party convicted shall nevertheless be subject and liable to indictment, trial, and punishment by law.

##### POWERS TO A COMMITTEE.

On the motion of Mr. HARDIN, it was ordered that the select committee on the public debt have power to send for persons, papers, and records.

##### RESOLUTIONS. COMMON SCHOOLS.

Mr. JACKSON offered the following preamble and resolutions, which were referred to the committee on education:

WHEREAS, any plan or system of common school instruction, which can be adopted in this constitution, will necessarily demand frequent alterations, conformable to the progress of society, to the improvements in systems of education, and to the means which the state may be able, from time to time, to bestow—Therefore,

Resolved, That it is inexpedient to establish in this constitution a system of common school instruction, but that the legislature be required, by a provision in this constitution, to maintain inviolably the present common school fund; also the money arising from the special tax now levied for that purpose, and such other means as may be placed at the disposal of the legislature for the promotion of that object; and that the same shall be appropriated to the promotion of common school instruction, in such manner, and under such restrictions, as the people, through the legislature, may determine.

##### COURT OF APPEALS.

The convention then resolved itself into committee of the whole, Mr. HUSTON in the chair, and resumed the consideration of the report of the committee on the court of appeals.

The amendment pending when the committee rose yesterday, on the motion of Mr. Turner, in these words, in relation to the salary of the judges, "which shall not be less than dollars per annum," was rejected.

Mr. TAYLOR moved to amend the third section by adding the words, "which shall not be diminished during their continuance in office."

He said he was unwilling to add a more effectual mode of removing from office than either impeachment or address—the withholding of "aid and comfort" from a judge by diminishing his salary.

Mr. C. A. WICKLIFFE said so far as he was individually concerned he had no objection to the amendment; but the reason it was not put in

by the committee was, they thought it would come in better in a general provision in reference to the salaries of all officers. It certainly could not do any harm to insert it, and he agreed that it was not proper the legislature should have power to take away the salary of an officer during the time for which he was appointed, with a salary fixed by the people.

The amendment was agreed to, and the third section as amended was adopted.

The question then recurred on the adoption of the fourth section.

Mr. GHOLSON moved to amend the section so as to provide that the concurrence of three of the four judges should be necessary to overrule the decisions of an inferior tribunal.

Mr. C. A. WICKLIFFE said such a provision was unnecessary. Three judges were necessary to constitute a quorum, and he presumed the gentleman hardly required that they should be unanimous.

Mr. GHOLSON thought the circuit judge was the most competent to decide questions that came before him, for he was acquainted with all the facts and circumstances of the case, and he therefore desired to have a provision that such a decision should not be overturned, unless with the concurrence of three judges of the higher tribunal. If the opinion of the gentleman from Nelson was correct, that two should overrule a judge of an inferior court, he saw no necessity for increasing the number of judges of the appellate court. He desired, by the amendment which he had proposed, to give to the opinion of the judge of the lower court the weight to which it was entitled.

The amendment was rejected, and the fourth section was then adopted.

The fifth, sixth, and seventh sections were also adopted.

The eighth section was next read. In the original report it stands as follows:

"Sec. 8. Any citizen of the United States, who has attained the age of thirty years, and who is a resident of the appellate district for which he may be chosen, and who has been a practicing lawyer in the courts of this state for at least eight years, or whose practice at the bar, and service upon the bench of any court in this state shall, together, be equal to eight years, shall be eligible to the office of judge of the court of appeals."

Mr. HARDIN enquired what was meant by the words, "service upon the bench of any court in this state?" He desired to know if it was intended to include county as well as circuit courts? He was aware that sometimes men were appointed to the bench of the county courts who had not read a word of law, and he desired the chairman of the committee on the court of appeals to say whether he intended to include such men.

Mr. C. A. WICKLIFFE replied that the object of the committee was, that the candidate for the office of a judge of the appellate court should furnish some evidence to the people, by his practicing as a lawyer, or on the bench, of his qualification for the office; and he did not suppose that the people would elect such a man as his colleague had described. Some gentlemen, he was aware, objected to the words "prac-

ticing lawyer," and wished to substitute the phrase "licensed lawyer." The committee had used the term practicing lawyer as it had been used in other constitutions. He knew there were great facilities afforded to obtain licenses. He had heard of one who offered himself as an applicant for a license, to whom the only question proposed was, how many modes, according to law, there were to acquire an estate? Three, was the reply. When asked to particularize, he said one was when a man's daddy died, another was when he bought and paid for it, and the third was hooking. That answer was considered sufficient, and the man got his license, and it would therefore be seen that the committee had reason for not adopting the term licensed. The wish of all the committee was to confine it to lawyers who had practiced in the courts for some years, and who could furnish evidence of their capacity, by the services which they had rendered.

Mr. HARDIN said the committee on the circuit courts had directed him to insert in the report from that committee the term of eight years, as a practicing lawyer, leaving out any service on the bench. He had himself known in his region of country, several men, such as had been described, who obtained licences as lawyers, and they were the greatest pests to society. It appeared to him too, that it was a growing evil. He had heard of one of these men being examined, to by the question, what is manslaughter, replied, that it was killing a man in a hurry.

Mr. MERIWETHER moved to strike out the words "and who has been a practicing lawyer in the courts of this state for at least eight years, or whose practice at the bar and service upon the bench of any court in this state shall together be equal to eight years."

According to the gentlemen who had addressed the committee it appeared that one man might obtain a license without any qualifications, and he would become a practicing lawyer if he obtained a case with a fifteen shilling fee.

Mr. NUTTALL approved of the amendment to strike out. He had no doubt there were such men as had been described, but he wished to throw the whole responsibility on the people, and he doubted not they would elect suitable men.

Mr. THOMPSON said the people would know who were competent, and therefore he was opposed to all restrictions upon the people.—Such restrictions could not be found in the constitutions of other states where the judges are elected by the people. There were no such restrictions placed upon the governor in making such appointments, who might select a man who had not been either a judge or a practicing lawyer, and why then should these restrictions be placed upon the people when the appointing power will be in their hands. They would doubtless elect competent men, and generally men who had practiced more than eight years, either for the bench of the circuit or the appellate court.

Mr. MERIWETHER said if the gentleman from Bullitt had understood his motion he would have seen that it was to strike out all restrictions.

Mr. ROOT said he had an amendment which he thought would obviate the difficulties which

with some gentlemen existed. It was to insert the words "and who has been a practicing lawyer in the courts of record of original jurisdiction." This would cut off the small, petty, practicing lawyers.

The PRESIDENT subscribed fully to the doctrine that the people are capable of selecting their judges, but they had met here in convention to lay down general rules to govern and direct the people. He presumed that this convention would provide against the election of an infant, and that was restriction. They would also require of the person who is to be elected a judge of the supreme court of the state of Kentucky, that he shall be at least twenty-one years of age. He saw that this provision required that he shall be thirty. As a general rule, if all the people were together consulting on the subject, they would say that the man who was to preside in a court of judicature of the last resort, should be a man of matured intellect and information, and that they would fix a period so far as would promote that maturity of intellect, judgment, and information, requisite to that office. He was content with thirty years. If they were all here consulting in relation to the qualifications of this judge, they would all agree that he should be an individual well acquainted with the laws of the land, either from practicing in the courts, or presiding in the courts of record of the commonwealth a sufficient time to afford evidence of his qualifications. Now, sir, I think eight years at the bar, or three years at the bar, and five as a judge in a court of record would be a good rule to observe in relation to this matter. We would all agree that each of these restrictions should be observed in order that we shall have the advantage and benefit of the acquisitions of the profession, and have men properly qualified for this station. We do know, that occasionally, there are peculiar freaks take possession of the public mind, in relation to individuals, and some even have a remarkable way of charming the people by their eloquence, and consequently they might have men imposed upon them who were without mature judgment and that knowledge of the law which would qualify them for the bench. Now, in prescribing this rule for the people themselves in relation to all the judges, that we will all have a greater chance of obtaining able, competent, experienced, and properly qualified men. And, in deciding, in the first instance, and making a system for all time to come, we had better provide them that we want in that tribunal. But suppose we do occasionally cut off an individual under that age, who is well qualified, do we not also cut off the pretensions of those who have not had experience, and who are not of mature intellect, and of legal qualifications to discharge the duties of the office. By the adoption of this rule it is not misjudging the competency of the people to select capable men for office? It is no suspicion in relation to it; it is only a safe rule for the people to subscribe to with a view to regulate themselves in reference to the choice of an officer. I shall vote against striking out.

Mr. CLARKE concurred in part in the views of the honorable President of this convention. He believed, that if the people of this state were now congregated, they would concur by an overwhelming majority in the opinion that the judge

should be qualified by experience, learning, and practice. He believed that if all the citizens of one district, embracing one fourth of the state were met, they would agree by an overwhelming majority that no man should be a judge of the court of appeals in this state, except he were qualified, a man of legal learning, experience, and talent. For that very reason, believing that such would be the fact in every section of the state, he was perfectly willing to leave the question to the voters of the several districts. If they would give such a decision when congregated here, they would do the same thing when exercising their sound discretion and judgment at the polls. He saw no reason why the people should be limited in the exercise of their judgment and sound discretion in making a selection of a judge when the governor has never been limited in the exercise of his discretion and judgment since the first constitution was framed. There never was a provision which required that the governor should be a lawyer. There had been those, it was true, who had claimed that office on different grounds, and some on the ground that they were not lawyers, but from among the people, as they were pleased to term it. If then, the governor appointed the judges without reference to specific qualifications, would it be proper to limit the people by saying that the judge should have been a practicing lawyer for eight years, or have rendered service on some judicial bench of the state? If it were true that the people are competent to elect their judges, and there were a correct principle in the breast of the people of this state—if it were true that the people want to promote their own welfare, then would they make no such selection of a judge as the gentleman from Nelson, (Mr. Hardin,) had indicated. This fact being conceded, he saw no reason for placing any restrictions upon the elections by the people. His opposition was based in the present instance upon the same ground as when the other day he opposed the provision relating to the qualifications of the clerks of the circuit court.

Mr. ROOT re-stated his amendment thus—to strike out after the words "practicing lawyer" the words "in the courts," and add "in the circuit court and court of appeals." It was evident that the judge of the court of appeals must be a lawyer, a lawyer in practice, for no man would be suitable to occupy the bench of the court of appeals who had had no practice. It would bring more ruin to the country than any thing else, for ignorance in high places often produced difficulties which required the skill and talent of many wise men to remove. It was therefore a settled principle in the minds of the people, that lawyers, and those of the best talent and conversant with the practice in the higher courts, must be appointed to these offices.

Mr. HARDIN felt desirous that the bill relating to the circuit courts and the court of appeals should harmonize. The committee on the circuit courts had introduced a provision requiring the candidate to be a practicing lawyer for eight years, and a residence of five years in the district. He desired, as he said a few days ago to the gentleman from Simpson, (Mr. Clarke,) to guard against the effect of the eloquence of young men who had no other qualifications for the



office. He had known a young man, who by his eloquence could carry the state with him, who was less powerful as he advanced in life. And so it was with many young men. Aikenside wrote his best work at twenty one; and Sheridan, at twenty three, wrote his "School for Scandal," and he never did so well after. He wanted the candidate to be a resident in the district—to have been a lawyer for eight years—and if he had his choice, he would say that he should be thirty five years of age, and should not continue in office after the age of sixty five. He would put such a restriction as to age, because he would guard against the winning eloquence of any young Absalom who might start up. He thought the qualification as to the residence not long enough.

Mr. DIXON. If he understood the object of the motion to strike out, it was to destroy all qualifications for this office, and if it prevailed, it would read in this way: "any citizen of the United States who has attained the age of thirty years, and is a resident of the appellate district for which he may be chosen, shall be eligible to the office of a judge of the court of appeals."

Could it be possible that gentlemen were really in earnest when they assert such a proposition as this? Did gentlemen really believe that every citizen of the district was eligible to this office? Surely gentlemen would not and could not maintain that such would be the fact. What then would be the effect of the motion to strike out? It would be that every citizen might at once be eligible to this station, whether ignorant or learned, honest or corrupt, qualified or disqualified. He could not believe that any gentleman was in earnest in advocating this measure. It was asked why any qualification should be put in the new constitution when it was not found in the old one? Did they not meet here for the purpose of amending the old constitution, and to make it more perfect? If nothing was to be added or altered, why the necessity of meeting? No restriction was laid upon the governor by the old constitution, but it was to remedy the abuses of the old system that they were now deliberating. In all probability the storm which had arisen against the executive and the appointing power would not have existed had it not been for the abuses which existed under the old system. It mattered not that this was not in the old constitution, the question was whether it was right and proper to incorporate it in the new. Was it right that men not qualified should hold this office, who might be wafted into this high position by the circumstances around them? If so, why not let the people determine what the age shall be. Why not let the people determine on all the qualifications? What was the object of laying restraint on the people in one particular and not in another? He believed there should be a restraint upon the people which would keep in check any tendency to corruption and licentiousness; not that he was afraid to trust the people to elect their officers, but he was opposed to their driving off into licentiousness, and elevating men to high stations who were utterly disqualified to discharge the appropriate duties. If there were to be any sort of discrimination in regard to these officers,

he desired that it might be put into the constitution in that form.

Mr. C. A. WICKLIFFE did not suppose that they were violating any great principle, or usage, or right, when they endeavored to insert some qualifications for the office of judge. The proposition of the gentleman would strike out all qualifications. An individual who had not been a resident of the United States long enough to have become a citizen might be voted for and elected. It was required by the report of the committee that he should have been a citizen eight years, and should have practiced law, or adjudicated in the courts of justice during that time. It was now proposed to strike out that, and thus render every one not only eligible to fill offices, but competent to vote for others. He found in running over the constitution of the state of Louisiana, that a person must be a citizen over the age of thirty years, a resident of the district eight years, and have practiced law five years, in order to be qualified for this office. The same principle would be found in other constitutions. He believed that no principle or right had been invaded by requiring that, before a person should come before the people asking to discharge the duties of this office, he should have some *prima facie* evidence of his fitness.

Mr. TALBOTT said he had made up his mind to say not a word on this subject. He did not expect to say any thing that would influence the vote of any gentleman, or be very interesting to the house. He only wished to say a word to his friends, who had come here pledged to constitutional reform. For himself, he had come determined to vote for any and every measure which he conceived necessary to carry out the great object which the people have in view, the election of all the officers by the people. But while he was in favor of that measure, he would, at the same time, oppose any and every measure, having for its object to thwart that great purpose. A proposition had been submitted here to try the judges elected by the people, by a bare majority of the legislature, and to that he was opposed. A proposition was now also submitted, to let any and every individual, without regard to his qualifications, and whether a citizen or an alien, be eligible to a seat in the highest courts in this state. He was likewise opposed to that, and if there was no other reason than that which he was about to assign, it would be sufficient. They had been told by some gentlemen that such confusion as the world had never seen before, would ensue if they left the election of the judges to the people. And he believed this would be the case if this proposition to strike out should be carried? If there were no qualifications required, every man would have his candidate in the field. Every man had his influence; every man had his party; and the result would be, that the district would be filled with as many candidates, and the man that could bring the most influence to bear, by corruption, or other means, would be the successful candidate. He felt constrained to vote for retaining the qualification in the report of the committee.

Mr. NESBITT thought the people desired to guard themselves against having a set of hungry

office-seekers without any qualifications except as to age and residence, more gaunt than famished wolves, turned loose upon them. It might happen in a canvass, that one of the candidates might possess all suitable qualifications, while the other was entirely destitute of them. The better man might secure a large majority of the votes, and the other might receive not more than twenty five votes in the district; yet before the election closed the candidate having the highest number might be stricken down and die. He presumed, in this case, that the certificate of election would be given to the man whom the people never intended to elect.

Mr. ROOT again referred to the effect of his proposed amendment. He thought that every delegate would see its propriety. It would be but a poor compensation to their constituents, for their long effort in getting this convention, if they were to come up here for the purpose of bringing about constitutional reform, if at last, the door to the office of the judge of the court of appeals was opened so wide, that every ninny hammer, through the influence of wealth or king alcohol, might ascend the judgment seat, and arbitrate upon the great questions which had been handed down from all antiquity, although he might be perfectly ignorant of the laws, and the decisions that have been sanctioned for the last thousand years. It was more important to have a person of judgment and experience in the station of a judge of the court of appeals, than in that of the presidency of the United States, or the chief executive office of this commonwealth. The governor of a state might succeed very well if he had a shrewd and learned secretary, although his own learning did not extend beyond Dilworth; and the president of the United States might retire from his station with honor, although he possessed little or no qualifications, provided he is surrounded by a wise and judicious cabinet. But when they come to the judgment seat of the court of appeals, where great and important interests were involved, learning, ability, talents, and integrity were indispensable. All the other departments of the government depended upon this, and they would have spent their time in vain, if they failed to secure this. They would adopt a system which, instead of being beneficial, would result in the most pernicious consequences to all the people.

Mr. MERIWETHER observed that the gentleman from Henderson had inquired whether it was to be supposed that every gentleman in the district would be qualified. It might be asked, on the other hand, if every lawyer were qualified. The gentleman from Nelson (Mr. C. A. Wickliffe) had told them with what facility a license might be obtained. And any person so licensed became a practicing lawyer if he obtained a fifteen shillings fee. But the gentleman from Campbell said that the bill would permit an alien to be eligible. The bill however, said he must be a citizen of the United States. The gentleman from Nelson (Mr. Hardin) said that even a residence was not required. He would ask if the bill required a residence? A person that practiced law in Indiana, or Ohio, might be eligible; all that he would have to do, would be to make himself a resident

and if he had practiced law for the term of eight years, he would be eligible to sit on the bench of the supreme court. There were a dozen individuals residing in Indiana, and yet practicing lawyers in the courts of Kentucky. As to the section read by the gentleman from Nelson (Mr. C. A. Wickliffe) from the constitution of the state of Louisiana, he believed that this was the only one out of some half dozen that he had examined, which contained a provision like the one which was read. If this amendment prevailed, he intended to follow it up with another which should require the candidate to be a citizen of the district. He had no fear that the people would elect a man without qualifications. The gentleman from Louisville (Mr. Guthrie) had made the supposition that an infant might be elected. It was not so. The amendment did not extend to age, but he proposed to offer an amendment which would be such that the people would be sufficiently prepared to judge of the attainments of the candidate without saying whether he should have been a lawyer or not. Would gentlemen say that all who had been lawyers, were qualified? If any standard of attainment could be fixed upon, which would secure talent and integrity, he would go for it.

Mr. TALBOTT explained that what he meant by using the term alien, was, a gentleman not living in the district in which the election was going on, but who had come there from some other district, merely with a view to his election. He did not mean by alien, a native of Europe. He had no idea that the people would elect a man who was disqualified. For himself, he would say that he had entire confidence in the people, and believed it was to their interest to elect men fully qualified for the office, inasmuch as their lives, their liberties, and their property were at stake. He believed the people equal to any emergency. But here was the difficulty he wanted to avoid. If men were to be made eligible to the high office of a judge of the appellate court, who were not lawyers, who had no sort of legal qualifications, who were not conversant with the practice and doings of the courts, men who had every thing to gain and nothing to lose, he would say again, that the adoption of such a principle might produce a state of confusion which every man in the country would regret to see. We all knew that a man to be a judge, should be a lawyer, and a lawyer of high attainments. At any rate, he believed it for one. As he had already said, he believed his constituents were in favor of electing all the officers by the people, but they did not want to leave them without restraint, or elect them without qualifications of any and every sort. And it was on this account, not because he distrusted the integrity or intelligence of the people, or believed they would elect corrupt or incompetent men, but he wished to prevent confusion, and elect the wisest and best men of the country as judges. And this he believed the people would do, if the qualifications mentioned in the report of the committee should be retained. He would therefore vote against the amendment proposed by the gentleman from Jefferson.

Mr. MERIWETHER said, the gentleman remarked that a number of individuals, not qualified, might be candidates, and one qualified per-

son might be a candidate. That circumstance would result in the advantage of the best man, according to the view he had taken, for he did not distrust the intelligence of the people. He would ask whether there might not be one qualified lawyer and half a dozen not qualified?

Mr. DIXON understood the gentleman to inquire whether a portion of the lawyers of this state might not be wholly disqualified to fill the bench of the court of appeals. The gentleman himself had not denied that some lawyers might be qualified to fill that office. On the other hand he would inquire if, from the whole community not embraced in the class of lawyers, one individual could be found qualified for that office?

Mr. MERIWETHER replied that he believed there was, and always had been.

Mr. DIXON said he confessed that this was beyond his comprehension. He had spoken of lawyers, not practicing lawyers alone, but those who understood the laws of the country, and had devoted their lives to their study. Would the gentleman insert in the constitution a declaration that every man in his district was qualified for this office, if the people chose to appoint him? If so, the constitution would be a laughingstock for all sensible men. It was his wish to make a good constitution, one that the people of Kentucky would be proud of, one that would protect the people from every improper influence, from whatever source it might come. He was not for taking away these qualifications. He believed that the restrictions as to age, citizenship, and residence in Kentucky, should be retained, and such other restrictions as would guard against improper influences, or against the possibility of placing men in power who are unqualified, and if they would protect the judiciary or the people, they should all unite for the same end.

Mr. DAVIS thought consistency a jewel, and was glad to see his friend from Jefferson (Mr. Meriwether) approximating to it in some degree. It seemed that the people who made constitutions and laws, and were competent to fill all the offices of the government, were unerring and infallible. Throwing any restriction around them, was acting with some degree of inconsistency. He thought his friend from Jefferson had not gone far enough to reach the point of consistency. It was true, he wanted to throw away some of the shackles that were around the people. He would ask, why not take away every thing that hindered a perfectly free choice. If the power that controls and elects were unerring, infallible, and would always select proper agents to fill office, why should any attempt be made to shackle these agents in their most enlarged discretion. Why have any restrictions as to citizenship, residence, or age. He would suggest to his friend, to draw up an amendment something like this: that every person, without regard to age, residence, sex, or color, should be qualified under the constitution. His honorable friend had said, that a man who has never practiced law, was yet competent to fill the office of the judge in the court of appeals. But this court reviewed the Federal and State constitutions, and all laws made under them, and all common law, and all civil law which had been adopted in our constitution, and yet a man who had never prac-

ticed law was supposed to possess sufficient knowledge to discharge all the duties devolving on the highest legal tribunal in the State. He thought that if ever there was a position extremely absurd, his honorable friend from Jefferson, who was a very able and sagacious man, had now laid one down. Still he was consistent, and the gentleman who had not given his concurrence was inconsistent. Whenever all powers were delegated to fill all offices, and it is declared that the agents were infallible, and would do exactly right, then this broad ground should be assumed without any shackling of those agents. But gentlemen involved themselves in a dilemma, when they threw any qualifications around the filling of offices. That was the test of the truth of the general principle upon which nine-tenths of the delegates in this convention seemed to act in relation to forming a constitution. He would say with the gentleman from Jefferson, that if it were necessary to prescribe any restriction upon a perfectly free action in filling the office of the appellate judge, it would be equally incumbent, wise, and politic, to prescribe restrictions in other respects. But, although he was opposed to the motion of the gentleman from Jefferson, and the principle upon which it was made, yet if that gentleman would act in beautiful and harmonious consistency with truth, it would not only lead to the position which his honorable friend occupied, but to one far in advance of it.

Mr. GHOLSON was surprised that this sarcastic mode of treating the right of the people to elect their judges had been so long delayed. He had been throughout the session expecting remarks similar to those he had just heard from the gentleman from Bourbon. He thought the people were entitled to the best talents for any office, and that they were the best judges of those talents. He did not think the best talent always came within the limits prescribed. Some men were more mature at twenty-five than others were at thirty-five. They had been told that the judicial offices must be confined to lawyers, that the clerks of the offices must be those who had been trained for two years in a clerk's office. He did not consider this training necessary. There was such a thing as hunkerism, and that hunkerism had occasioned all the sentiment against equal rights and equal freedom that they had heard. Gentlemen had been so long accustomed to the loaves and fishes—they had so long had a monopoly of every lucrative office in Kentucky, that they would now fight to the last. This was the last dying kick of aristocracy which they were about to see in this hall. He came here to aid in taking care of the interest of the farmer, on which the whole world depended. He wanted no restriction laid upon that class who supported the balance of the community. He was disposed to leave the whole matter of elections to the people without any restrictions of this sort.

Mr. PRESTON said he occupied rather a middle ground between the gentleman from Ballard, (Mr. Gholson,) and the gentleman from Bourbon, (Mr. Davis.) The perfect infallibility of the people to which the gentleman from Bourbon alluded, he did not believe was contended for except by very few upon this floor. It was not contended that the people were infallible,

but that it was better to trust the power of appointment to them than to the fallible governors Kentucky has had, and that they intended to substitute that mode of appointment for the one which had heretofore existed, without seeking to impose any restrictions which were not absolutely necessary upon the election of a judge. The convention, however, did intend to say that a free negro should not be elected, nor an alien. This would be one qualification. They did not intend that a minor should be elected, and this would be another qualification. They intended to impose some wise qualifications in order to secure to the people the appropriate and temperate exercise of their own power. He was in favor of the exercise of that power by the people, but he did not believe that any true friend of popular rights would carry it so far as to make it a mere farce in the eyes of all the world. When he looked to the extreme left, the "*extreme gauche*," as that portion of the French Chamber was called where sat the democratic members, he had no idea, from the moderate sentiments expressed by many of them, that they intended to strike down those restrictions upon the exercise of popular power, which experience dictated, and the destruction of which had been ridiculed in the burlesque proposition made by the gentleman from Bourbon. He knew of but one instance in history of a judge who was not a lawyer, and yet who gave universal satisfaction. He well remembered that the illustrious Sancho Panza, when he governed the Island of Barrataria, did so without any legal preparation, having received from his master, Don Quixotte, full authority over that fair and romantic domain; yet no judge who had ever exercised his powers in any land, ever received such applause in the administration of justice as did Don Sancho in his district. History did not relate whether the district was appellate or not, over which the celebrated Squire held sway; but at least he had full power and unlimited authority therein. He maintained that his friends from Jefferson and Ballard must fall upon the plan of that eminent judge, if they wished to relieve their proposed judiciary, who were not to be lawyers, from embarrassment in their decisions. Sancho had one fixed and inflexible rule with which he started out, and which aided him greatly in the decision of all points of law; he determined when he ascended the bench that he would never listen but to one side of the question, that then, as he honestly asserted, he had never any difficulty in making up his mind. Let us pursue this plan; and justice will come back to that true standard, and to that classical uncertainty in which the Greeks painted her as a blind-fold Goddess, holding the balances evenly suspended, so that luck was every thing, and every man had a perfectly fair chance. Now, he believed there was such a respect for the doctrine of chance in the public mind, and such wisdom in worthy Sancho's rule of practice, that if the amendment of the gentleman from Jefferson were engrafted in the constitution, the courts of Kentucky may soon, perchance, rival in learning, in dignity, and in wisdom, the decisions of the immortal Governor of the Island of Barrataria.

The PRESIDENT remarked that it had been said by the sages of the law, that it required a

study of more than twenty years to make a competent judge; and he could himself truly say, that after its practice for nearly thirty years he found that he had a great deal to learn in relation to the law, and that there were continually new questions and principles arising which required studious application and examination to understand. Now it certainly would be the desire of the people of Kentucky, that the greatest legal attainments the country afforded should be placed on the appellate bench. And shall we in their name, in providing a constitution for their government, require that some preparation, some evidence of devotion to a subject, which requires so long a study to understand, should be evinced on the part of the candidate, before he should be allowed to trouble the people with his pretensions to this high office? That is the question here, and the gentleman from Ballard misunderstands the position of those who favor the election of judges by the people. It is not that the people are deemed infallible, but that they are deemed a wiser and a better authority of appointment, than those to whom the power has heretofore been confided. It was true that the present constitution in giving the appointing power to the governor prescribed no qualification for office, but they also required the nomination to come before the senate, and it was not to be believed that thirty eight men of the age of thirty five, elected in the various districts of the country, would ever have permitted a man to ascend the bench of the chief justice of the appellate court of Kentucky, who had no actual experience in, or had devoted no time to, the study or practice of the law. That was the guard which was thrown around the executive appointments. And in giving this power to the people it is proposed that they shall throw a guard around themselves, in order that they may not be troubled with candidates who have not devoted their time and attention to the attainment of the proper qualifications. It was not intended to proscribe any individual, whether farmer, mechanic, loafer, or any thing else, but he must give the people an evidence by the devotion to the profession of law of a sufficient length of time, to show that he has some pretensions to the office, before he became a candidate. Would it not be prudent to allow the people to impose this restriction on themselves? He had as much confidence in the people as any one, but he intended to vote for the insertion in this constitution of a clause prohibiting the legislature from taking private property without due compensation therefor. Yet would not his confidence in the people induce him not to put it in the constitution, but to leave it to the representatives of the people interested. And he believed the people to have that restriction imposed upon them. All his reflection had satisfied him that the people had a right to prescribe to those who come before them as candidates for office, that they shall present certain evidences of qualification for the duties, and he desired that those who aspired to this high tribunal, should be brought within that rule.

Mr. GRAY said that the requirements of age and residence were qualifications of office. The experience of every man also went to show that no man would be qualified for a seat on

the appellate bench until he had practiced law at least eight years, and was it any more improper to require that he should possess these qualifications than those to which he had first referred. They were all prerequisites and had the same object in view—that the people shall know something of the qualifications of the candidate presented to them, and it was a knowledge which they could not very well obtain in any other way. It was to prevent the men who had no qualifications for this office from troubling the people with their claims—and the people were annoyed enough in that particular, as the number of rejected candidates to the convention testified. These restrictions, with the addition suggested by the gentleman from Jefferson, of a residence of five years in the district or state, were, it seemed to him, most proper.

Mr. TRIPLETT said that a judge of the court of appeals was to be a judge of the law, and the practice, and how was he to learn law without study, or know what the practice was unless he had practiced in the courts. Every man knew that the practice becomes a necessary part of the law, and if eight years was too long a time to require for that, then diminish it. He would say to the gentleman from Ballard, that although perhaps, his (a rich alluvial) county might produce men different from the balance of the state, yet he ought to have some degree of compassion on those in other parts. Our lawyers did not take up law by absorption but only by hard study, and they must have eight, ten, or twelve years before they could become possessed of such qualifications as would fit them for a seat on the appellate bench, and enable them to decide favorably on all the rights of the citizen, arising under the constitution and the laws, and he could not believe gentlemen to be in earnest when they desired to leave the possession of the proper qualifications on the part of those who were to sit on its bench to mere accident.

Mr. CLARKE had once before in some remarks assumed the same position as that contained in the amendment of the gentleman from Jefferson. It does not propose to destroy all qualifications, and there were very good reasons why a candidate should be a citizen of the United States. An elector must be. But even if it was required, he did not believe that any man who did not possess that qualification would ever be elected by the people. He had no objection to the candidate being required to be a resident of the district in which he ran, for a certain time, but he did object to the requisition of the eight years practice of law, the thirty years of age, and the having been a judge of some court for eight years. No one believed, he apprehended, that any person would be elected to the court of appeals who was not a lawyer, and familiar with both the law and the practice. Would any one undertake to say that the people would not know this fact and whether the candidate possessed these qualifications as well as any one here?

Mr. TRIPLETT. Give them the means and they will.

Mr. CLARKE asked, by what means it was that any one in that committee learned what it was that constituted a good judge? Whatever they were, those the people would possess. The

president of the United States was elected without any requisition of qualification whatever, and yet he had the appointment of all the officers in the nation—the judicial ones included. Might he not sometimes be mistaken in his appointments, and if so would not the consequences be as disastrous to the country as if the people should chance to be mistaken in their selection of a judge? He had no fears that the people would ever select any other than a competent lawyer of distinction and standing in his profession. And if it was necessary to say that a man should not serve as judge before he had reached the age of thirty years, was there not an equal necessity existing to prohibit his eligibility after a certain age. There was just as much danger to be apprehended from imbecility in the office of a judge, as from incapability. He thought there was just as much reason in the one case as in the other.

Mr. McHENRY said there was a principle involved in this matter which gentlemen seemed to have overlooked. The great objection urged against the election of judges, by those opposed to that reform, was that it would lead to the selection of incapable men, and under improper influences. To this it was replied that the people were capable of judging in these particulars, and that the class from which these high functionaries were selected, would be those who were qualified by their study of, and experience in, the practice of the law. Any constitution made here must therefore clearly be the result of compromise. He called on gentlemen on the one side therefore to yield the question, as to the election of judges, and on those on the other, to yield to those restrictions which seemed to be desired to be thrown around the people in the exercise of that power. They could do it more especially as the opposite side required but those qualifications, on the part of the candidates, which all of them agreed the people would themselves require, whether it was in the constitution or not. He hoped gentlemen would bear in mind, that there must be some compromise of opinion on both sides.

Mr. HARGIS said the question here was best presented in the proposition, were the people competent to the election of the judiciary, or were they not. Any restriction upon the people in the exercise of that power was tantamount to a declaration that they were not competent to the task. He was opposed to restricting the selection of candidates to lawyers, as he did not believe it would secure any better judges. There would be perhaps some two to five hundred lawyers in any district which might be made, and yet out of them, not more than one tenth would be capable of drawing a declaration, and force the case to an issue. Many men too had been in the courts who were not qualified to pass judgment on a case involving twenty dollars. These restrictions therefore would not secure the people any better judges. As to the fear that the people would be troubled with candidates, he did not regard that as any reason at all for the imposition of these restrictions. If the people were qualified to elect their judges at all, they were competent also to decide upon the qualifications of the candidates before them, and he was therefore opposed to the imposition

in the constitution, upon their free exercise of the appointing power. If they were not competent for the task, say so openly and directly, and let the present system be sustained; but do not seek covertly to convey the impression that they were not, by these various restrictions upon them. They are competent, or they are not—there is no middle ground on the question.

Mr. MAYES would not have been surprised if this amendment had emanated from some gentleman who was opposed to the election of judges by the people, as it then would have been plainly seen that the object was to render the constitution as ridiculous to the people as possible. Such certainly would be the result, if it was declared, as the adoption of that amendment would declare, that every man in the state, without the evidence of any qualifications save that he resided in the district and attained the age of thirty years, should be considered qualified for the office of judge of the highest court in the state. They might as well declare that a jury on the trial of a man for murder, would be fully as able to decide upon his innocence or guilt, by the mere hearing of the reading of the indictment, as if they had heard all the evidence on both sides in regard to the transaction. The restrictions were reported by the committee, not because the ability of the people was at all doubted, but because it was deemed proper and necessary that the people should be guaranteed that the candidates presented to them should possess the necessary qualifications for the office. The people in the districts could not personally be acquainted with the qualifications of all the candidates who might come before them, and the candidates therefore, should be restricted from presenting themselves, unless they did possess those qualifications necessary to discharge the high duties of a judge of the appellate court. And certainly no gentleman would desire that any other than such a man should be elected. He came here not to represent lawyers, mechanics, farmers, or any one class, but the whole people; to do that which in his weak judgment was best calculated to promote the interest and happiness of all; and these were the motives which governed him in his action on this subject.

Mr. TAYLOR said that the position occupied by gentlemen here could not better be illustrated than by an anecdote, which the committee would pardon him for relating: "A gentleman went into a lawyer's office, and saw around it but two chairs, a pack of cards, and a bottle of whiskey. Said he, how do you get along without any law books, I don't see any here? Said the lawyer, looking at him full in the face, and with a great deal of emphasis—I always go on the broad principle of human ingenuity." (Laughter.) And (said Mr. T.) if you want an appellate court that will go on the broad principle of human ingenuity, just go for striking out all qualifications reported by the committee, and you will be gratified. Some gentlemen seem to think, with Dogberry when he said that reading and writing came by nature, that the great and necessary qualifications for the court of appeals were of spontaneous growth. It has been said that whom the gods would destroy they first make mad, and it appeared to him—he said it in

no offensive spirit—that some gentlemen were approaching that spirit. The committee had thrown restrictions around the legislature in regard to the great natural and inalienable rights there proclaimed, and what purpose, other than to prevent their being infringed upon? What objection, then, could there be to carrying out this principle further, and require that those who were to decide upon and to guard those rights, those who were to sit upon the appellate bench, should possess the requisite qualifications for a discharge of their duties? And besides, was not every one aware that attachment to and confidence in the new constitution, by the people, was to depend on the manner in which the reforms introduced were to be carried out? If it was desired then to bring the instrument down so low as to be almost beneath contempt itself, just allow a man without qualifications to get on the appellate bench, merely from the circumstance that this body failed to require the requisite qualifications for a candidate for that station. Those who believe that the people have the intelligence and capacity to select proper judges of the court of appeals, and that they would select none except such as were experienced lawyers and fully qualified for the duties, should not object to these restrictions. If the people were thus qualified they could do no harm, and it may do good. It was an apt remark, that the first duty of the legislature was to see that the people were free, and their next duty to see that they so remained. Acting upon that principle, he should vote for the insertion in the constitution of the restrictions reported by the committee.

Mr. MERIWETHER here withdrew his amendment, for which Mr. Root had moved a substitute, and then moved to strike out the first word in the 8th section, *any*, and inset *no*, so as to make the section read *no person*. He wished barely to remark, that the section as it now stands, is an extension of the right to become a candidate, instead of a limitation. Without some alteration such as he had indicated, a lawyer who was a citizen of Indiana or Ohio, (and there were several within his knowledge,) who practiced in the courts of Kentucky, together with every justice of the peace who had been on the bench of the county court for eight years, would be eligible to a seat on the bench of the court of appeals in Kentucky. He would barely call the attention of the *human ingenuity* lawyer of this house, and the one who appeared to be so familiar with the practice in the courts of that renowned judge, Sancho Panza, to the absurdity of making lawyers who were citizens of other states, and even justices of the peace, eligible to our supreme bench, to the exclusion of our own citizens.

Mr. C. A. WICKLIFFE thought the gentleman had made his retreat upon a very small battery.

Mr. MERIWETHER. The attack came from a very small one.

Mr. C. A. WICKLIFFE said that the direct expression of one thing, in law, excludes the expression of another. The expression of qualifications, therefore, clearly excluded every body who did not possess those qualifications. The amendment, therefore, was wholly unnecessary.



Mr. HARDIN said the requisition of the qualifications necessary was not expressed so clearly as it ought to be, or as it would be if the negative form had been adopted. It was the natural qualification of every man to be fit for the office unless certain restrictions in regard thereto, were imposed upon him. The negative principle was the one adopted by the committee on the circuit courts, and the two articles ought to harmonize in expression as far as possible.

Mr. C. A. WICKLIFFE preferred the present form, and thought it to be clear that it could not be misapprehended by any who understood the force and meaning of language.

Mr. BROWN offered the following substitute for the eighth section:

"No person shall be elected a judge of the court of appeals, who is not a citizen of the United States; and who has not attained the age of thirty years at the time of his election; and been a practicing lawyer eight years; and resided — in the district, immediately preceding his election."

He thought it necessary that the candidate should have resided in the district for a certain time, so that the people might have an opportunity of judging of his qualifications and fitness for the office.

Mr. C. A. WICKLIFFE had intended, as soon as an opportunity was afforded, to have offered an amendment in regard to this qualification of residence, but he had been in doubt as to the number of years that should be required. The object would be attained, however, without the adoption of an entire substitute for the section.

Mr. HARDIN was in favor of some amendment requiring a residence of some length of time in the district. Otherwise, lawyers from Ohio and Indiana who practiced in the courts of Kentucky, might remove into the state just previous to the election, for the very purpose of being candidates for office. He again urged that in these matters the terms of expression in this article and in that reported by the committee on circuit courts should be harmonious, and instanced the action in that committee as having been governed by such a consideration as applicable.

Mr. BROWN then filled the blank in his substitute, with the words "two years," so as to require a residence of that period of time in the district, to qualify a candidate for the office of judge.

The question was then taken on the motion of Mr. MERIWETHER to strike out the word "any" and it was negatived.

Mr. C. A. WICKLIFFE then moved to amend so that it should read "any citizen of the United States, who has attained the age of thirty years, and who has been a resident of the district for which he may be chosen, for at least two years next preceding the election," &c.

The amendment was agreed to.

Mr. NESBITT moved to add the word "five" after the word thirty, so as to require the candidate to have attained the age of thirty-five years, before he should be eligible to an election.

Mr. C. A. WICKLIFFE desired to explain the opinion of the committee on this subject. It would perhaps rarely happen that a candidate would be presented or chosen younger than the age proposed by the amendment, as there were very few law-

yers who had attained sufficient standing and celebrity in their profession before that age, yet the committee, in looking back to the distinguished men who had filled the appellate bench not only in Kentucky but the supreme court bench of the United States, found that some of its brightest ornaments had been called there at an age not greater than the period the committee had thought proper to adopt. He was satisfied from what he knew of the life of judge Story, that he was not thirty when he was appointed judge, and was assured also that the late governor Clarke was not thirty years of age when he was appointed judge, and he could give other instances. Thirty years was the meridian of a man's life, and the committee thought that instances might occur where individuals of that age might present themselves possessing such maturity of mind and power of intellect as would command the confidence of the people among whom they lived, and they concluded to fix the requisition of age therefore at that period. For himself, he had no choice on the subject, though he should regret very much to deprive a district of the services of a competent man, merely because he did not happen to be born six or eight months earlier than he happened to be.

Mr. HARDIN was not wedded to thirty five or thirty years as a requisition of age. As to judge Story, his impression was that he was at least thirty three years of age when he was appointed on the bench of the United States supreme court. He was the youngest judge he believed ever placed on that bench. So far as his knowledge of the history of England was concerned, he knew of no man who had ever been made a judge in any of the courts there under the age of thirty five, and very rarely until they had reached the age of forty or fifty years. The committee on the circuit courts, by a vote of eight or nine to one, had fixed upon the age of thirty five. As for himself, it would not apply to him, or even to his colleague, and he was not particular whether the age of thirty or thirty five should be agreed upon.

Mr. APPERSON wished to state, as due to the chairman of the committee, that the gentleman had proposed to limit the period of age beyond which a judge should be ineligible, but was voted down unanimously by the committee. In regard to judge Story, he was just informed by the gentleman from Bourbon that judge Story was appointed to the bench in 1812, when he was about twenty seven or twenty eight years of age. Such an instance however, would rarely occur, but if such an opportunity should again occur, the committee did not wish that the constitution should be a bar to the people availing themselves of it.

Mr. NESBITT remarked that the present constitution required that a senator should be thirty five years of age, and as he supposed for the purpose of securing men of matured minds, to operate as a check upon the lower branch, where, he believed, the only qualification was that the members should be twenty four years of age. The court of appeals was a check upon the circuit courts, and revised the errors that the circuit judge might be lead into by his youth and inexperience. As a member of the committee on circuit courts, he had been in favor of requiring those judges

to be thirty years of age; but he believed that the judge of the court of appeals should be a man of more mature age. And if there should an instance occur, as that of judge Story, the people would not be entirely deprived of his services, they would merely have to wait five years before they could avail themselves of them. He was not tenacious however, of his amendment.

The amendment proposed by Mr. NESBITT, was then rejected.

Mr. ROOT called for the question on his amendment, to insert in the third line after the words "practicing lawyer," the words "in the circuit courts or court of appeals," in lieu of the words, "in the courts." The question was then taken, and it was rejected.

Mr. PRESTON moved to strike out in the first line of the eighth section, the words "citizen of the United States," and to insert in lieu thereof, the words "qualified elector of this commonwealth." The words in the section would seem to give the power to congress under its naturalization law, to make the basis of the qualification of the judge of the appellate court of Kentucky. The words "citizen of the United States," were not used in the present constitution in regard to the right of suffrage. There the phrase is used "every free male citizen." There were some important questions which had sprung up as to whether a naturalized citizen of the United States, was necessarily invested with all the rights of a citizen of Kentucky by coming here. He believed such not to be the case. In Illinois, a residence of six months was all that was required to become a citizen of the state, even from an alien to the United States. He preferred that the basis of the suffrage in Kentucky should be taken.

Mr. C. A. WICKLIFFE suggested that the object of the gentleman could be accomplished by moving to strike out of the section the words "of the United States," so that it would read, "any citizen who shall," &c. This would leave this vexed question of double allegiance undisturbed.

Mr. PRESTON accepted that modification of his amendment.

Mr. BROWN moved to amend the amendment so that it should read "any citizen of the commonwealth of Kentucky."

Mr. PRESTON preferred his amendment as he had modified it.

The amendment of Mr. BROWN was rejected, and that proposed by Mr. PRESTON was adopted.

Mr. C. A. WICKLIFFE here stated that a friend who had been at the trouble to make an examination in regard to the matter, had just informed him that judge Story was thirty-two years and two months old when first appointed.

Mr. TAYLOR moved to strike out the words, commencing in the fourth line and ending in the sixth line, as follows; "or whose practice at the bar and services upon the bench of any court in this state, shall together be equal to eight years."

The section as it stood would allow a man who had been on the bench of a county court seven years and six months, and had practiced law for six months to be eligible to the bench of the court of appeals. He apprehended this was

not desired by any and that it was perhaps an oversight by the committee.

The amendment was rejected.

The question was then taken on the eighth section as amended, and it was adopted.

The ninth section was then read.

Mr. DIXON offered as a substitute for the section the following: "the court of appeals shall hold its sessions in each appellate district, unless the people on the petition of a majority of the qualified voters of such districts shall otherwise direct, and then at such time and places as may be otherwise directed by law." His object was to give the people of a district who might desire not to have a branch of the court of appeals among them an opportunity to get rid of it. He did not doubt however, that all would desire to have the branch in their district.

Mr. MACHEN had objections to the manner in which it was here proposed to get at the sense of the district. He proposed therefore that the following should be added to the end of the section. "Provided that any one or all of said districts may by a majority of the qualified voters therein decline having a branch of said court, and in such event the appellate business for such district or districts shall be transacted at the seat of government."

Mr. DIXON withdrew his proposition and accepted that of Mr. Machen in lieu thereof.

Mr. TURNER said that he should at a proper time move a substitute for the whole section leaving it to the people of the entire state to say whether they would have the court branched or not, and to the legislature to provide for carrying out their will in case they should decide in the affirmative. He had as yet heard no expression from the people on the subject—nor had it, so far as he had ever discovered, at all entered into the canvass for the convention.

Mr. HARGIS had an amendment which he believed would obviate all the difficulty. It was as follows: Strike out all the first line after the word sessions, and insert in lieu thereof the words, "at the capital in Frankfort, at such times as may be provided by law, provided that the legislature may at any time provide for said court to be held at such other place or places not exceeding three as they may think proper." This subject was a proper one for legislation, and had no business in the organic law.

Mr. C. A. WICKLIFFE had no idea that the people of any district would ever refuse to have a branch of the court of appeals come among them, and he preferred therefore, the section as it stood, without amendment.

Mr. MACHEN was himself fully satisfied as to the propriety of branching the court, and had full confidence that the district of country from which he came would sustain the constitution of the convention on that subject. His proposition was intended merely to obviate the difficulty, which seemed to exist in the minds of some gentlemen, as to the probability that some of the districts preferring not to have a branch of the court among them. The amendment could do no possible injury while it might tend to satisfy gentlemen who entertained the apprehensions to which he had referred. However, he felt no particular interest in the matter.

Mr. MAYES opposed the amendment as being

calculated to destroy the proposition to branch the court, and because it would have a tendency to keep each district in a state of continual excitement.

Mr. HARDIN was opposed to the amendment. When the districts were arranged and the proposition came up before the people as to what point in the district the court should be located, it would lead to continual excitements among the people. In some of the districts the location might be such as to induce a majority of the people to reject the court, rather than to have it continued there. It was emphatically the proposition with too much machinery—if it was intended to branch the court it was better to do it at once. He should have preferred that the whole matter should have been left to the legislature, for them to branch the court or not as the people might desire. To insert the provision in the constitution would, he was confident, insure forever fifteen to twenty thousand votes against the constitution. Who believed that the vote in this, and the adjoining counties, would not be very heavy against any constitution containing such a provision. He was against branching because it would increase the expenses of the state. It was among the great reasons which induced him to advocate a convention, that some provision should be made in the constitution to guard against that wasteful extravagance in the administration of the government, which had so largely increased the ratio of taxation since the year 1834. To branch the court, to add an additional judge with other necessary expenses incident to such a change would add to the expenditures of the state at least \$4000 yearly. Gentlemen might say what was \$4000? Nothing. But those who were farmers knew that when a thousand bushels of corn was put in a crib an armful or a ear taken from it was nothing, but these little nothings would leave the crib bare by spring. What was one of the little springs that fed the Mississippi? Nothing. But when they were all united they formed the broadest and most majestic river the world ever saw.

The CHAIR announced that the gentleman's time had expired.

And then the committee rose and reported progress. Leave was granted it to sit again, and then

The convention adjourned.

WEDNESDAY, OCTOBER 31, 1849.

#### COURT OF APPEALS.

The convention resolved itself into committee of the whole, Mr. HUSTON in the chair, and resumed the consideration of the report of the committee on the court of appeals.

The question before the committee was the amendment offered yesterday by Mr. Machen, to the 9th section.

Mr. MACHEN suggested that his object in presenting that amendment was to prevent some difficulties which he thought had arisen in the house. He was a thorough friend of constitu-

tional reform, and he had no intention to make any proposition which would embarrass the action of the convention. He still believed the amendment to be proper and right, but the consultation which he had had with those for whose opinions he had a great regard, had induced him to ask for its withdrawal.

The amendment was accordingly withdrawn.

Mr. C. A. WICKLIFFE said, he understood that those who opposed the sitting of the court in different districts, yet were in favor of electing the judges by districts and not by general ticket. It would be necessary therefore to preserve the equality of the voting population as nearly as possible in each. It had been suggested by the gentleman from Daviess, (Mr. Triplett,) that these districts should be so formed as to preserve the balance of power, that the place at which the court would be located, might be inconvenient to some of the counties in the district. He would, therefore, with a view to obviate that difficulty, offer an amendment as addition to the ninth section, as follows:

"The legislature may authorize a writ of error or appeal to be tried in another county than that to which such district may be attached."

If it would be more convenient to take the business of one county or district to another county, this would give permission to do it, leaving the county in the district, so as to preserve the equality of the voting population.

The amendment was adopted.

Mr. HARDIN said he had an amendment which he should offer in the convention, in lieu of the ninth section, which he thought would meet the objection of the gentleman from Henderson. He would only read it now:

"Sec. . The court of appeals shall hold its sessions at the seat of government, unless otherwise ordered by law, and the power is hereby given to the legislature, from time to time, to fix on and regulate the times and places for holding the sessions of the court of appeals."

He did not desire any present action upon the amendment. He wished not to encumber the constitution with the subject; he wished the power in this case to be left to the legislature. They would make more friends by leaving it to the legislature than by putting it in the constitution.

Mr. C. A. WICKLIFFE was fully aware that that was the last point to which the opponents of the district system were to retreat and fight its battle. He was not to be alarmed from doing what he thought right by the idea which he considered a fallacious one, that they should make enemies to the constitution by the insertion of such a provision. Gentlemen were in the practice of getting up and saying, that unless their favorite measures were carried, there would be such a weight of opposition to the constitution that the people would not receive it. Other gentlemen said the people cared nothing about districting, and that it was a lawyer's project. He had heard and read similar language from persons out of the house, coming from the mountains around the seat of government. Between the proposition of his colleague, who would leave the subject of branching the court to the legislature, and the one of his friend from Madison, that the court shall be held at the seat of government, he had

no hesitation in preferring the latter. He had no wish to have such a spring board, as the amendment of his colleague, from which aspirants to office could bound into congress or the executive chair. He had often witnessed the influence which had been brought to bear upon the action of the legislature from around and within the capital, and he did not believe, if the matter were left open, that the court would be located any where else than at the seat of government. The influence of the members of the bar around that place would be brought to bear upon the legislature, and would constitute a nucleus to rally around for some aspirant for congress, or the governorship, and it would be very convenient to say, we will postpone this bill till the next year, till the third of March. If it was right and proper that the court of appeals should hold its sessions in different places, and at different times, and if the public interest would be subserved thereby, he would inquire what good reason there was for postponing it. As to the argument that it would be a make weight against the adoption of the constitution by the people, it was one that could be used on both sides. This measure had been before the legislature heretofore and he might perhaps point out the cause why it had been defeated. There had been in times past, some sudden changes, and new lights had burst in upon the legislative body between the going down and the rising of the sun; even at the hour of midnight those lights had burst in, and had furnished an apology for the declaration, that men had scruples about the constitutionality of the thing. The gentleman had proposed to give this constitutional power to the legislature. They would have it at any rate unless the proposition of the gentleman from Madison prevailed.

Mr. HARDIN repeated, that he had only indicated his design to bring forward the amendment he had read, at a proper time, when he should probably give his reasons fully and thoroughly, that his constituents might see why and wherefore he differed from his honorable colleague. He was not an enemy to the bill, he had ever been in favor of electing the judges of the court of appeals, and of electing them by districts, and that they should hold their offices but for one term.

Mr. C. A. WICKLIFFE did not intend to say that he was an enemy to the principle of the bill.

Mr. HARDIN said he had staked himself on the great question of constitutional reform. He was one of the first men that voted for it in the state senate. He was exceedingly anxious to frame a constitution which the people would adopt, upon the first vote that they should take upon it; and it was equally important that the constitution should be popular, as well as good. He had no idea of practicing law much longer, and would just as lieve have the branch of the court at Pulaski as here. He did not take many cases to that court, and there were a great many eminent lawyers who never took a cause to the court of appeals. They might as well stop at the court below, because they could have the opinion of but one man when they got here, and the case would not be as well argued as at home. He admitted, however, that it was well to have

a court of appeals, for the purpose of preserving uniformity in decisions. But the idea that justice was to be carried to every man's door, was like that which he had somewhere read fifty years ago, in which an individual declared that he hated the very idea of a court house and a grave yard. If he was not obliged to support his negroes he would never go near a court house, for he regarded the court house and the grave yard with much the same feelings.

He agreed with his colleague, that the legislature always had the power to branch the court, and he did not know how a contrary opinion got abroad; he had been told, however, that it was started by a gentleman who lives here, Mr. Charles S. Morehead; but whoever it was, he ought to have a patent for it. He had been in the legislature twice when the subject of branching the court had come up, and when gentlemen suggested places where the court should be held, Springfield was one of the places named. This was a place where they had to haul water five miles, and he always put in a proviso, that if the court was sent there, they should sit in watermelon time. The idea, therefore, that the legislature had not the power to branch the court, was a new one—one that, during his practice of the law for forty-three years, he had never heard in his county.

The CHAIRMAN stated that as the gentleman from Nelson had not offered the amendment which he read, there was no question before the committee.

Mr. MORRIS said he had been a silent but an exceedingly interested listener to the discussion on this question. He was one of the few gentlemen in this house who was extremely tenacious in the matter of the independence of the judiciary. He believed most emphatically and entirely with the late venerable Chief Justice Marshall, who declared in the convention of Virginia, that the greatest curse which could befall any country, was a dependent and corrupt judiciary. He came here prepared to vote for the insertion of a clause in the constitution giving to the people the election of the judges. He believed that the independence of the judiciary depended not so much on the mode in which the judges received their offices, as the tenure by which they were held. He believed that the same corrupt influences, so beautifully described the other day by the gentleman from Bourbon, (Mr. Davis) would equally operate on the legislature, or on any other of the departments of the government, as on the people themselves. Nay, he believed it would, to even a greater extent. He considered that the independence of the judiciary was to be effected more by making the term of office long, and the salaries of the officers high, and also by making the judges ineligible after serving out their respective terms. He believed that in this way they might secure an independent judiciary, and these were the propositions he would vote for as a member of the convention. As regarded the question now before the committee, he looked upon it as one of policy and expediency, and could he imagine it struck at the independence of the judiciary in the remotest degree, he would stand against it as firmly as the gentleman from Nelson had done; but he looked upon

it as not affecting the independence of the judiciary.

The convention had been told, and it had been proved by the gentlemen from Montgomery, and also by another table produced here by the gentleman from Bourbon, (Mr. Williams,) that if they branched the court of appeals, the legal business of that court would, in all probability, be largely increased. Now, he saw no objection to the adoption of that proposition on that score. Give the people of Kentucky an opportunity of having their law business promptly attended to, and that could be done by having branches distributed in different parts of the state. If the court of appeals was a benefit and a service to the people, by affording them an opportunity of going to a higher and abler court than the circuit court, for an adjudication of their cases, then let the tribunal be placed in such a position as to suit the convenience of the people. Was it right that the people from remote parts of the commonwealth, should be compelled to travel all the way to Frankfort, in order to attend the appellate court, whilst the judges should have the privilege of travelling along good roads, and without any inconvenience whatever, to sit and hear appeals at the seat of government? The court of appeals then, under existing circumstances, must, he thought, be either a benefit or a curse to the people. He should judge from the argument of the venerable gentleman from Nelson, (Mr. Hardin,) that he considered this court a curse. If it was a benefit, it should be spread over the state at large, so that people might enjoy it; but if, on the contrary, it was a curse, why let the people bear it?

It had been said that the introduction of this clause would affect the reception of the new constitution by the people of Kentucky. He, however, did not believe it would produce any effect of that kind; but if any, it would affect the constitution for good, and render it more palatable to the people. The insertion of the provision in question was regarded by many gentlemen here as an entering wedge toward the removing of the seat of government. He did not look upon it in that light. He would do nothing to remove the seat of government from Frankfort, for it was a pleasant place, and the people were very warm hearted and hospitable. He would warn gentlemen, who felt interested in the town of Frankfort, that there are large and remote sections of the state where the people were extremely anxious for the branching of the court of appeals, and that if they pertinaciously adhered to the keeping of every thing within this little town, it might operate most seriously against it.

The 9th section as amended was then adopted.

The secretary then read the tenth section, as follows:

"The first election of the judges of the court of appeals shall take place on the \_\_\_\_\_ day of \_\_\_\_\_, and every two years thereafter, in the district in which a vacancy may occur, by expiration of the term of office; and the judges of the said court shall be commissioned by the governor."

Mr. C. A. WICKLIFFE proposed to fill the

blanks in that section. He thought, that if the constitution was not to be formally proclaimed as the constitution of the state, till the people had had an opportunity to consider it, and the convention were to meet afterwards to proclaim it, they could not meet earlier than April or May next. The members of the legislature would be elected on the first Monday in August, as he understood by the contemplated report of the committee on that subject, and consequently, there could not be an election of judicial officers earlier than the ensuing spring after that legislature had closed its session. He would, therefore, propose that the first election of these officers, throughout the state, should take place on the first Monday in May, 1851, and that they should be elected thereafter on that day. That would avoid an election of these judges at a period when the political officers were chosen, and he thought it a more convenient season than the month of August.

Mr. MACHEN suggested that members of congress would be elected in 1851, and the election of judges and members of congress would thus occur in the same year.

Mr. C. A. WICKLIFFE replied that it was for this reason that the month of May was selected, which would avoid all other elections.

Mr. DESHA said the second or third Monday in May would be more agreeable to the people, in reference to their business for the season.

Mr. APPERSON would prefer the middle of a week, and an earlier period. The first Thursday in April would throw the election still farther from the time of other elections.

Mr. HARGIS preferred the third Thursday in April, as the circuit courts would be in session in his county on the first.

The PRESIDENT thought the election of these officers should come on those years when the members of the legislature were not to be chosen. He would prefer the first Monday in August, on those years when the members of the legislature were not chosen. He was not willing, however, that any time should be fixed upon now, as the time when all officers were to be elected was to be fixed upon hereafter.

Mr. C. A. WICKLIFFE stated that the reason why he wished to have the blank filled now, was, that he understood that the committee on the legislative department had fixed upon the first Monday in August, 1850, as the time when the first election for representatives should take place under the new constitution. They would then be obliged to take a different month, or delay the election till August, 1851, which would bring the election to the time of the election of members of congress. He thought it would be better to fix on a different period of the year for the election of the judges, both of the appellate and circuit courts, from that on which either state or national officers were to be chosen. He was, on the whole, indifferent whether the time were fixed now, or whether they waited till the legislative committee had reported the time for the choice of representatives. He would, therefore, withdraw the proposition to fill the blank at present.

The tenth section was then adopted.

The eleventh section was then read, as follows:

"There shall be elected, in each district, by the qualified voters thereof, a clerk of the court of appeals for such district, who shall hold his office for the term of eight years, from and after his election, and who may be removed by the court of appeals, for good cause, upon information by the attorney general."

Mr. TURNER said he had some difficulty in understanding the operation of this section. He would like to know how many attorneys general were to be had? He thought this section ought to provide for having four attorneys general, one to attend each sitting court, otherwise he must pass around to each district. In this case the business at the seat of government would be neglected, for the officers there would have no one to advise them in his absence.

Mr. IRWIN was not in favor of the proposed arrangement of the court, but he would enquire if it were not somewhat strange, that a clerk who was elected by thirty thousand persons could be put out of office by four persons?

Mr. C. A. WICKLIFFE was sorry that he could not please the gentleman from Logan. It was difficult to please a gentleman who did not wish to be pleased. The gentleman from Madison (Mr. Turner,) had suggested that the presence of an attorney at the capital was necessary. He would enquire where that distinguished gentleman now resided? Did he live at the seat of government? There had been many who did not, and the present able and competent officer did not reside here. He did not know how the government got along in his absence. He thought there would be no difficulty from the cause indicated. The gentleman from Logan (Mr. Irwin,) had objected that the committee proposed that four judges should displace a clerk who had been elected by thirty thousand persons. He would answer that the judges were to be elected by a still larger number, but they were to be removable by a small number. The power must be placed somewhere.

Mr. McHENRY rose to a point of order. He thought the remarks were not applicable to the subject before the committee. The section was not debateable under the resolution which gave permission to discuss amendments only.

Mr. C. A. WICKLIFFE begged pardon for having unintentionally wandered from the point in debate.

Mr. TRIPLETT wished to call the attention of the honorable chairman of the committee on the court of appeals to the words in the eleventh section, "and who may be removed by the court of appeals, for good cause, upon information by the attorney general."

There was a possibility, and even a strong probability, that a clerk might misbehave in one district not immediately under the cognizance of the attorney general, and he would not have information of the fact. He would therefore suggest the propriety of inserting the words, "upon the indictment of a grand jury"—after the words above quoted. There ought to be some measure by which the citizen in a remote part of the state, who had been injured by the mal-conduct of a clerk of the court of appeals, might be able to reach him through the attorney general. No private person could compel him to file an information, but when a grand jury

had found a true bill on an indictment, it was *prima facie* evidence that the attorney general ought to file an information against him. He would prefer that the trial should take place in his own district, because the subjects for which he should be tried would relate to the records of that particular court, and it would be necessary to have the records of that court to prove the facts. He would prefer that the honorable chairman should move an amendment of that kind, because it was not easy to carry an amendment to which that gentleman was opposed.

Mr. C. A. WICKLIFFE said the committee thought it best to throw around these officers some safe-guard from unnecessary annoyances by persons who might institute proceedings against them which were groundless. As a member of that committee he was not attached to any particular court as the court to try such a case. He would suggest to his friend whether it would not be better to leave it to the legislature to fix the mode of procedure.

Mr. TRIPLETT assented to this proposition.

Mr. HARDIN suggested that it would be better to adopt the language of the old constitution, which is in the following words:

"They shall be removable for breach of good behavior by the court of appeals only, who shall be judges of the fact as well as of the law."

Now, under that clause, the court of appeals has said it is only to be filed by leave of the court. If this language were adopted, all would understand what the decisions were. He would not, however, make any motion on the subject.

Mr. C. A. WICKLIFFE observed to the gentleman from Daviess (Mr. Triplett) that if he would consent to postpone any action upon his amendment for the present, he would consult the committee of which he was a member, and get a provision which he thought would meet the views of that gentleman.

Mr. TRIPLETT assented.

The eleventh section was then adopted.

The twelfth section was then read.

Mr. C. A. WICKLIFFE said that in consequence of the amendments previously adopted, it would be necessary to strike out the words "of the United States," and insert the words "a citizen and resident of the district at least two years next preceding the election." And he would move to have it so amended.

The amendment was adopted, and the section therefore was in these words:

"SEC. 12. No person shall be eligible to the office of clerk of the court of appeals unless he is a citizen and resident of the district at least two years next preceding the election, in which he may be a candidate, of the age of twenty-one years, and has a certificate of his qualifications from the judges of the court of appeals."

Mr. NUTTALL moved further to amend by striking out the words "and has a certificate of his qualifications from the judges of the court of appeals."

If this report were adopted, and if the election of the judges and the clerks were to take place next May, out of the twenty-five or thirty thousand voters composing a district, not more than half a dozen, except the old clerks, would stand any earthly chance of being elected clerks of the



court of appeals, for their several districts. Be that as it might, he understood that if this section were adopted, it would have the direct effect of installing all the old officers who were formerly clerks in the different courts of Kentucky. There was no earthly doubt of it; and, he would here say, that if there was one thing more than another that had a most powerful influence in revolutionizing public sentiment on the subject of calling this convention, it was the manner in which the clerks had heretofore been appointed, and the course pursued in continuing men, from father to son, in office. He was in favor of giving every man a fair opportunity of filling one of the public offices, if he chose to run for it. Now in regard to the duties of the clerks of the court of appeals he did not pretend to say that he understood them, but it seemed to him that few qualifications only were required to make a man a good clerk. He had been in the court of appeals once or twice in his life, and had never heard a clerk read more than a short paper that the court had affirmed or reversed the decision of the court below. A line or two was sufficient to enter the order of the court, as it appeared to him. He might be mistaken; that might have been a minute merely, and the order might afterwards have been written at length, but he did not hear it read. But, it seemed to him, that any practical man of good sense might discharge the duties of clerk of the court of appeals, or of the circuit court. He was willing to carry out the doctrine, which he first contended for here, and that was, that if the people were qualified to judge of the capacity and ability of men to fill other offices, they would certainly be qualified to elect a man clerk of the court of appeals. He was in favor of striking out the words he had indicated, because he thought it would be forcing the clerks already in office on the commonwealth.

Mr. HARDIN observed that this was the same question that had occupied the attention of the committee for the last three weeks. All it amounted to was, whether they should fix the qualifications for any office. They had fixed the age at twenty one years, and that was a qualification. That was as much an abridgment of a man's liberty as to make him subject to military duty. He had no idea that the people would elect a man that was not qualified, but it was important to have the people understand what was thought about the principle in order that they might know that a knowledge of the law was essential to the administration of justice in our courts. The people ought to understand that before a clerk was permitted to act he should have some paper which would show his qualifications. He thought that no man should be elected a clerk unless he was qualified. It had been said that it was in consequence of the abuses of the appointing power this convention had been brought about. It was true, there was ground for these complaints. When the clerk of Owen county died, the judge sent down to Green, without regard to the wishes of the people of the district, and brought his brother out of an apothecary shop. It was difficult for him to get a certificate, but some man taught him to repeat the answers which he would be required to make, and he thus obtained one. When the clerk in Garrard died, the judge thought no man

was so well qualified to fill the place as his son William; and William having sold it out, no man was so well qualified as William's vendee. And when Boyle county was made no man was so well qualified for that office as William, in the eyes of his father. He hoped gentlemen would not be inclined to carry their views so far as to run this principle into the ground. We have fixed upon the qualifications as to age and residence. It would do no harm. The gentleman from Henry was entirely mistaken in the supposition that the old clerks would be elected. Some would, and some would not. Many young men would qualify themselves to fill the office of clerk, and he ventured to say that there would be no scarcity of competent men to discharge the duties.

Mr. CLARKE said that gentlemen had attempted to assign reasons why a candidate for the office of the clerk of the court of appeals should be in possession of a certificate in respect to his competency and ability to discharge the duties of the office. This was based upon the fact that the individual would not be as likely to be as generally known by the people, as the one who obtained the office of clerkship in the circuit court. Hence therefore, it was contended, the necessity of a certificate. But, he would ask, was it true that the possession of a certificate was satisfactory evidence of his qualification? That was the point. It was argued that no one should be a clerk unless he was qualified, and the best evidence of the fact was the possession of a certificate. Now, in respect to what had fallen from the gentleman from Madison, and the venerable gentleman from Nelson, on the subject of a certificate, he would ask if these certificates, obtained with the facility which had been stated here, furnished satisfactory proof of the qualification of a clerk to discharge the duties of his station? If he (Mr. Clarke) desired to be a candidate for the office of clerk, he would set about learning to answer some dozen or twenty questions, which it was understood by the old clerk were always put by the judges of the court of appeals to an aspirant for the office. And, after he should have gone before them, and answered those questions, he would get a certificate. They allowed a man, because he had a certificate to impose upon the people—to practice a fraud upon their credulity. That was the effect of it. If they let him go before the people upon his reputation, his standing, his character, and business habits, the people would be competent to judge of his fitness and capacity to discharge the duties of a clerk. But, if they let him go into office, because of his possession of a certificate, which he had obtained by fraud, they excited the suspicion of the people and invited them to enter into a scrutiny of his qualification, which they doubtless would institute. He had no objection, nor had any one, to the candidate being a resident of the district in which he should be elected, two years, and that he should be twenty one years of age; but he did object emphatically to his being, by fraud and trickery, palmed off upon the community as a competent clerk, when able and distinguished lawyers said he was not qualified.

Mr. C. A. WICKLIFFE explained the object

of the committee in framing this section, in this manner. They designed to show to the community and to the world, as well as to the candidates for this office, that he should be furnished with *prima facie* evidence, at least, of fitness for the office. That individuals had obtained certificates who were not very well qualified for the duties of a clerk, might be true. An instance had been given by a gentleman. He could give an instance where the reverse was true. He had known the case of a young man, who had enjoyed every advantage to make himself a competent clerk, for he was schooled in the clerk's office, and made himself familiar with the duties of that office by study and experience, and he (Mr. Wickliffe,) knew that he was well qualified, yet in his alarm and trepidation, before the tribunal, he could not answer a single question. He then came to him, (Mr. Wickliffe) and told him what had occurred. Upon a consultation with the judges, a re-examination was had under such circumstances as to remove the cause of his trepidation; a certificate was granted and he made a most excellent clerk. When gentlemen came to reflect upon it, he thought they would see the necessity of having some security against any man obtaining this office without the proper qualifications. Some popular declaimer, wholly unqualified, might obtain the suffrages of the people, and secure the election and commission of a clerk, and having done so, he might then farm it out to some oneman who was qualified, just as the old sheriffs had done. He wished to preserve a provision by which the people should have some evidence of fitness, and that there should be some inducement to young men to qualify themselves. If his colleague were to imagine that he might be a suitable clerk in his judicial district, it would be difficult to prevent his election, yet no judge of the court of appeals would grant him a certificate that he was qualified. Would it be proper to appoint such a man as he, and then have some friend of his to perform the duties of the office.

Mr. CLARKE wished to remark that there was a man now occupying the station of clerk who could not write.

Mr. C. A. WICKLIFFE supposed as Dogberry said, it came by nature. He was aware there had been a practice throughout the state of appointing young gentlemen to that station who had never spent a day in a clerk's office, and who knew nothing about the business. Clerks had been appointed to office *pro tem.*, who went to work and qualified themselves, and became excellent clerks. But it was not now proposed to elect clerks *pro tem.*; and *prima facie* evidence was requisite, at least, that they could read and write, and understood something of the judiciary of the country. The office of a clerk was a very important one, not only for the despatch of business, but its correctness. He had known evils to arise, owing to a want of qualification in a clerk under the present system, or by incompetency of his deputies, while the clerk himself was employed in other business. It was on account of abuses of that kind, that the subject of calling a convention was fully discussed throughout the region where he lived. The people did not demand any evidence of the honesty or integ-

rity of a clerk, but they said they would require some evidence that he had learned his trade, that is, that he knew how to do the work.

Mr. BALLINGER would not have arisen to speak on this subject, but for the allusion to a clerk in one of the counties of this state, by the gentleman from Simpson. It was true that for the last year, that clerk had been disabled by the palsy. There was, however, no clerk in the state better qualified to discharge the duties of the office. He had been a clerk a long time, and received his appointment at first on account of his superior qualifications, and he was a living evidence of the indispensable necessity of proper qualifications. He had given universal satisfaction for nearly thirty years. The business of the office was now carried on by individuals who were not themselves qualified, but who performed their labors under his direction. That was an evidence of the necessity of having a clerk who was qualified both in theory and practice. He thought, notwithstanding the statements which had been made to the contrary, that the possession of a certificate was a requisite evidence of qualification. Any man who would give his time and attention to the subject could qualify himself for this office; but the people were not capable of judging whether an individual was fully competent. None but those who were themselves qualified to perform those duties were competent to judge of the fitness of another individual.

Mr. CLARKE explained that he did not make the allusion to which the gentleman had replied, with a view of showing that the incumbent was not qualified to discharge the duties of the office, but simply to reply to the gentleman from Nelson, (Mr. C. A. Wickliffe), and to show it was not indispensably necessary for a clerk to write a very elegant hand.

Mr. GHOLSON said he had not risen with any expectation that his peculiar views could be enforced, or that he should make any impression on the house in what he might have to say on this question; but he felt it his bounden duty to oppose the course which some gentlemen were taking in making these invidious distinctions at every stage of this discussion. Now the gentleman from Nelson, (Mr. Hardin), had conceded the whole ground in controversy at the outset. He had taken down his words verbatim as they fell from his lips, and they were that he had no idea that any man would be elected who was not well qualified. He had as much confidence in the intelligence of the people as the gentleman, and concurred with him in the opinion which he had expressed. It had been fully shown that a certificate was not *prima facie* evidence of a man's fitness for office. In this opinion he also concurred. They all knew that for many years past, the public offices had been confined almost exclusively to a certain class of the community, divided among certain families belonging to the Patrician order, as he considered them. The father first enjoyed the office for a number of years, and then it was transferred to the son. This was the only class of persons, if this provision were adopted, that could come forward and obtain a certificate of qualification. He agreed with the gentleman from Nelson, that the people would make a pro-

per choice. Where a man was well known the people must be the best judges, and yet gentlemen proposed to prescribe to the people whom they should or should not elect. He maintained that the character of a man before the people was the very best evidence of his qualification. He protested against prescribing to the people, for it was in so many words saying to them, "you know nothing about selecting a competent clerk, and we must give you our advice lest you elect an incompetent man, having no confidence in your judgment, integrity, and discretion." He knew this measure would be adopted, but before it was he would now repeat his protest against the infliction of such injustice on those who sent him here.

Mr. DIXON believed that he well understood now, what the gentleman from Ballard meant. The last remarks of that gentleman were easily understood. He had asked the gentleman from Nelson, if his object was to prevent the ignoramuses from being elected clerks, to prescribe rules to keep them out of the office.

Mr. GHOLSON declared he had not uttered that sentiment, but did say that other gentlemen held the doctrine that the people would elect a set of ignoramuses, and therefore they prescribed those metes and bounds.

Mr. DIXON. That was it then, just the thing, they prescribed rules by which ignoramuses might be prevented from being clerks.

Mr. GHOLSON. If the gentleman thought to make capital by a wilful perversion of his remarks he was welcome to do so.

Mr. DIXON did not think much capital would be made from any remarks of that gentleman; for after giving him full credit for all the capital he possessed, it would be of little value. He understood the gentleman to say, if the people would make bad clerks, they had a right to do so; if they would make mean and dishonest men clerks, they still had a right to do it; and if they put ignoramuses in office, they had the right to do it; and he insists that the people of Ballard and McCracken should not be prevented from exercising this right. It was unfortunate that the gentleman did not live in the time of the great contest of the white and red roses, as it was termed, or between the houses of York and Lancaster, which was waged with such partizan fury, that England was drenched in blood. There was during that memorable contest, a celebrated man who entertained the same opinions with the gentleman from Ballard and McCracken. He and those who agreed with him, thought it was wrong for a man to write, highly criminal to read, and especially so, if he spoke French. It was the celebrated Jack Cade. He was the great leader of all the ignorance of England; he fought several battles, and was victorious; he took many captains, and made it a point, like the gentleman from Ballard and McCracken, to spare no one who was so unfortunate as to have learned to read and write. At one time he constituted himself a court with criminal jurisdiction, when a clerk—the clerk of Chatham—was brought before him, on the grave and horrible charge that he could read and write, and some one else on a charge that he spoke French. Before the examination of the unfortunate violators of the criminal code of Cade commenced,

one of his followers said—the first thing we do, let us kill all the lawyers; to which Cade immediately replied, nay—that I mean to do. Is not this a lamentable thing, said he, that of the skin of an innocent lamb should be made parchment, and that parchment being scribbled over should undo a man. I did, said he, but seal once a paper, and I was never mine own man since. It was after arriving at this most wise and sapient conclusion that the most unfortunate clerk of Chatham was introduced into court and put upon his trial, when the most remarkable specimen, perhaps now on record, of all the beauties of ignorance was displayed in the dialogue which ensued between the renowned judge and one of his followers. I do not pretend to quote from the great dramatist, Shakspeare, accurately; but it was, as well as my memory serves, after this sort:

"Who have you there, said Cade.

The clerk of Chatham, said his follower.

What's his offence, said Cade.

He can write and read, and cast accounts, said his follower.

O! monstrous, said Cade.

We took him setting of boys copies, said his follower.

O! the villain, said Cade.

He has a book in his pocket with red letters in it, said his follower.

Nay, then, he is a conjuror, said Cade.

He can make obligations and write court hand, said his follower.

I am sorry for it, said Cade. The man is a proper man on mine honor. Unless I find him guilty he shall not die. Come hither sirrah, I must examine thee. Dost thou use to write thy name, or hast thou a mark to thyself, like an honest plain dealing man.

I thank God, said the clerk, I have been so well brought up that I can write my name.

He hath confessed! He hath confessed, said the follower of Cade. He is a villain and a traitor.

Away with him then said Cade, let him die with his pen and inkhorn about his neck. Off with his head.

And now, said he, we'll have the head of Lord Say, for selling the dukedom of Maine, and good reason too; for thereby is England maimed, and fain to go with a staff, but that my puisance holds it up. Why, said he, is not this Say a villain, and worse than all, he can speak French, and therefore he is a traitor. Answer, if you can. The Frenchmen are our enemies, go to then. I ask but this, can he that speaks with the tongue of an enemy be a good counsellor. I answer, he cannot. Then I say let him die the death of a traitor. Off with his head."

Had my friend lived at that period, he might have been a distinguished leader like Cade. No qualifications were then needed. If he wrote, that was a disqualification; if he read, it was the same; and if he spoke French he had no chance but to have his head taken off. They were not now living at such a period, and he thought his friend from Ballard must be satisfied of that. Jack Cade thought the qualifications of writing, reading, and speaking French, were sufficient to demand decapitation. His friend from Ballard seemed to think that all qualifications for the office of clerk, should be

disregarded. He, (Mr. Dixon) however, looked on the qualifications of a clerk, as among the most important in the state, important to every citizen in the whole country. In the clerk's office were deposited all evidences of titles, a thousand evidences of facts, upon which all the rights and interests of the people of this commonwealth depended. It was highly important that the clerk should know how to take care of these papers. Surely it was important, and he believed it required years of study and close application to qualify any man for the business. He was most decidedly opposed to breaking down, or throwing wide open the gate to permit every man to go in and take charge of these evidences of title, whether qualified or not. They had better look to this matter before they acted upon it. Titles to land, and titles of every description were placed in the keeping of the clerk. In the proper records of the decrees and judgments of the courts, every thing was involved, because a corrupt or ignorant clerk may pervert the record, and destroy all the evidences which it was intended to perpetuate, and then the rights of the people of course are sacrificed. Nothing could be so important as that the clerks should be competent men. He hoped they would not, by striking out this provision, say to the people of the whole state of Kentucky, it was right and proper, if they chose to do it, to put an ignorant man in the office of clerk. It would be a wrong, and an outrage on their rights, to put an incompetent man in that office, and thus throw down all the barriers which should be erected by this convention, against that wild spirit of revolution, which under a leader of the spirit of Jack Cade, might result in the destruction of every thing that was worth preserving.

Mr. GHOLSON said it would be recollected by the committee that he had commenced his remarks with the emphatic declaration that he wanted qualified men, and that the gentleman from Nelson (Mr. Hardin) said he had no idea that the people would elect a man who was not qualified. And, in order to get them, he (Mr. G.) proposed to give the election to those who lived around them, and who would therefore, be the best qualified to judge. He wished to be understood on that particular point. When gentlemen were driven to the wall, when they showed a disposition to hold up the aristocracy, let them refer to old English tales of Jack Cade, and Spanish tales of Sancho Panza. He needed no such aid. His affections were with the people.

The PRESIDENT supposed there was no man in the convention who did not desire that the candidates for the office of clerk should be well qualified. Now what was the best mode of securing that description of officers? In the present constitution it is declared "that each court shall appoint its own clerk, who shall hold his office during good behavior; but no person shall be appointed clerk, only pro tempore, who shall not produce to the court appointing him, a certificate from a majority of the judges of the court of appeals, that he had been examined by their clerk in their presence, and under their direction, and that they judge him to be well qualified to execute the office

of clerk, to any court of the same dignity, with that for which he offers himself." These are the qualifications required by the the present constitution. Granted that even under these qualifications frauds have crept into the records, should they now throw open the doors to an unlimited extent for the entering of such frauds, for that reason alone? Because certificates were sometimes given unworthily, was that a reason why no qualifications at all should be required before a candidate had the right to present himself and trouble a district with his pretensions to office? Licenses were required from lawyers and yet sometimes there were men who received them, who were not lawyers, but this fact was soon found out, and before they could do much harm. In regard to clerks, the evils arising were not so readily to be obviated. And should not the people require at least the same qualifications of those who present themselves for that office? Shall not the people place over themselves the same guards that in the present constitution they placed over the courts to prevent improper individuals from presenting themselves for these offices? However aristocratic these clerks might become from their official position, they certainly were not so in their origin. They were generally the sons of poor men, and frequently the orphans of widowed mothers who were educated in their duties by the several county clerks. And he desired also to fix such qualifications as should open the office to all, and at the same time preserve that high character for capability which the clerks of the courts of Kentucky had ever borne at home and elsewhere. It would at least increase the chances of securing better officers, and it was the part of wisdom, therefore, to put it in the constitution. Their possession of this certificate by the candidates, would be *prima facie* evidence, at least, to the people, that they were qualified for the station.

Mr. TURNER said that most of the clerkships were filled by the sons of poor and humble men. And if it should be required, as he proposed, that each clerk should serve an apprenticeship of two years before he was a candidate, it would to a still greater degree, keep the office within the reach of the sons of poor men, inasmuch as the sons of the wealthy and the aristocratic would hardly consent to learn the business as apprentices. The best clerks in the commonwealth were the sons of poor men who had been obliged to serve an apprenticeship of this kind. He instanced the clerks in this city, and in Madison, Fayette, and Lincoln, as being most excellent officers, and men who were of the class to which he had referred. The objection to the present mode of judges appointing their own clerks was, that they were very apt to appoint their own sons and relations; and this was not surprising, as they received so little compensation, that they must be compelled to resort to that means to sustain their families. But the people were now to make these appointments, and he hoped the convention would put it out of the power of any man to receive one of these offices unless he had qualified himself by learning its duties by a regular apprenticeship. In regard to the reference that had been made to his aiding a young

man in procuring the office of clerk—he had only to say that he did it in one instance, receiving no compensation therefor, and merely as an act of good will to the person. And even this he desired to guard against in the future.

Mr. R. N. WICKLIFFE said he should vote to retain the requirement of a certificate. The requisition in the present constitution on its face would seem to be the best that could be devised. It requires the judge to appoint the clerk, and even then, that he should not do it except upon a certificate of qualification. All would suppose that the judge was the best person to judge of the qualification of a clerk, and the framers of that constitution were wise in that provision, if the courts of the country had carried it out in the spirit they designed. But if there was any thing at all which had brought about this convention, it was the open bargain and sale of the offices of the commonwealth, and the shameful prostitution of the appointing power. There was hardly an office in the state that was not held through bargain and sale. It was the fact in regard to his county, as had been brought out by legislative investigation. He said it in no terms of derogation to the incumbents, for they were his personal friends, nor did he make it a matter of reproach to them, because it had come to be a sort of common law in the state, that all offices were to be bought and sold as merchantable commodities. He was for requiring some evidence of qualification from the candidates.

Mr. CLARKE wished to have the officials in his district excluded from this charge. The clerks there held their offices by no bargain or sale. It was due to them, estimable gentlemen as they were, though political opponents of his, that this should be said.

Mr. R. N. WICKLIFFE made his remark in a general sense. The case to which he had alluded in his own county had been a matter of legislative investigation, and here it was proper to say both gentlemen swore that the judge had no knowledge of the sale of the office.

The question was then taken on Mr. NUTTALL'S amendment, and it was rejected.

Mr. TURNER moved to amend the 12th section, by striking out the words "a certificate of his qualifications from the judges of the court of appeals," and to insert in lieu thereof the words "a certificate of his having served two years in some clerk's office, and of his qualification from the judges of the court of appeals."

Mr. WOODSON thought the adoption of this amendment would place it in the power of the present incumbents of the offices to say who should be clerks in all coming time. As a general rule, the clerks he believed were opposed to the calling of a convention, because under the present constitution they had a life tenure of their offices. To require that no man should be eligible to the office unless he had served an apprenticeship of two years, would lead to these results. The men who had been taken into the clerks offices would, from delicacy, be prevented from becoming candidates against their old friends; and the clerks also would be likely to get no one into their offices who would be probable, hereafter, to become their opponents for the station. Further as to the amendment: No man

who had not written in a clerk's office for two years could possibly be a candidate until after the first election. What he desired, was to see every man who could get a certificate of his qualifications eligible to the office, and if in the granting of those certificates the judge should perpetrate any fraud on the freemen of the commonwealth, let them be deprived of their offices.

Mr. A. K. MARSHALL said there was one honorable exception to the charge that the clerks had opposed the call of a convention. There was one who had not only been an earnest advocate of reform throughout, but who to his honor, be it spoken, was opposed to the qualifications recommended by the committee. He, (Mr. M.,) should vote against the amendment of the gentleman from Madison, and also against the proposition of the committee, leaving it, as he hoped the convention would determine it, to the people to decide what qualifications and restrictions should be required, and who possessed those qualifications. He had been commanded by the people of his county to commit into their hands not only the election of their officers, but to trust to their intelligence and their integrity in making that selection. He would give his vote therefore for no qualifications that were dependent upon the action or judgment of any other than the people themselves. They believed themselves to be, and he believed them to be, qualified to determine who was fitted for the office of judge of the court of appeals, and for judge of the circuit courts. He did not agree with the gentleman from Henderson that the people were totally indifferent to the qualifications for the offices they were to fill. He could not believe that there was no anxiety existing outside of this convention to fill these offices with persons who were amply qualified to fill them. Relying as he did most implicitly upon the virtue and intelligence of the people of this state, and believing himself to be commanded by the people of his county, as well as by the people of the state at large, to commit into their hands this power, he desired to do it without the imposition of any restrictions, believing they would themselves require all the qualifications that were necessary. He should therefore vote against every proposition to required qualification.

The amendment of Mr. TURNER was then rejected.

Mr. NUTTALL moved to strike out the words "and has a certificate of his qualifications from the judges of the court of appeals."

He did not want the clerks to have all the advantages, but only just an equal chance with every other candidate who might be able to get a certificate of qualifications from the appellate judges. He wanted all of them to come before this new court of appeals, and much more necessary was this since gentlemen had here confessed that men had received certificates and appointments who were not qualified.

Mr. HARGIS thought if the amendment was adopted it would prevent the court of appeals from organizing for the want of a clerk. The judges were first to be elected, and who should sit as clerk if it was provided that no one should be elected until he had received a certificate from them? As to the qualifications of these

clerks, he was desirous of requiring that they should be possessed by the clerks of the appellate court; but of the clerks of the circuit courts who were to be elected in the different counties, he would require no certificate of qualifications. He was acquainted with counties where there was no man who had a certificate or who could get one, and if such a qualification was required the court would either have to do without a clerk, or appoint a *pro tem* to act until some competent man should move into the county. This would not be the case in such large tracts of country as would constitute an appellate district.

Mr. BOYD moved to amend by adding at the end of the section the words, "or any two circuit judges of the state." The certificate of any two circuit judges should be sufficient, as it might not be convenient for poor young men who were qualified, to go to the expense of attending the court of appeals for the purpose of procuring their certificates.

The amendment was adopted.

The thirteenth section was then read as follows:

"Sec. 13. In case of a vacancy in the office of clerk of the court of appeals in any district, the governor shall issue a writ of election to that district, and the qualified voters thereof shall elect a clerk to serve until the end of the term for which the clerk was elected whose vacancy is to be filled. Provided that when a vacancy may occur from any cause, or the clerk shall be under charges, upon information, the judges of the court of appeals shall have power to appoint a clerk *pro tem*, to perform the duties of clerk until such vacancies shall be filled, or the clerk acquitted."

Mr. KAVANAUGH said it appeared to him that in case a vacancy occurred a short time previous to the general election, there ought to be some mode of appointment, by which the office could be filled *pro tem* for the remainder of the term. He understood, however, that the provision required that a writ of election should issue, even when a vacancy occurred, within a few months of the expiration of the term.

Mr. JAMES said he had prepared an amendment which he thought would obviate the difficulty.

The amendment was read by the clerk as follows:

Amend section 13 line 2, strike out all after the word "district" and insert "within less than one year next before the time for which he shall have been elected or appointed, the judges of the court shall fill the same, but in all other cases the vacancy shall be filled by an election in such manner as the general assembly shall provide by law."

Mr. C. A. WICKLIFFE observed that it appeared to him, that there was really no necessity for the amendment. In case a clerk should die within a month of the expiration, if the gentleman would examine the section, he would find that no difficulty could arise. There would necessarily be an appointment *pro tem*, of a clerk to do the business until an election took place, under the writ issued by the governor, or until the general election, as the case might be.

The question being taken on the amendment, it was rejected.

The fourteenth section was then read, and the question being taken, it was adopted, as follows:

"Sec. 14. The legislature shall direct by law the mode and manner of conducting and making due returns to the secretary of state, of all elections of the judges and clerks of the court of appeals, and of determining contested elections of any of these officers."

The 15th section was then read, as follows:

Sec. 15. All elections of judges of the court of appeals, and the clerks thereof, shall be by ballot.

Mr. C. A. WICKLIFFE reminded the committee that the proposition regarding the voting by ballot, was the next subject to be voted upon. He would leave it entirely to the judgment of the committee as far as he was concerned, without detaining them with any argument as to the propriety of its adoption.

Mr. ROGERS remarked, that in his opinion, the proposition involved a great and important principle. It was a matter of importance to the people of the state, to consider whether or not the present mode of election should be abandoned, and the ballot system adopted. He desired gentlemen to look back for a moment, and consider from whence this thing came. If they would revert to the August election, it would be seen that since the secret, and masked battery of the open clause, had been put down by the people of the State, the emancipation party had been holding up to the people the ballot system, as one which ought to be adopted, and the object was apparent. Under that system frauds could not be detected, whereas when votes were given openly, if an error was committed, it might be corrected. There was no necessity for ballot voting in Kentucky. Was it to be supposed that the citizens of Kentucky were in dread of any influence that might be exerted over them as by land-lords over tenants. Not at all. What were the arguments adduced in favor of adopting this system? It was held out by the emancipationists, that they could not come up and vote freely and openly without exposing themselves to the enmity of those whom they opposed. There was an ulterior object he apprehended. He believed they were looking forward to the time when they would be able to bring up the question of emancipation in another form, and they wanted to secure the provision of ballot voting as a preliminary step. When a man desired to commit petty larceny, or highway robbery, he would be very glad to provide himself beforehand with a means of concealment of his act, and when men contemplate committing a wholesale legal robbery of your property, they want the cover of ballot voting to do it under. To use their own language, they meant to be "as wise as serpents and as harmless as doves," and in carrying out their views, they were no doubt, prepared to come forward at all times, under cover of patriotism and humanity, but other disguises were necessary. It was written in the book of inspiration, that there should be false prophets in all times to come, as there had been in times past, and that they should deceive even the saints themselves. It would not be very surprising then, that they should deceive even



these good convention men. They had yielded to the anti-convention men, the question of eligibility of officers; they have yielded to them, the question of qualification; they have yielded various points—this point, he hoped they would not yield. He hoped they would retain the *viva voce* system, for he wanted to know where every man stood who came up to vote. It would be important as a matter of reference. It was desirable frequently, to revert to the former acts in a man's political life. How would it be in regard to the action of the convention if after a period of years, it could not be ascertained what course delegates had taken. He desired that there should be a public and permanent record of all votes, and he trusted that the amendment would not be adopted.

Mr. BROWN proposed to amend the amendment by striking out the word "ballot" and inserting the words "*viva voce*."

Mr. C. A. WICKLIFFE said he rose merely to disabuse the committee on the court of appeals, from the imputation of entertaining the sentiment that this proposition of theirs was in furtherance of the views of the emancipationists. He was very certain however, that the gentleman could not himself have supposed that such was the purpose, which the members of the committee had in view, in proposing the amendment that was now under consideration. At all events, he could say for one, that no such purpose entered his mind, and he did not think that he had subjected himself to such a charge, either in the house or out of it, wherever he was known. While up, however, he would say to his honorable friend, who had moved the amendment to the proposition of the committee, that the best way to accomplish his object, would be to vote against the proposition, and leave it to the legislative department, hereafter to prescribe the mode in which electors should cast their votes, and thus avoid encumbering the constitution with any provision on the subject.

Mr. ROGERS desired to say one word in explanation. He did not intend to advance the opinion, that any member of the committee, or of this house, favored the amendment that had been recommended by the committee, for the purpose of promoting the views of the emancipationists, but that, he believed, would be the effect of the amendment if adopted. It would be yielding to them a principle, and to this he could never consent. He hoped the amendment would not prevail.

Mr. BULLITT felt it to be his duty to protest against the adoption of the ballot system, in any form in which it could be presented. The direct tendency and effect of it would be to aid emancipation, as well as agrarianism, in all its forms. He had as much confidence in the honor, integrity, and virtue, of the people of Kentucky, as of any other people in the world; he would not yield the Kentucky character to any other, but it was a fact well known, that there were bad men in all communities. If all men were perfect and invulnerable, why would they be sent here, to make a constitution? A perfect man requires no law to restrain him, but they found it necessary in all governments, to impose restraints upon the wicked. What would be the effect of the ballot system? It would be this.

There were bad men, it was admitted—men who would deprive their neighbors of their property, if they could have an opportunity of doing it by sneaking up to the ballot-box, like a *sheep-stealing dog*, without being responsible to the influences around them. Where was the necessity for adopting the system of ballot voting?

He had come to the convention prepared to go for the election of judges, by the people, although it was not his original opinion that they ought to be so elected. Upon this point, he had yielded to the wishes of the people whom he represented. He believed further, that if the convention or the people hereafter, through the legislature, should determine to give good salaries and long terms of service to the judges, their appointment by the people would be, he thought, the best mode that could be adopted. But he would not begin by teaching the people a system of fraud. Any man who was not independent enough to go up to the polls and vote openly, ought not to be allowed to vote at all. What was it that they were proclaiming to the people by such a mode of action as this? It was tantamount to telling them, we are establishing a system that we say is the most perfect that can be devised, and yet so imperfect is it, we say in the next breath, that we cannot suffer our constituents to vote openly like men, but that they must sneak up to the polls and vote stealthily. Suppose, after having voted in this manner, I should be enquired of, by a candidate, how did you vote? In addition to the concealment of my vote in the first instance, I should have to lie a little about it, I suppose, in order to hide from him the fact that I had voted against him; so that I might avoid having my neck stretched, as I might be liable to do, when the judge came to carry out that vindictive resentment which gentlemen attribute to them.

He protested against the ballot system, on the ground that among honest men it was wholly unnecessary, calculated to teach people to dissemble, and to hide their votes. In a government of the people, like this, every man should come forward, boldly and independently, and give his vote. He should be taught and instructed to do this. One of the advantages that a slave state possessed over a free state was, that in the slave states property was more equally divided than in the free states. In the slave states, overgrown estates were not heard of. An Abbott Lawrence and a John Jacob Astor were not to be found as in the free states. There was no man to be found there having five hundred voters under his control, men who were more degraded than the slaves. If the slaves were allowed to vote he would be inclined to adopt the ballot mode of voting, but the case was very different.

There was no gentleman in this house who had a higher respect for the chairman and all the members of the committee on the court of appeals, but the course pursued by the committee, he must be permitted to say, did not entirely accord with his ideas of what constituted that sort of action which the honorable chairman professed to have in view. The ballot mode of voting was not applicable in this country, and they were let into a bit of a secret, by being informed, from a very high emancipation source,

that the emancipationists in their future conduct were resolved to be as wily as serpents and as harmless as doves. And how had the question now been brought up? Oh! it was pretended that a man could not vote, free from control, without going up to the ballot box, poking in his ballot privately. There was no earthly reason why the present elective system should be changed.

Mr. HARDIN said when the present constitution went into operation, he, although a lad, only about sixteen years of age, was in the habit of attending the elections, feeling a deep interest in observing how they were conducted, and he knew that there were great complaints of the frauds that were practiced upon the illiterate. The friends of the candidates were in the habit of shifting their tickets. Another cause of complaint was, that some of the voters were made to vote two tickets, and such was the alarm of that class of people, lest they should be imposed on, that they were in the habit of going to their neighbors, in whom they had confidence, and getting them to write the names of the candidates for them. Under the original constitution of the state, free negroes were permitted to vote; and one of the causes of calling the convention in 1799, was to change the ballot system of voting.

He understood from the chairman of the committee that he did not intend to carry out the principle through all the elections. He was for uniformity of voting. The principle should be the same in the election of all the officers of government. As the gentleman from Jefferson had well said, in countries where one man might have a thousand operatives under him, it might be necessary to protect those men in the exercise of the elective franchise against the dictation of their employers. Where a man owned nearly a whole county, it might there be necessary, but there was certainly no necessity for any such thing in Kentucky.

Mr. BROWN observed, that it was suggested to him by the chairman of the committee, that he could attain his object as well by voting against the amendment proposed by the committee. That might be true, but he could also attain it as well, by the amendment he had offered. He was utterly opposed to the adoption of the ballot system, in Kentucky. He was in favor of the old mode of voting. He had never had a vote to give, nor did he ever expect to have one, which he desired to conceal. He believed that it was more republican, more democratic, more independent, for a man to go up to the polls and vote his sentiments, without any concealment; and he believed that the system of voting, now proposed, was a little like the open clause, appropriately termed, by the gentleman from Mason, a masked battery. He disclaimed any such imputation against the committee, or any member of the committee, as that they were desirous of favoring the views of the emancipationists; but it was very well known that it was a mode of voting that had been favored by the emancipationists. The old mode he regarded as valuable, from its convenience for reference, whenever it became desirable to ascertain how a man had previously voted. Unless the poll-book could be referred to, to show how a man

voted, he could be held to no responsibility. There was within this state a class of men who were willing to destroy, and who would destroy, if they had the opportunity, the tenure by which a certain species of property within the state was held. They would take it away from the owner, without any compensation. They were engaged in a species of robbery, and this ballot system would serve them as a protection from the odium which would attach to those who desired to obtain a man's property without compensation. He was in favor of retaining the old mode of voting, because it was more republican, and because it would hold men to a just sort of accountability.

Mr. GARRARD said he had been endeavoring, for the last fifteen or twenty minutes, to get his own consent to pass over the remark of the gentleman from Morgan. The gentleman said there was not, in some regions of country, although he excepted that part which he himself represents, a man to be found who was qualified to discharge the duties of clerk of the court of appeals, nor one who could obtain a certificate of qualification. He would ask if the gentleman alluded to that portion of the people of this commonwealth that he had the honor to represent?

Mr. HARGIS remarked, that he had not specified the particular county where this state of things existed, and he did not know that the gentleman had a right to require him to state, specifically, what county he alluded to.

Mr. C. A. WICKLIFFE remarked that he was perfectly indifferent as to the decision of the committee upon the proposition now before them. He believed it would be remembered that it was stated when the proposition was submitted to the convention, that it was not designed to change the mode of electing political officers, but merely to change the mode of voting in the election of judicial officers. It would be remembered by the gentleman from Jefferson that the idea of such a discrimination had certainly not come from the emancipationists. Whenever he believed that any proposed change was calculated to forward the views of the emancipationists, he would be found battling as hard against such change as any man in the convention. He was opposed to changing the system of voting in Kentucky that he had been so long accustomed to in relation to other than judicial officers. Yet while he would vote to retain the system, there were objections against it, but he doubted whether those objections could be removed without encountering greater difficulties than the ballot system presented. His friend from Jefferson, he thought, was mistaken when he said that the mode of voting by ballot had only been adopted in free states. The gentleman would find that it had been adopted in some of the slave states.

Mr. BULLITT said he did not intend that his remarks should extend to all the slave states.

Mr. C. A. WICKLIFFE. Therefore this must be regarded, he supposed, as an attempt to introduce a change of the mode of voting for the purpose of letting in those men who wish to disturb the tenure of property in the state, and enabling them to accomplish their designs. He had witnessed the progress of elections in states

where the ballot system was the constitutional mode, and he had seen its benefits. He had lived under the system of *viva voce* voting, and had seen its benefits, and he had witnessed evils under it. It gave to the capitalist, to the man of wealth an influence and a power, which he should wish to destroy, if by human ingenuity it could be accomplished. No man ought to have control over his neighbor, such as the gentleman from Jefferson so warmly repudiates. He had himself sometimes seen the influence that has been exerted over voters at elections. He had known, in one instance, a wealthy and influential man to wait upon a mechanic who had declared his intention to vote for him (Mr. Wickliffe) and say to him, if you cast that vote, I will take your work away from you. He had known another instance, where a friend and supporter of his was indebted more than the value of his whole property. This man was appealed to by letters, and when they failed to divert him from his purpose of voting according to his free will, for the man of his choice, he was visited personally by those who were interested and who were his creditors, who told him, if you cast that vote you must pay up your debts, you must surrender up your property. These were some of the evils attending the present system of voting. He had seen instances, also, under the ballot system, where an honest voter had been cheated out of his vote, and, therefore he had only risen for the purpose of stating to the gentleman and to his colleague that he had not been an advocate for changing the system of *viva voce* voting, to the ballot system generally, because he did not believe it was requisite in political elections, but merely to explain the motives which operated with the committee in inducing them to recommend its adoption in reference to the election of judicial officers. He had no doubt that the great mass of the community would feel no reluctance, no unwillingness, but on the contrary, would feel both pride and pleasure in declaring their sentiments *viva voce* at the polls; yet as he deemed it possible that there might be men who would wish to avoid incurring displeasure with the judge by concealing his vote, he desired to afford him an opportunity. The proposed amendment did not prevent any man who desired to do so, from avowing for whom he voted. Having said thus much, he would leave the question with the committee.

Mr. HARDIN said there was one difficulty resting upon his mind, in regard to the practical working of this system, which made it impossible for him to yield his assent to its adoption. As soon as the ballots were counted, they were destroyed. As soon as this was done, he desired to know how they were to ascertain how each man voted, and how it would be possible to carry out a contested election, and ascertain the party entitled to the seat. There had been instances, he had no doubt, where men desired to conceal their votes, but among the people generally, ninety nine out of a hundred were not afraid to look any man in the face, and vote their sentiments. They claimed that it was their right to do so, and no one should deprive them of the right.

For himself, as his worthy friend from Jefferson had said, he believed he would rather aban-

don the whole constitution than to see this feature introduced into it. It was the great excellence of the people of Kentucky, that they were not afraid to come up and vote for the men of their choice. He thought no difference ought to be made between the mode pursued for the election of governor, and of a judicial officer. The very fact of making a distinction, implies that the judge was considered to be corrupt, or that the people were afraid that they would act corruptly. He would never consent to any such invidious discrimination.

Mr. PRESTON said as he might, in some degree, assume the paternity of the resolution, which came before the committee, on the court of appeals report, although he had not intended to say a word, at present, on the subject, yet he felt it to be due to the committee, as well as to himself, that he should make a few remarks. Every day convinced him that legislative bodies were like individuals, and were to be influenced in the same manner, by the whim of a moment, or by the eloquence of the advocate of a particular proposition, and that they would run full tilt, one way or the other, as these influences moved them. He might be in error upon this subject, but it was one of great magnitude, and should not be met with a sneer, nor subjected to declamation, such as they had witnessed from the gentleman from Jefferson, who had indulged in an assault upon it. And he had noticed that that gentleman had met the approving smile of the gentleman from Nelson. If the system would give rise to all the evils which the gentleman predicted, then let it not be adopted. But such has not been its operation throughout the country. Most of the states of the confederacy vote by ballot, and if such evils flowed from the system, where were the evidences of the fact? Does observation confirm the assertion?

They ought not to reject the proposition without giving it mature consideration. Some gentlemen seemed to be of the opinion that the character of the people of Kentucky was derived from their system of voting, and that it was only to be maintained by preserving that system. He could see no reason why this should be so. Some seemed to take the evidences of our civilization and progress as the cause rather than the result of that civilization. They see no evil, rendered venerable by time, without esteeming it a benefit, no blemish that is not a beauty. They reminded him of an Irishman who having been thrown upon a desolate island, and beholding nothing but sterile shores, was miserable indeed, until at length he discovered where a gallows had been erected, and transported at the sight, exclaimed, "thank God, I now know I am in a civilized country."

The character of the people of Kentucky did not depend on the ballot system or upon any other mode of election; it rested upon no such frail tenure; it was based rather upon the character, the virtues, the worth, the intelligence of our hardy ancestors, those pioneers who first established here civilization and free institutions, than upon the mere existence of this or that system of voting.

But it was asked why not make the system of voting uniform; why make a discrimination? One thing was certain, that the chances of fraud

under the *viva voce* system were multiplied according to the number of precincts into which the district was divided. In the city of Louisville there were this year, some seventeen candidates and the city was divided into eight wards, otherwise it would have been almost impossible to take the vote in a single day. The ballot would, if introduced, obviate this difficulty. The number of offices to be filled in a county at one election might be under this constitution as high as fifteen and a large number of candidates would offer for each, and unless the expenses should be greatly augmented or unless the precincts were multiplied and additional opportunity thereby afforded for the practice of fraud by double voting, the ballot system would be more convenient, and it was this very convenience, which was the main argument in its favor. The gentleman from Bourbon had drawn a graphic picture of election scenes where men were huddled together in barns and where tenants were compelled to vote according to the dictation of their landlords. Would gentlemen deny to the poor and the defenceless the opportunity of going to the polls and voting their sentiments quietly, without opening their ticket if they desire to do so?

Election by ballot seemed to have been stigmatized as an abolition measure. But he would ask whence did it emanate? The first time that he saw it proposed for adoption in Kentucky was in the pro-slavery convention that assembled at Frankfort in February last, which declared it to be one of their chief measures.

He did not believe that this question was one that would alter the character of the people of Kentucky. He thanked God their character was based upon a foundation too solid to be shaken by the mode of voting pursued by the citizens of this commonwealth. He believed they would now have an opportunity of trying the system; that it would be more convenient than that by *viva voce* in the local elections, and that it should not be heedlessly cast out of the house as if it were one that possessed such monstrous qualities that it would demolish the free institutions under which we live. The apprehension could only arise from an excited fancy that evils such as these could be produced by one or the other system of voting. He hoped that gentlemen would at least give to the subject a little calm reflection, and although he had no hope of carrying the measure, and attached less importance to the adoption of either mode, than many did, he would ask the convention to consider it more carefully, before they acted finally and conclusively in regard to the matter.

Mr. W. C. MARSHALL said, it always afforded him great pleasure to listen to the remarks of the gentleman from Louisville; but he apprehended that on this occasion the gentleman's views were influenced to some extent by the peculiar position which he occupied; and if the gentleman would take the trouble hereafter to read the speech that he had just delivered he believed he would find in it argument enough to satisfy himself that he was in a false position. What was it? He alluded to the description given by the gentleman from Bourbon, of barns filled with voters, brought in from the neighborhood, for the purpose of controlling the elections; and

gave that as one of the strong arguments against *viva voce* voting. He would ask the gentleman if drilled forces were not brought into service under the ballot system? He would ask whether the vote given by ballot was not known from the very color of the ticket, and whether a man at the head of his column of parasites was not able to exert as much influence upon the election under the ballot as under the *viva voce* system?

The gentleman had spoken of the working of the ballot system in Louisville, and of the influence which a landlord might exert over his tenantry. He would tell the gentleman that the influence of the landlord was a healthy and moral influence, and in his judgment it was far better that that influence should be carried out at the polls.

There was another consideration. He, (Mr. Marshall,) lived in a part of the country where religion seemed to be the order of the day, and he prayed God to defend him from a system by which a man was taught to go smiling in the face of a candidate while about to strike him under the fifth rib. He liked to see a man come up boldly and declare his vote, and not practice a fraud upon his neighbor. He would say to the gentleman further, if this system should be carried out, what would become of the character of Kentucky? The gentleman declared that it was not based upon the system of voting. Why then did the gentleman want to cover it up? If the character of Kentucky was placed upon such a firm footing why cover it up?

Mr. PRESTON interposed to explain. He had said the character of Kentuckians was not based upon the mode of voting, and that the main question was one of convenience in taking the votes.

Mr. W. C. MARSHALL was very glad to hear the gentleman's explanation, for his understanding of the gentleman's remarks had been somewhat different. Still he would say, if it were a matter of convenience only, that could be accomplished by having the elections take place on the same day, he would ask the gentleman whether the same objections that he urged against the *viva voce* system were not equally applicable to the vote by ballot? It was innovation which the people did not require. It was, in his judgment, a reflection upon the candidate or upon the people themselves, and in either case the people must suffer. It proved that the gentleman was himself unwilling to go into the election of the judges, because he believed it wrong. He had himself made three speeches against the elective principle, but failed to convince a single individual. His constituents said, Billy go for the elective principle, and he folded his arms quietly in obedience to their will.

When the gentleman from Bourbon made his speech, every sentiment that he uttered found a response in his heart, but he said to himself the people desire a different system, and we are bound to yield to their wishes. The very sentiment that had been uttered by the gentleman, in maintenance of his views, struck at the tenure of office; and he could but remark how strange it was to see gentlemen who were sent here to do one thing doing another. If gentlemen would only look at their own speeches they would see

it there indicated that the people desired the contrary of what they were doing. The gentleman spoke of leaders urging forward their dependent voters with whip in hand. Great God. He would ask him in all candor and frankness whether if a man designed to use such influence he could not do it under the one system as well as the other? He hoped the gentleman from Louisville would reconsider the course he was taking. And if he would but do that he would find that he was going counter to the popular will.

Mr. PRESTON said that after the lecture he had received from his friend, the laughing philosopher from Bracken, he almost doubted his own judgment, or at least his own recollection, of what he had said on the subject. For himself, he had not been driven by those popular storms into a port such as the gentleman described himself as having been compelled to put into under the pressure of public opinion, and he believed that such was the obstinacy of his disposition, that he should have tried more than three or four speeches on the subject of an elective judiciary, if he had once opposed it, and would have triumphed or fallen on the question. The gentleman however could turn his sails with a dexterity which he could never hope to equal.

He liberates every sail to the wind.

—utere velis,  
Totos pande sinus.

and upon such a subject as an elective judiciary—upon which the lives, liberties, fortunes and happiness of his constituency depended—he wears ship and steers away full tilt, with the largest majority that any member has received, until he is safely harboured in this convention. He did not know whether such facility of temper was, after all, so desirable; at least he would not attempt to imitate it. The gentleman from Bracken cheered on the gentleman from Bourbon who had thrown himself, sword in hand, before the venerable institutions of the past, determined to sustain or perish with them, defending the pass like Horatius at the bridge, but while he applauded him did not imitate his example, but sought shelter behind him. How did the gentleman manifest his consistency? He came forward and declared, in the first place, that he was opposed to an elective judiciary, that he was one of those who were in favor, originally, of the time-honored institutions under which our people have lived. Yet he was now prepared to go to the utmost extent to secure the adoption of the elective principle. That was the basis of the gentleman's consistency. And how did the gentleman further manifest his consistency? He declared that a system of tenantry was one of the best things on earth; and he considered the power exercised by the landlord over his tenantry to compel their votes admirable in its effects. He [Mr. P.] could not, for his own part, see the beauty of the system where a tenant was ordered to vote as his landlord directed. More than half the people of the United States now voted by ballot. And yet, according to the argument of the gentleman, more than half the people of the United States were cowardly, trembling—and to use the language of the gentleman from Jefferson, "sheep

stealing dogs"—and unworthy to be trusted. He appealed to the history of their common country, and asked the gentleman in all fairness, if he could conscientiously calumniate so large a portion of its citizens without cause? What was this system of landlord and tenant that the gentleman spoke of so approvingly? He recollected having a conversation with Mr. Bingham, of Philadelphia, on that subject. Mr. Bingham had been in England at the time when the subject of the reform bill was agitated in the house of commons and house of lords. Mr. Bingham said he met in society a nobleman who owned large estates that were occupied by a numerous tenantry. The nobleman enquired of him how the system of ballot voting was conducted in America; Mr. Bingham described to him the mode of proceeding. The Englishman seemed lost in astonishment. Said he, that is not possible. Not possible? Why impossible? Why, sir, a man's own tenantry may vote against him. Certainly, said Mr. Bingham, that is the very object of the thing. Well, remarked the nobleman, I could never go for a system that strikes at the relation which exists between landlord and tenant, and destroys every sentiment of loyalty and fidelity.

The gentleman from Bracken says he can see no benefit that can arise from the ballot system. Had the gentleman never observed in our state, the eagerness with which couriers hasten from one precinct to another when an election is going on, conveying news of the state of the polls up to a certain time. There sits the clerk, his book open, the votes counted, the state of the contest is known at a glance. The candidate who finds himself behind, says, it is necessary to rush up a few more voters: he spends five hundred dollars more in the corruption of voters; and that is the practical working of the system in excited contests in our state. Now, under the ballot system this would not occur.

If we were to go into this ballot system of voting, it would only be adopting that which a majority of the nation had already tried, and he could assure the gentleman of one thing, that those who had once adopted the system, had never gone back—had never abandoned it.—He would detain the committee no further than to invoke their attention to two or three things: first, the multitude of officers for whose election this convention was providing; secondly, that there would be but one day's election; thirdly, that it would be well to separate the judicial elections from the elections for other officers: and in addition to that, he considered it a matter that was entitled to some consideration, whether it would not be advisable to allow those who desired to avail themselves of the ballot system of voting, to do so at the local elections for judicial officers. He trusted that by the time the question came up in the house, the gentlemen composing the convention, would give to the subject a calm and impartial consideration.

The PRESIDENT disclaimed any idea that the rights of the master to the slave were dependent upon the preservation of the *viva voce* system of voting, or that they would be jeopardized by the adoption of the ballot system. That relation was secured by that regard for the great principle that no man's property should be taken

without full compensation, which prevailed so broad-cast throughout this land, and did not depend upon the *viva voce* system of voting. If it did so depend upon that, he would tell gentlemen that the emancipationists would soon know their strength, and would act upon it.—The fact that he had been five times elected to office by the votes of those who were his political opponents, was certainly sufficient to induce him to believe that the people were independent. No man had a greater cause to respect and believe in the independence of the people; but he had seen the men who had thus cast their votes, persecuted by their party and discountenanced for years. And there was a want of toleration in the land, in regard to the exercise of the right of suffrage. He was one of those who voted his sentiments at the polls, and in deliberative bodies, and he desired to say that he stood here in favor of the ballot.

Mr. C. A. WICKLIFFE here, with the assent of the members of the committee on the court of appeals, withdrew the amendment, remarking that the ten minute rule was, perhaps, a restriction on the debate of the question, and it could again come up in the house, where no such rule prevailed.

Mr. DAVIS said he supposed it would take but a few moments for the fate of his forlorn hope to be decided, and he asked, therefore, that the question should now be taken on the substitute for the whole article which he had offered:

#### ARTICLE —.

##### *Concerning the Judicial Department.*

"Sec. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, and in such inferior courts as the general assembly may, from time to time, erect and establish.

"Sec. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

"Sec. 3. The judges of the court of appeals shall hold their offices for the term of eight years, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law.

"Sec. 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business. The judges shall, by virtue of their office, be conservators of the peace throughout the state.—The style of all process shall be, "the commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky, and con-

clude, "against the peace and dignity of the same."

"Sec. 5. That the governor of the commonwealth shall, from among the judges of the inferior courts, and such persons as shall have been judges thereof, nominate, and by and with the advice and consent of the senate, appoint the judges of the court of appeals.

"Sec. 6. That the court of appeals shall appoint its clerk, who shall be a citizen of the state of Kentucky, and who shall hold his appointment for and during the term of years, subject to be removed by said court, upon specific charges, filed by the attorney general. And whenever there may be charges pending against the clerk, the said court shall appoint a clerk to perform the duties of the office for the time.

"Sec. 7. That all fees accruing for services rendered by the clerk of the court of appeals, shall be collected from the proper parties under the direction of the auditor of public accounts, and be paid into the treasury of the state, and said clerk shall receive for his compensation an annual salary \$ . The number, appointment, and compensation of his deputies, and the other necessary expenditures of his office, shall be regulated by law."

The question was then taken and the substitute rejected.

Mr. NUTTALL said, some time ago he had offered an amendment to the article, which had been apparently forgotten. He had no intention that it should be buried, and called for the question upon it now.

It was read as follows:

"*Provided, however,* That if any candidate for the office of judge of the court of appeals, or any of the circuit courts to be established in this commonwealth, shall engage in public speaking or treating, during his candidacy for such offices, or either of them, upon information, in writing, supported by the oaths of two or more respectable witnesses, to the attorney general of the state, he shall, in the event of the election of such candidate, thereupon cause to be issued from the clerk's office of the circuit court, at the seat of government, a *caveat* against such judge, which shall be returnable to the succeeding general assembly of the commonwealth of Kentucky, who shall try him according to the rules and regulations by this constitution provided for the trial of judges for other offences, and upon conviction thereof, he shall be adjudged disqualified from holding said office, and the governor shall not, before the trial nor after the conviction in such case, commission such judge."

The PRESIDENT enquired if the gentleman meant when half a dozen lawyers in a district were slandering and abusing a judge, he should not have the right to defend himself before the people?

Mr. MAYES suggested that this was in direct contradiction to the gentleman's position of not requiring any test or qualifications for office. The amendment was in effect declaring that the people had no right to elect the judge if he makes a speech to them.

Mr. NUTTALL said that with due deference to all other professions, he had always thought, that if any one more than another was entitled to the appellation of a high and dignified one,



it was the legal profession. And so far from a judge being called upon to defend himself from the accusations of the lawyers, he believed the functionary would find in them his strongest protectors.

The amendment was rejected.

Mr. C. A. WICKLIFFE then moved that the committee rise and report the article as amended to the house.

Mr. HARDIN moved to take up the article in relation to the circuit courts.

The motion was decided to be out of order, and after some conversation on the point of order involved, Mr. WICKLIFFE'S motion prevailed, and the committee rose and reported the article as amended to the house.

Pending the question on agreeing with the report of the committee,

The convention adjourned.

#### THURSDAY, NOVEMBER 1, 1849.

##### REPORT FROM A COMMITTEE.

Mr. CLARKE, from the committee on the Legislative Department made the following report, which was referred to the committee of the whole, and ordered to be printed:

##### OF THE LEGISLATIVE DEPARTMENT.

###### ARTICLE —.

SEC. 1. The legislative power shall be vested in a house of representatives and senate, which together shall be styled the general assembly of the commonwealth of Kentucky.

SEC. 2. The members of the house of representatives shall continue in service for the term of two years from the day of the general election, and no longer.

SEC. 3. Representatives shall be chosen on the first Monday in August, in every second year; and the mode of holding the elections shall be regulated by law.

SEC. 4. No person shall be a representative, who, at the time of his election, is not a citizen of the United States, and hath not attained to the age of twenty four years, and resided in this state two years next preceding his election, and the last year thereof in the county, town, or city, for which he may be chosen.

SEC. 5. The general assembly shall divide the several counties of this commonwealth into equal and convenient precincts, or may delegate such power to such county authorities as they may by law provide; and elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, and in the several election precincts into which the counties may be divided: *Provided*, That when it shall appear to the legislature that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town, shall be invested with the privilege of a separate representation, in both houses of the general assembly, which shall be retained so long as such city or town

shall contain a number of qualified voters equal to the ratio, which may, from time to time, be fixed by law; and thereafter, elections for the county, in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation, unless such county, after the separation, shall also be entitled to one or more representatives.

SEC. 6. Representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein. At the first session of the general assembly after the adoption of this constitution, and every eight years thereafter, provision shall be made by law, that in the year and every eighth year thereafter, an enumeration of all the qualified voters of the state shall be made. The number of representatives shall, in the several years of making these enumerations, be so fixed, as not to be less than seventy five, nor more than one hundred; and they shall be apportioned for the eight years next following thus: Counties, cities, and towns, having more than two thirds, and less than the full ratio, shall have one representative; those having the full ratio, and a fraction less than two thirds over, shall have but one representative; those having the full ratio, and a fraction of more than two thirds over, shall have two representatives, and increase their number in the same proportion; counties having less than two thirds of the ratio, shall be joined to similar adjacent counties for the purpose of sending a representative: *Provided*, That if there be no such adjacent county, then such county having less than two thirds of the ratio, shall be united to that contiguous county having the smallest number of qualified voters; and the remaining representatives, if any, shall be allotted to those counties, cities, or towns, having the largest unrepresented fractions.

SEC. 7. The house of representatives shall choose its speaker, and other officers.

SEC. 8. Every free, white male citizen of the age of twenty one years, who has resided in the state two years, or in the county, town, or city, in which he offers to vote, one year next preceding the election, shall be a voter, but such voter shall have been, for sixty days next preceding the election, a resident of the precinct in which he offers to vote, and he shall cast his vote in said precinct, and not elsewhere. Voters, in all cases except treason, felony, breach or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from, elections.

SEC. 9. Senators shall be chosen for the term of four years, and the senate shall have power to choose its officers biennially.

SEC. 10. At the first session of the general assembly, after this constitution takes effect, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the first class shall be vacated at the end of two years, from the day of the election, and those of the second class at the end of four years, so that one half shall be chosen every two years; and when an additional member shall be added to the senate, he shall be annexed by lot, to one of these classes.

Sec. 11. The senate shall consist of not less than thirty, nor more than thirty eight members.

Sec. 12. The same number of senatorial districts shall, from time to time, be established by the general assembly as there may be senators allotted to the state, which shall be so formed, as to contain, as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a senatorial district, except such county shall be entitled, under the enumeration, to two or more senators.

Sec. 13. One senator for each district shall be elected, by the qualified voters therein, who shall vote in the precincts where they reside, at the places where elections are by law directed to be held.

Sec. 14. No person shall be a senator, who, at the time of his election, is not a citizen of the United States, who has not attained the age of thirty years, and who has not resided in this state six years next preceding his election, and the last year thereof, in the district for which he may be chosen.

Sec. 15. The first election for senators shall be general throughout the state, and at the same time that the election for representatives is held, and thereafter, there shall be a biennial election for senators to fill the places of those whose term of service may have expired.

Sec. 16. The general assembly shall convene on the first Monday in November, after the adoption of this constitution, and on the same day of every second year, unless a different day be appointed by law, and their session shall be held at the seat of government; but if the public welfare require, the governor may call a special session.

Sec. 17. Not less than a majority of the members of each house of the general assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorised by law, to compel the attendance of absent members, in such manner and under such penalties as may be prescribed thereby.

Sec. 18. Each house of the general assembly shall judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

Sec. 19. Each house of the general assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two thirds, expel a member, but not a second time for the same cause.

Sec. 20. Each house of the general assembly shall keep and publish, weekly, a journal of its proceedings, and the yeas and nays of the members on any question, shall, at the desire of any two of them, be entered on their journal.

Sec. 21. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

Sec. 22. The members of the general assembly shall severally receive from the public treasury a compensation for their services, which shall be three dollars a day during their attendance on, going to, and returning from the ses-

sions of their respective houses: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made, nor shall a session of the general assembly continue beyond sixty days, except by a vote of two thirds of each house; but this shall not apply to the first session held under this constitution.

Sec. 23. The members of the general assembly shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to and returning from the same, and for any speech or debate in either house, they shall not be questioned in any other place.

Sec. 24. No senator or representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this commonwealth, which shall have been created, or the emoluments of which shall have been increased during the time such senator or representative was in office; except to such offices or appointments as may be filled by the election of the people.

Sec. 25. No person while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor while he holds or exercises any office of profit under this commonwealth, or under the government of the United States, shall be eligible to the general assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, That attorneys for the commonwealth, who receive a fixed annual salary, shall be ineligible.

Sec. 26. No person who at any time may have been a collector of taxes, or public moneys for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly, unless he shall have obtained a quietus, six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible.

Sec. 27. No bill shall have the force of a law, until, on three several days, it be read over, in each house of the general assembly, and free discussion allowed thereon, unless in cases of urgency, four fifths of the house, where the bill shall be depending, may deem it expedient to dispense with this rule.

Sec. 28. All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments as in other bills, provided that they shall not introduce any new matter under the color of an amendment which does not relate to raising revenue.

Sec. 29. The general assembly shall regulate, by law, by whom, and in what manner writs of election shall be issued, to fill the vacancies which may happen in either branch thereof.

Sec. 30. Divorces shall not be granted, save by courts of justice, in conformity to law.

Sec. 31. The credit of this commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation, without the concurrence of two thirds of each house of the general assembly.

Sec. 32. The general assembly may contract debts to meet casual deficits, or failures in the

revenue, or for expenses not provided for, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars, and the moneys arising from loans, creating such debts, shall be applied to the purposes for which they are obtained or to repay such debts: *Provided*, That the state may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defence.

Sec. 33. No act of the general assembly shall authorize any debt to be contracted, on behalf of the commonwealth, except for the purposes mentioned in the 32d section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it.

Sec. 34. No law enacted by the general assembly shall embrace more than one object, and that shall be expressed in the title.

Sec. 35. No law shall be revised or amended, by reference to its title, but in such case, the act revised or section amended shall be re-enacted and published at length.

Sec. 36. The general assembly shall have no power to pass special laws for individual benefit, unless a majority of two thirds of both houses concur therein.

#### AMENDMENT OF THE RULES.

Mr. GARRARD offered the following resolution which lies over one day, under the rules:

*Resolved*, That the 29th rule of this convention be amended by inserting the words "and such amendments as may be offered" immediately after the word "amendments" in the last line of said rule.

#### COURT OF APPEALS.

The President announced the next business in order to be on the report of the committee of the whole on the article in relation to the court of appeals.

After a brief conversation it was agreed to take the question first on all the amendments which were verbal merely, or not involving any important principle, and they were concurred in.

Mr. C. A. WICKLIFFE expressed the hope that the convention would not agree to strike out the words "of the United States" from the 8th section, which provides that "any citizen of the United States &c." shall be eligible to the office of judge. The word "citizen" he supposed meant the same thing; but Kentucky had not prescribed a mode to make citizens, other than that by the government of the United States: indeed, he doubted if they had the power to do so. He hoped therefore the convention would retain the expression in the article which but followed the precedents of other constitutions.

The question was taken and the convention refused to concur in the amendment by which those words had been stricken out in committee of the whole.

In the 12th section, a like amendment occurred to which the convention disagreed.

Mr. A. K. MARSHALL intimated that he had prepared a substitute for the entire article which

he wished to offer when the proper time came. He sent it to the secretaries desk, to be taken up when in order.

The secretary read it as follows:

#### ARTICLE —.

Sec. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, which shall be styled the court of appeals, and in such inferior courts as may be established by this constitution, or such as the general assembly may, from time to time, erect and establish.

Sec. 2. The court of appeals, except in cases otherwise directed by this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may from time to time be prescribed by law.

Sec. 3. The judges of the court of appeals shall hold their offices for the term of six years, and until their successors are duly qualified; but for any reasonable cause, which shall not be sufficient ground of impeachment, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided however*, that the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journals of each house. They shall, at stated times, receive for their services, an adequate compensation, to be fixed by law.

Sec. 4. The judges shall, by virtue of their office, be conservators of the peace throughout the state. The style of all process shall be—the commonwealth of Kentucky. All prosecutions shall be carried on in the name, and by the authority of the commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

Sec. 5. There shall be elected, by the qualified voters of the state, one judge to be styled the chief justice of the state of Kentucky, and such associate judges as the legislature may direct; *Provided*, that it may be lawful for the legislature to lay the state off into districts, in each of which a judge or judges of the court of appeals may be elected.

Sec. 6. The judges of the court of appeals shall hold at least two sessions of the court in each year, and each session shall be held at the seat of government, until otherwise directed by law.

Sec. 7. No person shall be eligible to the office of judge of the court of appeals, who is under thirty, or over sixty five years of age, and who has not been, at the time of election, at least five years a citizen of the state of Kentucky.

The PRESIDENT said the course to be pursued would be to take up the article by sections, and when the measure was perfected by its friends it would be in order to act upon the substitute of the gentleman from Jessamine.

The 1st and 2d sections were accordingly read and passed without amendment.

The third section was then read.

Mr. HARDIN moved to strike out the words "which shall not be sufficient ground of impeachment."

Mr. HARDIN. I invite gentlemen to examine the constitution of the United States. There

is no way to address a man out of office for any offence for which he may be impeached. In our constitution there are several incongruities. I will read the section on this subject:

"A competent number of justices of the peace shall be appointed in each county; they shall be commissioned during good behaviour, but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of two thirds of each house of the general assembly."

The convention will perceive that the power of removal extends beyond misbehaviour in office, and that you can remove by address for any thing for which you could by impeachment. You can remove a justice of the peace for felony, treason, or any crime of that description. I see no reason why when you come to address a man out of office, you exclude in the address what is the subject of impeachment. Any one may see the great difficulty which might grow out of it. The consequence will be, when you remove by address, it will be said, that is a subject of impeachment. I wish the legislature to have power to remove by address if the judge behave outrageously bad. Shall there be no way to remove him by address, no way to get at him but by impeachment? We know the delays, formalities, and ceremonies attending an impeachment. I wish the legislature to have the right to address out a man for any thing for which he could be impeached out. I can see why the power of addressing out of office should be more extensive than the power to impeach. It is no crime to be superannuated, yet the legislature should have power to remove by address. It is no crime to be so deaf as not to be able to hear a word, like Judge Duvall, who held his office as judge of the supreme court for ten years after, and was superannuated besides. It was no offence in Judge Heath of Baltimore to become insane, and yet congress could not remove him. It is important that the power to remove by address, should be more extensive than by impeachment, but that the power to remove by address should be excluded from the very offence for which you may impeach, I cannot understand. There are a thousand ways in which their conduct may be very wrong, and yet you cannot impeach them.

Mr. C. A. WICKLIFFE. The committee transcribed this article from the present constitution, and if there is any thing wrong in it, our ancestors were guilty of it. If it needs correction, I am willing it should be done. I am inclined to enlarge the subject of impeachment, and to prescribe the offences for which an officer shall be impeached. I am extremely anxious to retain the power of impeachment, because it disqualifies a man from any office. I think this will meet the difficulty, "but for reasonable cause, the governor shall remove any of them on an address of two thirds of the general assembly." If no other gentleman does it, I shall, hereafter, move to specify the grounds for which a judge may be impeached.

The motion to strike out was agreed to.

Mr. HARDIN. I will now renew the same amendment that I made in committee of the whole, to strike out "two-thirds," and insert "a majority;" and on that question I shall call for

the yeas and nays. I desire now to call the attention of the house to the third, fourth, and eighth articles of Judge Chase's impeachment. The third charge is thus:

#### "ARTICLE III.

"That, with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges contained in the indictment, although the said charge embraced more than one fact."

On this charge eighteen were against Judge Chase and sixteen for him.

The fourth charge is as follows:

#### "ARTICLE IV.

"That the conduct of the said Samuel Chase was marked, during the whole course of the said trial, by manifest injustice, partiality, and intemperance, viz:

"1. In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the court, for their admission or rejection, all questions which the said counsel meant to propound to the above named John Taylor, the witness.

"2. In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused; and although it was manifest, that, with the utmost diligence, the attendance of such witnesses could not have been procured, at that term.

"3. In the use of unusual, rude, and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation and to produce that insubordination to law, to which the conduct of the judge did, at the same time, manifestly tend:

"4. In repeated and vexatious interruptions of the said counsel, on the part of the said judge, which, at length, induced them to abandon their cause and their client, who was thereupon convicted and condemned to fine and imprisonment:

"5. In an indecent solicitude, manifested by the said Samuel Chase, for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive of justice."

On that charge, also, there were eighteen against and sixteen for him.

#### "ARTICLE VIII.

"And whereas a mutual respect and confidence between the government of the United States and those of the individual states, and between the people and those governments, respectively, are highly conducive to that public harmony, without which there can be no public happiness, yet the said Samuel Chase, disregarding the duties and dignity of judicial character, did at a circuit court, for the district of Maryland, held at Baltimore in the month of May, one thousand eight hundred and three, pervert his official right and duty to address the grand jury, then and there assembled, on the matters coming within the province of the

said jury, for the purpose of delivering to the said grand jury an intemperate and inflammatory political harrangue, with intent to excite the fears and resentment of the said grand jury, and of the good people of Maryland against their state, government, and constitution, a conduct highly censurable in any, but peculiarly indecent and unbecoming in a judge of the supreme court of the United States, and moreover that the said Samuel Chase, then and there, under pretence of exercising his judicial right to address the said grand jury, as aforesaid, did, in a manner highly unwarrantable, endeavor to excite the odium of the said grand jury, and of the good people of Maryland against the government of the United States, by delivering opinions, which, even if the judicial authority were competent to their expression, on a suitable occasion in a proper manner, were at that time and as delivered by him, highly indecent, extra-judicial and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partizan.

"And the house of representatives, by protestation, saving to themselves the liberty of exhibiting at any time hereafter, any further articles or other accusation, or impeachment against the said Samuel Chase, and also of replying to his answers which he shall make unto the said articles, or any of them, and of offering proof to all and every of the aforesaid articles, and to all and every other articles, impeachment or accusation, which shall be exhibited by them, as the case shall require, do demand that the said Samuel Chase may be put to answer the said crimes and misdemeanors, and that such proceedings, examinations, trials and judgments may be thereupon had and given, as are agreeable to law and justice."

The vote stood, on the eighth charge, nineteen against him, and fifteen for him.

I invite gentlemen to read that charge as a literary curiosity, and also the address to the grand jury of Baltimore, for such a philippic was never given in the world. They are as follows:

*"Copy of the conclusion of a charge delivered and read from the original manuscript at a circuit court of the United States, holden in the city of Baltimore, on Monday the 2d day of May, 1803, by Samuel Chase, one of the judges of the supreme court of the United States."*

"Before you retire, gentlemen, to your chamber to consider such matters as may be brought before you, I will take the liberty to make a few observations; which I hope you will receive as flowing only from my regard to the welfare and prosperity of our common country.

"It is essentially necessary at all times, but more particularly at the present, that the public mind should be truly informed; and that our citizens should entertain correct principles of government, and fixed ideas of their social rights. It is a very easy task to deceive or mislead the great body of the people, by propagating plausible, but false doctrines; for the bulk of mankind are governed by their passions, and not by reason.

"Falsehood can be more readily disseminated than truth, and the latter is heard with reluctance if repugnant to popular prejudice. From the year 1776, I have been a decided and avowed advocate for a representative, or republican form of government, as since established by our state and national constitutions. It is my sincere wish that freemen should be governed by their representatives, fairly and freely elected by that class of citizens, described in our bill of rights, "who have property in, a common interest with, and an attachment to, the community."

"The purposes of civil society are best answered by those governments, where the public safety, happiness, and prosperity are best secured, whatever may be the constitution or form of government; but the history of mankind (in ancient and modern times) informs us "that a monarchy may be free, and that a republic may be a tyranny." The true test of liberty, is in the practical enjoyment of protection to the person and the property of the citizen, from all enquiry. Where the same laws govern the whole society without any distinction, and there is no power to dispense with the execution of the laws; where justice is impartially and speedily administered, and the poorest man in the community may obtain redress against the most wealthy and powerful, and riches afford no protection to violence; and where the person and property of every man are secure from insult and injury; in that country the people are free. This is our present situation. Where law is uncertain, partial, or arbitrary; where justice is not impartially administered to all; where property is insecure, and the person is liable to insult and violence, without redress by law, the people are *not free*, whatever may be their form of government. To this situation, I greatly fear we are fast approaching!

"You know, gentlemen, that our state and national institutions were framed to secure to every member of the society, equal liberty and equal rights; but the late alteration of the federal judiciary by the abolition of the offices of the sixteen circuit judges, and the recent change in our state constitution, by the establishing of universal suffrage, and the further alteration that is contemplated in our state judiciary (if adopted) will, in my judgment, take away all security for property and personal liberty.—The independence of the national judiciary, is already shaken to its foundation, and the virtue of the people can alone restore it. The independence of the judges of this state will be entirely destroyed, if the bill for the abolition of the two supreme courts should be ratified by the next general assembly. The change of the state constitution, by allowing universal suffrage, will, in my opinion, certainly and rapidly destroy all protection to property, and all security to personal liberty; and our republican constitution will sink into a mobocracy, the worst of all possible governments.

"I can only lament, that the main pillar of our state constitution, has already been thrown down by the establishment of universal suffrage. By this shock alone, the whole building totters to its base, and will crumble into ruins,

'before many years elapse, unless it be restored to its original state. If the independency of your state judges, which your bill of rights wisely declares "to be essential to the impartial administration of justice, and the great security to the rights and liberties of the people," shall be taken away by the ratification of the bill passed for that purpose, it will precipitate the destruction of your whole state constitution; and there will be nothing left in it, worthy the care or support of freemen.

"I cannot but remember the great and patriotic characters, by whom your state constitution was framed. I cannot but recollect that attempts were then made in favor of universal suffrage; and to render the judges dependant upon the legislature. You may believe, that the gentlemen who framed your constitution, possessed the full confidence of the people of Maryland, and that they were esteemed for their talents and patriotism, and for their public and private virtues. You must have heard that many of them held the highest civil and military stations, and that they, at every risk and danger, assisted to obtain and establish your independence. Their names are enrolled on the journals of the first Congress, and may be seen in the proceedings of the convention that framed our form of government. With great concern I observe, that the sons of some of these characters have united to pull down the beautiful fabric of wisdom and republicanism, that their fathers erected!

"The declarations, respecting the natural rights of man, which originated from the claim of the British parliament to make laws to bind America in all cases whatsoever; the publications, since that period, of visionary and theoretical writers, asserting that men, in a state of society, are entitled to exercise rights which they possessed in a state of nature; and the modern doctrines of our late reformers, that all men, in a state of society, are entitled to enjoy equal liberty and equal rights, have brought this mighty mischief upon us; and I fear that it will rapidly progress, until peace and order, freedom and property, shall be destroyed. Our people are taught as a political creed, that men, living under an established government, are nevertheless entitled to exercise certain rights which they possessed in a state of nature; and also, that every member of this government is entitled to enjoy an equality of liberty and rights.

"I have long since subscribed to the opinion, that there could be no rights of man in a state of nature, previous to the institution of society; and that liberty, properly speaking, could not exist in a state of nature. I do not believe that any number of men ever existed together in a state of nature without some head, leader or chief, whose advice they followed, or whose precepts they obeyed. I really consider a state of nature as a creature of the imagination only, although great names give a sanction to a contrary opinion. The great object for which men establish any form of government, is to obtain security to their persons and property, from violence; destroy the security to either, and you tear up society by the roots. It appears to me that the institution of government is really no

sacrifice made, as some writers contend, to natural liberty, for I think that previous to the formation of some species of government, a state of liberty could not exist. It seems to me that personal liberty and rights, can only be acquired by becoming a member of a community, which gives the protection of the whole to every individual. Without this protection it would, in my opinion, be impracticable to enjoy personal liberty or rights. From hence I conclude that liberty, and rights, (and also property) must spring out of civil society, and must be forever subjected to the modification of particular governments. I hold the position clear and safe, that all the rights of man can be derived only from the conventions of society, and may with propriety be called social rights. I cheerfully subscribe to the doctrine of equal liberty and equal rights, if properly explained. I understand by equality of liberty and rights, only this, that every citizen, without respect to property or station, should enjoy an equal share of civil liberty; an equal protection from the laws, and an equal security for his person and property. Any other interpretation of these terms, is in my judgment, destructive of all government and all laws. If I am substantially correct in these sentiments, it is unnecessary to make any application of them, and I will only ask two questions. Will justice be impartially administered by judges dependant on the legislature for their continuance in office, and also for their support? Will liberty or property be protected or secured, by laws made by representatives chosen by electors, who have no property in, a common interest with, or attachment to, the community?"

He was found guilty on two of the charges preferred against him, by a vote of eighteen to sixteen, and on the eighth there were nineteen for conviction and fifteen for acquittal. Any gentleman who will read these charges, will see that no more flagrant conduct has been manifested on the bench since the days of Judge Jeffries. The effort of Judge Chase was to punish any, the slightest expression, of disrespect to the President, or his family, or his cabinet. The administration of Mr. Adams was particularly marked. It was intended to perpetuate his power. He succeeded General Washington, and he commenced a system to perpetuate his power, and finally perhaps, to end in the subversion of the government. He had a pretence for a war against France and a large standing army, when there was no prospect of war at all. Then, as part and parcel of the same measure, he had an alien law, to enable him to send out of the country any man who was troublesome to him. In addition to that, he had a law to indict and punish a man at pleasure, for any word spoken disrespectfully of the President of the United States, his family, or his cabinet. For that, many men were made to suffer, and among others was a gentleman from Vermont, (Matthew Lyon,) who afterwards represented the state of Kentucky in the congress of the United States. Part and parcel of the same was a system of direct taxation, and also of indirect taxation in the shape of excise. His standing army, his alien and sedition law, and his system of internal taxation, together with such men as judge



Chase, constituted a machinery by which he calculated to perpetuate his power and subvert the government of the United States.

There was a great deal of virtue in public sentiment, and there my worthy friend from Bourbon will find the public voice expressed, was most noble and honorable to the American character. From one end of this continent to the other there was a voice raised against him and his measures, and the public sentiment, notwithstanding the lever of his power, his large army, his alien and sedition law, and his whole system of excise and taxation, hurled him from power. The republican party, as it was then called, did intend to make an example of judge Chase, because he deserved it; and they meant to make this example just as the whig party in England had made one of that tyrant Jeffries. Articles of impeachment were preferred against him by an overwhelming majority fresh from the republican ranks, and each article of impeachment was voted on by the house of representatives, and carried by a majority of two to one, and this was thought enough to authorize his conviction. The senate held their terms for six years, and the New England States had then as they have now a great disproportion of power in the senate, for even the smallest of them are sovereignties, and have an equal power in the senate with the larger states. There was, as I said the other day, a small federal party in the senate, and if I said any thing on that occasion offensive in relation to the powdered heads of these gentlemen and their affected nobility, I will take it back; but it was literally true. They lacked the ribbons and the star, and that was all; they could not even board in the city, but must go to Georgetown and ride in their splendid carriages, so brilliant that when the sun struck upon them they gleamed as when the sun on the surrounding hills of Utica fell on the burnished arms of Cæsar's soldiers.

As I said, on the third charge, eighteen of these senators were against Judge Chase, and sixteen for him, and on the fourth charge, the same number eighteen to sixteen, on the last there was a falling off of one of those that were for him, and the vote stood nineteen against, and fifteen for him. He lived and died on the bench, an example to the world of judicial tyranny, and a proof of the impracticability of impeaching a judge. Now my colleague thinks the acquittal of judge Chase was right. On that subject as well as some others Nelson county is divided. I will not say who is right, but I will declare that I differ from him in opinion. The honorable gentleman said there was a man by the name of John Quincy Adams who voted for judge Chase to the end. Do you know the history of John Quincy Adams? He was the supporter of his father to the end, and of judge Chase, at the time of his trial. But a year or two afterward he got the benefit of a spring plank and turned a summerset to the republicans, but this was not before judge Chase was tried. The gentleman said I supported John Q. Adams. I did it with tears in my eyes, and I had afterward occasion to tell him, in a speech which I made in congress in 1835, I had supported him, but if the Lord would forgive me for it, I would never do it again. That speech was

published and copies were sent to my friends over this state.

Mr. DAVIS, I trust the gentleman will not make any more references to summersets on this floor.

Mr. HARDIN, very well, I will not, but I am sure it would not hit my honorable friend from Bourbon if I should. I do not know to what the gentleman alludes. But to resume, I supported John Quincy Adams' election, because his defeat was based on proving bargain, sale, and corruption against six or seven of the best men in Kentucky, and I was determined to stand up for Kentucky. Another reason for standing up for Kentucky, was, at the time I entered upon political life, thirty nine years ago, we had no such parties as whig and democrat, and every one knows that I could not join the federal ranks on account of the cloves and powder. On the death of governor Madison I was against the new election, and also in favor of judge Clark, because I thought he was right. When the question came up in relation to breaking the old judges by address, I was against the address and also against the new court.

Afterwards I fought in the whig ranks, and if any man in my party has fought faithfully, I have, and I have been making battle for it ever since. I believe their great doctrines are substantially right; I believe the labor of America must be protected against the pauper labor of Europe. I believe in rotation in office, for this gives every man a chance, and it is the finest curb ever put into the mouth of those in office. I never have wavered, and if the gentleman from Bourbon thinks I alluded to him, I did not; he is as firm as the rock of Gibraltar which cannot be battered down by a popgun or a pocket pistol.

It will be no labor to trace my position. That has been so traced that any man can see, and read it. But sir, I do not attempt to trace the position of my honorable colleague. He has the advantage of me in that particular. If I were asked in what part of the Heavens the Aurora Borealis dwelleth, how could I tell?

As the poet says:

"Like the Borealis race  
That flits 'ere ye can point its place."

I repeat again that I went for Adams because they endeavored to prove bargain, sale, and corruption, on six or seven men of my state. If my country is about to go to war, I will prevent it if I can, but if she gets into war, I will help her. This is the manner in which I acted during the late war with Mexico. If a man, living in another state, should say that six or seven men in Kentucky had sold themselves, I should hardly stop to inquire; I should go for Kentucky in a moment.

I extremely regret to have any difficulty with any gentleman. I regretted the speech of my honorable colleague a few days since. I attack no gentleman, and I do not intend to do so, but I will defend myself. I have been a consistent whig and intend to die so; but I appeal to the democrats, if I have not fought them honorably, if I have ever treated them with disrespect. One reason, among others, why I struck for a convention, was the practice

of the governors of Kentucky, in filling all the offices with none but whigs. I believe the offices should be distributed without reference to politics. I believe the result would be that when the elections of the country were thrown into the hands of the people, those elections would be without party feeling. I saw that the power and patronage were getting into the hands of the whigs, and I struck for a convention. I saw that three or four governors more would root out all the democrats as clean as the diggers of ginseng dug it up, and carried it off to China. I cannot see the principle that requires two thirds. We are a government of the people. In all our operations the government is based upon the hypothesis that the people are competent to govern; and if competent to govern, how are they competent to govern? Why, by majorities, and every government of a minority is a tyranny, call it by what name you will. I know that the honorable delegate from Bourbon said that he could not trust the people. I know they sometimes run off with a great deal of feeling; but whom shall we trust? Are we to trust the appointing power in the hands of the governor? Surely not. We have tried that, and it has failed. Are we to trust it in the hands of the members of the legislature? God forbid. I do not know that I very well understand the course which my friend from Bourbon pointed out; but I think we once had a practice in this state similar to that which he recommended, and if so, I have a deep-rooted objection to it. We know that the state of Kentucky has been scandalized by the sale of the sheriff's and clerk's offices. In two thirds of the cases, the clerks of the circuit courts have bought their offices. General Allen was made clerk of Green county in 1793, and the report was that he sold the office to a man named Jack Barret. The judge appointed Jack Barret, his vendee, and the office has been held by one or the other for the period of fifty seven years. How was it in Hardin county? Ben. Helm was elected clerk in 1797, and Mr. Haycraft, the present incumbent, when a boy, was brought into his office and raised there, and a very pretty boy he was. Mr. Helm had a niece as pretty as he. They wooed and courted, and at last he married Sally Helm. Ben. Helm, the uncle of Sally, resigned, and seemed to give Haycraft up the office. John Helm, the father of Sally, at the age of eighty, died. In his will he distributed his property among his children, but he said, "I charge Sally with \$3,000, and my brother Ben can tell what became of the money." The fair and literal meaning of which is that he bought the office for his daughter, from his brother Ben. We have in Nelson as fair a clerk as any in the world—Mr. Slaughter—and the report is that thirty two years ago, his father gave two thousand dollars for the office. Now, that embraces the three clerkships in the counties where I practice law. In the county of Bullitt, it is reported that Noah Summers bought George Pope out; and in the county of Spencer, it is also said the county court clerk's office was likewise sold. I do not know whether the clerk of Marion—

Mr. KELLY. I will not permit any such charges to be made in my presence against a dead brother.

Mr. HARDIN. Now, the gentlemen says he will not permit any charge to be made against his dead brother. I would be very loath to make any charges upon his father, or his brother. I was speaking in reference to clerkships being sold like horses in the street.

The sheriff of Marion county advertised his office, and it was bid for like horses in the streets. One man bid eight hundred dollars for it, and although willing to give bond for himself, was not for the high sheriff, and it was put up again for a second time, and sold for one hundred and ten dollars less. The high sheriff sued the first bidder, and the defendant engaged myself and colleague for the purpose of defending him, but I at any rate wanted to use it for a political speech, and would have given a bonus of ten dollars, rather than not to have made the speech, but the suit was withdrawn.

Where then are you to vest the appointing power? In the courts? Do we not know that it is a general practice for them to select the members of their own family for these offices? I ask with all possible respect towards the judges, do you know of a single instance in which a new county has been made, and a clerk appointed, that the judge did not appoint some member of his own family to the office? If there has been such an instance, it has escaped my observation. Where then is the appointing power to be vested? Is it to remain where it is? Surely not. Is it to remain with the judges as to the clerks? Surely not. Is it to remain with the governor, when we have seen how it has been exercised, during the last ten or fifteen years. Certainly not; because it will be the source of every species of intrigue and favoritism. Shall the members of the house of representatives appoint state officers? Surely not; for it will be a source of outrageous corruption. Shall it be given to the members from each county? Surely not; for they would soon be selling these appointments, as the members of the parliament of Great Britain do.

Now as to this branching business of the court of appeals, I wish here to submit a few remarks. I am against it altogether, and I will declare now, as I have frequently done, that I have been before the people in one way or another for some thirty nine years, and I have never heard it once demanded by the public sentiment. The court of appeals is the court of the state, and there is a fitness in its being held at the capital of the state. The governor and all the state officers reside here, and the people are in the habit of resorting here to transact their business with the government. It was necessary, therefore, to the symmetry of the operations of our government that the court being for the state at large should hold its sessions wherever was the seat of government. But we were told by gentlemen from the southern and southwestern portions of the state, that the people desire it to be branched. I have never heard the people say a word on the subject, but I will say that the lawyers want it. And in that I do not think I am mistaken, nor do I intend any disrespect whatever to the lawyers when I say it. It is an honorable profession, and one that controls, in a great degree, public sentiment, and one also that, from time to time, has done a great deal towards

saving this state from anarchy and confusion. But how are the people to be benefitted? Why, says one gentleman, it is a matter of great importance that the lawyer who argues a case in the court below, must come up and argue it in the court above. Could not the lawyer write out his argument and send it here? Is it not the every day practice for lawyers who live as far away even as Hickman county to write out their arguments and send them up to the court here? I tell you a well written argument is of more weight than the best *viva voce* one ever made in court. There is the only place where the ballot box is preferable. It is no inconvenience for these lawyers to send their arguments and records here—people are continually coming here from every county, and there is scarce a week in the year when an opportunity will not thereby be offered of sending them. But supposing that there were the four branches of the court established, I ask if it will administer to the convenience of more people, than would be the case if all the sessions of the court were held here? Suppose one of the branches to be located at Mountsterling, and there my friend over the way declares it must be, and there, I think from its central location, it ought to be.

Mr. APPERSON. The gentleman is mistaken, I never said so.

Mr. HARDIN. But you think so, and we all know that it is a central point, and that in all probability, if the court is branched, it will go there. Now is it not more convenient for a majority of the people of the northern district, down to the mouth of the Kentucky, and up the Ohio to come here, than to ride along on horseback, through the mud, to Mountsterling—and the court will be either there or at Owingsville, if there is to be four districts—and if there is three, it will be at Paris. Is it not more convenient for that people to come here, especially when most of them will have other business to transact here? Well, suppose the branch in the next district to be held either at Harrodsburgh or Danville, I ask if it would not be more convenient for the people of Shelby, Hardin, Trimble, Oldham, Jefferson, Bullitt, Spencer and Nelson to come to this place than to go to either of the others? I should like to see you (Mr. C. A. Wickliffe) riding through the mud just to pay you for your advocacy of this proposition of branching. Suppose that the branch in the next district should be held at Greensburgh, Munfordsville, or Glasgow, would it be more convenient for the people of Breckinridge, Daviess, Ohio, and Meade to go to either of those places than to come here? Then, I ask my friend from Daviess, will Mahomet go to the mountain, or the mountain go to Mahomet?

Mr. TRIPLETT. We will divide it.

Mr. HARDIN. Is it not easier to come here? Packets are running every day from where the gentleman lives to Louisville, and when the railroad is completed, from thence to Frankfort, in two or three hours. Or if not by railroad, there is a good turnpike and slack-water navigation, rendering it altogether more convenient to come here than to go to either of those other places. In the next district the branch would probably go to the town of Princeton, which would be its centre. I ask the gentleman from Henderson,

(Mr. Dixon) if he would not as soon come here, as he could very conveniently by water, as to go to Princeton? And will it not be extremely inconvenient to the judges, men of advanced years, generally between forty and sixty—for even now the most eligible men for the office are over fifty years of age—to hold a term of ten weeks at Mountsterling, next at Danville, and next at Greensburgh, supposing these to be the points of location. Would it not be extremely oppressive upon them, to be obliged to ride on horseback, through the mud, if it was muddy, or through the inclemency of the weather, if it was inclement, from Mountsterling to Princeton, a distance of near three hundred miles.

How long would it take to finish the business at the branches? The court finished its business herein about 110 days, but I venture to say that they will have to sit eight, nine, or ten weeks at each of these branches—say eight weeks; that would take eight months in the year to hold the sessions alone, of the court. There could be no mistake about it, and for the reason that the business before them would be doubled, and as I think, trebled. Gentlemen have said it would bring justice to the door of every man, or in one gentleman's language, it would bring Mahomet to the mountain. I do not know about its bringing justice to every man's door, but I do know it will bring more cases into the court. I have looked over the docket of the court, and I find that there are a set of gentlemen who practice here—some come here of course, in self-defence—whose every effort is to get some error inserted into the record so that they may bring their causes up to the court of appeals, instead of fighting fair, face to face. It reminds me of the fashion of the governor's appointments, of making two or three appointments out of one. It is a fashion now, of appointing a judge of the court of appeals from the circuit courts, and then appointing another circuit judge in his place, thus making two appointments out of one. These lawyers have the same fashion of getting an error or blunder into the record, that they may have a pretence for appealing, and thus making two causes out of one. In examining the docket, to see who these lawyers are, who thus took two mouthfuls out of a case, I find that two of them who are most excellent lawyers, sharp, keen, shrewd men, who can see a round ninepence across the Mississippi at Plumb point, without the benefit of a telescope—out of fifty lawyers, bring up more than half of the causes here. And why do they do it? Just to make two fees out of one. They also delay the circuit courts. I have argued a case before a court and jury, and one of these court of appeals gentlemen has worried the court the whole day, taking down evidence, and yet so distorting and garbling it, that the case will not appear in the court of appeals as it did in the court below, and by that means the judgment is reversed. I hazard nothing in saying that the branching system will double, if not treble the business of the appellate court, and I do not believe that they will be able to sit in each district, more than once in each year. And the very moment the docket is large, cases will be brought up on the merest pretences in the world, just for the sole purpose of delay. Delays will then be secured for one

or two years, while under the present system, the delays are not more than six months. Business will then get so clogged up that it will be impossible to get through with it, and the result will be that the legislature will have to raise the amount for which writs of error or appeals shall be taken. Now any case over which the circuit court has jurisdiction, may be brought up to the appellate court, by an appeal, or writ of error; but such will be the increase of business, under the branching system, that the court will not be able to get through with it, and it will have to be restricted by increasing the amount in controversy, on the suit on which an appeal may be taken. Gentlemen have said, if justice is to be had, why not let it reach alike, the door of each and every man. I answer, that branching the court, will not increase the means for attaining justice, but it will furnish facilities for the most manifest and flagrant injustice. It will retard justice, by increasing the opportunities of ingenious lawyers to make two causes out of one. One gentleman has gone so far as to say, abolish the court of appeals, if you will not increase the facilities of getting justice. I say the court of appeals is only important in one point of view, and that is, to produce uniformity of decisions. All litigation must stop at some point, and whether it stops in the appellate court or the circuit court, in respect to the great quantum of justice, or injustice done, it makes no difference. The only object of a higher court was, by its review, to secure uniformity of decision. When our lives or our liberties are at stake, we stop in the court below, and why do we come to the court of appeals, only when our property, but vile trash at best, is at stake? Just that we may secure uniformity of decision in the courts below, throughout the whole length and breadth of the land. The idea that every man must bring his case to the court of appeals, is entirely fallacious. There is no necessity for it, and it will double and treble the expenses of justice.

But there is another reason why I oppose this proposition to branch the court, and that is the increased expense. It now costs about \$5107 per annum to pay the judges and all the expenses of the court. It is, sometimes a little above or a little below that amount, but that is the fair average. Now when you get four judges on the bench—and you will never get a man of fifty or sixty years of age to ride from Mt. Sterling to Princeton, and hold four courts a year in all seasons of the year, for less than \$2000 or \$2500 per annum—say \$2000 a year each—that will cost \$8000. Then you must have a room fitted up, a clerk's office to build in each district, costing in all \$1000 perhaps, for each branch. Then you must have book presses and records for each, and incidental expenses amounting very near to what it now is. I hazard nothing therefore, in saying that this article in our constitution will double, nay treble the expenses of this one branch of our jurisprudence. I have no individual interest, none in the world in this matter. When I came here, I came in the old fashioned way on horse back, and wherever the branches may be held if I travel to them it will be in the same way. In forming these districts the effect would often be to divide the business of the counties—and to

throw one part of it into one district and the other into another district—and thus the same lawyers be forced to attend the court in both districts.

I am in favor of the principle of ineligibility and always have been. Why was it, I appeal to the whigs of the legislature, that we should go for one term for the presidency? Why was it we would not permit the president by the influence of the patronage and appointing power his official station gave him, to look to a re-election for office? Because we were aware that it must influence him in the administration of the government, and in the next place because it would give him so much the vantage ground over any who chose to compete with him. Does not the same argument apply to the judge of the court? You put him in office for eight years—either as a judge of the circuit or of the appellate courts—the same principle applies to both. Suppose a judge having jurisdiction over ten counties, looks forward to a re-election—what then? Perhaps the lives of ten men may be in the palm of his hand at the very time, and they may belong to powerful and wealthy families, because they are the very ones, your hotspurs, who commit these crimes. Perhaps too he may have the liberties of some twenty or thirty others in his hands, one half of them vagabonds stealing about the country, and there may be besides a thousand civil causes before him. Suppose him to be as upright as Aristides himself and as honest, would not this power in his hands have an effect on the voters, whether the ballot or the *viva voce* system was adopted. It is a lever of power that cannot be trusted in the hands of any man, where he has an inducement to exercise it. The position of the incumbent member of Congress is worth fifteen per cent in votes in the canvass, and the position of a judge who is running for a second term will be worth full fifty per cent. Go to Mississippi, and witness its operations there. Judge Coalter, a whig, has been re-elected repeatedly to the circuit court, in a district strongly democratic, and they have never been able to defeat him. Judge Sharky has been elected from the middle district and he is the chief justice. He is a whig and his district is democratic by 4000, and yet no man has ever been able to come nearer than 2200 or 3000 votes of him. Why, although he is an able and upright judge, and one whom Mississippi should be proud of, because his station is a lever that gives him tremendous power. The honorable gentleman from Louisville, (Mr. Preston), who claims the paternity of the ballot proposition, says that the position of the president and a circuit judge is not analagous. I say that he has more power in his theatre, the court, than the president of the United States in his theatre. The sheriffs, jailors, and constables are all cap in hand to him, because their accounts are to be allowed by him. And there is also a class of lawyers who are cap in hand to him. I know, and I appeal to every gentleman here, if it is not the fact, that the lawyer who is seen hand in hand with the judge, is the very man who invites all the business. And why? Because the litigants believe him to be in favor with the judge, and the judge with him, and though both may be honest, yet it invites business to

the lawyer, although his legal talents may not deserve it. And I appeal to the gentleman from Green, (Mr. Lisle), who although he has not as yet made a speech here, I know to be one of the most intellectual gentlemen in the house, as gentlemen will find out when he does speak—if he did not live in a town where the judge of the court had three sons, lawyers, and one brother-in-law—the clerk had a son and a son-in-law, lawyers, and if they did not finally exclude all others from practice in that court? Litigants went to them under dread of the judge and clerk, and that drove other lawyers from that bar. And they drove also from that bar, a gentleman who, considering his opportunities, is one of the greatest men of the age. It cannot be otherwise. The judge will have this influence, and that too without being corrupt. I remember what judge Bibb told me when I received my license. Said he, it is not enough for you to get a license from the judge, you must get one also from the people. I said I would try to do so. Said he, you must bear in mind never to quarrel with the judge, and always if possible, appear to be on familiar terms with him. Why? Said I. Because, he replied, it invites business to you, and a contrary course will drive it away from you, if you are ever so competent.

I want the judge to have no power beyond what the constitution and the laws give him, and I want to give him no temptation to swerve from his duty. Why says the gentleman, he should be voted for by ballot, lest he might exert his power upon some voter who had exercised independently his right of suffrage. This is an additional reason, and a confession that the judge should not be re-eligible. But I have another reason. When two men become candidates for office, let them be on the same footing. Do not clothe one of them in his black robes, to look wise and sapient, in all his power. You know how wise and dignified they look. Take a lawyer from the bar and put him on the bench, and he becomes a most dignified character, and generally puts on two or three pair of spectacles to look deeper into the books than any other man. And put him in a position to electioneer before the people, and they will wonder almost how such a man come to get into the world. Let him come before the people as he has got to come on the day of judgment, without his robes of office, and like the man who competes with him for the office.

Nothing in the world so purifies and clarifies the political atmosphere as rotation in office; give no man a life estate in office. What is the principle that fostered the growth of the Roman republic until from a small city they grew to a power that overran the world. It was rotation in office—that no man who filled an office for the first year should be re-eligible the second. That principle was first broken in upon by Caius Marius, and from that day may be dated the downfall of the Roman republic. You purge your political atmosphere by rotation in office. You tell your aspiring young men, pursue your studies and come on, for the public stations are open to you, and you are not to be placed under the disadvantage of competing with the man who has a thousand litigants depending upon him. It is said that we should not make him

ineligible unless we increase his term of office. Is not eight years long enough? We know that it is often necessary to take the old trees out of the forest, to give the younger ones air and room to grow. But I have no particular desire about the term; I do not want a man to be an umpire on the bench, and at the same time a candidate for office. If he is to be an umpire on the bench, do not let him at the same time be a sycophant in the political arena seeking for votes. Make him independent.

I do not know that I shall trouble the convention with any more remarks, and I have thrown out these heads of topics that I may be able, if I choose, hereafter, to write out my speech, to enlarge upon them as I please.

Mr. C. A. WICKLIFFE. I do not intend at this time, Mr. President, to notice many of the remarks of my colleague, which would, under other circumstances, demand and receive an immediate response from me. This is not the theatre for the exhibition of any private griefs which he may feel or imagine; neither is it fit at this time that I should repel, with appropriate rebuke, the personal allusions to myself, foreign from the question under consideration. When the gentleman made his *debut* in this house on his majority principle, in reply to the few remarks I made in opposition to his motion, he charged me with uttering the language of a monarchist and courtier.

My colleague has known me well. He could not expect to have escaped the remarks which his reckless charge invited. He looked for a vindication of the principles and opinions uttered by me. He perhaps little thought that I should have drawn for that vindication upon the productions of his own mind, given to the public at a time when sound principles pervaded it; when its vigor had not been made to totter under the influences of circumstances which have surrounded him.

We have spent so much time on this article concerning the appellate court, that I cannot now throw myself upon the indulgence of this body long enough to notice the allusions which I understand to be personal; but a proper time will be presented, perhaps, when the gentleman's report shall come up. I shall then ask the indulgence of the convention to do myself justice, and also to bestow some attention upon my colleague.

The question before the convention, if I understand it, though I could not learn it from the speech of the gentleman, is to insert into the constitution the principle that a majority of the legislature shall have the power of removing the judges of the court of appeals whom the people have elected. This question has been discussed in committee of the whole, the vote has been taken there, and I am anxious that it should be taken in the house. The gentleman has called for the ayes and noes, and I am prepared to record my vote in opposition to him; and I shall be prepared to defend that vote before our common constituency if he shall select that theatre for the purpose. So far as respects my political opinions in reference to other matters which have divided this country in times past and now divide it, I have at present this much to say: Whatever may have been my errors in the exercise

of the functions with which a confiding country have from time to time invested me, I have yet the first man to charge me with dishonesty of purpose or intentional error. I have been able to stand before an opposing constituency, and if I have been unsuccessful in vindicating the correctness of the opinions I entertained, I have at least commanded their respect and personal confidence. I have stood my ground in my own county, neither have I elsewhere been found to flee before my fellow citizens.

I will say no more. I am anxious that this convention shall proceed with its business, and I am now prepared to vote on all the propositions that have been so fully, ably, and elaborately discussed in committee of the whole, and when the convention has more patience and leisure, I may notice some of the remarks, personal to myself, my colleague has made.

Mr. RUDD. I voted against the amendment of the gentleman from Nelson (Mr. Hardin) in committee of the whole, to strike out "two thirds" and insert "a majority." My object was to insert three fifths, instead of either two thirds or a majority.

I consider it almost impossible in any state of things, unless for the grossest conduct on the part of the judge, to remove a judge from office by the two thirds principle. A man must be base indeed, if he could not, in a body of one hundred and thirty-eight, obtain forty-six votes. I ask the house in all sincerity, if a man ought to be permitted to sit in judgment upon the rights of his fellow citizens, if he is unable to obtain forty-six votes in his favor? I am in favor of the independence of the judiciary, still I do not want the judge to be wholly irresponsible. I want to make him responsible to the people from whom his power emanates. If it were in order to do so, I would ask for a division of the question.

Mr. BRADLEY. I shall vote for the motion to strike out, with the view that when the question comes to be put upon filling the blank, it may be filled by the insertion of three-fifths, so as to give the impeaching power to three-fifths of the legislature, as I prefer that to two-thirds. I am opposed to giving the power to a bare majority, and prefer three-fifths to two-thirds.

Mr. C. A. WICKLIFFE. I would suggest to the gentleman from Louisville, that if he will let the question be taken upon the proposition of my colleague, he will not be precluded from offering his own proposition subsequently.

Mr. HARDIN. I will withdraw my motion, so far as relates to filling up, and move only to strike out.

The yeas and nays being taken, resulted as follows:

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Benjamin Copelin, Edward Curd, Green Forrest, Nathan Gaither, Selucius Garfield, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, William Hendrix, Thomas James, Hugh Newell, Elijah F. Nuttall, Ira Root, James Rudd, William R. Thompson, John J. Thurman, John Wheeler, Robert N. Wickliffe—22.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D.

Brown, William C. Bullitt, Charles Chambers, William Chenault, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Garrett Davis, Lucius Desha, Archibald Dixon, Jas. Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, James H. Garrard, Ninian E. Gray, John Hargis, Vincent S. Hay, Mark E. Huston, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, Wm. N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, George W. Williams, Silas Woodson—71.

Mr. BOYD then moved to strike out in the second line the word "eight" and insert the word "six," so as to reduce the term for which the judges should serve. He said he thought it would at least be more satisfactory to his constituents that the term should not be longer than six years.

Mr. BRADLEY. I shall vote for the motion to strike out "eight" and insert "six," believing that that term will best suit those whom I have the honor to represent; and if the amendment shall prevail, of which I have not much hope, I shall, at the proper time and place, move to strike out four judges and insert three. I will state here, that I am for the branching system, I am for having three districts, and three judges, with a term of office of six years, and this will enable them to have an election every two years. This is the view that will control the vote that I am about to give.

Mr. MACHEN. I shall vote against the amendment, and I will very briefly state the reasons why I shall do so. I came here with predilections in favor of a six years term of office for the judges, and that no officer should be in office for a longer period than six years. I came however with the expectation that perhaps the number of judges would be continued as at present. For reasons which are satisfactory to my mind, I am now in favor of the appointment of four judges. There is a principle connected with the election of the judiciary, which I conceive very important to be maintained; it is that one of these judges shall pass out of office every two years, and that the people of the district in which he resides, or in which he was elected, shall have the privilege of choosing another to fill his place. But if we strike out "eight" and insert "six" we shall necessarily destroy that principle which, it seems to me, so important to preserve.

Mr. BRADLEY. There is but little difference between the views of the gentleman from Caldwell and myself. The propriety of having an election every two years, I fully appreciate, and



this can be attained by the tenure of six years, having three judges and three districts. I have come to the conclusion that this is perfectly practicable, and I am entirely in favor of it.

Mr. BARLOW called for the yeas and nays.

The yeas and nays were then taken upon the motion to strike out "eight" and insert "six," with the following result:

YEAS.—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, Milford Elliott, Nathan Gaither, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Thomas James, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Nathan McClure, Hugh Newell, Elijah F. Nuttall, Johnson Price, Thos. Rockhold, Ira Root, Ignatius A. Spaulding, Michael L. Stoner, Albert G. Talbott, John J. Thurman, John Wheeler, Silas Woodson—34.

NAYS.—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, William Chenault, Beverley L. Clarke, William Cowper, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benj. F. Edwards, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Vincent S. Hay, Mark E. Huston, James W. Irwin, William Johnson, George W. Johnston, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, William Preston, Larkin J. Proctor, John T. Robinson, John T. Rogers, James Rudd, John W. Stevenson, James W. Stone, John D. Taylor, William R. Thompson, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams—56.

The fourth section was then read by the secretary.

Mr. HARDIN moved to strike out "four" and insert "three," in the first line, which is in these words, "the court of appeals shall consist of four judges," &c. On this he called for the yeas and nays.

The yeas and nays were taken upon this question, and resulted as follows:

YEAS.—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Milford Elliott, Green Forrest, Nathan Gaither, Thomas J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Mark E. Huston, James W. Irwin, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, George W. Mansfield, Alexander K. Marshall, William C. Marshall, William N. Marshall, Nathan McClure, Hugh Newell, Johnson Price, Thomas Rockhold, Ignatius A. Spaulding, John W. Stevenson, James W. Stone, Michael L. Stoner, John J. Thurman,

Howard Todd, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson—53.

NAYS.—Mr. President, (Guthrie,) Richard Apperson, Francis M. Bristow, Beverly L. Clarke, William Cowper, Edward Curd, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Richard D. Gholson, Ninian E. Gray, Thomas James, George W. Johnston, Peter Lashbrooke, Thomas N. Lindsey, Willis B. Machen, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, William Preston, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, Albert G. Talbott, John D. Taylor, William R. Thompson, Philip Triplett, Squire Turner, C. A. Wickliffe—38.

Mr. TRIPLETT. As the vote which has just been taken, appears to have been given upon deliberation and reflection, and as there is little probability that the decision just arrived at will be changed, it appears to me it will be better to re-commit the bill to the committee from which it emanated, in order that they may remodel it, so as to make it suit this expression of the views of the house. I think it will be a saving of time, and that it will prevent those errors which will probably creep in, if we attempt to re-construct the bill in the house.

Mr. C. A. WICKLIFFE. There can be no necessity for its re-commitment, as the only alterations to be made are mere verbal alterations, that will be evident to every gentleman.

Mr. TURNER. I do not believe—sir I am not at all convinced that the deliberate opinion of the house has been expressed in the vote just taken. Nor do I think it necessary to change the phraseology of the bill throughout until it shall be ascertained whether this reduction in the number of Judges, is the true expression of the convention. The two extremes have met, for the purpose of breaking down the branching system—I know that I was asked to vote for that purpose. I am against the branching, and in favor of having four judges, and I hope we shall get back to four judges. I do not wish to change the phraseology of the bill until we shall ascertain whether this will be so.

Mr. DIXON. A difficulty presents itself to my mind as the bill now stands. It provides for four districts, and only three judges to be elected. There will consequently be one district that will have no part in electing a judge. I believe we shall have to come back to the number of four, or give up the bill.

Mr. C. A. WICKLIFFE. I do not know whether I distinctly understood the gentleman from Madison (Mr. Turner.) I think the gentleman is certainly mistaken, in supposing the vote just taken was not an expression of the judgment of the house, or that there is a desire to break down the branching of the courts, or the sitting of the court in districts. I do not know what may have induced the decision. I am willing to acquiesce in the decision of the majority, and I presume the vote has been given upon sober and sound reflection. I understand it has been decided that the court shall consist of three judges, instead of four, and that they are to be elected for eight years, and to serve eight years,

if they continue in office so long, by a very decided vote of this house. I presume that the election is designed to be by districts, and with the delegate from Madison, I desire that the house shall proceed with its deliberations, upon this article, until we shall decide in some mode whether it is the will of a majority of this house that the court of appeals shall hold its sessions in three districts, which will necessarily have to be prescribed in the following section of this bill. The committee can very easily modify the bill, presupposing that three is to be the number of judges to constitute the court, and carry out the system, as seems to be indicated. I arose therefore to ask the house to proceed with the consideration of the bill.

The PRESIDENT. The hour has arrived for proceeding with the special order of the day.

Mr. C. A. WICKLIFFE. This is I believe the order of the day.

The PRESIDENT. The order of the day is to go into committee of the whole at twelve o'clock.

Mr. WICKLIFFE. Then I propose to dispense with the rule.

Mr. TURNER. I would prefer dropping this matter just here, because I think that we shall all get together again in regard to the number of judges, as it originally stood. In the mean time, I would prefer going into committee of the whole upon some other subject.

Mr. C. A. WICKLIFFE. I withdraw my objection, and will let the house take its course.

The question then being put, shall the convention resolve itself into committee of the whole generally, it was, upon a division, decided in the affirmative—ayes 42, noes 40.

#### COUNTY COURTS.

The convention then resolved itself into committee of the whole, Mr. BOYD in the chair.

The CHAIR stated that the first subject in order, was the report of the committee on the revision of the constitution, and slavery.

Mr. GHOLSON. If in order, I will move to take up the resolution I had the honor to submit some days since, in relation to the qualification of officers.

The question being put, the motion was negatived.

Mr. APPERSON moved to take up the report of the committee upon the circuit courts.

Mr. R. N. WICKLIFFE. I think, myself, that while we are on one subject, we ought to get through with that subject, or else take up one of a kindred nature. If we take up the subject now, of the revision of the constitution, and slavery, it will throw us a week or ten days ahead. I therefore think, that the motion to take up the report of the committee on the circuit courts, is the proper one.

Mr. HARDIN. I was anxious to do so sir, but one or two of the members of the committee requested me to postpone asking that that report should be taken up until to-morrow, with a view of having another meeting of the committee to-night, to see if they could not come to some agreement, so as to make it more conformable to the already expressed opinion of the house.

Mr. APPERSON. I thought the report was in possession of the house.

The CHAIRMAN. It is the understanding of the Chair, that the report is in the possession of the house.

Mr. BRISTOW proposed to take up the report of the committee on county courts.

Mr. DIXON. I do not believe that the committee are disposed to take up any report, and therefore, it will perhaps be as well that the committee rise, and that the convention should adjourn.

Mr. C. A. WICKLIFFE. I hope the gentleman will withdraw that motion until the committee have taken hold of something, because it would be an awkward report for our chairman to make, that the committee had done nothing.

Mr. HARDIN. I want to know what necessity there is for taking up this report at present. The committee have requested to have another meeting this evening, so as to make the report meet the views of the house. If the object of the gentleman is to take it up for the purpose of perfecting it, I have no objection; but if he has any particular designs against me, or the committee, I hope he will give me until to-morrow, when perhaps I may be able to bring forward something that will be acceptable.

Mr. APPERSON. My only object was to get to work, and I thought that the subject of the circuit courts, was one that had the nearest relation to the subject that we had just been engaged with. My motion did not arise from any thing that I had against the gentleman.

Mr. HARDIN. I am just as ready now as at any time, to take up that subject. I care very little what becomes of the bill. I am not wedded either to the circuit court, or to the court of appeals. My proposition was merely to accommodate the committee.

Mr. APPERSON. If it be the desire of the committee to take up the report of the county courts, I will withdraw my motion.

Mr. BRISTOW then renewed his motion to take up that report.

The motion was agreed to. The secretary read it as follows:

#### ARTICLE —.

SEC. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, a county court, to consist of a presiding judge and two associate judges.

SEC. 2. The judges of the county court shall be elected by the qualified voters in each county, for the term of four years, and until their successors shall be duly qualified, and shall receive such compensation for their services as may be fixed by law, to be paid out of the county revenue.

SEC. 3. At the first election after the adoption of this constitution, the three judges shall be elected at the same time, but the associate judges, first elected, shall hold their offices for only two years, so that, thereafter, the election of the presiding judge, and that of the associate judges, will not occur at the same time.

SEC. 4. No person shall be eligible to the office of presiding or associate judge of the county court, unless he be a citizen of the United States, over twenty one years of age, and a resident of the county in which he shall be chosen one year next preceding the election.

SEC. 5. The jurisdiction of the county court shall be regulated by law, and, until changed, shall be the same now vested in the county courts of this commonwealth.

SEC. 6. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Two Justices of the peace and one constable shall be elected in each district by the qualified voters therein. The jurisdiction of said officers shall be co-extensive with the county. Justices of the peace shall be elected for the term of four years, and constables for the term of two years; they shall be citizens of the United States, twenty one years of age, and shall have resided six months in the district in which they may be elected, next preceding the election.

SEC. 7. Judges of the county court, and justices of the peace, shall be conservators of the peace. They shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The legislature shall provide, by law, for the mode and manner of conducting and making due returns of all elections of judges of the county court, justices of the peace, and constables, and for determining contested elections; and also provide the mode of filling vacancies in these offices.

SEC. 8. Judges of the county courts, justices of the peace, and constables, shall be subject to indictment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant.

The first section was again read.

Mr. BRISTOW moved to amend by adding to that section the words, "any two of whom shall constitute a quorum for the transaction of business."

Mr. TURNER. With the view of testing the sense of the committee, I move you to strike out the two associate judges.

The CHAIRMAN. There is an amendment pending.

Mr. TURNER. As a matter of course, the motion that I make will take precedence of the motion of the gentleman.

Mr. BRISTOW. The amendment which I propose will be adopted as a matter of course. There can be no objection to it.

Mr. TURNER. But that motion may be superceded. My opinion is, that we shall have a better court, and one that will better accomplish the public business, if we have but one judge, with a sufficient salary, to secure a man competent to do the business, than to have three judges with small salaries; for in that case, we should be very apt to have men who are incompetent. I made this motion with the view of making another, in case it prevails. It is, that one judge shall hold court at all times, except when the county levy is to be laid and claims against the county, to be assessed. At these times I wish the magistrates, who are to be distinct officers at all other times, to come in and assist. By doing this, you will make it a county bench; otherwise your court will be regarded as a mere town

court, as having very little sympathy with the people, and will not have that strength to sustain it, it ought to have in every part of the county.

There is another reason. In assessing the claims against the county, where you have the court as I propose, residing in different parts of the county, they will be qualified to judge of the claims, that may be presented; they will possess correct information; whereas, if you have a court composed of men who live in the town, there will be large classes of claims brought before the court, speciously presented, regarding the justness of which, they would be unable to determine. Numerous cases of that kind are brought forward, and at first view they appear to be just and correct; whereas, if you have information on the other side of the question, they might prove to be unjust. Any man who has had much to do with courts, knows that this occurs very frequently.

And I think in fact if we are to have a court thus organised, it is much better to have one ignorant man than to have three to preside in it. But I think we will be more likely to get a good judge if we have but one, than if we were to have three, and the business will be done infinitely better.

Mr. BRISTOW. I hope the question will be taken upon the motion I made.

Mr. TURNER. I would make this suggestion to the gentleman, that if there is a majority of the committee in favor of my proposition, of course they will vote his proposition down, because if his should be adopted, it goes in a great measure to defeat mine, and if mine should be adopted, his will be entirely superceded.

Mr. BRISTOW. The simple question is whether two of these judges shall hold court.

The question being put upon the amendment of the gentleman from Todd, it was adopted.

Mr. TURNER. I now make the motion to strike out the words "and two associate judges," and in another part of the bill, I will move an amendment to provide that the county magistrates to come in and take their seats in the court of claims.

Mr. BRISTOW. This is an important court sir, a court before which the rights of property, to a very considerable amount, are to be investigated. There will be important questions to be determined by that court when they undertake to settle claims against the county, and to raise revenues. You are aware of the very great prejudice that has existed throughout the commonwealth against the county courts. We could not adopt the principle contended for by the gentleman, without incurring all that unpopularity. If you gather up the magistrates from all parts of the county to hold court at all times of the year, you throw upon them many embarrassments. The gentleman says that these three judges will be selected from town residents. I suppose not sir. We have not prescribed the limits in which they shall live, we have left it entirely to the county, and we have supposed that they would be well content with three judges, whom they might select within the county. We thought that three judges selected by the people to preside in this court, would be better able to discharge the duties, than if you

were to gather up all the magistrates throughout the county. The gentleman speaks of frauds and impositions that may be practiced upon the judges, but I think it is a great mistake to suppose that three judges, accustomed to hold court, will not detect frauds as readily as any magistrate can do. Much might be said on the subject, but I am not for consuming the time of this convention. If it be the deliberate opinion of the convention, that one judge should do the business, and when upon county business collect all the magistrates together, let them so decide. But I am convinced that after mature deliberation, they must come to the conclusion that the best way would be to have one presiding judge and two assistants.

Mr. KAVANAUGH. This report relative to the county courts is, in my view, one of the most important that can come before the convention, and as it is suggested by delegates around me, that the convention did not expect to take up this report to-day, and as there is not much disposition manifested to go on with it at present, I will move that the committee rise.

The committee rose, reported progress, and obtained leave to sit again.

The convention then adjourned.

#### FRIDAY, NOVEMBER 2, 1849.

Prayer by the Rev. STUART ROBINSON.

#### THE ELECTION IN CASEY COUNTY.

Mr. HARDIN presented a petition signed by some two hundred and fifty six persons resident in Casey county, in relation to the election of the delegate to this convention for that county. It was referred to the committee which has charge of the returns of that election.

#### AMENDMENT OF THE RULES.

Mr. GARRARD called up his resolution offered yesterday to amend the 29th rule.

After some conversation he modified his amendment and it was adopted as follows:

*Resolved*, That the 29th rule of this convention be amended by inserting the words, "and such amendments as may have been offered in committee of the whole, if desired by the mover," immediately after the word "amendments," in the last line of said rule.

#### COUNTY OFFICERS.

Mr. TURNER called the attention of the convention to the fact that there were reports from two committees, which were of such a character as to require that they should be considered together in the committee of the whole—the committee on the executive and ministerial offices for counties and districts, and the committee on county courts. He moved that the committee of the whole be instructed to consider those two reports together.

Mr. BRISTOW thought the adoption of such a motion would be productive of confusion. He preferred that each report should be considered separately, and after they had been disposed of

in committee of the whole, a special committee could revise and avoid any conflict between them.

The motion was not agreed to.

#### LEAVE OF ABSENCE.

On the motion of Mr. HAMILTON, leave of absence was granted to Mr. Hendrix till Tuesday next.

#### COURT OF APPEALS.

The convention resumed the consideration of the report of the committee of the whole on the article in relation to the court of appeals.

Mr. A. K. MARSHALL said he yesterday gave notice of his intention to offer a substitute for the whole report of the committee, and it was then suggested by the President that such a proposition would be in order, when the measure had been perfected by its friends. He now rose to modify his proposition to this extent—he would offer it as an amendment instead of a substitute. If in order, he would now move to strike out the sections from one to ten inclusive, and insert the sections which he presented yesterday.

Mr. C. A. WICKLIFFE called for the yeas and nays on that motion.

Mr. A. K. MARSHALL. I expected when honored with a seat in this convention to have remained entirely silent, except to give my vote. I had no ambition to offer resolutions or make speeches on this floor. It would have been exceedingly agreeable to me to have been permitted to pursue that course, and I should have done so if I believed the course which the convention was about to take was one which would meet the wishes of the people of the state of Kentucky. I had not a doubt when I came here that a constitution would be made in accordance with the wishes of the people without the slightest difficulty or delay. It did seem to me that the desire and the wish for a change of such parts of the constitution as were objected to by the people, was so clearly understood, that the convention could not err in making the changes required by the people. So far as I have been able to learn from my association with the convention party, and so far as I have received instructions from my constituents, there is very little to be done in this body. The people expect some slight change in the legislative department, to have the sessions every two years, instead of annually, and to limit, in some degree, the power of the legislature with regard to special legislation, and involving the state in debt; they expect us to limit the tenure of the judicial officers and to give into the hands of the people the selection of all the officers of the state. Now, I ask every gentleman in this house if we do this, and do nothing more than this, if we shall not meet the expectations and wishes of those who sent us here? I have not understood that the people of Kentucky have believed in relation to the present constitution, that "the whole head is sick, and the whole heart faint," and that "from the crown of the head to the sole of the foot, it is covered with wounds and bruises and putrifying sores." I do not believe they expect us to change every line and letter of the old constitution; but on the contrary, they desired us to leave as much of it as

possible in the instrument which we submit to them. The proposition which has been made by the committee on the court of appeals, I have been compelled very reluctantly to vote against, because, if we embody in it details not expected by the people, if it does not defeat, it will most certainly bring a strong opposition to the constitution. There will be in many counties an opposition to these details; they did not expect us to place them in the constitution; and I have offered this amendment that we might commit into the hands of the legislature—as it was committed to them by men who were practically as wise as those who live in this day—the power of carrying out the principles which we establish in the constitution, leaving the details to the legislature, and not assuming to ourselves the authority to do that which, in every other constitution, has, I believe, been left to the legislature.

We need not be in the least alarmed that what we leave out of the constitution will be dangerous to it. There is no danger of sins of omission being visited on our heads by our constituents. There will be no vote cast against the constitution in consequence of what is not in it, but every new principle that we introduce, all extraordinary and new matter of detail may, if it does not certainly, array many votes against it; and I desire to retain every line and letter of the present constitution, which I am not compelled to change, with a view of engrafting in the new instrument those principles which are clearly and unequivocally required—and very few are required. I venture to say there is not a gentleman in this house, who cannot take up the old constitution and amend it so as to meet the wishes of the people, provided he has no particular wish of his own to gratify, if he will just exercise the knowledge which he has of the wishes of the people of Kentucky. There is not a man on this floor, there is not a boy ten years old, who knows the views of the people, who cannot make a constitution which they would accept without the slightest hesitation. If we have no views of our own, no personal ambition to gratify, no professional ends to attain, and no sectional objects to secure, there is not the slightest doubt that any man can make a constitution which will meet the wishes of the people by an overwhelming majority, and he would have nothing to do but that which his constituents have bidden him to do—change those features which have been objected to, and then leave every thing else just as he finds it. I hope the proposition I have made will receive the attention of the house. I know it is not perfect; and if the motion prevails to strike out and insert, I shall then move a reference to some committee with a view of having it put in a more perfect form.

Mr. HARGIS. I have been waiting for an appropriate opportunity to give my views in relation to branching the court of appeals, and the election of four judges. The branching of the court of appeals is not a new subject. It has been before the legislature during the last fifty years, and I believe this fact is now conceded. The object in calling this convention, in part, was to reform the vast expenses of the state. We were in debt to the amount of nearly five millions of

dollars. We have had too much legislation, and thus our expenses have been increased. I have received from the Auditor an account of what will be the additional expense in holding a session of the court of appeals. The judges now receive one thousand five hundred dollars, and the additional expense is nine hundred and one dollars. This expense is necessary to pay the salary of the sergeant, the tipstaff, the attorney general, and other incidental expenses. We should incur in electing the judges of the court of appeals, seven hundred dollars in the first election; and this is an item of expense of which I have heard no gentleman speak. If the state is to be laid off into three or four districts, there must be some place for the sheriffs to meet to compare the polls and ascertain who is elected. The sheriffs would have to be paid about the same amount as for comparing the polls in the election of members of congress, which is two dollars a day, and two dollars for every twenty five miles travel in going and returning, which will make an expense in each county of from six to ten dollars, and will make the whole amount for the state at least seven hundred dollars. Then, in addition to that, there will be an expense for record books which will amount to five hundred dollars in each of the branches. Besides this, if there is an attorney general, he must be paid something in addition to his salary of three hundred dollars a year, for we cannot suppose that he would travel through the state for this sum. His pay must be increased then, or we must increase the number of attorneys general. The judges must be paid two or three thousand dollars for riding over the state and holding these courts. This will amount to six or eight thousand dollars, and the whole sum, without saying a word about libraries, will make an addition to our present expenses of six or eight thousand dollars annually. It will be impossible to avoid this; and I tell gentlemen that whenever they branch the court of appeals, they rivet upon the state an additional expense of six or eight thousand dollars a year.

The legislature for the last fifty years could have branched this court, and could have repealed the act at any time if it was found not agreeable to the wishes of the people. They have never ventured to do it. Why have they not? Because the people of Kentucky have never required it. If they had done so, sending in their members to the legislature every year, it would have been passed, and the experiment would have been tried, and if it did not work well, they could have repealed it. We have come here with a view to lessen the expenses of the government, and carry out the wishes of the people in this respect; and the first thing we do, we fasten an expense of six or eight thousand dollars, annually, upon the state, when the legislature would not venture to do it even for a single year. Besides, the subject of branching the court of appeals was not, so far as I know, discussed last summer by the people. If the people have not branched the court when they had the power to do it, shall we rivet the expense upon the state wholly unlooked for by the people? If this is done, I have no doubt the people will reject the constitution by a large majority. I have seen some dozen men from my section of

the country, and all of them are opposed to it. Now, in order to satisfy the people, and to have their will expressed, let this be a matter of legislation entirely; to that extent I am in favor of the amendment of the gentleman from Jessamine. That will give the legislature power to branch the court, if they please; the people will be satisfied; and the objections to an increase of expense, by doing that which the legislature would not do for the last fifty years, will be avoided.

Much has been said to show that the branching of the court will not increase the expense of the state. Surely this expense will be increased unless the judges are willing to ride over the state for the salary of fifteen hundred dollars, which they now receive, while other states are paying their judges from two to six thousand dollars. However gentlemen may claim that the people want justice brought to their doors, they can now reach the court of appeals if they desire it; many do go to that court who ought not. All that is said about setting up this monopoly in Frankfort, and the influence this has on the election of senators, amounts to but little in my opinion. The legislature will sit here, and how will it influence the action of the legislature for the court of appeals to sit here? It seems to me that the influence of the court of appeals and of the legislature would be entirely distinct; I cannot see how they will affect each other. Then how is it that it will tend to set up an aristocracy which has been spoken of around Frankfort?

I should have been glad if the system of ballot voting had not been stricken out. I was for that system, and I still believe it right. Gentlemen have said that was a favorite measure of the emancipationists. I do not see how emancipation is connected with ballot voting. All that has been said about the rich man's marching up and making his tenants vote according to his wish, is an argument in favor of voting by ballot. I want my tenant to go and drop in his ballot without my knowledge of the man for whom it is given. If they vote by ballot what landlord will know any thing about the vote of his tenant. Much has been said about the influence that a wealthy man may have in procuring votes. This is a reason why I am in favor of the ballot system, because a wealthy man would not risk his money if he did not know what ticket would be put in the box. Would I risk paying out money to A, B, and C, when they could drop a ticket in the box against me. That is one reason why the ballot system is all important, more important in the judiciary than any where else. One gentleman says there is no possible chance to contest an election under the ballot system. That is something that I do not understand. If I understand the method of voting by ballot, the name of the candidate is written on one ticket, and the name of the voter is written upon the back of the same ticket. When this ticket is deposited, his name is recorded by the clerk upon the poll book. When the election is over, the ballots are all counted, and the clerk arranges in lists the name of each candidate and the name of each man who has voted for him. The tickets are carefully preserved until it is ascertained whether there will be a contest of the election. And if no contest arises

within ten days, the tickets are destroyed. Another gentleman says that fraudulent voting cannot be punished under the ballot system. If his name is upon the ticket and is likewise recorded upon the poll book, will it not be easy to compare the tickets with the record upon the poll book, and ascertain whether there has been illegal voting either by those who are under age, or who are non-residents? If there is a contested election, then these fraudulent votes may be struck out. The grand jury can indict any one who votes under age, and every proceeding can be carried on as if the ballot system did not exist. Now, in order to carry it out properly, the tickets will be destroyed, and neither the judge nor any other man will have a right to know for whom any person may have voted. That is a system that will protect the voter, and if any thing is fair, and will at the same time tend to destroy the corrupt influences under the present system, this will do it.

To those gentlemen who say this is connected with emancipation, I answer that it is not at all connected with either abolition or emancipation. It is a movement of the people, which they, in their honest judgment, consider that we need. Some two or three weeks since, the gentleman from Logan (Mr. Irwin) stated that this convention was brought about by a union of the emancipationists and democrats. I name it to deny it, and I will try to prove it. But I do not blame the gentleman for thinking there was something like a combination of the emancipationists and democrats. He appeared to be a sort of way-faring man during the canvass, having been a candidate in Todd, I believe, and having not succeeded very well there, perhaps, he travelled over into Logan, where he started under headway. All was vacant and open. He soon found that there was an emancipationist there as a candidate, who was after him with a sharp stick, close by. There was another gentleman, who is now a delegate in this convention, a whig, who was away ahead. But this emancipationist was right after the gentleman from Logan, and when I heard of it I thought of the race that John Gilpin run with the post boy. Gilpin put on his red cloak and his belt, to which he had suspended two bottles filled with wine, and started in the race. And, as he went he thought he would go clear, and the first thing he knew the post boy was scampering at his heels with whip and spur, and he lost his wine. Now, I thought the gentleman from Logan was in the same predicament. He had no expectation of opposition, but here was this emancipationist, running him close, and he came within fifty votes of defeating him. He got more votes than any other emancipationist in Kentucky, except the candidate from Louisville. The gentleman may have had reasons for his belief, but I do not believe that any one, even of his own party, believed his statement to be true. There were in this state twenty whig emancipationists, who together, got about nine thousand four hundred votes, while the nine democratic emancipationists received about four thousand votes. If the gentleman alluded to the union of the emancipationists and the democrats with the intention of creating a dissension here, it was clearly wrong. In Lewis county, there were two emancipationists running, but



a whig was elected, who is now in this house. In Lawrence and Carter counties there was a majority of four hundred democrats, and there a whig was elected by a strong democratic vote, but if the emancipationists had joined the democrats this could not have been the result. I name this to condemn the imputation that the democrats were united with the emancipationists, or any other party. I believe that the convention was brought about by the will of the people of Kentucky, and no party should have the honor of it. I believe we came here with the intention of making such a constitution as the people require, without lugging in any thing new, or which would increase the expenses and result in the rejection of this constitution by the people.

If all this be true, that the branching of the court of appeals would increase the expenses of government, and if the people have not required this at our hands, as certainly as we live it will make twenty or thirty thousand votes against the constitution. I honestly believe this, and I call on gentlemen who are in favor of the branching system, to wait only a year or two, and to let us have the right to add another judge, and branch the court, and then, when the subject is discussed, the people will pass it if they want it. But if we put it in the constitution now, under the circumstances, I can assure the friends of constitutional reform that our labor will be rejected.

Mr. A. K. MARSHALL. I would ask to have the word "six" struck out of the third section, that the number of years for holding the office of judge may be left blank.

The PRESIDENT. The gentleman has the right to modify his own amendment.

Mr. C. A. WICKLIFFE. I presume if the house think proper to insert that amendment, it will be proper hereafter to fill the blank; but the house could not take any thing from it after its adoption, without a re-consideration. We may add to it, but we cannot strike any thing out of it. With that understanding I shall vote. The proposition of the committee is to fix the term of the judges at eight years, and to establish the principle that these judges, whether three or four, shall be elected by districts. The amendment proposes, if I understand it, that there shall be one chief justice and two associate judges.

Mr. A. K. MARSHALL. It proposes no particular number of judges.

Mr. C. A. WICKLIFFE. The legislature may then give the chief justice the support of one, or as many more as they please. There is to be one president, of course, and the legislature may so constitute the appellate court that he shall sit alone. If I understand it correctly, I prefer the original report, with all the inroads made on it by the vote of the house yesterday.

Mr. A. K. MARSHALL. I would ask if the whole matter might not be referred to a committee. I have said that I did not consider myself competent to produce any thing perfect. I have merely thrown out the will of my people. I desire to have it referred to a committee, even if it is adopted by the house. I have no personal interest in this constitution in any way. I have but one wish, and that is, to form a constitution

which the people of the state of Kentucky want, and which they will accept. I have but one fear in reference to the proposition emanating from the committee on the court of appeals, and it is a fear based upon what I believe to be a thorough knowledge of the feelings of the people of Kentucky—for I am no stranger to their feelings in regard to the present constitution—and that fear is, that it will be fatal, entirely fatal, to the constitution itself. The proposition of the committee will be presented to the people with a suspicion attached to it, unjust in all human probability, but which the honorable chairman of the committee knows to exist, and to which he has himself referred. It will be looked upon, to use plain language, as a lawyer project. It has been called so in this house, and out of it, and whether the suspicion is groundless or not, is not for us to determine. But let the people of Kentucky believe that the lawyers have concocted this for their benefit, or that the main moving object of it is to benefit the lawyers, and they will scout it as certainly as the Lord lives.—They like lawyers well enough, but not enough to take any thing which they suspect is for their special benefit. There are enemies enough in this house, and out of it, to use this, whether it is so or not—enough to justify the declaration which has been made here. I do not say that I entertain these feelings, but I confess that I shall have some difficulty to combat this objection. I shall have much to do to satisfy my constituents that this bill, in all its parts, is for the whole community, and that this class of professional gentlemen are not more especially benefited. I want the matter left with the legislature. Let them do as they please. I hope the house will understand me that I do not wish to press this thing. It has forced itself upon me, and I felt it was my duty to offer it. But I desire that it shall be referred to wiser heads than mine to render it more in accordance with the wishes of the community. I hope the house will accept the proposition.

Mr. CLARKE. I have known since I have been here, scarcely a proposition made in this house, that has not been met with the stereotype argument, that if it should be incorporated in the constitution, it would cause the constitution to be rejected before the people. I believe I understand something of the feelings of the people of that region of the country from which I came; but I am at a loss to know how it happens, that gentlemen know so well what are the wishes of the people throughout the whole state as they profess to do. The gentleman from Jessamine assumes, as did the gentleman who preceded him, that if you branch the court of appeals, you will lose twenty thousand votes which would otherwise be given for the new constitution.

Mr. A. K. MARSHALL rose to explain.

The PRESIDENT. No gentleman has a right to interpose when another delegate is addressing the chair, unless leave be granted him to explain. I hope that gentlemen will obey the rule strictly.

Mr. CLARKE. I beg leave to remark to the president, that if I have misquoted the gentleman, I desire that he shall have liberty to correct me.

Mr. A. K. MARSHALL. Never having belonged to a deliberative body before, I must be pardoned for violating a rule which the president seems to think so essential, and the only apology I can offer is, that I was but following the example that has been set me, by older delegates on this floor, with the permission of the president. I will now take the liberty, as permission has been granted me, to explain that my observation was, that I believed that the incorporation of this proposition in regard to branching the court of appeals, would array a large number of votes against the constitution. I did not pretend to designate how many.

Mr. CLARKE. It is an argument, as I before remarked.

The PRESIDENT (interposing.) The gentleman has chosen to impeach the chair for interference. It is true, I have interfered. I have done so heretofore, and shall continue to interfere, and call gentlemen to order whenever they violate the rules of this body.

Mr. CLARKE. I may, sir, have put words in the mouth of my friend who spoke last; I have said that he argued that twenty thousand votes would be arrayed against the constitution, if the proposition for branching the court of appeals should be inserted in that instrument. In this I may be mistaken, but I am not mistaken when I say that an argument that is in the mouth of almost every gentleman on this floor who has spoken upon any subject, is, that if you incorporate a certain principle you will array a party in this state against the constitution, and that, therefore, you ought not to incorporate such a principle. That is a stereotyped argument in regard to almost every proposition, against which a gentleman may entertain an objection.

More than one half the state, in point of population, live south of this place. It has been argued here, and among others, by the elder gentleman from Nelson, that if you branch the court of appeals the result will be, that you will array—I believe his remark was—every citizen—every voter at least in the county of Franklin save seven, against the constitution. Well, sir, I confess for myself that I have not been at the trouble of enquiring how all the people of Franklin county will vote, in the event that the court should be branched, but if you give four judges, and establish four districts, and locate a branch of the court of appeals in each district, I ask, sir, if the same rule, will not obtain, in establishing the fact that you get at four points, or three at least, leaving a branch here, the votes of a great number of persons in favor of a new constitution, because they will have obtained their wish, though you may lose a number of votes in Franklin county because the court has been branched.

I can tell gentlemen, for I profess to know something about the feeling of the people in that part of the country which I have the honor to represent—that they have regarded the location of the court of appeals at one point only, in the state, as a hardship upon that region of country, from the time I grew up, down to the present day, and if we cannot get a branch of the court down there, we are determined, in a body, as far as I am advised, to get the court of appeals a little closer to us.

I understood the gentleman from Nelson to say, yesterday, that it would be a great hardship for the citizens of Henry county to be required to go to Harrodsburg to attend the court, that they would have to travel a longer distance than from Frankfort to Harrodsburg. I suppose the gentleman considers it no hardship at all, that the people of Warren, Simpson and McCracken, and all the southern part of the state should have to come here to attend the court, but it would be a great hardship to make four judges ride down there through the mud. When the people have to come up, the roads are all dry, but when the judges have to go down, the mud will be very deep, according to the argument of the gentleman.

Now Mr. President there is not a voter southwest of Louisville, who would not be willing to be taxed a half cent or one cent, for the purpose of furnishing facilities for obtaining justice. Gentlemen need not be alarmed by the idea of additional expenses when we say that we want four judges instead of three. It has been argued on this floor, and I believe that the conviction obtains in the mind of every gentleman, with perhaps few exceptions, that the business of the court of appeals cannot be transacted by three judges, because the business is calculated to increase, and it must increase, according to the commercial habits of the people of the state. It has already increased in a ratio so great, that the judges of the court of appeals numbering three at this time, cannot bestow that attention in the investigation of the cases that come before them, that the well being of the country and the interests of the community demand at their hands. It must be the case that we must have more than three judges. We must require them to have that uniformity of decision of which gentlemen have spoken; we must require them to enable litigants to reach justice without delay, and sir, the interests of the country demand four judges. I ask if Kentucky will stand back, merely because there will be an increase of expense of twenty five hundred, or even four thousand dollars.

Mr. President, I for one disclaim that this is a lawyer project. I am aware sir, that there are those in the country—and I have felt the influence of these objections myself, who go about and attempt to excite prejudice against the profession of law. I am aware that there are those who go forth among the people, and whenever the remotest opportunity occurs for exciting prejudice against a lawyer who presents himself for office, the opportunity is not allowed to escape. But I apprehend the profession, as far as branching of the court of appeals is concerned, will be able to satisfy an enlightened constituency, that what they have done in this matter, has been done alone for the purpose of enabling them to reach justice, without traveling four or five hundred miles to do it. This may be a lawyers' project on one side or the other, and I doubt very much if there are not a number of lawyers perhaps not very far distant from the present place of sitting of the court of appeals, who are opposed to the branching of that court. Withhold from us a branch and what injury sir, do you inflict upon my constituents, upon those of that part of the coun-

try from which I came. Then if I am employed to bring an action of ejectment, or any other, I make no arrangement with my client that if justice is not done in the court below, I will appear in the court of appeals. He gives me a fee. After trial if I apprehend that justice has not been done, I advise him to take an appeal. He does so. And what then? After the case has been prepared there—argued there—understood by his counsel there—all the facts and circumstances perfectly familiar to him, he is there required to leave that counsel with whom he has advised during the progress of the case, he is obliged to employ additional counsel to conduct his case through the court of appeals; whereas if you allow him the opportunity to reach the court by traveling ten, fifteen or twenty miles, the probability is that the lawyer he had employed there, would be able to attend the case, in the court of appeals, and save him the payment of a double fee. That would be the effect of it. It would grow up into a practice that when counsel are employed to attend a case in the court below, there would be an agreement at the same time, that if the case should be taken to the court of appeals, the same counsel would appear and conduct the case through that court, and it must result in a great saving to the people. There is no force in the argument that this is a lawyers' project. I disclaim it as a lawyers' project.

If the wants and interests of the country require that justice should be brought nearer to the doors of the citizens of the state, why withhold it? We are in this state as a band of brothers, and I call upon the gentlemen who live in the counties surrounding the capital, I call upon gentlemen who live in the neighborhood of the place where the court of appeals is at present held, and ask them if it is right and proper to withhold from us a branch of that court. I have no special authority to do it, but I ask in the name of the mountain region of this state, if it be right that those who are congregated around the place of the present sitting of the court of appeals should withhold from those in that region, the right and the convenience of having their rights preserved, when all that the state has had to bestow, has been bestowed upon this place. When all the moneys collected throughout the state, in the way of taxes, have been thrown into the lap of this town for the last half century, is it too much for us to ask, to be allowed to have our business done for us nearer home, when we are taxed as much as they.

I am satisfied that there is a power in the south-western part of the state that will have justice brought nearer to them, and if we cannot get a branch of the court of appeals down there, we will have—and we will struggle for it until we reach the power to have—the court of appeals itself nearer to us. I believe there are some gentlemen on this floor who have perhaps mistaken the proposition that was discussed yesterday, or have not even matured it. I believe that a proposition will be made to reconsider the vote, by which four was stricken out in reference to the number of judges, and when that vote shall be reconsidered and the question be put to this house, we shall then discover whether they are willing to withhold from

us, some of whom live two hundred, or two hundred and fifty miles from the seat of government, because of the additional expense of some twenty-five hundred dollars, the means of reaching the sanctuary of justice. I have said more than I intended, for I have been disappointed, and regret to see a disposition manifested, to make those who live in the remote portions of the state, the mere suppliants at the feet of power here.

Mr. HARDIN. I have said over and over again, that I never heard this question made before the people where I live. I mean the question of branching the court of appeals. I have taken part in the elections, though not always as a candidate, I think I may safely say for the last forty two or forty three years, and I never heard the question made, either in my own or in the surrounding counties. I am willing to give the power to the legislature to branch the court, whenever the people of the state desire it shall be done, and I have indicated to the house, that before I had done with this subject, I would offer a proposition for this purpose, and the same thing is embodied in the proposition of the gentleman from Henderson. I want the legislature which comes immediately from the people—if it be desired by the people to branch the court—to have the power to do it; and if they want more than three judges, let the people say so through their representatives. That is all I want.

And I say again, and I say it in a spirit of conciliation, that I do not want to see this constitution encumbered with additional machinery. But as to the gentleman's idea of making me use the expression that it was five hundred miles from the county of Henry to Harrodsburg, and in coming back it was but thirty. I recollect a lawyer called Worden Pope who, when he heard any one using extravagant language, used to say, "pooh! I never believe myself when I am joking." I think I said about fifty miles. But for a man who has been all over the state, in its length and breadth, and made speeches in almost every county, and yet to be convicted of such a gross absurdity, as saying it was five hundred miles from the county of Henry to Harrodsburg, and only thirty back again, is more than I am willing to suffer. I will say it is about two hundred and eighty five miles from one extreme point to the other, where these branches would be located. And I would repeat, that to require an old man from forty to sixty five years old, at all seasons of the year, to pass from point to point, would be, to say the least, extremely inconvenient. The gentleman says, will you not give the mountain counties justice? This does not apply to my friend (Mr. Clarke.) He lives in the richest part of the country—there are no mountains there—not one. I consider the counties of Christian, Warren, Logan, Todd, and Simpson, the garden spot of Kentucky. The gentleman says—if you do not bring the court of appeals to us, we will take away the seat of government from you. Well, that will go for about as much as it is worth. I suppose the whole power of this state is not in Simpson county. Suppose the emperors of Russia, and of Austria, the king of Great Britain, and Louis XVIII, when they had assembled in

their great congress, and were proposing some great measure, for the regulation of the affairs of the whole of Europe, up should jump a little delegate from Hesse-Cassel, and say, if you don't do so and so, all Hesse-Cassel will be in arms, and we will pluck the diadems from your brows. Such a threat would not be more ridiculous than the menace of the gentleman about the removal of the seat of government. I have been trying to court my honorable friend all the session. I think he is a very promising young gentleman, but that he should have fallen into the mistake of attributing to me such a palpable absurdity is very extraordinary.

I have no intention of making a speech. I only rose to say, that I approve of the proposition of the gentleman from Henderson, to leave it to the people, through their legislature, to say whether Hesse-Cassel shall be accommodated or not. I have no particular interest in the thing, but I know very well that it is important to the character of the state, that the character of the court of appeals should not be brought down. Duty to the public requires, that that department should be kept up; and to have three or four old men trudging down to some distant county, to hold a court, perhaps it may be in the warm season, perhaps in the winter time, will tend very much to degrade the court, and bring it into contempt. I have no interest at all, none in the world, in having a court to sit in this place. I would just as soon have it sit any where else as here. I don't practice much here. I have perhaps three or four cases a year. It is not a practice that my colleague or myself care much about, or look much to. I believe we come here more for self-defence than anything else. I know there are some gentlemen, who make it a regular business to come here and get fees. I have a list of the names of several gentlemen who do so. I do not say this invidiously, because it shows that they must be men who have rich gifts by nature, and great legal acquirements. I believe I will reserve the list however, until I do make a speech on this subject, at some future day.

Mr. CLARKE. I suppose that my venerable friend from Nelson assumes, that the elder delegate from Nelson, and some two or three other gentlemen here represent Russia, Prussia, and Austria, and that the balance of us are from Hesse Cassel. I am willing sir, that the gentleman should have all the credit of representing a great power in this convention. I have no objection in the world. But sir, when I know that those who have honored me with a seat on this floor, demand an effort on my part to enable them to enjoy the rights that are enjoyed by those who occupy a more favorable position in the state, I trust I shall be pardoned by the Russian autocrat—I do not apply that to my friend—but I hope to be pardoned by the gentleman from Russia, for insisting that those whom I represent shall be permitted to enjoy an equal participation in the rights and privileges which are to be conferred upon the people of this state by the constitution. That is all I ask. I should be recreant to the high trust confided to me, if I did not insist upon having a branch of the court of appeals, closer to those whom I have the honor to represent. I trust I shall be pardoned

by the gentleman, if I try to discharge the duties that have been entrusted to me, by the people whom I represent. I do not intend to be understood however, as desiring to place my friend from Nelson, in an unenviable attitude. I did remark that he had stated in his speech of yesterday, that great inconvenience would be felt by the judges, if they were compelled to go to Harrodsburg. I said, I suppose the gentleman considered it five hundred miles from the county of Henry to Harrodsburg, and only thirty from Harrodsburg here. I did not say that he made this statement, but I deduced it as a consequence from his argument. There is no inconvenience it appears, in requiring the people of Carter, Ballard, and McCracken counties, to come to Frankfort, but there is great inconvenience and hardship in requiring four men to go down to those counties. Now sir, what is the fact? For the last fifteen years there have been three judges from two counties that border on mine, sitting in the court of appeals—I allude to chief justice Ewing, honorable J. R. Underwood, and honorable Asher W. Graham, who has been recently appointed. These gentlemen are obliged to travel to this place, twice a year, to hold court. And is it too much to ask, that they should go down there sometimes, instead of compelling the whole people of that region to come up here. Is it not just as convenient, I ask my venerable friend—for four judges to ride down there once in twelve months, as to require every litigant to come to this place to attend the court. Why sir, up to 1843, upon a motion to admit a will to record in the county court, if the motion did not prevail, the unsuccessful party was compelled to appeal to the court of appeals; and in the absence of branches, in many cases, to trudge from one to two hundred and fifty miles, with from ten to one hundred witnesses, to Frankfort, to obtain the decision of the court as to whether a will should be admitted to record or not. In more than one instance I have known large numbers of witnesses, who were in humble circumstances, to be brought in carts, the distance of an hundred and sixty miles, to reach the capital. I again ask, would it not be proper that the judges should at least visit the people, and hold court among them once a year, rather than to require the people to undergo such hardship and expence as they have been subjected to, under the present system.

Mr. LINDSEY. If the proposition to branch the court of appeals cannot be carried by legitimate argument—if the opinions of the delegate from Franklin and of those gentlemen from neighboring counties, opposed to the proposition, cannot be changed by considerations of propriety and fitness—the gentleman from Simpson will hardly succeed by denouncing the citizens of Frankfort and Franklin county. His people might as well have kept him at home, so far as the proposition under discussion, as well as all other matters, is concerned, if they supposed his attacks upon my constituents would frighten them or their humble delegate from propriety. What has the town of Frankfort done? What has she received at the hands of the commonwealth, so much more than other places, that she should be singled out by the gentleman, and charged with defeating projects which the honor-

able gentleman favors? He may say sir, she has the capital of the state, and the rickety concern called the governor's palace. Well, look back at the records, and see at whose expense these buildings were erected. They were not built at the expense of the gentleman and his constituents. They had their share it is true; but the citizens of this town, by individual subscriptions and donations of lots, which were sold and the proceeds applied, contributed largely to the expenditures, and that too, under contract with the commissioners authorized to locate a permanent seat of government for the state. Look, sir, at the few improvements that surround your public square. By whom were they made? Were they made by the liberality of such gentlemen as undertake to influence the minds of delegates near the capital, by threats of its removal? They were made, sir, by the authorities of the town. The gentleman's threats are ill advised and made, doubtless, without reflection or premeditation.

If the people of this proud commonwealth require a removal of their seat of government, let them remove it to Louisville, or any other place, and when they do so, I will say to the gentleman, take the court of appeals with it. There is propriety—there is fitness that the three high departments of the government should be at the same place.

I have voted sir, throughout for four districts and four judges. The votes were given from a conviction that four districts would bring candidates for the judgeship within the knowledge of those who are to elect them, and from the fact that a fourth judge would add strength to the high character of the court, and give weight to their decisions, with three to concur in opinion.

These votes were given also, to gratify gentlemen who seemed to desire the district mode of election, and also to obviate the objections raised by those opposed to the election by the people—that they could not know for whom they were voting, and the practice would soon run into the mode of selecting other officers by central influences, and party arrangements.

I did it sir, to lessen in some degree the heavy labors that the court now undergo.

In doing this, I did not pledge myself to go for establishing branches of the court, as I clearly indicated in a few remarks heretofore made. But I am told by the gentleman from Simpson, that I must advance to this, under the penalty of forfeiting all the interests of my constituents. I say to gentlemen, they may reason me into the measure, but I cannot be driven. I know my people too well to believe for a moment, that any considerations growing out of the location of the capital, or any threats of its removal, would be regarded by them, and most certainly they will not be by their humble delegate.

I am not disposed to impute any thing improper to delegates, or to charge them as being actuated by considerations of a selfish character, yet I could but remark on yesterday, when the fourth judge was rejected, that some of those who have manifested so much concern about the branching, should show plainly that they regarded that as fatal to their projects.

Why did the honorable delegate from Montgomery show such feeling at that vote? It was

not a defeat of branching, unless he regarded the number of branches as necessary to be regulated by the number of judges, and it spoiled his hopes and calculations for a branch at his town. The fluttering, sir, shown, did awaken a suspicion in my mind, that I had been lending a hand to build the foundation of a project, which I would regard, if carried out, as calculated to weaken not only the independence of the highest judicial tribunal, but the confidence that should be reposed in its decisions.

If the convenience of the people has been the ruling consideration of those who advocate branching, why should they have treated the loss of the fourth judge as fatal to their project? Three districts, if their arguments be true, would be better than one place of holding the court, and why did they not rally on that? My apprehensions are, as intimated by the elder delegate from Nelson, it broke the combination—spoiled the plan, overthrew the figures, and would not work to suit.

Gentlemen who consider the convenience of the people the paramount consideration, seem exceedingly reluctant to accept the proposition made, to leave the subject to the people, to be decided through their representatives. If it is the will of a majority of the people, as contended for by those who favor the measure, why not trust it to their decision. Will any one in favor of branching, vote against the constitution, with the power conferred on the legislature. My opinion is, they will not. Nor do I suppose any one opposed to branching, will vote against it on that account. Yet, if it is made imperative to branch, although it is against the wishes of a majority, it will have to be done, and however inconvenient it may be when put to practice, it will have to stand until the constitution is altered, and will necessarily bring against the constitution we adopt a heavy vote.

Our work sir, would be endangered, and greatly endangered by introducing as fixed rules, matters that have not been desired by the people.

What papers in the state proposed or discussed the plan desired by the committee of the court of appeals? What delegates made it a question in their canvass? The gentlemen from Simpson and Montgomery, both say they spoke of it to their constituents. This may be all true, but does it prove that a majority of the people, or of even their own constituents favor the project in the absence of any contest upon it, or direct expressions of the people's will. Let me ask the honorable gentleman from Simpson how many litigants from his county had occasion to come to the appellate tribunal of the state the past year.

Mr. CLARKE. If the gentleman will permit me, I believe the tables show only one case. There would perhaps have been more, if the inconvenience of travel, and the increased expense of attendance upon the court of appeals, had not been so great. Hence, justice was withheld from them.

Mr. LINDSEY. He answers one, only one. But he says many more would have asked reversals of erroneous decisions given against them, but from the fact that the distance was so great to Frankfort. It proves one of two propositions to be true; that the cases decided must be small

indeed, or that there is more need of lawyers in his county, than of a branch of the court of appeals.

It cannot be that a gentleman of his abilities as a lawyer, would see an erroneous opinion of the circuit judge given, and his client's rights disregarded—his property wrongfully taken—when the erroneous judgment could have been revised at an expense of fifty cents or a dollar paid for postage, in transmitting by mail to the town of Frankfort, the record of the case, with a short written brief, pointing out the errors of the circuit court.

Sir, the time was when the court of appeals of Kentucky was what every tribunal of the last resort should be, a court having the confidence of the people—an ornament to the State—and its decisions commanded respect and confidence wherever read. Those were the days when the court had around them lawyers of the highest eminence in their profession. Causes were then argued and re-argued, and opinions were revised and re-revised until they contained an expression of the law plain and easy to be understood.

Those were the days when causes were required to be argued, and then the bar enlightened the court and the court the bar. It was this discussion and labor that made such a bar and such a court. Even in those times, sir, when there was no admission to practice in that court except by regular license of the court—when personal appearance was demanded—when litigants or counsel had to attend the court and await their turns upon the docket, the efforts to branch the court, repeatedly made, were unsuccessful. The arguments then were as now, the great distance to come—the exceeding hardship that a litigant should have to travel all the way to Frankfort with his record.

These objections, sir, were obviated by rules of practice made by the court of appeals and by legislative enactments; until now a man may practice in that court who cannot practice in the county courts of the state. He has, sir, but to write a brief in his client's name, and to send it to the court, and the thing is done. The court is left to find out and apply the law themselves without the aid of authorities. In half the cases they decide, and those who practice in the way suggested, do not aid the court; yet in every case when they do not get a cause decided as they want, become critics on the decisions of the court, and thereby aid in destroying the confidence the people should have in such a tribunal.

It is but a short time since, perhaps one or two winters past, the legislature passed an act requiring the clerk of the court of appeals to docket the causes of each judicial district together. The docket is published under this arrangement before court, so that every lawyer who desires to attend the court in person can come on the very morning of the day if he pleases when his case is to be heard. Thus, sir, every arrangement that can be made to cheapen and make convenient the practice in that court has been adopted, and still some of the profession at a distance seem dissatisfied, and make charges that Frankfort lawyers are monopolizing the business of that court. Look to the records of the court what lawyers of Frankfort are doing—not one sixteenth of the causes are attended to by them. For my humble

self, were I actuated by selfish considerations, and looking to what I might make as a lawyer, I would say unhesitatingly branch. But no such considerations are influencing me—none such influenced the people of Franklin in twice casting a handsome majority in favor of this convention. Have they regarded such matters as have gravely on this floor been charged upon them? Nay, had they dreaded the fierce denunciations that some are inclined to hurl at them, it would have been their true policy to have voted against the convention throughout.

What would be said to a plan like that of Ohio, of increasing the judges and having a court of appeals in every county. This would be bringing decisions of causes nearer still to every man's door, although it might not bring him justice or correct law. That is the plan in one sister state—one exceedingly disliked by the people of Ohio, if I am correctly informed, in relation thereto. They have been compelled to require their supreme judges to meet in bank at the capital of their state once a year to preserve uniformity of decision amongst them on their circuits, and to have the opinion of a full court on questions new or difficult. No one wants such a machinery here, I am sure, yet it is but carrying out the principle contended for, that the highest courts should be brought to every man's door.

The next thing looked for, is that the governor of the commonwealth shall branch out. He can't be branched. Why shall he not travel through each county of the state dispensing the duties of the office fairly to each county, and doing the business of the people at their own doors. A fair division of his time in that way would not only be pleasant, but would perhaps keep him in fine health by traveling. Is there not, sir, in the executive departments, twice the amount of business to be transacted by the people which requires them to come in person or by proxy, to what there is in the court of appeals? The same in relation to the legislature. Why require that this department shall sit at one place? Could they not as well move about holding sessions one year at one place, and another year at another? These rambling departments may suit some, but I imagine if left to the people they will not approve them, even on the consideration of having law and justice at their doors.

But some gentlemen say the expenses to be incurred are nothing. Sir, I do not let dollars and cents influence me much in gratifying the wishes of my friends in building up this constitution, yet I know sir, the taxes of this state have increased fearfully in the last fifteen years, and are in a fair way, from the failure of our public works to meet expenditures, to be increased greatly more. It is time sir—it is necessary that we cheapen the administration of justice, and the expenses of government to the people, instead of increasing them. Every one concedes that the branching must necessarily increase the expenses, and the gentleman from Simpson would have had all his people taxed to have brought four judges to his neighborhood to decide the one case from his county rather than let the litigant pay the expense of getting his cause to Frankfort.

In addition to the items of expense already



enumerated by the elder delegate from Nelson, there are a few more sir to be added, if branching prevails.

The attorney general must necessarily attend to the business of the commonwealth in each district court. Who sir, qualified to be the legal adviser of the executive of the state, and all the higher officers, would fill that office and perform its duties then for four or even five times the salary now paid—abandoning all other business and every other pursuit, to ride about with the judges to the several courts as he would have to do. He cannot practice by brief in causes of the commonwealth, that he did not attend to in the court below, nor would it be meet and proper that he should do so.

Then sir, you must have a traveling reporter for the court, or four reporters, with sufficient salaries to command competent persons to perform the service of reporting the opinions of the court.

And you must also increase the publication of your statutes and reports four fold, at least, over the number now required, for exchanges with other states and the United States, which will be found no small item of increase. Thirty copies of reports and statutes now for the states, and one or more of each for the United States, must be quadrupled, saying nothing of all other books requisite for a library.

The interest of the state—the convenience of the people—I do not believe require the branching of the court of appeals. Certainly it was not a matter complained of sufficiently to justify us in making it a fixed rule in our constitution to be made. I am, for one, unwilling to hazard higher things, we know the people require, by introducing doubtful ones, to say the least, that have not been required. I will vote to leave it to the people. If they desire it, the legislature will be commanded so to arrange the court.

Mr. President, I did not intend to have said a word on this subject to day, nor would I have spoken, but for the attack made upon my town and county by the honorable delegate from Simpson, who seems to think that Frankfort influence is at work against his favorite measure. Such complaints are often made by persons who seem to me to find out a great deal more of the actions of the people here than I do. I aver sir, I have seen no interference by any citizen of Frankfort, in any way upon any subject before us. They are a free people, and will remain so, unless frightened by the threats of my friend from Simpson.

Once for all sir, I have to say, the people of Frankfort have asked nothing from the convention. They have not, in any way, interposed their feelings, interest, or wishes against any of the matters as yet discussed before the convention; and I do protest sir, against their being held up unjustly as I think they have been to-day, when they have not, in any way, interfered, and their delegate has but exercised the right belonging to every member of voting as he deems right for the interest of the state.

Mr. APPERSON. We have heard the gentleman from Franklin enquire here to-day, what has Frankfort got? I am delighted with Frankfort, and always have been ever since my first visit to the place, but the enquiry has been made

what has Frankfort got? In regard to the public buildings, although erected by the people of Frankfort, how often have the people of Frankfort applied to the legislature that money shall be applied from the common public treasury to repay them?

Mr. LINDSEY. I have resided here for thirteen years, and during that time, I have heard of but one application of the kind made. It was to obtain the return of seven or eight hundred dollars by a widow, whose husband at the time the subscription was made, was in affluent circumstances, and surrounded by all the comforts of life. Misfortune brought her to the very depths of poverty, and she was in those circumstances, left with two feeble daughters to provide for. That is the only application ever made to the legislature, so far as my information extends, to pay back any portion of the sum which was contributed by the citizens of Frankfort to the erection of the public buildings. I referred to the fact which will be found recorded in a neighboring county, that at the time when it was proposed to locate the capital here, there was pledged by the owners of the property, a block of lots, now solidly covered by some of the best houses of the town, the whole proceeds of which went into the state treasury to pay for the erection of the public buildings. And be it said to the discredit of the representatives of the people, with a full knowledge of all the suffering that surrounded that lady, and with an overflowing treasury at the time, they wasted and expended it on foolish projects of internal improvement throughout the commonwealth, resulting in nothing but loss to the state, and did not return the money or any part of it.

Mr. APPERSON. I think if the gentleman had looked a little further back, before he came here, he might have found other cases. I have heard of them at any rate, although I do not know whether the money was ever returned or not. But I was going on to notice the enquiry, what has Frankfort had? The present governor is a resident of Frankfort. I was delighted with his nomination and aided in securing it. The clerk of the court of appeals resides in Frankfort, and it is the best office in the state. The register and the second auditor also belong to Frankfort, and they are good appointments, and I do not complain of them. What else has Frankfort had? She has, in the person of one of her citizens, a minister to Mexico—that portion of the foreign ministers that falls to the share of Kentucky. She has also the consul to Liverpool, one of the most lucrative offices in the gift of the president, and she has also a commissioner of Indian Affairs. Now what has Frankfort got, or rather what has she not got? I do not complain. She has distinguished and intelligent citizens, and I believe these are all first rate appointments, but I wish to ask how all this happens? Is there more intelligence and virtue in Frankfort than there is in Louisville, Lexington, Bowlinggreen, Bardstown, and Harrodsburg all put together? It is because there has been a gradual and continual concentration of the representatives of the people, at Frankfort, and there all the greatness seems to have concentrated. The other day, we

were told that there were thirteen lawyers residing in the town of Frankfort who practiced in the court of appeals. Were there that many in Louisville? Let us look at the counties not in the habit of sending up causes to the court of appeals. Suppose we look for a moment at Daviess—it is about as wealthy a county as Franklin, and has about as many voters, and I presume she ought to have as many lawyers, and as able ones to make exceptions, and bring up their cases here, if they did not live so far off. Is it possible that Daviess has no good lawyers? She has one, I know, on this floor, a most excellent lawyer, and a very worthy and intelligent gentleman. I would infer from the remarks of the gentleman from Franklin, that the lawyers in other portions of the state, were from some reason negligent of their clients, and never prepared their causes to bring before the court of appeals. Now I presume that the lawyers all over Kentucky are doing their duty to their clients. So far as my experience is concerned, I have found that the lawyers in the most remote portions of the state have paid quite as much attention to the interests of their clients, as have those in the neighborhood of Frankfort. But in all parts of the state there are not the same facilities and opportunities of obtaining justice, and they feel the want of it.

Gentlemen say that this matter has not been discussed among the people, and that they have not been consulted in regard to it. I insist that in portions of the state at least this is not the fact. The people of the county I represent have been consulted, and there was no difference of opinion on the subject among the candidates. It is true that the county of Montgomery has not suffered as much inconvenience as some other counties, for she has had her fair proportion of causes in the court of appeals. I would be pleased to have the court come to Mt. Sterling, but personally I am satisfied it would be better for me if it was never branched. I practice in many of the adjacent counties, and many of the litigants there have employed me in the court of appeals, when I was not engaged in the court below. But I do not expect to do as much of this business if the court is brought to my town. Why it would be an invitation to other lawyers to settle at Mt. Sterling, and there would soon be as many there as at Frankfort.

But that is not the question. It is, does any grievance exist, and how has it happened? Is Frankfort so much more of a commercial place, and has there been so much more litigation arising there than at Owensboro', where manufactories are growing up? Perhaps it is not so large a town, but it is an equally rich county, rich people, and has as many voters as Franklin. And go to the next county, Henderson, and so on down, and you will see that there is a very great disproportion. I was, I must confess, greatly astonished to hear the gentleman from Breathitt talking about the attorney general as he did. The gentleman ought to have known that the attorney general does not live here, and does not compose part of the court of appeals, and if he will examine the docket, he will find that there are but very few cases in which that functionary appears. What has he to do with the court of appeals? There are no criminal causes, except

little petty misdemeanor cases perhaps brought up here, and does the gentleman think the attorney general would travel all over the state to attend to such causes? But the gentleman might have known that this was a rule which would work both ways. If it was so convenient for two thirds of the lawyers in this commonwealth to appear by brief in the court, would it be any the less convenient for the attorney general to do the same with the few causes he had charge of? Now, so far as the attorney general is concerned, if we shall sit here until the first Monday in December, we shall sit until the court of appeals is in session, and if the gentleman will go into the court room, I venture to say, that he will not see the attorney general more than once in that court. And yet he is a gentleman well qualified for the station, and always attends to the business.

Another objection urged, was the expense of additional officers, tipstiffs, constables, etc., attendant on branching the court of appeals. Now, if an examination was made, it would be found that these officers were paid by the day, and would be required whether the court sat here, as now, or whether it was branched. The expense, therefore, would be the same in both cases. I was a little amused at the gentleman from Nelson (Mr. Hardin) in his designation of the districts. One of them, the eastern district, he commenced at the head of the Big Sandy, and run across to the mouth of the Kentucky river. He would hardly do that, I apprehend, if he was in the legislature. The district would, with more propriety be framed, by including several of the counties on the south side of the Kentucky river, and would not embrace Fayette county. I admit that Franklin would not be so well accommodated thereby, and perhaps Woodford, Jessamine, Anderson, Henry, and other counties nearer, might not, but then look at the greater number of counties whose facilities would be greatly increased if the court was branched. It may be that Harrodsburg would be the centre of another district, though I hardly suppose it would, and at any rate it would be a duty for the legislature, and not this convention, to perform.

So far as the substitute of the gentleman from Jessamine (Mr. A. K. Marshall) was concerned, there was one feature in it which I shall support. I am glad that so able a gentleman has come forward to aid me, for I stated in my remarks on a previous occasion, that at a proper time I should move that the judges should be elected by the state at large, and I understand that his amendment makes just such a provision. Thus far the gentleman from Jessamine and myself are together.

But is there not a grievance in this matter? I take it for granted that the lawyers in other parts of the state are just as attentive to the rights of their clients as are those residing in the centre, and that they would be just as apt to undertake to save the rights of their clients, or would be, if they had the same facility to have their rights adjudicated upon. But, says the gentleman from Franklin, why not make the appellate court travel all over the state, into every county, as it does in Ohio? I answer, because it is inexpedient to do so, and because the same end can be attained by branching. But this, it was urged, would make the court less dignified. Did the branching

system make the courts of Virginia, South Carolina, Massachusetts, Pennsylvania, and New York, less dignified? Was it such a reproach on the judges to require them to travel? Take the number at five hundred cases, and divide them into four parts, and there would be one hundred and twenty five each. Was it so very hard to require four men to travel, say two hundred miles, and not at all hard to require one hundred and twenty five men to travel the same distance to come here? But there would be more than one hundred and twenty five; there would be the parties to each suit, thus making two hundred and fifty. And what is there undignified in these judges thus traveling to four parts of the state and holding their courts there? Will it tend to degrade the courts whose authority is the highest of any we have, those of New York, Massachusetts, Virginia, Pennsylvania, and others? If so, how does it happen that the decisions of those courts stand so high with our own?

The PRESIDENT, the hour of twelve having arrived, announced the special orders of the day.

Mr. DAVIS moved to dispense with the special order, which was agreed to.

Mr. APPERSON. The gentleman from Nelson (Mr. Hardin) has said that the court would be required to sit nine or ten weeks in each place. If there was any evidence that it would sit so long, it is conclusive evidence that the court should be branched. He tells you that they sit now but fifty days at each term, that is about eight weeks. Now when you come to make the calculation, I think that if you branch the court, and require them to sit in four different places, they will not be engaged more than thirty two weeks out of the fifty two. The gentleman has told us that we ought not to be too specific in what we do, and yet what do we find in his bill? He has been so specific as to set down even what shall be the amount of the judges' salary. That is specific enough in all conscience. And his circuit bill reminds me that if the principle is correct, that the court of appeals shall sit all the time in one place, why not apply the same principle to the circuit judge, and say he shall sit in but one place? If it is so undignified for the judges of one court to travel over the whole state, why is it not as equally undignified for the others to travel over, as some of them have to do, ten counties? It is because of the disposition to bring justice as near to every man's door as may be. But I have supposed that four weeks would be sufficient to do the business of the court of appeals at any one of the branches. Perhaps the one in which Frankfort would be situated, if Louisville was thrown in with it, would require five or six weeks. We find that, during the four weeks of the last term the court decided one hundred and thirty cases, and that was quite as many as any district would ever have before it, unless it was the one in which Frankfort and Louisville were situated. Clearly, then, they would not be required to sit longer at all the points than sixteen weeks at one; that would be thirty two weeks a year, and if two more weeks were added for districts where there might be more business, still that would not require more than thirty six weeks. And if

we are going to pay these officers so well, certainly they can afford to labor these thirty six weeks.

The gentleman from Nelson has said that there were a few lawyers, who brought up all of the cases to the court of appeals. I have heard it said also that some gentlemen had such influence over courts and juries that they could gain any cause they pleased. The gentleman has told us that he was advised that the best way to succeed in the practice of law, was to be on good terms with the judge, and I suppose the gentleman has acted on that advice. I do not mean to say that any judge has been partial to that gentleman, but we all know what his talents are, and his great ability to make the worse appear the better cause, and in this way he is able to have the decision in his own way. Hence I suppose those on the opposite side find themselves obliged to come up here to seek redress at the hands of the court of appeals.

I was sorry to hear the gentleman from Jessamine intimate that this was a lawyers' project. Is this so? If we were to look around the house and see how the lawyers stand, they would be found to be divided into two parties, those nearest the capital forming one, and those distant from it, forming another party. Those that live away off want justice extended to them, and those that live in the neighborhood of the capital want to get all the fees. I will not impute such motives, but it is a significant matter that the lawyers here are divided as I have intimated—the gentleman from Henry excepted. I find him at all times liberal, though I am not disposed to complain of the illiberality of any gentleman, because I believe all are disposed to do what they believe to be right.

It was enquired this morning if this court was to be migratory—a term which I do not understand to be applicable to the proposition to branch it; and if that was proper in reference to the court, why not apply the same principle to the legislature? I think there is a great difference between the two cases. They were the representatives of the people, from every county in the state, and fully understood what the people wanted. As in the convention the people were hereby their representatives. Are they present in the court by their representatives? I think not. It is enquired also why should not the governor travel about the state as well as the court? What has he to do with the administration of justice, and the decision of causes! Nothing, as it appears to me. Gentlemen have also referred in the same connection to the reporter. The present reporter is as worthy a man, and as well qualified for the duties of his office as any man in the state, but is it his duty to be in court? Not at all. He has the opinion handed over to him as it is written out, and he gets it printed. I happened to be here when a proposition was before the legislature offering to print these reports for two dollars and twenty-five cents a copy; and although the gentleman was not a lawyer, nor indeed was he required to be; he agreed to have them done as well as those for which the state pays, I believe five dollars for every five hundred pages, and a dollar perhaps for every additional one hundred pages, or five or six dollars a volume. It is also enquired whether it is not a fair propo-

sition to submit this question to the people? It is just as fair as to submit to them whether they will have three, or four judges, or even whether there shall be a court of appeals or not. I suppose the people sent us here for some purpose, and having come here, let us do our duty as the people require. And it does seem to me, when we look at the suits in the circuit courts, and compare the number of them that are brought up to the court of appeals, with the number that come up from around Frankfort, it will appear that either the lawyers are greatly superior in this part of the country, or else they are in possession of great facilities for having their causes adjudicated. These facilities I am desirous to see extended to every part of the commonwealth, as far as is possible. So far as the people of Frankfort are concerned, there is no man who has a higher esteem for them than I have, and in regard to the capital I hope they will always have it among them, and that it will never be removed.

Mr. LINDSEY. It is said that a learned coroner in Indiana on one occasion in charging his jury, laid down the proposition that there were three modes by which a man might come to his death, "by accident, by incident, and by the acts of an incendiary." The delegate from Montgomery has not taken exactly either of these modes of killing off Frankfort and her citizens, although his course may come under the head of one of the learned coroner's classification in the eyes of some. But I do not charge that he is doing it by the "acts of an incendiary." Yet for one who manifests such high regard for my town and people, as the gentleman has expressed, who has not suffered any inconvenience from attending the appellate court here, but found it pleasant, agreeable, and profitable, it might seem strange that he has been arming himself with such weapons as he has used on this occasion.

What delegate, let me ask, Mr. President, introduced Frankfort and her influences into this discussion? Certainly no one will charge me? Nor will the charge lie at the doors of any of those who oppose the branching of the court of appeals. I leave the convention to determine. When I am compelled to fall down in argument for objecting to any constitutional provision, or in its advocacy to the mere wishes or interests of a single county, or her influences, the question will not be considered worth the opposition or necessary to be established. I hope, sir, my vision is not so far limited that I cannot see great interests to be promoted in the state at large.

The gentleman asks what has the governor of Kentucky to do with the administration of justice? I respond much to do with it in the various executive branches. Had the gentleman spent a small portion of the time he devoted in making out tables, that prove nothing, that advances an argument for his branching proposition, in ascertaining the amount of business the people of Kentucky do in the executive branches of their government, he would have found that the arguments, on the score of inconvenience to the people in visiting the seat of government, would apply with much more force to the governor's being stationary at one place than to the court of appeals.

The gentleman asks "what has Frankfort not got?" and answers, "she has the governor, second auditor, register, clerk of the court of appeals, minister to Mexico, consul to Liverpool, and commissioner of Indian affairs." All true, sir. The citizens hold these offices. But the gentleman says he does not complain. If not, why does he introduce such statements, invidiously, or seemingly so?

Did the citizens of Frankfort create these offices, or fill them? What agency had her people in causing the distinguished gentleman, now at the head of the executive department, to fill that office? None, sir, whatever. He was selected by a convention of delegates from all parts of the state.

The mode of crying out "Frankfort influence" is no new thing to me. Frequently have I seen members of the legislature elect to the petty offices, necessary to the organization of both houses and the management of their business, citizens of Frankfort, and then heard them charging that it was brought about by Frankfort influence.

Because a turnpike road runs through the town, in which the state is interested, that is named as a great matter in the grave charges against the citizens.

I regret to see honorable delegates resorting to such means to promote their favorite projects; and again, sir, protest that they find argument and sound reason to sustain them, rather than denunciation, so unmerited as it has been, from any act of my constituents.

Mr. CLARKE. It is true that in the remarks I submitted to the house some half hour ago, I stated that there were lawyers in Frankfort and the counties adjacent who perhaps were as much interested in continuing the court of appeals here, as lawyers in the districts possibly could be in branching the court of appeals; but I did not intend by that remark to intimate that the feeling was stronger in the one class than in the other. I make the remark to meet the suggestion of the gentleman from Jessamine, who stated it to be a lawyer project, or rather that it would so be considered by the people, for he did not himself declare that he believed it to be so. Now, I have been considering upon the vote taken yesterday, and could not discover that this proposition of branching had received any strength from many lawyers either of Franklin or the surrounding counties. It has been asked—what has Frankfort got? In proportion to its population, Frankfort has received more from the public treasury than any other town in the state. If I am not mistaken the very streets that surround this capital were paved at the public expense, and not at the expense of the citizens of Frankfort. The gentleman from Franklin shakes his head, but I have been informed that the whole state has been taxed to raise money for that purpose. There are various other benefits Frankfort is continually receiving.—From the adoption of the present constitution down to the present moment, one hundred and thirty eight delegates have yearly assembled here, and it is a fair estimate that each one of them has left a dollar a day in Frankfort. They have assembled here yearly and have thus furnished a market for the county of Franklin and the surrounding counties, and thousands

and tens of thousands of dollars have thus been annually spent here. Now, I have served in the legislature here for two years, and I have not a word to say against the citizens of Frankfort, for they have always treated me politely and hospitably. Nor have I made any attack on the people of Frankfort; but I have said this: That the people of a region of the state which I in part represent on this floor, want a branch of the court of appeals there. They want the means of justice brought nearer their doors, and I stated the reason why, and attempted briefly to enumerate the hardships under which they have been laboring for the last fifty years. I then said that if the representatives of the people in this convention withheld from that portion of the state a branch of the court of appeals by which justice could be obtained more easily than at present and at less expense, that we could try and take the court of appeals itself nearer to us. If we were to receive the cold shoulder, and to have the backs of the hands of the delegates of this convention turned upon us down there, when we asked for no more than simple justice, I then appeal to the whole delegation from that region of the state to stand up, and if we cannot do any better, we will try to have the court of appeals removed nearer to us than it is at the present time.

The objection to branching the court of appeals, as I understand it, is based upon two grounds. First, the increase of expenses, and secondly, that it will lower the dignity of the court. It has come to this, then, that these judges of the court of appeals degrade themselves if they go to the different parts of the state and mingle with the people! One of the strongest arguments against the life tenure of the office is, that the judge, after he has been on the bench a number of years, does not know the wants of the people, has not the least idea of their spirit, and does not appreciate their intelligence and virtue. If you branch the court, and require them to visit the different portions of the state, you enable the judges to know something of the people. And would it in the least interfere with the force and weight of the judicial decision, if it was rendered at Bowlinggreen instead of Frankfort? Not at all. There are thirteen states, I find, by a hasty examination of a book of constitutions here, in which their supreme court has been branched. In some they are required to hold courts in seven and eight different places, and in others in two, three, and four. What states are these? One is the Empire state. I call upon gentlemen who practice in the appellate and other courts of this state, and ask of them when they have found a point not decided upon by our own court of appeals, if there is any higher authority in the country than the decisions of the supreme, or appellate court of New York? There is Massachusetts, too—her court of appeals is branched. When you have not found the decisions of your own court to apply, I ask where you find higher authority than the decisions of Massachusetts? Virginia, North Carolina, South Carolina, Tennessee, in short, I believe more than a majority of the old thirteen states that assembled in convention and framed the federal constitution of this proud union, have branched their court of appeals,

and the weight and authority of the opinions of those courts are not inferior to those of any courts in the union. I live on the very borders of the state of Tennessee—the county in which I live is on the state line—and I know something of the operations of the system in that state. The court is there called the supreme court, and sits in three different districts, and I have never heard the first man say that the decisions of that court rendered at Knoxville, were not just as dignified and authoritative as those rendered at the city of Nashville.

I trust I shall not be understood as imputing motives here, but it is a notorious fact, that the idea prevails, that there is an influence about this place, which, when exerted under a strong motive, and where the interests at stake are important enough to arouse it, it is difficult to resist. Why, how many turnpikes and railroads are there running to other towns with equal population to this? Where is the other town with one or two railroads starting out, and appropriations made for more, and turnpikes running in every direction, and navigation stopped at the town itself? And yet nothing has been done for Frankfort! I then only ask these people who have so long enjoyed all these advantages, to submit to the increase of a tax of half a cent, for the purpose of extending justice to us, when we have been paying into the coffers of the state for years, thousands and hundreds of thousands of dollars, to be expended here, and fill the pockets and purses of the citizens of Frankfort. And will they not now submit to a little increased taxation, to enable us to obtain free access to the court of appeals? That is all we ask.

Mr. STEVENSON. I regret exceedingly the character that this debate has now assumed. I think it portends no good. I dislike to see on this floor crimination and recrimination. I am pained to witness such an array of sectional feeling, and local prejudice, so well calculated to call up the worst feelings of our nature. This hall is an inappropriate theatre for such displays. It is unquestionably not a proper way to get at correct action. It certainly can lead none of us to expect that it will give any force to our work when we shall place the new constitution before the people for their approbation. And for what is it all done? It seems to me we can meet here and enter into an interchange of opinions, and convince each other of error, if error exists, without this personal feeling, this local, sectional, jealousy, which is unworthy of the state, unworthy of ourselves, and entirely unworthy of the great cause in which we are engaged! For myself, I am opposed to branching the court of appeals. I shall give one or two reasons, without entering into a lengthened argument, by which I have been led to this conclusion. In advance, I say that I am actuated by no selfish feeling. I stand not here to-day as a representative from northern Kentucky alone, not as a gentleman blind to the interests of southern Kentucky, because I happen not to live among them, but I stand here as a Kentuckian, prepared to act for the whole state. I stand as a representative on this floor prepared to follow gentlemen when they shall convince me that their proposition is right, and to give it my humble support. But when threats are thrown out—

when denunciations are made—when local prejudices are appealed to, and the worst passions of our nature are attempted to be aroused against this town, or that town, it creates a bitterness of feeling which, if persisted in, must lead to deleterious results and wrong conclusions. I do not know, myself, that I have any particular feeling of attachment to Frankfort, except that it is the capital of my state. If there are underhanded influences at work here—if there is certain wire-pulling behind the scenes here as certain gentlemen have intimated—a sort of central influence—in the name of God do not let us attempt to strike at great principles because we dislike Frankfort. Let us remove the seat of government, but do not let us do that which we know to be wrong because the seat of government, in the opinion of certain gentlemen, is in the wrong place. If it is wrong to branch the court of appeals, let us not do wrong because certain delegates on this floor desire to remove the seat of government! We had better remove the seat of government and get rid of this trouble. That is my idea; and when gentlemen tell how many officers Frankfort has had, what amount she has received from the public treasury, who paved the streets, and who built this house and that house, I pass it all by as irrelevant to this discussion, and as unworthy this hall. I think it has nothing to do with the great question whether the appellate tribunal in this state should or should not be branched. If Frankfort is unhealthy—if Frankfort is not central enough—or if any thing else is wrong, why let us select another place for the seat of government; but wherever the seat of government is, there, in heaven's name, let us have the appellate court held! It is, in my judgment, the proper place, and the only place where it ought to be held!

The first reason why I am opposed to branching the court is, that it tends to destroy the independence and the stability of the judiciary.—What leads to enlightened opinions from any judicial tribunal? What tends to judicial stability? Why, correctness in the settlement of the principles contained in legal decisions. How is that to be arrived at? By laborious, patient, unceasing investigation of all authorities within their reach, and by a calm consultation and deliberation over them. The science of the law, like every other science, is progressive. New books, as well as new principles, are every day being developed and brought forth. Late editions of English works and American editions, with American notes and authorities of these English works, are every day being published. The judges, in order to arrive at correct principles on any subject should have all the light, and all the means of consulting these new works. While judges must exercise the labor and patience of investigation, yet they must also have, in fine libraries, the materials and legal quarries upon which this labor and this patient investigation is to be exerted. Can you furnish these materials more readily by having four branches or one single appellate court? Is it easier to have one fine library, and a fund set apart in this constitution for its annual increase, by the purchase of new books, or is it easier to have four branches and four diminutive libraries,

without increase? I think it is easier to have one. And by having but one, we are more likely to have a good one, with much better prospect of having it annually increased by valuable additions, than if we had four.

Look at the supreme court of the United States. Let any gentleman go into that court, and I care not how distinguished or how humble he may be—I care not how much prejudiced against the legal profession that visitor may be—let him be a lawyer or not, he will, on entering that august tribunal, feel proud of it as one of the institutions of his country. If he is a lawyer he will feel proud of his profession; if not a professional man he will be proud of the intellect, the dignity and imposing aspect of the tribunal itself, the ability with which questions are there discussed, and above all with the solemn and impressive manner in which the learned, able, and well digested opinions of that tribunal are delivered. Would gentlemen branch that court? It seems to me that if there is any thing in this argument of convenience in traveling to and from courts, as we have heard to-day, that gentlemen living in Texas would find a great many more reasons to urge against the inconveniences of having to travel to Washington city, than can be urged by any man in Kentucky? But I have never heard any such complaints from the people of any part of the confederacy. In the supreme court they have lawyers too from every part of the Union—they have two fine libraries, consultation rooms, printed briefs, printed records; no pains and no expense is spared in order to arrive at safe and correct, legal or constitutional conclusions. How consistent the opinions of that court—how stable—how uniform—how able—how distinguished? When we hear of a Mansfield and a Hale, and a host of other bright luminaries who have adorned the English bench in former years, what American heart does not thrill with pride and pleasure when he hears even upon the other side of the Atlantic, that we have, in the names of a Marshall and a Story, jurists worthy to sit side by side with them, and associated with them as distinguished compeers! I believe the branching of the court of appeals will be the first stroke at the stability of the judiciary. And it is not, Mr. Chairman, as a northern Kentuckian or as a sectional man that I speak, but as one who feels deeply the importance of a respectable and independent judiciary. I speak as one who desires to see the character of our jurisprudence raised and elevated—a jurisprudence which by its learning and stability shall rank with any in the Union. When gentlemen tell me that you can have the same light, the same mature deliberation in branching the court of appeals, I point them to those states where branching has existed, and I ask, has it given satisfaction? Let me tell my friend from Simpson, that some of the very states that he has quoted are now praying to be delivered from the system of branching their appellate court which they had unfortunately adopted in their constitution.

I know a state which has just called a convention, and one of the crying evils is the low character of their judicial decisions—the perfect begging of justice—I mean the state of Ohio.—There they have these migratory courts with a vengeance. Had I time I could, by the de-



cisions of cases there, show the instability of such a system. I could show that in one prominent case at least, (*Zercher vs. Good*), after solemn determination of an important judicial question—under which the courts acted for years—they have recently taken it all back and unsettled all the judicial decisions of like principle.

Mr. Chairman: Judges are like other men.—They are subject to the same physical infirmities. Were I called in bad weather and over bad roads to go five hundred miles to argue a case, would not the fatigue of the journey render me, in some degree, unfit to perform the duty for some days. Gentlemen may talk about it as they please. There is no difference between judges and other men! Take the judges for eight or ten months to distant parts of the state—far from home—and there will be a natural anxiety to get home; a feverish restlessness in the minds of the judges to hurry through and get home, which, if it is not calculated to render them wholly unfit, will at least tend to banish and keep away that mature, calm, and patient deliberation which is so essential to the consultation room of every judicial tribunal. I am disposed as an humble member of the convention to go as far as any man could go to accommodate the whole state. But at the seat of government, which should be central in its location, some inconveniences must result to those living on the extreme confines of the state in their business with the state. It is not, Mr. Chairman, confined to the judiciary, but it applies to every other department of the government. If, to overcome this, it is necessary to branch the judicial department, why not branch the other departments of the government? Let me illustrate. Suppose the neighbors of my friend from Simpson (who utters such bitter complaints,) desire a land warrant—would they not have to apply to the county court first, then to come to Frankfort and bring a survey which they would deposit in the register's office, to get a receipt from the register, and at the end of six months receive their patent. Suppose again, money has to be paid by sheriffs into the treasury department. Do they not all have to come here and settle with the second auditor? Wherever the seat of government may be located, those who live in the distant parts of the state having business with the state, requiring them to be present, will be put to some inconvenience. Now, it strikes me that all the argument of my friend from Simpson, in order to get over the injustice which he speaks of, would require us to have traveling auditors, treasurers, and registers, and all these departments ought to be branched.

Mr. Chairman: The question which I commend to all the advocates of the branching system is, whether it is not better to have the court of appeals here and get justice, than have a court of appeals at every man's own door, and obtain a sort of peddling out of justice—a species of justice which will be only half administered, because settled on wrong principles. Is a man more benefited by having wrong decisions at his own door, than if he were to come here to the seat of government and have his suit decided on correct bases. I think myself that the people, if they believe they will have a better court here, a more enlightened court, more stable de-

cisions, and a higher character given to the jurisprudence of our state, would prefer the appellate court here than to have a migratory court traveling through certain districts.

I shall not go into the large increased expenditure which would necessarily be incurred by a branching of the appellate court. That question, and the details of increased expenditure, has been gone into by the gentlemen who have preceded me. What I want is, that when I get here I shall find a learned, stable, safe, and independent judiciary; and I wish to have the salaries of the judges fixed in the constitution at an adequate minimum. Why? Because I think that also tends to preserve and keep the judiciary independent. When I was in the legislature for one or two years, I frequently heard propositions made to reduce the salaries of the judges, although they were but twelve hundred dollars. There were gentlemen in that body who thought they were too high, and bills were continually introduced, and time and money was continually spent in discussing the propriety of reducing the salaries; and the money thus wasted in useless discussions and fruitless efforts at reducing salaries, if it had been applied to the judges' salaries, would have given us the best talent in the state. I think that while I am not for paying any more respect to our judicial department than to any other, I am for keeping it firm and independent. I am for putting a limit, beyond which the legislature shall not come, whatever that limit may be. Let this convention agree upon what would be the true minimum compensation, and beyond that do not let the legislature go. Neither make it too high or too low, but make it adequate and sufficient! Make it ample to command the best talent in the state.

My friend from Montgomery remarked that it was strange that gentlemen supposed that the attorney general would ever be required to attend a court of appeals. My friend seemed to think that every thing could be done by brief. I do not think it at all strange, and I think the gentleman from Montgomery is entirely mistaken. Whether the attorney general would or not, be required to attend the appellate court in the several districts, would depend on circumstances. There are cases where he could not argue by brief. One is the prosecution for malfeasance of all public officers. But a few years ago the clerk in one of the largest counties, Fayette, was tried, and for two or three weeks was prosecuted before this court. Now, I ask if the court had been branched, and the court had been sitting at the time of said prosecution, if in Greene county, would not the attorney general have been obliged to attend? Whether he must attend or not, will depend on the business of the court, which none can foresee. The necessity of his personal presence will depend on the character of cases arising in the court.—When, however, you appoint an attorney general he will look to all these probable contingent services, and he will require a salary, if he be a man of fine attainments, that shall be a suitable compensation.

But, as I said, I do not intend to enter into the subject of expenses. I think that a secondary topic. I go on the broad principle that the char-

acter of our jurisprudence will be elevated, and I desire to see it stand among the first in the union. I desire to see good judges, that when our commonwealth comes into competition with others, for the service of her sons, she shall give good prices and command the highest talent.—Then fix some adequate minimum—give them the means of light and of investigating cases, and require them to sit at the seat of government. I do not speak of Frankfort—I speak of the seat of government, wherever it may be. There require them to sit, and proceed with the business until the whole docket is disposed of. I came here not absolutely pledged to an elective judiciary. I should prefer, and I expect to go for, the election of judges by the people, because I believe the people will disregard these minor, sectional, personal, and improper influences, which have hitherto operated, by the modes which have existed in Kentucky.

I prefer the people to the legislature; that with me is the last mode. When I was canvassing last summer, I expressed my preference for the people as against the governor and the legislature. I reserved to myself the right, as I still reserve it, to go for any other mode, if any should be suggested, in preference to that. But I believe that the people are fully competent; that they will not only disregard political, but all improper influences. No plan is thought of but that by the people. When I hear gentlemen say that one or two individuals will lead a whole district captive, and the whole will be in the hands of a few intriguers, I think they do injustice to the virtue and intelligence of the people. It is because I have the utmost confidence in that virtue and intelligence, that I prefer that mode of appointment over that by the governor, and the legislature. It is not so much in the mere appointment, as it is in their proper independence, after you have appointed the judges. Keep them above the influence of a bare majority of the legislature; hold them responsible to the people; let their living not depend upon the whims or caprice which from time to time may show itself in this hall. Fix a point beyond which that legislature cannot go: put them in for six or eight years; give them facilities and means of light, and I have no fear that we shall not have, not only a good and firm, but an able judiciary.

One other consideration, and I am done. I have very unexpectedly, and in a very desultory manner, given what I thought was the leading objection to branching the court of appeals. Others have given reasons which with me, are mere secondary considerations. But I would commend to the members of this convention, a spirit of harmony and conciliation in this matter. I appreciate the warm zeal of my friend from Simpson, and it is natural that my friend from Franklin should feel excited when sneers were cast against his county and town; but I appeal to both these gentlemen, as well as to every delegate on this floor, if we would not be acting wisely, to let this matter rest where it can be reached. If a majority of the people of Kentucky desire to branch this court of appeals, as an humble servant, I shall yield my opinion, however honest, and bow with the most perfect acquiescence to their will. Therefore, let us put

it into the constitution, that it may be branched if it shall be demanded by the people—let us leave it for the legislature to determine when, if ever, this shall be done. This is a sort of olive-branch that meets with my most hearty approbation. It is not denying any portion of the people justice; it is not forcing them to come up here against their will. If they desire to have this court branched, all they have to do, is to instruct their representatives to do it. Their fiat would be the law of the land; then every gentleman would be satisfied; whereas, if they do not desire it, if it is unpopular, and not demanded by the popular will, we have still done wisely; because we have kept it out of the constitution. We shall go before the people with this new constitution, having both parties united in its favor. Those who have opposed branching, as proposed in the bill, will achieve what they want, unless a majority of the people of Kentucky should hereafter desire this court branched through legislative action—while on the other hand, those who are in favor of the plan of branching, as proposed by the committee, will have a mode of effecting their object.

On motion, the convention adjourned.

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SATURDAY, NOVEMBER 3, 1849.

Prayer by the Rev. STUART ROBINSON.

REPORT FROM A COMMITTEE.

Mr. STEVENSON from the committee on Miscellaneous Provisions, made the following report, which was referred to the committee of the whole, and ordered to be printed.

#### ARTICLE —.

##### GENERAL PROVISIONS.

SEC. 1. Members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: I do solemnly swear (or affirm, as the case may be,) that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of ———, according to law, and that I have neither directly nor indirectly, given, accepted, or knowingly carried a challenge, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, since the adoption of the present constitution of Kentucky, and that I will neither directly nor indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, during my continuance in office.

SEC. 2. Treason against the commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 3. Every person shall be disqualified from holding any office of trust and profit for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

SEC. 4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

SEC. 5. No money shall be drawn from the treasury, but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

SEC. 6. The general assembly may direct, by law, in what manner, and in what courts, suits may be brought against the commonwealth.

SEC. 7. The manner of administering an oath or affirmation shall be such as it is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God.

SEC. 8. All laws which, on the first day of June, one thousand seven hundred and ninety two, were in force in the state of Virginia, and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the legislature of this commonwealth, shall be in force within this state, until they shall be altered or repealed by the general assembly.

SEC. 9. The compact with the state of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this constitution.

SEC. 10. It shall be the duty of the general assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 11. All civil officers for the commonwealth at large, shall reside within the state, and all district, county, or town officers, within their respective districts, counties, or towns, (trustees of towns excepted,) and shall keep their respective offices at such places therein as may be required by law; and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

SEC. 12. Absence on the business of this state, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this commonwealth, under the exceptions contained in this constitution.

SEC. 13. It shall be the duty of the general assembly to regulate, by law, in what cases, and what deduction from the salaries of public officers shall be made, for neglect of duty in their official capacity.

SEC. 14. Returns of all elections by the people shall be made to the secretary of state for the time being, except in those cases otherwise provided for in this constitution.

SEC. 15. In all elections by the people, and also by the senate and house of representatives, jointly or separately, the votes shall be personally and publicly given, *visa voce*.

SEC. 16. No member of congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this commonwealth, or hold or exercise any office of trust or profit under the same.

SEC. 17. The general assembly shall direct, by law, how persons who now are or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

SEC. 18. Any person who shall, after the adoption of this constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person, or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of the state, shall be deprived of the right to hold any office of honor or profit in this commonwealth—and shall be punished otherwise in such manner as the legislature may prescribe by law.

#### ARTICLE —.

The seat of government shall continue in the town of Frankfort, until it shall be removed by law: *Provided, however,* That two thirds of all the members elected to each house of the general assembly, shall concur in the passage of such law.

#### ARTICLE —.

That the general, great, and essential principles of liberty and free government may be recognized and established: WE DECLARE,

SEC. 1. That all freemen, when they form a social compact, are equal, and that no man or set of men are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

SEC. 2. That all power is inherent in the people and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and protection of their property. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious societies or modes of worship.

SEC. 4. That the civil rights, privileges, or capacities of any citizen, shall in no wise be diminished or enlarged on account of his religion.

SEC. 5. That all elections shall be free and equal.

SEC. 6. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate.

SEC. 7. That printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty.

SEC. 8. In prosecutions for the publication of papers investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases.

SEC. 9. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place or to seize any person or things, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

SEC. 10. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

SEC. 11. That no person shall, for any indictable offence, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, by leave of the court, for oppression or misdemeanor in office.

SEC. 12. No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

SEC. 13. That all courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

SEC. 14. That no power of suspending laws shall be exercised, unless by the legislature or its authority.

SEC. 15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

SEC. 16. That all prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

SEC. 17. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SEC. 18. That no *ex post facto* law, nor any law impairing contracts, shall be made.

SEC. 19. That no person shall be attainted of treason or felony by the legislature.

SEC. 20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth.

SEC. 21. That the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SEC. 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address or remonstrance.

SEC. 23. That the rights of the citizens to bear arms in defence of themselves and the state, shall not be questioned.

SEC. 24. That no standing army shall, in time of peace, be kept up, without the consent of the legislature; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

SEC. 25. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

SEC. 26. That the legislature shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for a longer term than during good behavior.

SEC. 27. That emigration from the state shall not be prohibited.

SEC. 28. To guard against transgressions of the high powers which we have delegated, we DECLARE, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void.

#### COURT OF APPEALS.

Mr. MANSFIELD gave notice that on Monday next, he should move to reconsider the vote by which the convention, when acting on the report of the committee on the court of appeals, had stricken out four and inserted three, as the number of which the judges of the court of appeals shall hereafter consist.

Mr. C. A. WICKLIFFE subsequently rose and said he understood a notice had been given, that a motion would be made on Monday next, to reconsider the vote by which the fourth judge was stricken out of the article on the court of appeals. If such a motion were to be made, he suggested that it should be made at once, and that for that purpose, the rule which requires notice of one day to be given, of a motion to reconsider, should be suspended. He would not however, make the motion now, as the house was not full.

The convention then resumed the consideration of the report of the committee of the whole on the article on the court of appeals, the pending question being on Mr. A. K. MARSHALL'S substitute.

Mr. KELLY moved to amend the substitute by striking out the fifth and sixth sections, and inserting the following:

SEC. 5. The state shall be divided by the general assembly into three convenient districts, and in each of said districts, a judge of the court of appeals shall be elected by the qualified voters thereof, and that judge having the highest number of votes shall be chief justice: *Provided*, That the general assembly may increase the number of said districts and judges, not to exceed in number —

SEC. 6. The said court shall hold two sessions each year at the capital: *Provided*, That the general assembly may order said sessions to be held in the several districts.

Mr. TRIPLETT. I am now somewhat glad that I did not get the floor shortly after the time the vote was taken, by which the fourth judge was stricken out. The greater part of two long nights spent amongst books and musty records is pretty well calculated to cool the blood.

This question of branching the court of appeals necessarily and naturally divides itself into two propositions, one, so far as relates to the mere labor of the judiciary, and the other relating to the interests of the people. It is a natural division. If three judges cannot do the business delegated to them, then we should have four. The object is not only to have the business done, but to have it done well. I am satisfied that three judges can do the business, if ordinarily industrious. I do not believe that this convention desire to throw an amount of labor upon these judges, when at the age of from forty-five to sixty years, which must be ruinous to their constitutions. Will gentlemen look back to the number of judges on the court of appeals bench who have been absolutely compelled to resign or die. Their constitutions could not stand the labor when they became old. Bear in mind that as the wealth, the commerce, and the population of the state increases, as we want them to increase, as a matter of course litigation and law questions will increase, and a complication of law propositions, and with them an increased amount of the business of this court. I have said, and I say it with some forethought, that ordinarily three judges can properly discharge all the business that there is now, or has been for the last few years, in the court of appeals. But I believe that by the time the new court of appeals can be organized, the business will be more than they can discharge, even if that court is at the seat of government. Then it will be necessary, so far as the judges are concerned, to increase their number, in order to meet the increasing amount of the business of the court. Now, with reference to the interests of the people. The number of cases that are reversed by this court, is a matter in which they are directly concerned. I have examined the cases brought before this court during the last four or five years, and find that from sixty-one to sixty-five cases in every hundred, have been reversed, seven or eight of this sixty-five are reversed on mere

technicalities; the people are not interested in such cases, property does not thereby change hands, and ultimately the decision stands as when at first pronounced. But about fifty four of fifty five of these cases are reversed for good cause, and then the property changes hands. The amount of property which is thus changed cannot be accurately ascertained, because it is not usually stated in dollars and cents, but from the best estimate I can make, from four to six hundred thousand dollars worth of property is thus transferred annually, by the decisions of the appellate court.

I have based my estimate upon the average value of the land, as I find it in the second auditor's books.

Now, lay that proposition down, and take up the next. I yield the question, that by branching the court of appeals the business will be increased, yes I may say it will be doubled. I am an advocate for branching this court, yet I agree that by having the court sit in four places, you will double the business; it is precisely for this reason that I want the court branched. Bearing this proposition in mind, will gentlemen tell me that four or five hundred thousand dollars shall remain in wrong hands, for the want of courts to review the decisions? Now, look to the amount of property that changes hands, stand by the proposition that some have laid down with regard to the increased amount of business of this court, and then answer to your consciences, and to your constituents, whether this amount of property shall remain in wrong hands, merely to save the additional expense of two thousand or twenty-five hundred dollars per annum, which this branching project will necessarily cost.

Perhaps the gentleman from Nelson (Mr. Hardin) will answer, that this property will change hands improperly, if the court is branched; and in consequence of the rapidity with which the court must pass from place to place, there will be wrong decisions. There is no danger that the great principles of law will not be carried in the heads of the judges, libraries or no libraries. The necessity of books for reference, is not so much to settle the justice of a case, as to settle abstract and technical principles, and pleadings. It is strange, yet true, that nearly one third of the books comprising our law libraries, relate to pleadings and evidence.

It is not often the case, that a large amount of property changes hands on account of the laws of pleading. These laws are easily understood, and the main object is to get the action properly before the jury or the chancellor. The great principles of law and equity are easily comprehended and tolerably easily applied, and the judges would carry from place to place these great laws which have become, as it were, a part of their common sense. If there are not large libraries, this will be a very small matter compared with the benefits which the people will receive from branching this court.

My great anxiety is to get through with the business. First, I wish to make a good constitution that the people will accept, and then to accomplish this object as speedily as possible. What is necessary for this? I will call the attention of the chairman of the committee on the judiciary, and also the chairman of the commit-

tee on county courts to this point. If we fight over every solitary proposition that is submitted to this body, in relation to the court of appeals and the circuit court, it will be months before we get through. I want to transfer the arena of the contest to the committee room. I want also to add the committee on county courts, with its quiet thoughtful chairman. Let him with other gentlemen of that committee act as arbitrators; let all three of these committees meet of an evening, and let them bring their reports together, and my life for it we shall save weeks, if not months. I hope the chairman of one of these committees will make that proposition. I desire, if it would be in order, that the gentleman from Jessamine, who brought forward a proposition in which there is a great deal of merit, be added to one of the committees.

Mr. KELLY withdrew his amendments, in order, as he said, to enable the gentleman from Jessamine (Mr. A. K. Marshall) to offer an amendment with a view of perfecting his substitute.

Mr. A. K. MARSHALL then moved to strike out all of the fifth section of his proposition down to the word "provided," and to insert in lieu thereof, the words "the judges of the court of appeals shall be elected by the qualified voters of the state."

Mr. C. A. WICKLIFFE. I intimated a few minutes ago that when the house should be full, I would, in order to save time, adopt the course suggested by the gentleman from Daviess. I am ready to agree to any course that will meet the approbation of the house, and enable us to progress with the business, and I move now, if it is the pleasure of the house, to suspend the rule, which requires a motion to reconsider to lay on the table for one day. I understand that the gentleman from Allen has made a motion to reconsider the vote given on the proposition, and that other gentlemen of the house who voted with him, desire that it should be so reconsidered. If it should be the pleasure of the house to adopt that course, and then to recommit the bill and the amendment of the gentleman from Jessamine, as indicated by the gentleman from Daviess, I am ready to acquiesce, and as I have no doubt, are the other members of the committee on the court of appeals. I have at least satisfied myself that if we desire to give to the country an increased confidence in our judiciary department, the number of judges upon the appellate bench ought to be increased to four, though not beyond that number. That number was not agreed to by myself without reflection or examination. Before I came here to discharge the duties assigned me, I had conversed with gentlemen who had not only practiced in that court, but with those who had served as judges there, and their opinion is in accordance with my own, that there ought to be on that bench, an additional judge. I speak not of the present incumbents of the appellate bench, for I did not feel authorized to enquire of them, as I did not know that they would feel authorized to give me their opinion. I appeal also to the president, if he has not heard it demanded from every quarter within the last seven or eight years? I do not design at this time to enter in any lengthened discussion as to the

propriety of having this additional judge, but I, as well as the committee with whom I act, prefer that we shall not meet the other committees, with the vote of the house declaring the opinion that the bill should be so constituted as to compose the court of three judges. We think the committee ought to be left as free to act as the other committees would be. If it is the pleasure of the house to reconsider the vote, I trust it will be done to-day, and then if the course indicated by the gentleman from Daviess be adopted, if no good results from it, at least there will be no harm, beyond perhaps the loss of a little time spent in trying to do good. The house can then proceed to the consideration of the reports from other committees. With a view of testing the sense of the house, I move to suspend the rule.

Mr. HARDIN. I am anxious that these three committees should get together, and in a spirit of conciliation, see if they cannot devise some general, harmonious decision, which will meet the concurrence of the house. But I would enquire if it is not just as well to refer this matter back without reconsideration, as with it? It will at least save time. I have looked forward to the action of the convention, on the circuit court bill, with a good deal of fear and trembling, in view of the labors which will be imposed upon them. They have already been so arduous as nearly to break down some of the members of the committee. I hope the motion to recommit, as indicated by the gentleman from Daviess, will be agreed to, and that the result will be the most harmonious action. I only regret that the gentleman from Washington (Mr. Kelly) has withdrawn his amendment, for it met my views exactly.

Mr. KELLY. It will come up again.

Mr. IRWIN. I am as anxious to get through as any gentleman here, but I am disposed to see a vote taken on the proposition of the gentleman from Jessamine, and then the house may determine which of the plans is really the best.

Mr. C. A. WICKLIFFE. If there is any objection to dispensing with the rule, the desired result cannot be attained. If the gentleman objects, I will withdraw the motion.

Mr. IRWIN. I was merely going to move the *previous question*, so as to enable the convention to come to a direct vote on the proposition of the gentleman from Jessamine.

Mr. W. C. MARSHALL. I understand the motion of the gentleman from Nelson to be, to dispense with the rule with a view of testing the sense of the convention on the question of the four judges, as decided yesterday. I am anxious that this course should be adopted, for the reason that I believe it will tend greatly to expedite business. There is a fitness in these reports from the several judiciary committees, and in my opinion, there should have been originally but one judiciary committee, who should have had the supervision of all the courts. But the same thing will be effected by the adoption of the proposition to require the three committees to act together. And I am satisfied, that if the house has any confidence in those committees, the results of their united action will have great weight in the house, and business be greatly progressed thereby. Without something of this kind is



done, I am satisfied we shall remain here until June. I hope, therefore, that the rule will be suspended, and the vote taken at once on the motion to reconsider. If the house reiterates its preference for three judges instead of four, as I hope they will, it will act as a guide to the committees in the framing of their bill.

Mr. BROWN. I trust the house will dispense with the rule. The committee on the court of appeals have bestowed great labor on their bill, and with the exception perhaps of the proposition to branch the court, and to have four judges, it is as perfect as it can be made. I have no doubt that if the bill is referred as indicated, the result will be such as to meet the approbation of the house. I voted to strike out the four judges, not that I had any particular objection to that number, but because I was opposed to the adoption of the branching principle in the constitution. I am willing to leave it to the discretion of the legislature.

The question was then taken on the motion to dispense with the rule, and it was agreed to.

Mr. TURNER. I should like to define my position. I am utterly opposed to branching the court, but I am willing to go for the four judges, and think we ought to have four. I shall vote for the reconsideration, with a view of offering a proposition which I think we had better compromise upon. It is to fill up the blank with four judges, one to be elected by the state at large, to be styled the chief justice of Kentucky—the state to be divided into three districts, in each of which one assistant appellate judge should be elected, and the court not to be branched. I am willing to go for a proposition embracing that principle, and with that view I shall vote for the motion to reconsider.

The convention having dispensed with the rule referred to, the question was taken on the motion to reconsider the vote striking out the four judges, by ayes and nays on the call of Mr. Hargis, and it was agreed to—ayes 49, nays 43, as follows:

YEAS—Mr. President, (Guthrie,) Richard Apperson, Luther Brawner, Francis M. Bristow, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, William Cowper, Edward Curd, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Ninian E. Grey, James P. Hamilton, Alfred M. Jackson, Thomas James, George W. Johnston, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spaulding, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, Phillip Triplett, Squire Turner, Charles A. Wickliffe, Robert N. Wickliffe—49.

NAYS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, William C. Bullitt, Charles Chambers, William Chenault, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Milford Elliott, Green Forrest, Thomas J. Gough,

Ben. Hardin, John Hargis, Vincent S. Hay, Mark E. Huston, James W. Irwin, Wm. Johnson, George W. Kavanaugh, Charles C. Kelly, Thomas N. Lindsey, Thomas W. Lisle, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, Nathan McClure, Hugh Newell, Johnson Price, Thomas Rockhold, John W. Stevenson, Mich'l L. Stoner, John J. Thurman, Howard Todd, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Silas Woodson—43.

Mr. C. A. WICKLIFFE. In accordance with the intimation of the gentleman from Daviess, I move to discharge the committee of the whole from the consideration of the two bills in relation to the circuit and county courts, and to refer them, together with the bill now under consideration, to the three committees to sit in joint session. I am very much in hopes, that by the adoption of this course, we may facilitate the harmonious and speedy action of this body upon these important branches of the constitution.

The motion was agreed to, and it was

*Ordered*, That the committee of the whole be discharged from the further consideration of the report of the committee on circuit courts and the report of the committee on county courts, and that said reports, together with the report of the committee on the court of appeals, be referred to the standing committees on the court of appeals, circuit courts, and county courts to act in conjunction.

Mr. A. K. MARSHALL then asked and obtained consent of the house to withdraw his substitute.

Mr. KELLY desired to offer his amendment as a resolution of instruction to the joint committee, but it was ruled out of order at this time.

Mr. CHAMBERS. If I knew how to get at it, in order, I should like to test the sense of the convention upon branching the court of appeals and upon the number of judges for that tribunal. These are the two subjects of difficulty; and to obviate them, we have just agreed upon a joint or consolidated committee, to be composed of the three committees upon the appellate, circuit, and county courts.

Now, this is just the committee that should have had the whole subject of the judiciary, from the first; but I am unwilling, after we have spent some three weeks on the report of the court of appeals, and have given an expression of the sense of the convention upon one of these subjects which does not agree with the report, to have the subject referred to this joint committee without instructions. Every member on this floor has the same right to be heard that any one of this joint committee has, and when once we know how many judges we are to make, and whether this court is to be made ambulatory, all difficulty is at an end. I shall, therefore, in the proper time, move to instruct the committee; for, if we do not, we shall have to fight the whole bill over again both in committee and in convention.

It does not seem to me right, that when a favorite measure of the committee on the court of appeals has met with a rebuff in the house, its friends should be permitted to call to its aid the assistance of two other committees, and thus strengthened impose it upon us for a second con-

sideration. In such case instructions to the committee are proper.

The question is, shall the convention instruct the committees, or shall it be instructed by them? I had supposed that we were the people's agents, and instructed by them—and that these committees were our agents, and to be instructed by us.

Mr. TRIPLETT. The very object of recommending these reports to committees in joint session, was to get clear of the identical thing the gentleman proposes. Let the committee get together and then report to the house, and their decision will have force and weight with the house.

Mr. CHAMBERS. I desire that the committee should have the instructions of the house, and will make my motion with that view.

The PRESIDENT ruled the motion out of order, as the time for receiving motions and resolutions had passed.

Mr. THOMPSON had a proposition which he desired to have referred to the joint committee, and with a view of attaining that object he moved to suspend the rule.

The motion was not agreed to.

The convention then resolved itself into committee of the whole, Mr. BOYD in the chair.

#### PREAMBLE, AND DEPARTMENTS OF THE GOVERNMENT.

On the motion of Mr. McHENRY the committee proceeded to the consideration of the report of the committee on Miscellaneous Provisions, on the preamble to the constitution, and the distribution of the powers of the government.

It was read as follows:

#### PREAMBLE.

We, the representatives of the people of the State of Kentucky, in convention assembled, to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this constitution for its government.

#### ARTICLE 1.

*Concerning the distribution of the powers of the government.*

SEC. 1. The powers of the government of the State of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: those which are legislative to one; those which are executive to another, and those which are judiciary to another.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

The preamble and first and second sections were separately read and adopted.

It was then laid aside to be reported to the house.

#### COUNTY AND DISTRICT OFFICERS.

On the motion of Mr. TURNER, the committee next took up the report on the executive and ministerial officers for counties and districts.

The first section was read as follows:

"Sec. 1. There shall be elected a commonwealth attorney for each circuit, and a circuit court clerk for each county, whose term of office shall be

the same as that of the circuit judges; a county court attorney, clerk, surveyor, coroner, and jailer for each county, whose term of office shall be the same as that of the presiding judge of the county court."

Mr. WOODSON. I move to amend that section, by striking out the words "county court attorney." In a great many counties in the state, there is no county attorney at all, and although it may be thought necessary for the despatch of business that there should be, yet in many cases the material is not to be found, out of which to make them; and to require the county courts to appoint such officers would be neither more nor less than burthening the county, with the payment of salaries to persons not properly qualified to discharge the duties devolving upon them. If it were left discretionary with the county courts to appoint them or not, I should have no objection, but to make it imperative would be improper. The courts are to be differently organized from the present mode, if the proposition now before us should be carried into effect. We are to have judges, we are told, who will thoroughly understand the law, and be capable of discharging the duties of their station, without the counsel or advice of an attorney. I think there is no necessity for these officers. It is creating an office hitherto unknown, and which will in many counties of the state be used as an engine, and a powerful one, in the elections. For these reasons I am for striking it out.

Mr. GHOLSON. It appears to me, sir, from the reading of the report, that the subjects embraced in it come properly within the scope of the duties of the committee to whom the reports on the court of appeals, and the circuit, and county courts, have already been referred.

The same matters, it will be perceived, are included in the report that have been referred to that committee, and by way of harmonizing the decision, it seems to me this had better go to that committee also.

Mr. TURNER. I have no great choice in this matter; but the subjects referred to this joint committee, relating to the various courts, are not all embraced in the report that is now under consideration. At the commencement of the session the labors of the convention were divided amongst ten committees, and the subject matter embraced in this report was referred to one or these committees; and unless we set aside the order of business, thus agreed upon, we must take up this report and consider it separately. I know and I have already suggested it once or twice, that much of the matter which is contained in this report, has relation to those matters that were considered by other committees; but unless we add the committee that made this report, to the combined committees to which we have just referred the reports relating to the various courts—and that would be, to have about half the convention on one committee—it is essential that we should proceed with the consideration of this report in committee of the whole. I think the motion of the gentleman from Knox should not prevail. There may be a few counties in the state where they do not employ a county attorney, but still an attorney is necessary to attend to the duties of that office in

the county court particularly, to act in behalf of the commonwealth if anything should come before that court, of a public nature. For instance, in the matter of opening roads. That is a thing which strikes vitally at the interest of the public. And in such case, where a whole neighborhood is interested on one side, it becomes important that there should be an officer whose special duty it shall be to attend to the interests of the county. There is a class of cases also touching directly the public morals, which are brought up for trial in the county court. Such cases require a public officer, whose duty it shall be to see that the law against offences to which I have alluded, shall be carried into execution. In criminal cases that come before the county court, nine tenths of them do not originate with the grand jury. The individual committing an offence is first arrested and brought before a magistrate. If there are no proceedings instituted immediately, the individual in many instances gets beyond the law. And if there be no officer on behalf of the commonwealth, and there should be an error in the warrant when the trial comes up, a technical objection is made, the proceedings are quashed, and the individual is placed beyond the reach of the law. It is essential also to have a prosecuting attorney to examine witnesses; it is as important to have an attorney for such purpose in commonwealth cases, as in cases between individuals. With the salaries which we give both to county and circuit attorneys, we are seldom able to command the same legal attainments and talents, as will be found in the lawyer upon the opposite side. But without having any prosecuting attorney at all—in many instances the offender against the laws will be turned loose to prey upon society, without any person taking the initiatory steps to have him brought to justice.

There cannot be much injury arising from the appointment of this officer, as suggested by the gentleman from Knox, for this reason, that the salaries of the county attorneys are to be regulated by the electors of the country, and if there should be little or no service to be rendered, of course the salaries will be small, they will be proportioned to the service. I think that an officer ought to be appointed in every county of the state, and my colleague says that the old constitution either directly provided for the appointment of such officers, or recognized that as being proper and necessary.

Mr. BARLOW. I concur in the opinion of the gentleman from Ballard, as to the propriety of referring this report to the three committees to whom were referred the reports in relation to the various courts. I think it is a subject that is immediately connected with that which those committees have before them. I therefore move that it be passed by, to be reported to the house when this committee rises, with the view of having it referred to the committees on the subject of the courts.

Mr. C. A. WICKLIFFE. I hope my friend will not persist in the motion to refer this motion also, to the three committees. It is said that it is the last furrow that breaks the horse's back. I think those three committees have as much as they can do, and if the gentleman will refer it to some other committee, it will be as well.

Mr. DIXON. Do I understand the gentleman as proposing to refer the whole of the report to the three committees, or only so much as relates to the commonwealth attorney.

Mr. BARLOW. I mean that portion of the report that is connected with the judiciary department.

Mr. DIXON. I believe it is all connected with that department. If the whole report is to be referred to that committee, perhaps we had better abolish the committee on ministerial and executive offices altogether. It takes every thing from that committee that appropriately belongs to it. I do not think that the committee ought to be deprived of its own work. I do not know if the motion is strictly in order. I am not at all satisfied that it is in order, to take any portion of the report, and to refer it to another committee, leaving the balance here. I have great doubts about it. I think we had better let the matter remain where it is.

The CHAIRMAN. It would be unprecedented, in my opinion, to refer it to another committee.

Mr. DIXON. I think myself, it would be wholly unprecedented, but still let the fault rest where it belongs. I merely make the suggestion.

Mr. CLARKE. I submit if it would not be well enough for the house to indicate by vote, or in some other way, the change that they desire should be made in the report. If this report should be referred now, to the three committees, or if it should be returned to the committee which reported it, they would have no means of determining, or of ascertaining the sense of the house, in regard to any action to be taken by the committee. They would not be advised whether it was the sense of the convention that there should be a county attorney or not. I apprehend that the better plan would be, to take some question in committee of the whole, upon the proposition submitted in this report upon a motion to strike out, or some other motion, and that, if it be necessary to refer it back, will enable the committee to make such change in the form of the report as will be conformable to the opinion of the convention.

Mr. BARLOW. I am by no means particular about the form of proceeding. I heard an intimation from gentlemen in different parts of the house, and a reason given why it was necessary to commit this report to the same committee to whom had been referred the reports in relation to the different courts, was that the subject might be made to harmonize, inasmuch as they were intimately connected.

Mr. BROWN. I consider that there would be no propriety at all, in referring this report to the joint committee on the court of appeals, the circuit court, and the county court. There would however, be some propriety in referring it to the committee on the circuit courts. For I find in those two reports, that provision has been made for the same class of officers, the same qualifications are required, the same duties, and the same mode of election are prescribed. I think it would be proper to refer back the report to the committee who made it, including the committee on the circuit courts.

I therefore move that the committee rise, with the view of so referring this report.

The PRESIDENT. I think we had better pass upon some principle and ascertain the sentiment of the convention, in relation to the election of these various officers, and how many we are to have, and after we have determined those points, we may refer the subject to a committee that they may put the whole in a connected form. But as to referring it now, without first obtaining the sentiments of the convention upon the subject, and determining what is to be done with it, I think it would be a loss of time. It seems to me, it would be throwing upon the committee a duty which we ought to discharge ourselves. I am against the committee rising, and reporting to the house, with the view of referring the subject to a committee.

Mr. TURNER. It appeared to me when the committee that made this report was formed, that it was not very essential except for the purpose of dividing the labors of the convention among its various members. I therefore feel no particular pride in having advocated the formation of this committee, or of assisting in its labors, but I should consider it an injustice to other members of the committee, if their labors were to be referred to another committee, without adding the committee also. Taking the fruits of their labor and placing them before these three committees, without adding the committee as a fourth, would be like treating them as ministerial sure enough, and the others as judges to try them. And that would be the effect of the motion of the gentleman from Hardin. I admit that the committees which made the various reports that were referred back this morning, are in many respects more important committees than this, still the officers here provided for are essential to the commonwealth, and there is a committee to which this particular branch of duty has been assigned; and they have reported the result of their labors. I think as a matter of course, we ought to consider this report. It is true the committees on the various courts have assumed to report upon matters which did not properly belong to them, and upon which they had no power given them to report, and I will say another thing; I do not believe the suggestions they have made as regards the same officers are equal, certainly not superior to those contained in this report. I believe in point of principle, and in every other point of view, that the report under consideration is superior to the reports that have been made on the same subject by other committees. I am therefore opposed to the motion to rise and refer this subject to the three committees.

Mr. NUTTALL. I doubt the propriety of the committee rising. This matter is before us in a tangible shape, and I think it would be economy, of time at least, to act upon the report as it is, without any further reference to a committee. The county attorney, or attorney for the county court, seems to be cutting a figure in this report, and notwithstanding the objections of some of the delegates on this floor, I look upon him as an important officer in this country. He is an officer who is to supervise, to a very considerable extent, the morals of the county. It will be incumbent that all offenders shall be brought

before the proper officers for trial. In the county where I live—though I do not know how it is elsewhere—we look upon the office of county attorney as something like a stepping-stone for young men who are entering upon the profession of law, and we liberally reward him. Our county gives two hundred dollars annually to the county attorney; he receives it whether he renders twenty-five dollars worth of service or not. We never enquire into the fact. We look upon him as an officer who is necessary to the well-being of the county; but we look more especially upon this office, as a stepping-stone for young men, affording them a means of learning special pleading. Many lawyers are made out of poor men's sons; and it appears to me to be proper to hold out to them some degree of encouragement and assistance; I care not whether it be by voluntary contribution or by tax, so that they get it.

I am opposed to striking out the words, "county court attorney." It can do no harm to allow it to stand. This report, I think, is about as well written as any that has been presented to this house, and we have now got a committee of thirty gentlemen, to consider some three or four of the most complicated questions, and the Lord Almighty knows when they get tangled up together what will become of the subjects that have been referred to them. I was averse to the proposition for making that reference, but I am so often wrong that I thought I would vote with the majority once, and I am now going one step further, and am willing to add another ten to the committee, and let this subject be referred to the committee of forty; then we will select one other subject, and add ten more to the committee, and let them make a constitution, and when it comes in I pledge my honor to vote for any thing they propose.

Mr. RUDD. I think that an opinion ought to be expressed by the committee of the whole, upon the different propositions contained in this report, before we resolve to throw it upon a committee that already consists of thirty members. If the committee that made this report be added it will be equally objectionable; there will be a difference of three to one. I like to vote upon equal terms. I am certain that the joint committees do not wish to be encumbered with any further business than has already been referred to them. They are charged with the regulation of the three courts, and they have as much as they can get through with, without having this subject added. If they act harmoniously and report back a bill upon the subjects already referred to them, that will be acceptable to the convention, they will have done all that we ought to expect them to do; and they will be entitled to the thanks of this convention. You might as well refer the whole business of the convention to these thirty men. I hope the committee will not rise, but that we will go on with the consideration of the report, and finish the business that we have before us.

Mr. GHOLSON. I was very unfortunate in my suggestion. It was made to cut off the very thing I see it has produced—that is debate. I suppose that when the constitution is formed we do not intend to provide for one thing in two places in that instrument.

My object is to get along with the business for which we came here, and I have urged gentlemen to vote more, and talk less. I think we are spending much time uselessly, and if gentlemen will proceed to vote upon the propositions now before them, I will agree not to make a speech for the next three weeks.

Mr. NESBITT. I find by reading the twenty third section of the third article of the constitution, these words:

"An attorney general and such other attorneys, for the commonwealth as may be necessary, shall be appointed whose duty shall be regulated by law. Attorneys for the commonwealth for the several counties shall be appointed by the respective courts, having jurisdiction therein."

I think it is possible that the gentleman from Knox may be mistaken in supposing that there is any county that has no county attorney. The language of the constitution is imperative upon the county court, and they have carried it into effect.

Mr. WOODSON. I would ask the gentleman if "attorney for the commonwealth" there, includes attorneys for counties?

Mr. NESBITT. I presume they are included.

Mr. WOODSON. It is not so in the region of country where I live. That section of the constitution has never been so interpreted or understood, and in various counties they have no attorneys.

Mr. NESBITT. However to obviate the difficulty of the gentleman from Knox I would propose that these officers shall be elected, and that no qualification should be required, and I am of opinion that we would save time by taking up this report, and obtain the sense of the committee upon it. I agree with the gentleman from Jefferson, that by the time these three committees, acting conjointly, get a report prepared and presented to the convention, they will have done as much as they are able to do. If every thing is to be referred to this joint committee, it would be better to add every member of the house to it, and begin over again and take up the old constitution, section by section. I was for that at the start. If every thing is to be referred to this committee of thirty, it ought, I think, to be increased to a hundred.

The question being taken on the motion that the committee rise, it was decided in the negative.

Mr. MITCHELL. I do not understand, as the gentleman who was last up, that the office of county attorney as it now exists in our county courts, is a constitutional office. I apprehend that the attorney of the commonwealth for the county referred to in the existing constitution, discharged his duties at the quarter-session courts; but as the county courts are at present organised, being deprived of original common law jurisdiction, I apprehend that the county attorney is merely a lawyer employed by the court, and is not a constitutional office. The creation of such an officer, to act upon the part of the commonwealth, is of very questionable utility, and I would not like to see inserted in the constitution, an imperative provision for his appointment. The duty of the county attorney is merely advisory. It is very rarely that any duty devolves on him as a practicing attorney. I look upon the office as almost a sinecure. Be-

fore the jury law was passed—it is true—it was appropriately made the duty of the county attorney to attend to prosecutions for breaches of the peace occurring in his county, because the fines went to lessen the county levy; but since the passage of that law, those fines are a part of the jury fund, and that duty should be diverted from him, as a matter belonging rather to the state at large than the county. This would make the duties of the office merely advisory. It is proposed now to change the county court system entirely, to elect a county judge, and the individual chosen to fill that office, it is reasonable to suppose, will be so far learned in the law, as not to need the advice of a county attorney. Under all the circumstances, I think it will be the best to strike out.

Mr. CLARKE. I am not very much wedded to the retention of the provision for the appointment of the county attorney in the constitution, and I have thought that I would submit a compromise to the gentleman from Knox and Harlan. There may be some counties in which county attorneys may be necessary; and I submit whether it will not be best not to make it imperative—as this bill does—upon every county court to appoint a county attorney; but leave it discretionary with the court, by substituting the word "may" for the word "shall." There are counties where such an officer may not be necessary; and I would leave it to the judges to determine whether one should be appointed or not. They would very rarely, I think, employ a county attorney, and thus increase the taxation. They would employ them only when absolutely necessary, and the appointment would be approved by the people. I am in favor of allowing the court a discretionary power, and if my friend from Knox and Harlan will so modify his proposition, I will vote for it.

Mr. MAYES. As it is not a matter of very great moment—if the gentleman from Knox will permit me—in order to meet the views of the gentleman from Simpson, I will move, by way of amendment to his proposition, to strike out the words "county court attorney," and insert the following: "the county court may appoint a county attorney, whose duty shall be regulated by law."

Mr. WOODSON. I accept the amendment.

Mr. MAYES. I do not think it should be imperative on the county court to appoint a county attorney; it should be left discretionary with the court to appoint or not, as they shall think the business and interests of the county require.

Mr. PROCTOR. I do not see any necessity for the appointment of a county attorney; but if we are to have that description of officer—as the principle has been settled I believe that we intend to elect all other officers—I hope that this officer will also be elected by the people, and that his duties will be specified in the constitution, because in some counties in the state under the existing state of things, there are doubts as to what the duties are. In some counties where the duties are not defined, the county attorney has prostituted his office for sinister motives. I am not anxious that the appointment of this class of officers should be provided for, but if it be, it is better that they should be required to

prosecute, in all cases in which the commonwealth is interested within the counties in which they reside. It is a very difficult matter sometimes for the commonwealth attorney to carry through a prosecution successfully—not being a resident of the county, and not being cognizant of the facts attending a case that may arise; hence, if a county attorney be appointed at all, he should be required to prosecute in all cases in which the commonwealth is interested, whether civil or criminal.

And as we are about to adopt the principle of making all other officers elective, I hold that the county attorney should also be elected by the people.

Mr. TURNER. In the aspect in which the question is now presented, I have no great solicitude whether it prevail or not. There was nearly an equal division in the committee upon the question whether this officer should be elected, or appointed by the court. I voted in committee in favor of the appointment by the court. There were two or three small officers, that really appeared to me, too unimportant to trouble the people about.

Mr. CLARKE. If it be in order now, I will move to amend the first section, in the third line, by striking out "county court attorney," and at the end of the section insert the following; "that the qualified voters of the different counties in the state may elect a county attorney, who shall hold his office for the same time as the presiding judge of the county court, whose duties shall be prescribed by law."

Mr. WOODSON. There is no one who would go further for the elective principle in every department of the government, than myself. My object is to give to the people as much power as possible—as far as the election of all officers is concerned—and if I shall ascertain that the constituents whom I represent here, are in favor of electing county attorneys, I shall vote to give them the power to elect them. My impression is, that neither of the counties I represent is in favor of having a county attorney at all.

In the county of Knox there has not been a county attorney for fifteen years, and perhaps they may not choose to have one for the next twenty years. I want the county courts to have it left to their discretion whether they will have an attorney or not, and I am willing to accept the amendment of my friend from Simpson, if he will insert, "that a majority of the qualified voters of the county may elect an attorney if they think proper."

Mr. CLARKE. I will put the amendment in that shape.

Mr. MAYES. I believe that my amendment was accepted by the gentleman. I regard this as an important question. From the reading of the proposition of the gentleman from Simpson, I do not know how the people are to determine that they will elect a county attorney. The court may very easily determine; but if left to the people, they will first be obliged to take the question whether they will have an attorney. I would greatly prefer to have the amendment which I proposed acted upon and adopted or rejected. If rejected, then I would propose to strike out the words "county court attorney," and leave to the legislature, accord-

ing to the twelfth section of the report of the committee on executive and ministerial officers, for counties and districts, to provide for the appointment of such officers as may, from time to time, be deemed necessary and proper.

Mr. CLARKE. I would like to test the question whether the county attorneys shall be elected or appointed by the court.

Mr. WOODSON. The motion which I made was simply to strike out the words "county court attorney;" and my object was to prevent making it the imperative duty of the county court to appoint, in each county, an attorney. If those words are stricken out, I am willing that the committee shall substitute any provision they may think proper, provided it does not impose upon the court the duty of appointing such officers.

Mr. PROCTOR. I have no particular objection to the proposition of the gentleman from Knox, but I hold that the county court attorney is an officer that should be elected by the people. Hence I will vote against any proposition that will give the appointment to the county court. If elected by the people, he will be responsible to them, for the proper discharge of the duties of his office.

Mr. MITCHELL. I rise merely to suggest a modification of the amendment, which will obviate all difficulty on the subject. It is, "that the general assembly shall authorize the election of county attorneys, in such counties as may request it."

Mr. CLARKE. I accept it.

Mr. KAVANAUGH. I do not agree with the gentleman from Knox (Mr. Woodson) as to his view of the necessity of county attorneys. We have commonwealth attorneys in every district, and I wish to call the attention of this committee to their duties. It is their duty, in the first instance, to take up and prosecute cases in the circuit court, where an offence has been committed against the peace of society and the public safety. When any felony has been committed, the commonwealth attorney of the district has nothing to do with it, until it comes up into the circuit court. In every county there are courts of enquiry established, in order, after a felony has been committed, to guard against the escape of the offender before he has been returned to the circuit court. Now, unless it be provided by law that every county in the state shall have a county attorney, the most outrageous felonies may be committed, and as the county has no representative in the court of enquiry, the individual would escape. Therefore, there are strong reasons why we should have a county attorney. Again, in every county in the state, there are laws operating which relate to the state revenue, in regard to tavern licences, and to peddling clocks, watches, and other goods, which it is the duty of the county attorney to enforce. In such cases the whole state is interested. There are cases in which the county attorney is to protect the rights of the state, and it is important, therefore, that each county should have a practicing attorney. As to leaving it to the counties to decide whether they will have these officers or not, it will be unwise, inasmuch as the people or the courts could never decide in advance when the necessity for the officer would arise.



Mr. MAYES. The difficulty in my mind in relation to the election of the attorney, arises from the fact that the people could not determine whether they would have the county attorney or not, until they had had a special election for the purpose. It is a matter, therefore, which should be left to the county court to determine. It is impossible for any county to say whether the services of such an officer would or would not be required in advance. It is essential that in every case of felony the state should have a representative to act on the subject, in the person of the county attorney. Besides, in regard to county matters, it is his duty to see that the sheriff pays over the revenue, and to prosecute motions to recover it; and it is impossible for any county in advance to say whether or not he would be required to exercise these duties. I go, therefore, for requiring every county to have such an officer, and for his election by the people. We are electing all the other officers in the state, and we may as well elect him. If there were any officers, in regard to whom there are stronger reasons against their election than others, it seems to me they are the practicing attorneys, whether of the districts or the counties. I shall vote for their election by the people, however, as I do not consider the reasons against it to be sufficiently strong to induce me to pursue a contrary course.

Mr. CLARKE. As I am determined to vote for the section as it stands, I withdraw my amendment.

Mr. G. W. JOHNSTON. I regret that the motion made some time since that the committee rise, did not prevail, as I desire to get clear of this report for the present. I think we are acting hastily in providing for officers, before we have created the offices they are to fill. This report provides for the election of a county attorney, and county court clerks, and if we go on in this way, we shall either have to undo what we are doing now, or the committee upon the courts will have to make their reports conform to our action to-day. Suppose we vote now for the election of county court clerks, and the convention should provide for a probate court having testamentary jurisdiction in each county, and a commissioner's court, what would we be obliged to do? Why, to reverse our previous action, and make provision for the appointment of the clerks of such courts. It is provided in this report that a judge and sheriff shall be elected, and at the same time the associate justices are elected. I believe, on the motion of the gentleman from Madison, associate justices have been stricken out of the report. This report should either go back to the committee or lie on the table until we have advanced a little further, and created some offices to be filled, before we provide for the appointment of the officers. I do not desire that we shall be obliged hereafter to go back and undo what we have done to-day. Therefore, if it is in order, I move that the committee rise and report the bill to the convention, there to be either referred back to the committee, or to lie on the table. We can then take up some of the reports from other committees—the proposition for instance of the select committee in regard to the establishment of new counties—on

which our action will not require to be undone, and time lost.

Mr. McHENRY. The gentleman can obtain his object by moving to pass over this report.

Mr. G. W. JOHNSTON. I make that motion then, and also to take up the report on the subject of new counties.

Mr. TURNER. I am satisfied myself from the experience we have had during the session, of the results of the practice of requiring every thing to be discussed in committee of the whole, that the best course is to consider these matters at once in the convention. I suggest, however, that we take the vote first on the proposition, whether we shall have a county court or not. And then we may rise and report, and have the subject in the convention, where these protracted discussions may be cut off by the previous question.

Mr. G. W. JOHNSTON. I am disposed to accommodate, and will withdraw the motion.

The question was then taken on striking out the words "county attorney," and the motion was rejected.

Mr. DAVIS. It seems to me that if this convention means to do anything, it ought, when it takes up the report of any committee, to settle for itself its leading features and principles. For instance, as regards the institution of the office of county attorney, the committee ought at once to make known whether it proposes to have such an office. In relation to the matters which were referred to the grand confederated committee this morning—one question being, whether there shall be four or three judges, and another whether the court shall be branched or not—all these and similar questions should be decided by the convention, for itself. They should not be referred to any individual or associated committees for their decision, that they may come in and instruct the convention. Are we to do any thing, or get away from here at all? If so, some method of proceeding must be adopted, and the best in my judgment, is to take up these reports *seriatim*, either in the house, or in the committee of the whole, and at once decide what shall be done, without waiting the opinion of any committee. When a report is thus acted upon, the convention knows at once its settled opinion and decision in relation to all its principal features. It makes no difference how, but it ought to be done in some mode. This report under consideration, should be taken up and read by sections, either in committee of the whole, or in the house—and probably that would be best, as then a stop could be put to this eternal talking, and the convention brought to a vote—and then decide upon its features. The objection of the gentleman from Shelby (Mr. G. W. Johnston) was more specious than solid. He says if we decide now, in regard to these officers, it will be perhaps before this confederated committee has decided whether the offices shall be established or not. But the decision of this question here, will decide this point for them, and on this or any other proposition it would be the proper course to pursue. But all I desire is that we shall get to work in some form or other. Let us do something. Let the convention decide upon the great principles and features of the constitution for itself, and then let it be referred if ne-

cessary, to sub-committees to frame and put in form.

Mr. MAYES said that as the convention had refused to strike out, he would withdraw the balance of his amendment, proposing to insert.

Mr. CHRISMAN moved to strike out the words "coroner and jailor." This would leave it to the legislature to provide for the appointment of these officers as they might deem necessary and expedient.

The motion was rejected.

Mr. LINDSEY moved to amend the first section by adding the following words: "whenever the county court of any county deem it to the interest of their county to dispense with the office of county attorney, they shall, at their court next preceding a regular election for the county, make an order discontinuing the office, and at any time thereafter, at a court next before a regular election, the county court may, by an order, restore the office; and the duties of said officer shall be regulated by law."

Mr. TURNER. This is about the same motion the gentleman from Knox made. Every county is intested in having those persons who violate the laws punished, and if they do not have the proper prosecuting attorney to prosecute them, they will escape into other counties. If you intend to punish crime at all, you should begin at its very incipient stages, otherwise, from a commencement with small violations of the moral law, the individual, if unchecked, soon becomes hardened and scruples not at the commission of greater and more heinous offenses. A prosecuting officer is therefore necessary in each county, to see that these lesser crimes and misdemeanors are at once punished. And it is an office, which, for the common safety of the state, every county should be required to possess, otherwise the duty might be thrown upon only a few counties who might desire his appointment. The absence of them in the border counties would also be an inducement for offenders to come in from other states to commit their depredations. The old constitution required that there should be a county attorney in each county, and yet I understand there are some counties which have no such officers. Let us however do our duty, and provide for these officers, and if the counties do not carry out the provisions of the constitution, the blame is with them, and not with us.

Mr. HARGIS. The only difficulty I can see in this matter is, that in some counties there is no man whom the court can appoint. If this should be the case, and it is made an imperative duty to provide for such an officer, what will be the situation of the court? They could not comply with the law. I prefer to leave the matter optionable with the court. As to its election by the people, it is a little trifling office, of no account, and the people care but little about it. Nor do they care about electing the coroner, jailor, and other little petty officers. They will have enough to do in the election of the judiciary, and other important officers.

Mr. LINDSEY'S amendment was rejected.

Mr. APPERSON moved to strike out the words "county court" before the word "attorney." Otherwise the section might be under-

stood as referring to a county court attorney, county court surveyor, &c.

Mr. TURNER agreed to the amendment as right and proper, and

The section was so amended.

Mr. BRISTOW suggested that there was nothing in the report which provided how these officers were to be appointed. The term elected was used, but he preferred to have the words added "by the qualified voters."

Mr. TURNER explained, that they were to be elected as the bill stated, in the same manner as the circuit judges, &c. The object was to keep the constitution as free from verbiage as possible.

The first section was then adopted.

The second section was then read:

"No person shall be eligible to the offices mentioned in this article who is not at the time twenty four years old, a citizen of the United States, and who has not resided two years next preceding the election in the state, and one year in the county or district which he offers his services. No person shall be eligible to the office of commonwealth or county attorney, unless he shall have been a licensed practicing attorney for two years; no person shall be elected clerk unless he shall have procured from the court of appeals a certificate that he has been examined by their clerk under their supervision, and that he is qualified for the office for which he is a candidate; but the office of sheriff or constable may be filled by persons who have attained the age of twenty one years."

Mr. CLARKE. I move to amend the second section, by striking out the words "no person shall be elected clerk unless he shall have procured from the court of appeals a certificate that he has been examined by their clerk under their supervision, and that he is qualified for the office for which he is a candidate;" but.

When the report of the committee on the court of appeals was under consideration, I took occasion to assign some reasons why I thought no certificate should be required from a candidate for the office of clerk of the court of appeals. I heard no argument which satisfied me that I was not right. I will not now detain the committee. I am willing the vote should now be taken.

Mr. GHOLSON. I had the honor to introduce a resolution covering that point as well as some others, and I suppose this motion will test the matter which I had in view. I want to know how many honorable gentlemen are in favor of laying a tariff of from five to one hundred and fifty dollars, to operate upon all applicants for the office of clerk. It has been shown that a certificate is no protection to the people, and is not even *prima facie* evidence of fitness. This provision can have no other effect than to operate as a tariff for the protection of those who now have certificates, and it is imposing unjust restrictions upon those who shall be candidates. It is making invidious distinctions in society. It is circumscribing the number from whom the people may choose, and is thus violating their freedom. At a proper time I shall call for the ayes and noes.

Mr. TURNER. We had this debated the other day, and I would ask that the remarks made by

the gentlemen from Ohio, from Henderson, and from Louisville, be considered as answers to the gentleman from Ballard and McCracken, and the gentleman from Simpson. I hope that we shall not have a repetition of the debate on the principle involved in this question.

Mr. McHENRY moved to amend, by striking out the words "by their clerk," and inserting the words, "any two of the judges of the circuit courts."

Mr. KELLY. I believe in this case, the examination will be a mere farce. No length of service at the bar will make a competent clerk. I have been a clerk for fifteen years, and I think I can judge in respect to this matter. I have no idea that the certificate will be of any use to the people; they are as competent to judge of the fitness of a person for this office as the judges of the appellate and circuit courts, and therefore I am opposed to the restriction. I do not think the requisition that a clerk shall be twenty four years old is necessary. I know young gentlemen fifteen years old, who are as well qualified as many of the clerks in this state, or the clerk of the court of appeals, though there is none better than he is. I know too, that the examination is not thorough. The duties of the clerk of the appellate court are not as extensive as those of the circuit court. On that account the bare certificate will be of little consequence. I hope the restriction will be stricken out.

Mr. TURNER. I have no anxiety whether the circuit judges are added or not. I said nothing when the bill was before the house. I know that in many instances when a candidate finds a difficulty in getting a certificate from one judge he will go to another who may be more ready to grant it. I think we had better confine this matter where it was in the old constitution. The appellate judges are not likely to be influenced by local matters in different parts of the state, for they will not be acquainted with the counties except those immediately around them. I do not say that the judges would give certificates from any improper motives, but I know there have been those who would give a certificate to any one who desired to practice law. If you want the certificate to amount to any thing, let us confine it to the judges of the court of appeals. I believe there is nothing more essential to preserve the great interests of this commonwealth than to have a competent clerk, and we should have every restriction which we can put upon it. Every man's life, reputation and property, and every thing else is occasionally in the power of these officers. And if there is any part of this constitution conservative, I want this part to be so particularly. I have said, and I repeat again, that the requisition of this certificate, instead of giving the prospect of wealth to the sons of those who are already wealthy, it will secure it to those who are in lower circumstances as to wealth. It will go to the sons of the yeomanry of the country. At an early day, in this government, the sons of the wealthy performed this service, but now you cannot find half a dozen individuals in these offices whose fathers are wealthy, except in those cases where the father was a clerk. I say, therefore, it secures a better prospect to the great body of the community. I have frequently heard young

men, who wanted a certificate as a lawyer, say "I'll not go to this judge, for he will ask me too many questions. He will take me through Coke; I'll go to another judge who will ask me but few questions, and sign my certificate directly." I want a judge to give an answer of the character that was given to me. I asked the judge, how long shall I have to read, and his reply was until you understand it. Now, I want a clerk to serve till he can answer all the hard questions that may be put to him. The report of the committee has not been acted on in the convention, and I intend that the circuit judges shall be struck out of that report.

The committee then rose, reported progress, and obtained leave to sit again.

#### LEAVE OF ABSENCE.

On the motion of Mr. COFFEY, leave of absence, till Wednesday next, was granted to Mr. Ballinger.

The convention then adjourned.

#### MONDAY, NOVEMBER 5, 1849.

Prayer by the Rev. Mr. NORTON.

#### LEAVE OF ABSENCE.

On the motion of Mr. TAYLOR, leave of absence to Wednesday next, was granted to Mr. Proctor and Mr. Lashbrooke.

On the motion of Mr. FORREST, leave of absence was granted to Mr. Pollard to this day week.

#### PREAMBLE, AND DEPARTMENTS OF GOVERNMENT.

The first business was announced to be, the question of concurrence in the report of the committee of the whole, on the Preamble, and Article I, concerning the distribution of the powers of the government.

The convention concurred without a division.

#### COUNTY AND DISTRICT OFFICERS.

The convention resolved itself into committee of the whole, Mr. BOYD in the chair, and resumed the consideration of the report of the committee on the executive and ministerial offices for counties and districts.

The pending question was on the motion of the gentleman from Ohio (Mr. McHenry) to insert in the second section after the words "court of appeals" the words "or any circuit court judge of this commonwealth."

The amendment was rejected.

Mr. McHENRY then withdrew another amendment which he indicated on Saturday, and which was connected with the amendment now rejected.

Mr. C. A. WICKLIFFE moved to strike out the word "four," and insert "one," so that the section should read—"no person shall be eligible to the offices mentioned in this article who is not at the time twenty-one years old," &c.

Mr. TURNER. I think it should be shown that a man has fixed habits, and that those habits are known to the people, before he is entrusted

with the records of the county which are preserved in these offices. At twenty-four, a man's habits are more likely to be fixed and known to the county in which he lives. I have been informed that in the state of Missouri important records have been lost, and the incumbent clerks disclaim all knowledge of them, for when there is a change of clerks the documents are not counted, and it is not therefore known who is responsible for the loss. I look upon the office of clerk as of more importance than the office of a member of the house of representatives, for in the latter case a representative has but a one-hundredth part of the power of one branch of the legislature to do either good or evil, whereas the clerk has the sole care of the records, and the opportunity to alter them. The change of even a word in some of the records in the care of these clerks, might lose a man an estate, and hence no man should be elected to such an office, and thereby have such powers given to him, unless he is a man of discretion that will properly exercise the power entrusted to him.

Mr. C. A. WICKLIFFE. The age of a clerk of the court of appeals has been fixed at twenty one years, as the age of responsibility. I will go as far as the gentleman from Madison—or as far as it is prudent to go—to fix a test of qualification, but when a man has attained the age of twenty one, which is the age of responsibility as a free agent, if he has other qualifications, I think the people ought to decide on his fitness in a moral point of view, and we should not debate those between the ages of twenty one and twenty four from the opportunity to compete with others for this office. The gentleman must know that a large portion of the business is often done in these offices by deputies under the age of twenty four, and I see not why this distinction should be made.

Mr. IRWIN. A few moments since the house rejected the motion made by the gentleman from Ohio and Hancock, which required the certificate to be signed by two of the judges of the circuit court. I think the house did not understand that motion, for surely we do not intend that there should be a restriction which does not exist in reference to the court of appeals. I hope some gentleman will move a reconsideration of that vote.

Mr. HARDIN. There has been some little disagreement between the reports of the committees of these two courts. In the committee on circuit courts of which I am chairman, we require the state's attorney to be twenty five years of age; but we provide that no person shall be elected clerk of the circuit court, unless he has attained the age of twenty one years. The age of twenty one, has always been considered the proper age in this state.

The question was then taken on the amendment, and it was adopted.

Mr. WOODSON. I have an amendment to offer nearly similar to one which has been rejected. I propose to amend the section by inserting the words "or a circuit judge" after the words "court of appeals," so that no person shall be elected clerk unless he shall have procured from the court of appeals or a circuit judge a certificate of qualification. I prefer that no certificate should be required, but that the whole be

left to the discretion of the people whose officer he is to be. But I think the certificate from one judge will be as safe a guarantee as that of two. I offer it now only that I may have the opportunity to call the ayes and noes upon it in the convention.

Mr. CHAMBERS. Experience is the best teacher. Under the present constitution it is required that a clerk shall have a certificate, showing that he has undergone an examination by the clerk of the court of appeals? And have not these offices been filled by men who were well qualified? If then this provision has worked so well, why should we depart from it? The requisition of a certificate will operate as a stimulus to a man to prepare himself as I know from experience. It will make a man look into the duties of the office and fit himself for them. I am opposed to letting down our offices, and throwing them wide open for all, whether qualified or not.

The PRESIDENT. I desire to retain the same qualifications for clerks that existed under the old constitution, which requires an examination by the clerk of the court of appeals and a certificate of a majority of the judges, that he has been examined and is qualified. This was a means of safety in reference to the qualifications. I do not like this departure from the old course. I am not satisfied that a majority of the judges of the circuit or county court, or even of the court of appeals, are qualified to determine the proper qualifications of a clerk. I know that although I have been a practicing lawyer a long time, and might be qualified to be a judge so far as the qualification of age is concerned, yet I know that I should not be qualified to judge of the fitness of a person for the office of clerk. There are but few clerks who would not make a better examination. I object to the examination of the judges alone, because they may not know the duties of the clerk, but the examination of the clerk in the presence of the judges, is a *quasi* judicial act which can be trusted. In that way we have had good clerks, except in those cases where they had their appointment *pro tem*.

Mr. ROGERS. It is said that we live in an age of improvement, that arts and sciences have advanced, and that some progress has been made in the science of government. In the organization of our government the principle was recognized that man is capable of self-government, and that the people are qualified to judge, with no restriction except as to age. They can elect a senator of the United States at thirty years of age, and a member of congress at twenty-five. And after fifty years experience, during which time, this has worked well, we have come up here and intend to carry the science of government a little further, by restoring to the hands of the people the right to elect those officers which have been heretofore appointed by the governor. But are we advancing? Not at all. Take the report of the committee, and you find that no man shall be a judge unless he is thirty years of age and has been a practicing lawyer for a certain time. I have no objection to that. What next do you find? You do not permit a clerk to be chosen unless he has a certificate from the court of ap-

peals. We are advancing in the science of government, by fixing in the hands of the court of appeals the right to control the whole. This court of appeals in fact will nominate, and the people will but confirm the nomination, as the senate confirm the appointments of the governor. I do not want to vote for a man in this way, nor do the people that I represent want to do it. This kind of nomination by the court of appeals, I object to, and shall vote against it.

Mr. CLARKE. I am always inclined to distrust my judgment, when it comes in competition with that of older gentlemen on this floor; but I beg to institute a comparison between the amendment proposed by the committee, and the provision contained in the old constitution. I understand the president of this convention to say, that he prefers that provision to the one proposed in lieu of it. But the latter does not correspond with the former. Persons were appointed under the old constitution, and held their offices for months and years without any certificate from the judges of the court of appeals. I know instances myself, where clerks were appointed *pro tempore* by those judges, and held their offices without first being qualified by them. Here is the tenth section of the old constitution on that subject:

"Each court shall appoint its own clerk, who shall hold his office during good behavior; but no person shall be appointed clerk, only *pro tempore*, who shall not produce to the court appointing him, a certificate from the majority of the judges of the court of appeals, that he had been examined by their clerk, in their presence, and under their direction, and that they judge him to be well qualified to execute the office of clerk, to any court of the same dignity, with that for which he offers himself. They shall be removable for breach of good behavior, by the court of appeals only, who shall be judges of the fact as well as of the law. Two thirds of the members present must concur in the sentence."

That was the old constitution. What was then allowed? You allowed, under the old constitution, the judges the power to appoint a man with no certificate of qualification whatever, and permitted him to hold the office, as I have already said, for months and years. And by whom was he appointed? By the judges; and these appointments were frequently made. Now, when we propose to elect a clerk by the people, it is argued that he must have a certificate from a majority of the judges of the court of appeals, before he shall have the office. You say that the judge is competent to select one who has undergone no examination at all, that he can take care of the public records, and of all the public papers, and important documents entrusted to his charge, without even having a certificate, and yet you now say, that if the people elect a clerk, he must have a certificate from the majority of the court of appeals. I cannot see any consistency in this argument. I understood my friend, the president, to say that he wished to require the same qualification as is contained in the old constitution. If you place it on the same ground, you will allow the people to elect a clerk before he has received a certificate from the judges of the court of appeals, and he will remain in office till he can obtain a certificate,

just as the clerks formerly did when appointed *pro tem*. I shall favor the amendment of my friend from Knox and Harlan; but when we get back into convention again, I intend to offer the same amendment, as I did on Saturday, striking out all in relation to the requirement of a certificate from the judges of the circuit court, and to get the yeas and nays upon it. But if I cannot do better, I should much prefer the amendment of the gentleman from Knox to the one reported by the committee on executive and ministerial offices. I am satisfied the people are competent to judge of the qualifications of a clerk. I am convinced that if the amendment proposed the other day by the gentleman from Madison, who, I believe, is the chairman who made the report, were adopted, it would perpetuate the clerkships in the hands of the present incumbents. That proposition requires that the clerks shall have had an experience of two years in some clerk's office. Now, I put it to that gentleman, and to others, if that clause were put in the constitution, whether the effect of it would not be to perpetuate these offices in the hands of the present incumbents? Is it likely that Mr. Swigert, or any other gentleman who wanted to run again for the office, would take a young man into his office and instruct him, in order to make him a competitor? Would any clerk in this state, who was instructing a favorite young man, or perhaps his own son, be likely to introduce another, who it was probable would become an antagonist to either of them? Not at all. I would rather that the clerks should be elected by the people, without any certificate, than that such a clause should be engrafted in the constitution. If clerks have held their offices for one or two years without a certificate, when appointed by the judges, I maintain they ought to be permitted to do it now, when, as I hold, the people are qualified to judge of their ability. But even if the clerks were not qualified at the time they were elected, I have heard men say that in one or two months, a man of business habits might prepare himself to discharge the duties of clerk.

The PRESIDENT. I never supposed, nor designed, that there should be any *pro tempore* appointments of clerks by the people, and therefore I never supposed the people would elect *pro tempore* clerks while certificates could be obtained; and I hope and trust my remarks will not mislead the gentleman as to what I designed. I do not believe that the judges of the circuit courts, when elected by the people, will be endowed with universal knowledge—be good book-keepers, good clerks, and every thing else, by the mere certificate of election by the people. The representatives of the people are not always good ones, and are often rejected on a second trial. That fact ought to satisfy every gentleman that the people are not infallible. I believe it is the part of prudence to require proper qualifications for these important officers, to whom we are to confide the keeping of the records of courts, the titles to property, and the contracts and papers of individuals. I know many good lawyers who could not find a paper in a clerk's office, because they know nothing of the order with which the papers should be arranged. There is some skill required in knowing where

to put things, and if all the clerks in Kentucky should tell me, even under oath, that a man could fit himself for the duties of a clerk in thirty days, I would not believe them. There are but few men in Kentucky who cannot learn book-keeping, but there are very few good book-keepers in this commonwealth, because few have made it their vocation. We lawyers often have to deal with accounts; and how do we do it? We send for a skillful book-keeper, and get his information and his aid in examining the books. What do we do in all complicated questions that arise in relation to machinery? We study the cases as they arise, and call to our aid skillful men to explain what we do not comprehend, in order that we may give a satisfactory explanation of the case. We are thus constantly extending our information. I prefer, therefore, that the examination of the clerk should be made by a clerk, in the presence of the judges, if this can be done without requiring them to come to Frankfort. I do not feel willing to multiply the qualifications of candidates for this office, but I desire that a man be properly qualified before he asks for the office.

Mr. CLARKE. I did say that I had been informed that a young man might be qualified to fill the office of clerk, in the course of twenty, thirty, or forty days. Whether the information was correct or not, I certainly had it from those who profess to be acquainted with the duties of a clerk. I did not suppose that a clerk would be elected *pro tem.* by the people, as the gentleman seems to think I understood him to say. I understand that under the old constitution, the clerks were appointed *pro tem.* by the judges, and I repeat the statement that I made before, that those clerks have held their offices from one to two years, without being in possession of a certificate. It is to be presumed they were not qualified at the time they received their appointment, at least they had not that *prima facie* qualification, which a certificate of the majority of the court of appeals indicates. Yet, in whose hands, I ask, were the papers that settle the rights of the people of the state? In whose hands were all the records that belong to the people of the county, if not within the hands of the men thus appointed *pro tem.* by these judges, without any certificate of qualification? I have known of no instances where complaint has been brought against those individuals thus appointed *pro tem.*

Now, if it has been the practice of this state for the last half century to appoint clerks, *pro tem.* where vacancies occurred, who had not the certificate of a majority of the judges of the court of appeals, and to allow them to remain in office, having in their hands important papers determining and settling the rights of the people of the county, and no injury has resulted from such appointments, I ask upon what ground it is claimed that the people cannot select a man, who in a short time, can be prepared to discharge the duties of the office of clerk? I do not argue that a clerk should be appointed *pro tem.* by the people; but if he were, he would have in his hands no more of the rights of the people than the clerk appointed by the judge *pro tem.* He who is a candidate for election by the people, will have his pride stimulated to

qualify himself for the station, and I believe he will be qualified in less than two months. Indeed, I do not believe the people would elect a man who was not qualified at the time of his election. It has been abundantly proved that certificates have been frequently obtained without due and proper qualifications. And when thus obtained, what is the result? It is this, the court of appeals have sent forth among the people a man endorsed as qualified against one not thus endorsed, and who is perhaps in fact, better qualified. The people are thus imposed upon. How will the people reason when a candidate presents himself for this office? They will first inquire whether he is honest, and whether they can safely entrust these papers to his care. The next inquiry will be whether he is capable, and they will determine that question, because they are deeply interested in it, and in nine cases out of ten the man will be stimulated to qualify himself. I trust no certificate will be required, and that even the amendment of my friend from Knox will be rejected, and that the people may be permitted to elect.

Mr. TRIPLET. I have an amendment which I propose to offer, and which I hope will be adopted now. Let us take a medium course and a safe one. If we return to one portion of this house, they tell us that the circuit court clerks and judges are better qualified to judge of the fitness of the candidate for this office than the judges of the court of appeals. Another portion think the judges of the court of appeals are the best prepared to decide this question. I ask attention to this fact, which I think will be admitted, that a man best understands the business to which he has been accustomed. Let us turn our attention to the additional fact that long disuse prevents the discharge of the duties of any station with freedom and decision; and we come to the conclusion that judges of the court of appeals are not the best judges of the qualifications of a clerk. But, I cannot agree with the gentleman from Simpson, that the clerk shall have no certificate. A calm consideration suggests the safest course; there is no necessity of running from one extreme to the other. Why compel candidates to come a distance of two hundred or three hundred miles to Frankfort, to a tribunal not better qualified than that which you have at your own doors? If your circuit court judges are nearly as well qualified to judge, why not let them judge. In the county of Ohio, I do not believe there is a single soul who has a certificate, except the clerk, nor in Daviess, Breckenridge, nor Hancock. And I call upon the delegate from Henry to enquire how many, except the acting clerk, have certificates in his county. Now, there are one hundred counties in the state, and you do not intend to limit the number of candidates to the present incumbents, and I would inquire how many candidates the clerk of the court of appeals can examine previous to the election? There must be from one to two hundred examinations by one single court, with all the expense and trouble of travelling one or two hundred miles to the town of Frankfort for the purpose of going through this examination. They hold but two courts in a year.

At your own doors you have a tribunal, as I remarked, equally as well qualified to make this



examination as the court of appeals. I am satisfied that the circuit court is fully as well qualified to make the examination, as to the qualification of clerks, as the court of appeals. And, furthermore, if any fraud is attempted to be practiced in the granting of a certificate to a man who is not qualified, there is a plain and simple plan by which it may be detected. Let the candidate be placed at the table, and let him keep the minute book for one day, and let him make up the record at night. This will prove whether he is qualified or not. All this can be done in the circuit court, but not in the court of appeals.

The amendment that I propose, is simply to insert after the words "court of appeals" the words "circuit court;" it will then read thus, "no person shall be elected to the office of clerk unless he shall have procured from the court of appeals, or from the circuit court, a certificate that he has been examined by their clerk under their supervision, and that he is qualified for the office."

Mr. WOODSON accepted that amendment.

Mr. TURNER. I dislike very much to detain the committee on this subject has been debated a good deal already, but there have been some suggestions thrown out which it will be necessary to notice. Whenever I find myself compelled to differ with the gentleman who has just spoken, I do it with great distrust of my own judgment, but in this instance, I rely upon my own more than upon his, because I have had an experience that he never has had, in regard to a clerk's duties, and I am satisfied that it is one of the most important points in our constitution, that we should make provision for the qualification of these officers. I have long thought so, and so declared during the canvass. My objection is, to your leaving this matter to the local judge in the circuit in which the applicant resides. He should not be under any local influences, though he may be as well qualified or better than a man living at a distance, who knows nothing about the individuals upon whose merit he is called upon to decide. There is a great advantage in having the certificate come from the judges of the court of appeals on that account. I admit, as was said by one of the gentlemen who addressed the committee, that superior qualifications are requisite for a clerk, to those of a judge. The clerk of the court must be a lawyer, or at least have considerable knowledge of statutory law. When I went into the clerk's office, the first thing I had to do was to read all the statutes that had been passed in relation to the business that properly belonged to the court in relation to devises, in relation to the duties of executor and administrator, and a hundred other things that come usually before the county court for adjudication. If the clerk does not understand the substance of what the law is, he never can make the record to meet the merits of the case. Will gentlemen tell me that an individual can understand these matters in six weeks, two months, or even a year? Sir, he ought to be a pretty good lawyer before he should be entitled to be appointed clerk of a circuit court. What has been the effect of having clerks who did not thoroughly understand the duties of the office? Many a man has been

made a pauper in consequence of an error arising from the ignorance of the clerk. Many men have been turned out of their houses merely because the clerk did not know how to make out a certificate conveying the rights of a married woman in real estate, where the parties had an intention to convey, and where the conveyance was afterwards set aside in consequence of the error of the clerk. Many a man has lost his property after having made improvements to double and treble the value of the property originally. In the county of Madison there was a case in which the rightful owner of eleven hundred acres of land, in one place, was deprived of his property in consequence of an error of this kind. I allude to the great case of Shackelford, Miller, and others. The duties appertaining to the office of clerk are of transcendent importance. It is behind no other office in the gift of the people in importance. I could refer you to another case in the county of Madison, where fourteen hundred acres were lost after a man had recovered judgment because the clerk did not draw up the judgment correctly in the record, and the error was not discovered until it was too late.

Mr. CLARKE. Did that clerk have a certificate from the court of appeals?

Mr. TURNER. The principal clerk had a certificate, but the judgment was drawn up I suppose by the deputy. The form of reading the record, is gone through with before the judge, it is true, but in nine cases out of ten, he perhaps is smoking a cigar, and two or three lawyers are talking to him, and he pays little or no attention to the record. Every thing, therefore, depends upon the clerk having a knowledge of his business. The legislature is passing acts every year giving new jurisdiction to the courts, and it becomes necessary therefore, that the clerk should be able to make his forms agree with the substance of those enactments. One gentleman objects that the court of appeals is in the habit of granting certificates whenever they are applied for, and that another court never grants them, except upon the clearest evidence of qualification. It may be that in one case out of fifty a certificate may be granted to a man who is not qualified, but never did I hear the objection made, that they refused an individual who was qualified. It is merely an imaginary objection. Many men get into the legislature who are not qualified. There are sometimes judges appointed, and clerks also, who are not qualified for the stations they fill, but those cases are exceptions, and it is our duty to provide a means of ascertaining the qualification of those who present themselves as candidates for an important office like this. Are we not to have sound evidence of qualification?

In relation to another matter, that was alluded to by the gentleman from Louisville, I have had more experience than he has in that branch of business. It is more than thirty years since I went into the clerk's office in Madison county, and there are now records in that office, which could scarcely be found by any person but myself. The record is not always entered in the name of the individual whose estate is in controversy; it is indexed in the name of his son, or some distant relative, and a great portion of

the persons interested in the case may be wholly unknown; there can be, therefore, no certain alphabetical mode of arrangement, and after the lapse of forty or fifty years, it becomes almost an impossibility to find the records of the case. A man who has no system, and no knowledge of the duties of the office, will perhaps cause the ruin of many individuals in the community. I want something that will secure uniformity, and not to have every thing in a state of confusion, or as the printers say in "pi." You will be tolerably certain of having plenty of printers "pi" in the office of every clerk in the commonwealth, if you do not take care that they understand their duty.

The gentleman from Simpson is a great lover of the people, and I admire his zeal and enthusiasm, but he seems to like the ignorant portion of the people better than the intelligent. I am for employing the intelligent portion for the purpose of protecting and preserving the rights of the ignorant. I wish to make men desirous of being intelligent, of qualifying themselves for places of trust; and that they should not come in as applicants for office, relying upon the fact of their being the most ignorant men that are to be found in the community, and consequently, according to the tenor of the gentleman, less liable to do mischief. I do not pretend to say that the gentleman from Simpson thinks in this way; but the result of his argument is, that you should give a free fight, and let every body come in and compete for the offices. Well it will be about as it was with the English officer who, happening to be in Frankfort, and being very desirous of witnessing a "free fight" at a time when there was a ball at the Mansion House, a servant came to him after he had gone to bed, and told him that there was a "free fight" going on in the bar room. He went down and ensconced himself in a corner to look on, but each party thought he had come to help the other, and so they both turned to, and gave him a severe beating. Well he got enough of that "free fight," and told the servant never to awaken him again to see a "free fight," for he had seen and felt enough of it to last him as long as he should live.

Well if we have a "free fight" in relation to the selection of clerks, the people of Kentucky will never want another "free fight" as long as they live. You will get the records in such a condition that there will not be another "free fight" called for.

I want something like a conservative government. I want to give to the people the power to manage the affairs of the government; but in doing this they require that some restrictions shall be placed upon this power. Why do we make a constitution at all, unless it be that there shall be restrictions imposed upon the various departments of government? This is the very purpose for which the people have sent us here. It is essential in my judgment, that there should be some evidence required of a candidate for an office of this description, that he understands the duties appertaining to that office.

Mr. NUTTALL. I thought that this matter was pretty well ended, but I find it has become rejuvenescent, and is about to commence again. I was struck with the figurative remark that was made by the gentleman from Madison, that if the

requisite qualifications are not provided for, every thing pertaining to the clerks office will be knocked into "pi." I suppose the people will have to swallow it too.

Now I think if there has been a good, a first rate, unanswerable speech made for our side of the house, the gentleman has just made it. He has convinced us beyond the possibility of a doubt, that the ground we occupy is the correct one. I was rather inclined that way before, but now I am satisfied, perfectly certain that I am right. Unless we can provide in the constitution that all the old incumbents, who have held these offices for the last ten, fifteen, twenty, thirty, forty, or fifty years, should remain precisely where they are—unless we can provide in our constitution that they shall live to the age of Methuselah,—we might just as well take a new set of clerks as not. If the gentleman from Madison should unfortunately die—and I acknowledge—for I have a very great respect for him—that the county would sustain a very great loss; what would be the condition of things in Madison county? What would be the condition of things in every county in the state, if these old clerks should unfortunately die? There would be no living man that could find a single record. I know that from the bungling manner in which the clerks have recorded deeds and acknowledgements, vast estates have been lost; there is just such a case in my county, that occurred through an act which I suppose the lawyers would call *felo de se*.

If gentlemen will refer to the decisions on this subject, they will find it is not more than twenty years since the question was first made concerning these clerks and certificates; there are recent discoveries in this country concerning the errors that have been committed by clerks heretofore, in relation to the relinquishment of dower in conveying real estate. These mistakes are not confined to the county of Madison, or the county of Henry; you will find them in every county in the state; they have occurred in counties where clerks have obtained their certificates of qualification, and those certificates were obtained when the most distinguished men occupied the bench of the court of appeals; when such men as Boyle and Mills and Bibb were judges of that court.

I do not know whether I am conservative according to the gentleman's construction or not, or whether I prefer the ignorant portion of the people—that the gentleman speaks of—to the learned. I have not got learning enough myself to know when I come in contact with a man of learning, what his attainments are; but I think the whole of the gentleman's argument just leads to this; that you must make clerks out of the present incumbents, or you must select good lawyers to fill these offices. Well I am in favor of the bar, that is certain. I am a humble member of the profession, and if clerks are to be made from the bar exclusively, I shall, of course, be satisfied; I think it is a great misfortune that we are not all clerks in this house, because according to the information we have received the last few days, no other than good lawyers can tell anything about the manner in which the duties ought to be discharged. I am sometimes erratic in my judg-

ment, but I am desirous of doing that which shall best promote the public interest; and I do not see any necessity for throwing so many restrictions around the people, if you give them the liberty of electing the clerks of the courts at all.

I had hoped that as one clerk led off in this debate; and as there are several clerks in this house, we would have heard from them also, and have got all the information that was requisite; but they seem to hold back; they do not give us the least of their advice.

Mr. CHAMBERS. I am not a clerk at this time.

Mr. NUTTALL. Like myself I suppose the gentleman has resigned. There are however, many gentlemen upon this floor who are clerks, and I think that all who are so now, or who have been, will be inclined to go for this amendment.

I was myself of opinion that no certificate should be required, but when I heard the remarks of the gentleman from Daviess, I yielded—as this is a time when yielding seems to prevail—to the opinions of the gentleman, upon this subject. Having two terms of the court of appeals in a year, you require all applicants for clerkships to come up here to obtain their certificates of qualification; and if that court will devote its time to the examination of all those who present themselves as candidates; they will have within the next two years no time for the decision of cases. The circuit judges, and the clerks of the circuit court together, are certainly competent to examine into the qualifications of a man for the clerkship, without putting him to the trouble of traveling two or three hundred miles to this place, and waiting here day after day until his turn comes around for examination.

Mr. TURNER. The court of appeals can examine forty candidates at the same time, as easily as one.

Mr. NUTTALL. I suppose then, they would go upon the plea of the school master and examine them in classes, as they do boys at school, and upon putting a question to the first—such as this—if a *feme covert* comes in with her husband to convey real estate, what sort of certificate would you require? If he did not answer, the question would be put to the next, and the old fashion of tripping would prevail, and the fellow that got turned down would be served as the little boys are served at school.

Mr. MACHEN. I had the privilege—I do not know whether it will turn out to be an honor or not—a few days since, of introducing a resolution which I had hoped would, to some extent, obviate the discussion which is now going on. It is not however before the committee, and I do not know exactly how to get it there. It will be recollected that it was a requisition upon the legislature at its first session under the new constitution, to provide for the compilation of a book of forms, to be used in the clerk's offices. That proposition I suppose is not cognizable by the committee at this time, and the question comes up simply as to whether the certificate of qualification shall be required of the different persons who shall see proper to present themselves for the office of clerk.

It does strike me that the argument of the gentleman from Madison is based upon a very strange hypothesis. We have laid down as a fundamental principle, by which the action of this convention is to be governed, that the people of Kentucky are capable of self-government. That is a proposition to which, I understand, every one subscribes. If this principle be founded in truth, how are the doctrines which gentlemen advance here to be reconciled with it? It resolves itself into this, that notwithstanding the people are capable of self-government, yet when they want the assistance of a clerk to carry on the operations of government, they are incapable of making a proper selection. The clerk is an important officer, and should be perfectly qualified; but the people are capable of self-government, therefore, they are incapable of selecting a clerk. That is just about the tenor and effect of the argument.

I was very much pleased a few days since, with the argument advanced by the gentleman from Todd, upon this question of qualification; it was that we should endeavor as far as possible to elevate the people by giving all power into their hands, in order that when called upon to act, they should act with full responsibility resting upon them, and then like prudent men, they would set about seeking those qualifications which would enable them efficiently and prosperously to exercise all the power bestowed upon them. When we take from them the power of electing a circuit court clerk, what do we say to them? We say, gentlemen you are incapable of determining upon the qualifications of those in your immediate counties, as to fitness to fill this or that office. For one, I think they will exercise this power in a wholesome manner, not only as regards themselves, but the interests of the counties generally. I know it is important that we should have clerks who are qualified. The gentleman from Madison bases his argument upon the hypothesis that we will have incompetent persons to fill these offices. Where is the evidence of this? And he tells us of the immense estates that have been lost in consequence of having them filled by incompetent persons; and he goes on and tells us, that those very persons had certificates of qualification from the court of appeals. And he would have us go to the same tribunal for certificates of qualification of clerks hereafter.

Let the people of every county in the state determine for themselves, and I will guarantee that they will not put in such persons as the gentleman has described. He said we must have lawyers—

Mr. TURNER. The gentleman is mistaken. I said that before a person could be qualified for the office he must have studied the various acts which have relation to the business to be transacted by the court—that he must have made some degree of progress towards an understanding of the statute law.

Mr. MACHEN. I understand then, that he must be pretty nearly a lawyer. I admit the fact; but I ask you, Mr. Chairman, if we have not, among the yeomanry of the land, men who are capable of taking up the statutes of the state, and of construing them with as much correctness as the gentleman himself? The gentle-

man argues as if the people would put ignoramus in office, who ought not to be trusted with any part of the business of the government.

Mr. McHENRY. I am decidedly in favor of having some qualification prescribed. Under the old constitution, the candidate is examined and obtains a certificate from a majority of the court of appeals. It was presumed that the judges would be competent to decide upon their qualifications. I am, however, for going with the gentleman from Daviess, and others, in favor of an examination by the circuit court. Most of our judges of the circuit court, at least, are qualified to make examinations, for it has appeared on all hands that they have now good circuit court clerks. And I want to keep up the number of those clerks in the state. I do not think that the people desire that we should strike out all qualifications for clerks. A great many people in the state are interested in having the business of that office performed in a proper manner; and I think, although we give the election of these clerks to the people, yet it should be with the assurance that they will not elect a man who has not the proper qualification.

It is said that great injury has been done by the errors of the very men who had certificates from the court of appeals. I grant it. No man is perfect, no system is perfect. But take it in this way, that out of one hundred and fifty cases, where certificates had been given by the judges, the people have been imposed on by about ten, how often would they be imposed on by those who had no certificate of qualification? It is to prevent the people themselves from being imposed on, that I desire they should have some evidence of qualification. It is not merely a knowledge of forms that will make a good clerk; he must, as the gentleman from Madison has remarked, have some knowledge of the substance of those statutes, under which the proceedings of the court are taken. Like the story of the good old justice of the peace, who was required to issue a search warrant: the article to be searched for was a drawing knife. Well, when he came to issue the warrant, he could not find any form for a search warrant for a drawing knife, but he could find one for a turkey; so he said he would issue the warrant for the turkey, and if the constable found the drawing knife, he could take it. Now, I do not want those in the office to be as much at a loss as the honest old justice of the peace. I want them to understand something of the substance of the matters which they have to transact. The people can judge of a candidate, as to his honesty, and as to his being such a person as it would be agreeable to do business with, but as to his knowledge of the manner of doing business, they would rather have that certified by some one in whom they have confidence. I have never had much acquaintance with the nature of the duties of a clerk's office, never having acted in the capacity of clerk myself, although, perhaps, I might form as just an estimate of the qualifications of a person to fill that office, as most of the people in the country; yet, I would prefer not to rely exclusively upon my own opinion on that point, but would prefer that the candidate should have a certificate from some

tribunal, indicated by the constitution itself, of his qualification.

Mr. LINDSEY. Mr. Chairman: If my friend from Caldwell was about building a fine house, and found it necessary to procure workmen and was not a mechanic himself, and did not know those who applied for the work, it would not follow that he should not build a house, nor have the right to choose the workmen. But it would show a necessity that he should either commit the whole thing to a competent person, or that he should require the applicants to present him some evidence of their capacity to do the work.

Prudence would prompt him to one of these modes, rather than risk having his materials destroyed and his building spoiled.

The people have directed us to provide what is necessary for a good government, keeping in their hands the right of appointing their own agents, of selecting their own mechanics. Prudence requires that we furnish them the means of knowing the qualifications of those who are to do the work. It is no reflection upon their intelligence or capacity for self-government, nor their right to elect all officers, that they are not all clerks, and therefore not capable of judging who are qualified to do the clerk's duties. They keep the right of appointing the clerk, but want us to fix a mode by which they shall not be deceived and be induced to select incompetent persons. It is a fact, Mr. Chairman, that one county in this state was within four votes of electing an individual to the legislature, who had graduated in the penitentiary. If the people of that county had known this fact, think you they would have voted for him? The people are misled often—let us keep them from being misled. The people should be in position, as far as practicable, at all times to know candidates for important offices, and especially those which require skill and qualification in particular duties, and where the whole service or duty is devolved upon one person, as in the case of clerk—an officer more important to the interests of a county to be fully qualified, than even a circuit judge, whose errors can all be revised and corrected.

In the case of county clerk, errors committed often pass unnoticed until there is no chance of correction, as in the cases of erroneous certificates to deeds, instanced this morning.

I am in favor of adding the test of qualification by the circuit court, or court of appeals. This will obviate the objection made, that candidates will have to go a great distance to procure certificates, and also the further objection, that examinations before the circuit judge may, through prejudice or local influence, be too much under the power of the circuit judge.

If the amendment of the gentleman from Daviess prevails, the candidates, if local influence operates, may go to the appellate court—if unjustly treated there, they may go to the circuit courts.

If provision is only made by law that both courts shall fully perform their duty of giving full examination before certificate, either court will suit me. If the circuit judge should be required to follow the mode indicated by the delegate from Daviess, of requiring candidates for clerkships to perform a day's work in court

under the supervision of court, clerk, and lawyers, that would be better examination and test of qualification than a week's oral examination.

I am, sir, for qualification before any one shall even be a candidate for clerk, and for rigid examination before certificate shall be given, and in advocating this, I do not conceive that I violate in the least the proposition that the people are capable of self-government, but rather give them the means of exercising the principle correctly, and prevent the evil consequences flowing from the selection of persons incompetent to discharge important trusts through mistakes, or in any other way.

Mr. NEWELL. I am in favor of the adoption of the proposition of the gentleman from Daviess, in preference to the original provision in the report of the committee, but I am opposed to the requirement of certificates altogether. I think the whole question amounts exactly to this. Are the people capable of self-government or not? If they are, I hold they are capable of electing every officer in the state. If they are not, why then we had better choose a set of individuals to be guardians over them. The people are acknowledged to be competent to elect the first officer in the state, without any certificate of qualification, and they are competent to elect every officer, down to the clerk of the court, in the same manner. Why do you stop, when you come down to the clerk and say that he shall come before the people with his capabilities certified to, before they shall elect him. I want gentlemen to be consistent. As well might you say that the circuit judge, or the judge of the court of appeals, shall be required to obtain a certificate of fitness to discharge the duties of their offices. If you carry out the principle, even the members of the legislature might be required to obtain evidence of qualification. I will go for the amendment, and then if some gentleman will move to strike out the provision in relation to certificates, I will go for striking it out.

Mr. BROWN. I am opposed to these certificates of qualification. I think if the people can be trusted to elect a public officer, they should be trusted to judge of his qualifications. Every argument that is used in favor of requiring a certificate of qualification will apply against the election of the officer by the people. I know that the legal profession in this country is highly intelligent and a highly useful profession. No one appreciates its usefulness more highly than I do; but I understand the government to be the common property of the whole people, and I do not think that any class of men should be permitted to have the entire control of the government. I do not think that the legal profession should be permitted to prescribe to the people whom they shall select. I know very well, that to be a commonwealth attorney, or a circuit judge, it is necessary that the appointee should be taken from the legal profession. That is all right and proper, but at the same time I am opposed to their prescribing the qualifications that shall be required on the part of other officers. It is neither more nor less than giving them the power of nominating the

candidate, and the people have only the right to confirm or reject the nomination.

And if a candidate obtain a certificate, is it any guarantee that he is really qualified? The gentleman from Madison has proved to you that a man may obtain a certificate without having any qualification. If he cannot obtain a certificate in any other way, he has only to go to the gentleman from Madison, and that gentleman's ingenuity and skill can procure it for him. What security then, have the people? None at all, according to the showing of the gentleman himself.

This provision in the report, if carried into effect, will be perpetuating the system of which the people have complained so much. Certificates will be granted upon principles of favoritism. I believe the people will be able to elect as good clerks without the certificate of qualifications as with it.

Mr. MITCHELL. I am aware that as much time has been occupied already on this subject as should be bestowed upon it, but having had some little experience myself in relation to the duties of the office of clerk, I desire to say a word or two in reference to it. It seems to me that a great deal of unnecessary incense has been burnt at the shrine of popular intelligence. The question now before the committee does not involve the popular capacity, does not call in question the capacity of the people for self-government, does not trench upon the elective franchise, does not interfere with the reforms which have been demanded by the people, and which this convention has been called to carry out. In the existing constitution a certificate of qualification is required when a circuit judge has the appointing power. If that had been urged as an attack upon the intelligence of the people, it would have been the subject of discussion throughout the state. Every body knew that this was the provision of the existing constitution: When the people voted for this convention, in order that the present constitution might be changed, was it because the candidate for clerkship had to obtain a certificate of qualification before he could present himself for appointment to that office? No sir, that objection was never urged.

The objection was, sir, that being appointed by the court, it gave to the judge an influence that he ought not to possess; and it was interfering with the right of the people to select their own officers. That was the ground, as I understand, upon which the popular voice cried out for reform in this particular. I have never yet heard a man say that a certificate of qualification trenched upon the rights of the people. What does the certificate suppose? It supposes an examination necessary—it supposes that the office is so unobtrusive in its character that something is required, to show that the applicant has the requisite qualifications.

An individual who is a candidate for a seat in the legislature, goes before the people and declares his sentiments, his political opinions are known, his capacity to advocate those opinions is known. The man who is a candidate for a judgeship must have a reputation as a lawyer, as well as a reputation for integrity and honesty as an individual. His reputation is public. If

is not so in the clerical department. This is a quiet, unobtrusive office; its duties are performed without a word spoken; and its requisitions presuppose an examination necessary.

It is not, then, a question involving popular capacity or intelligence. On the contrary the requisition supposes that no one is competent to judge of the qualifications of the clerk unless an examination be had by the proper tribunal.

Well, if it be true, that the people cannot examine into his qualifications—and it is impossible, in the nature of things, for them to do so—the mass of the people have no means of ascertaining his competency. It is a power which they cannot exercise. It is therefore necessary that they should delegate that power in some way. They want a tribunal, a board of examination, because, the examination being necessary, it is more convenient that it should be done by a board which is thus constituted.

Then sir, what is all this declamation about its effects upon popular influence and the infringement of the elective franchise? Why do you not throw off the other requisites of qualification? Why not, for instance, dispense with the requisition that the candidate shall be twenty-one years of age? There are other restraints besides this requisition of the certificate of the judges. There is no reason why one should be retained and another rejected. The people are better prepared to judge as to the merits of an individual, than as to his qualifications to discharge the duties of a particular office.

Much has been said about the advantages it will give to the existing officers. I differ with gentlemen on that subject. I believe the absence of this requisition will give them an advantage instead of the requisition itself. Those who already possess certificates will come forward and say, fellow citizens I am here with the evidence of my qualification. My competitor has none. I ask you if it does not operate in favor of those who have heretofore exercised the office? If you do not make this requisition, all who may be disposed to come forward as candidates will not stand upon an equal footing, because there will be no qualified tribunal to give the certificate; however desirous the individual may be, he cannot get it in an authoritative form, and is deprived of the privilege of presenting his qualifications to the country.—Now look at the operation of this thing in other departments of life. Why does a medical man obtain a diploma? Why is it that public opinion has forced on him the necessity of doing it? It is because his practice will not prevail without giving more evidence that will convince the people. Why not say this is in derogation of popular rights? Why not let him go to work and practice in the neighborhood until he is qualified?

I do not know of any good reason why the requirement of a certificate should not be continued. It is not one of those questions of capability of the people to elect, and it never will be urged as a test of the rights of the people. And I really believe that by requiring the certificate you will do more to test the capacity of the candidate than by leaving it out. I believe the present incumbents now enjoy a decided advantage by having these certificates, and being

able to point to them, to say we alone are possessed of the requisite qualifications. And will you deny to those who desire to come forward as candidates for these offices the opportunity of doing so, although they may be very well qualified, by refusing them the privilege of obtaining a certificate?

Mr. BROWN. I fully appreciate the experience and intelligence of the gentleman from Oldham, (Mr. Mitchell,) and think what he says is entitled to much consideration. He thinks that the absence of a requisition here of a certificate of qualification, would operate against those now in office. Now the absence of the requirement for it, would not deprive the candidate of the privilege of procuring a certificate and presenting it to the people, if he deemed it necessary.

Mr. MITCHELL. The objection was that there would be no board of examination, constituted by the laws and acting under the sanction of an oath, who would be bound to furnish the certificate of qualification. Any man might obtain private certificates, but they would not have so great a weight with the people, as those obtained from such a tribunal.

Mr. CHRISMAN. Before the vote is taken, I wish to define my position on this subject. I am sent here by the people to secure certain great principles, and this mission I mean to fulfill, so far as my action is concerned. I am instructed to give them the power to vote for judges of the court of appeals, and of the other courts of the commonwealth, and also for sheriffs, magistrates, and constables. But the people did not instruct me to vote for giving them the right of selecting county attorneys, jailers, and coroners, and hence the motion I made on Saturday last to strike out this class of officers. This is playing the game as I think rather too low down, and I am not disposed to take the step. The gentleman from Henry, (Mr. Nuttall,) remarked that he believed it would be unfortunate for the people of Madison, should the gentleman from Madison die. Now I think it would be unfortunate for this body, should that gentleman and some others be removed from it, for if they were we should be all sail and no ballast. I generally find him to be right, and in this particular I shall go with him. I am prepared to require certificates of qualification from these officers, although I am not particular where they may be obtained, whether as proposed by the gentleman from Daviess, from the circuit court, or from the court of appeals. All I desire is, what the interests of the people desire, that the candidates should be fully qualified for the important offices they are to fill. The gentleman from Simpson has remarked that almost any individual could qualify himself for it within twenty days, and he afterwards said that this thing of requiring qualifications was placing forever in the hands and at the disposition of the present incumbents the office of clerk. Now if a man can qualify himself in that short time, can he not obtain a certificate of the fact, and how then would it be placing the control of these offices forever in the hands of the present incumbents? I was raised in a clerk's office, and it is true also that I belong to a family that has always held that office in the county. I know



the importance therefore of having a good clerk, not that I mean to say that I am a good one, for I acknowledge the contrary, yet I doubt whether, if the office be placed before the people without requiring any certificate of qualifications, any candidate could keep me out of the office. I acknowledge myself unqualified for the station, and hence I feel the importance of requiring the certificate. As the gentleman from Oldham remarked, the public complaint is not against this qualification as required in the old constitution, but against the manner in which the power of appointment has been exercised by the judges. We have seen clerks removed from one county to another, and we have seen also the office sold to the highest bidder. This is what the people complain of.

Mr. NUTTALL. I did not expect to bring down the wrath of the gentleman from Wayne upon me; I have never insinuated that I wanted the gentleman from Madison to die or leave the house; so far from that, from the year 1823, when we were here in the legislature together, down to the present time, I have always had the highest regard for him, and have ever esteemed him as a sound, able, and intelligent jurist; and the last thing on earth that I should desire would be to have him removed from this body. If the gentleman from Wayne wishes to sail under the colors of the gentleman from Madison, God knows I would not seek to prevent him. I can respect an opponent, or even the enemy of my country, so long as he does not sail under false colors. For myself, I am for the bright stars and broad stripes of my country. Now I am very much attached to the gentleman from Wayne, but if a young gentleman of his acknowledged talents and ability, who belongs as he confesses literally to the family of clerks, and who has been for such a length of time in a clerk's office, with all the means to qualify himself for the duties—if he has not been able by this time to become a good clerk, why it rather seems to me that no requirement of qualifications we might devise could secure one. He says, however, that he has no doubt that with or without a certificate he could beat all creation in Wayne. I have no doubt of it—none at all, for I understand it is a pretty strong whig county, and the very fact of his election in the face of that majority, evinces that he must be a gentleman of extraordinary fine abilities and amiable manners. Now, as to my friend from Oldham, (Mr. Mitchell,) if there is a gentleman on earth whom I esteem, it is him; and we are pretty much on all matters bone of the same bone, and flesh of the same flesh. Nor do I wish on this occasion to provoke his wrath, for I know he is well qualified as a clerk. And although his arguments had considerable weight on my mind, nevertheless I am not disposed to change the position I occupy, or further, to concede any more than is contained in the proposition of the gentleman from Daviess.

Mr. MITCHELL. Agreed, I will go for that.

Mr. NUTTALL. Agreed it is.

The question was then taken on Mr. TRIP-LETT'S amendment, and it was adopted.

Mr. BROWN then offered the following substitute for the section as amended.

"No person shall be eligible to the office of

commonwealth attorney who has not attained the age of twenty four years, and who has not resided two years next preceding his election in the state; one year in the county or district in which he offers his services; and shall have been two years a practicing lawyer. No person shall be elected circuit or county clerk, sheriff, or constable, who has not attained the age of twenty one years, and resided two years in the county or district next preceding the election."

It was rejected.

Mr. TURNER moved to strike out all from the word "but" in the 10th line, and to insert the words "sheriff and constable" after the word "clerk" in the preceding part of the section, so as to require these three officers to be twenty one years of age, and the others to be twenty four.

The amendment was agreed to.

Mr. KELLY moved to include the county court attorney within the 21 years limitation. All knew that the office was commonly given to some junior member of the bar, generally a poor one, and it was too small a matter to interfere with. We have been placing too many restrictions on the people in this constitution, and doing what they did not send us to do, and if we continue in this way, he did not doubt it would be rejected with as much unanimity as the convention itself was called.

The amendment was agreed to and the second section was then adopted.

The third section was read, and it was adopted without amendment.

The fourth section was then read.

Mr. TURNER offered an amendment to strike out the words "associate judges of the county courts," and insert in lieu thereof, the words "members of the general assembly," with a view that if the system of associate judges should not be adopted, the sheriff should then be elected at the same time as were the members of the legislature.

The PRESIDENT objected to this on the ground that it would interfere with the plan of separating the judicial from the political election.

Mr. TURNER withdrew the amendment, with the remark, that if the necessity for it should arise, it could be offered hereafter.

Mr. WOODSON moved to strike out all after the word "years" in the fourth line.

Mr. TURNER. The effect of the amendment will be to permit the sheriff to be elected without limitation as to time.

Mr. WOODSON. The office of sheriff is an important one, and is frequently exercised to the oppression of the people. If the officer prove to be a good one, I desire that the people, whose officer he is, may have the right to re-elect him. The fact that a man has served four years, is no evidence of disqualification, but rather of qualification, and if he has so discharged the duties as in the opinion of the people to deserve it, they should have the right to re-elect him if they choose.

Mr. TURNER. This office of sheriff is a most important and influential one, and my experience has been, that not one out of every five sheriffs, after they have served four years, make as good officers as they did during the first four. They attend to their duties very well during the first two years, but after that they fall off, and

confining their attention to the most profitable of their duties, they learn how to avoid the discharge of those that are less so. The committee were divided on the subject—some being for a term of two years and re-eligibility after one term, and others for no restriction as to their eligibility—and they finally came to the conclusion as expressed in the bill. The object of extending the provision to deputies, I will explain. I have heard from those who were familiar with the workings of the constitution of 1792, and its system of allowing the deputies to be eligible, that it was customary for the high sheriff to select a man as deputy, who would succeed as sheriff. Then the new sheriff would select the old one as his deputy—and thus they went on repeating the operation, and pursuing a system of “ride and tie,” which would have kept the offices within their control forever, had that constitution lasted so long. And in Madison, Bourbon, Clarke, and Fayette, the men first elected and their deputies, did retain the offices during the entire existence of that constitution. And it was the same in all the great counties of the state. Another reason why these officers should not be re-eligible is, that they would pervert the discharge of their duties to the attainment of a re-election. It was right and proper they should go out of office once in a while and take the air. The result would be that, if this provision was adopted, the counties would be blessed with far better sheriffs than under any system of re-eligibility.

Mr. CLARKE. I have an amendment which I should prefer to that of the gentleman from Knox, although I am opposed to the provision of the report of the committee. It is the 26th section of the report on the legislative department, in the following words:

“Sec. 26. No person who at any time may have been a collector of taxes, or public moneys for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly, unless he shall have obtained a quietus, six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible.”

I am unwilling to allow the sheriff to collect the public moneys and to electioneer on them from time to time. It would give him an advantage before the people over any competitor who was obliged to rely upon his own means. But, if the gentleman would incorporate this principle into his amendment, and require the candidate to have a quietus of all claims upon him on the part of the people, you then throw him on his own resources. If he thinks proper to spend his own money for electioneering purposes, let him do it, and the other candidate has the privilege to do the same. Under such a provision I should have no objection to his coming before the people three, four, or any number of times—none whatever. When he did come, under such circumstances, then the enquiry would be whether he was a faithful officer or not, and I have no objection, if the people choose, that they shall re-elect him as often as they see proper. But I do object to his being allowed to use the public funds for his electioneering purposes.

The PRESIDENT. The sheriffs and constables are a class, and I believe the only class of officers whom I do not wish to see re-eligible.

The truth is, there are a great many ways in which these individuals may fail to discharge the duties that devolve upon them, for the sake of benefitting themselves. They are the agents to execute the judgments of the courts, in the collection of all debts, that are collected through that medium. It is their duty to collect them fairly and according to the law, but there are a great many ways in which such officers have the power to favor individuals and thereby to enhance their popularity, and it was in their power also greatly to oppress individuals. Now, I do not wish them to exercise their offices either to the favor of individuals, or to the oppression of them, through any desire to advance their prospects for a re-election. It is generally the case, that these sheriffs and constables learn in some way or other, the circumstances of individuals in the community, and how to take advantage of them, and to make money out of them. They find out all the weak points in the condition of individuals, the amount of their indebtedness, and their necessities for money, and they carry on a system of shaving and extortion that is a disgrace to the country. I do not say that all do, but some of them; and whenever a man's appetite is whetted for making money in that way, it always increases. And the offices of sheriff and constable are sought for as offering greater facilities for acquiring money in that way, than any other in the land. I would therefore turn them out occasionally, and bring in a new set, who are not so well acquainted with the necessities of individuals, and whose knives are not so sharp. This class of officers should have but one term, and I commend the suggestion to those gentlemen who are in favor of rotation in office. I submit it to them whether it is not better to let the report stand, or amend it, so as to give the sheriffs one term of four years, if two is not enough, and then make them and their deputies ineligible for some period of time. Let them settle up their accounts with the public and with individuals, and give place to others.

Mr. ROGERS. We have been told here by almost every body who has spoken, that the people are intelligent and virtuous, and if this is so, why are there apprehensions suggested that the people will be bought up and controlled by those whom they have put in office? But they are subject to be influenced by no such considerations. It is not the Kentucky character, and it is contradicted most triumphantly, by the history of the last four years. The people desired that a convention should be called; and every judge and commonwealth's attorney, and every body who expects these offices, and nearly every clerk in the state, with some honorable exceptions, all opposed it, and yet the people, by a majority unprecedented, called the convention. Is that not a proof that the people are incorruptible, and that a man with money enough cannot buy their votes? Have you not had an example during the past year, that tells all over the union what the Kentucky character is? Look at the position taken in regard to one of her statesmen, whom the people delight to honor and love, as manifested in the vote taken at the last election. The party which Mr. Clay headed in that election, only received some

twelve thousand out of one hundred and fifty two thousand votes. And will gentlemen tell me then, that Kentuckians are to be controlled by money or by such little offices as sheriffs and constables? I am one of the people, I expect no office, and I went for the calling of this convention on principle. I desire that the power of appointment shall now be restored to the people, unfettered with these restrictions. If the people are capable of self-government, they are capable of deciding upon the qualifications of these officers. This truth is axiomatic to my mind, and therefore if a man has discharged the duties of his office faithfully and well, I desire that the people may have the power to retain his services by re-appointing him, if they desire it.

Mr. DIXON. I have been listening a great deal to this eternal cry about the sovereign infallibility of the people, and really if the continual repetition of the assertion should convince any body, I ought by this time to be convinced of its truth. My friend over the way, (Mr. Rogers,) asks most emphatically if this thing of capability for self-government, and power of selecting officers is not the same. He says he can see no difference. But I think it is perfectly clear and manifest that there is such a thing as electing officers by the people, and such a thing too as the officer when he is elected, abusing the confidence of those who elected him. Does the gentleman mean to say that because the Kentucky character is as he describes it, that the people are never deceived in regard to men? Does he or any other gentleman mean to say that the people are never deceived in regard to the qualifications, the principle, the integrity, and the hearts of men? Does he mean to assert that capable, intelligent and discriminating as he is, he can look into the hearts of men, and see the secret influences operating there, so as to enable him at once to determine who should or who should not be placed in power? Does he mean to assert that the people are infallible and cannot be deceived? Does the gentleman not know that Judas Iscariot deceived the other eleven Apostles before he betrayed the Lord? And yet are the people so infallible that they never can be deceived? No one can assert such a doctrine. While then I would trust the people to the utmost I would guard them. While I fully believe in their capacity for self-government, I also believe it to be right and proper that they should be protected against all improper influences, come from what quarter it may. That is the principle I mean to maintain. Would the gentleman, because he believes the people are capable of self-government, not desire that the sheriff should execute a bond for the faithful discharge of his duties. Why do we require a bond in such a case? If the people are so far seeing as to be able to look into the very hearts of men and penetrating at once into their most secret motives, can they not tell in a moment whether the officer would discharge his duties faithfully, honestly, and efficiently or not? If they have this power, why in the name of heaven, require the execution of a bond at all? If the officer is faithful, honest, efficient and capable, and collects the money and hands it over, that is all that is wanted; there is no ne-

cessity at all for any other qualification. And I tell the gentleman if he believes this that he should offer an amendment declaring that the legislature shall require no bond from the sheriff, and let the reasons therefor be put in a preamble. For instance, that the people are capable of self-government, that they are endowed with the power of at once deciding upon the purity and integrity of men, and the motives which influence them, and that as it is utterly impossible they should elect any man to be sheriff who would not discharge his duties most faithfully, therefore let no security be required of him. I doubt whether the gentleman would go as far as that.

I agree with the gentleman from Louisville (Mr. Guthrie) precisely, that it is better that the sheriff should not be re-eligible. I can very well see how the office in such a case might be prostituted to the very worst of purposes. I can very well perceive that when his term is about to expire, and there is a competitor in the field against him, and the public money in his pocket how the officer's views of justice are liable to be perverted. The gentleman seems to think however that money does nothing in an election. It is a remark in which but few in this house will concur, when he tells us that the character of Kentucky is so pure that money will do nothing in an election. Money in an election, I admit will do nothing with pure men, but in Kentucky, as well as in any other country, there are impure men, and bad men. It is true and it cannot be denied that there are bad, artful and corrupt men in Kentucky, who can be seduced and will be by money and other influences. And there are men who can and will be corruptors of the men controlled by a sheriff, with a view to influence his election. The time approaches when the election is to take place, the sheriff is anxious for a re-election, he has little means of his own, but a great deal of the public money in his hands, and the temptation is irresistible for him to use it. Such inducements ought not to be held out to any official thus to pervert the duties of his office. But there are other means in his power. Does not every one know the power of the sheriff to oppress some and to favor others? He comes armed with the process of the law, he has the authority to seize on the poor man's estate, and to sell it out. Well, he has authority, it may be also, to seize on the rich man's property also, but he wants votes, and although it is his duty beyond all question, to execute the process at once, he can give it the go by if he can secure those votes by so doing. And he may have processes against forty men of influence in a community, and delay the execution of them all for the sake of securing the votes he wants. Is there not seen every day, vindictive men ready to go to law with each other, and for no other purpose than to harass and worry each other? They do not care for the petty sum involved, the object is simply to harass the man contending with them. The sheriff is armed with the process issued by the proper authority, and it is an immense power when employed by a vindictive spirit, and if such an individual was favorable to the sheriff would not the very purposes of the law be liable to be defeated, to advance the interests of the officer, and to pander to the revengeful feelings

of his supporters? But the gentleman says, if the officer thus acts, the people will not re-elect him. Will that relieve the man who has been injured, oppressed, and down trodden by the sheriff? Would that restore to the man his rights, abused by the sheriff in failing to discharge the duties of his office, in a desire to secure the votes of his adversary? Not at all. The people have turned out the sheriff, but still here are men suffering under the exercise of a power intended for the good of the country, but which has been perverted to corrupting of purposes. This is a question that I do not like to discuss, but it is unavoidable, in view of the importance of guarding these officers from an interference with the best interests of the people, when they have in their hands the power of sacrificing whom they please. Let the sheriff be elected, I care not whether for two or four years, but let him be ineligible. When he goes out let him wind up his business, and then after an interval of two or four years afterwards, if the people want him again let them elect him. And I think with the gentleman from Louisville that rotation in office, especially in regard to sheriffs, is the most advisable policy to adopt.

I have thought proper to make these remarks, because I am satisfied that if we turn these sheriffs and constables loose, armed with all the process of the law, with the power to exercise it for the advancement of their own interests, it will be an injury to the country, that years will not remedy.

Mr. WOODSON. The scarcity of any article is said to enhance its value. If this be true, and I think it is, consistency, in this convention, cannot be too highly appreciated, and by none more than my friend from Simpson (Mr. Clarke.) I do not pretend to say that I have, or shall be consistent in my course, in this convention, but I think that I shall try at any rate to preserve it as far as possible. But I have been particularly struck with the course of gentlemen here. When a clerk is to be elected, we are told no man should be eligible without a certificate of qualification. And why? Because the people are not capable of judging of his qualifications. When a sheriff is to be elected by the people, I am told, do not let him be elected again. And why? Do not the people of his county know all about his qualifications by that time, whether he has been oppressive or not, or discharged his duties properly or improperly? Most certainly. My position is, that we ought to interpose no more restriction than is possible here, and I am not to be deterred from it by the gentleman from Henderson (Mr. Dixon) and others who are continually taunting people here, with a disposition to pander to the prejudices of the people, and seeking thereby, to deter us from asserting that the people are capable of self-government. Nothing of the sort has any influence on me. Above all, do not say in one breath that the people are capable of self-government, and in the next that they shall not select their own officers, after they have served them one term, for fear they may be improperly influenced. It reminds me of the election of Napoleon to the first consulship. It was declared that it should be a perfectly free election, but accompanying it was the proclamation, that he who voted against Na-

poleon should be shot. It was like the liberty of the press proclaimed during the reign of terror in France, where every article was subjected to the censorship of those in power. Here we are told the people are free, and can govern themselves, irrespective of all restrictions, but they are told also, that they cannot even elect a clerk without a certificate from a judge of the court of appeals, or of the circuit court; and for what purpose? In order that the people may know who ought to be permitted to serve them? And when a sheriff was to be elected a second time, we were told, in effect, that the people, instead of being capable of self-government, were incapable, or otherwise, that a majority of the people are corrupt and accessible to bribery and improper influences. Gentlemen ought not thus to say in one breath that the people are capable of self government, and in the next that they are not. But, says the president, sheriffs and constables are to be found, who would pervert their offices to the oppression of the people to secure their re-election. I am reminded by that remark, of one of *Æsop's* fables—that of the fox and the flies. The fox objected to the flies, when they had satiated themselves, being driven off from him, for fear that another hungry set would come and deprive him of the last remaining drop of blood in his veins. Thus, if a man discharges the duties of his office in the way described, it is to be hoped by that time he will be sufficiently satiated with the best blood of the people, and that they would suffer less under him, than those who had not as yet tasted a single drop of it. My impression is that the people, in the selection of these officers will be governed by proper considerations. If a sheriff discharges his duties faithfully and properly, they will re-elect him; if not, they will not re-elect him. If these two positions were not true, I would vote to deprive them of the power of exercising this privilege, and vest it in another tribunal. Let us be consistent, and not proclaim to the world in the same breath, that the people shall elect their officers, and they shall not; and that they are capable of discriminating in their choice, and that they are not thus capable. Do, at least, let us be consistent. To use a homely phrase, "I want to go the whole hog, or none." Let the people have the whole power of electing whom they wish.

Mr. ROGERS. This thing of drawing general conclusions from particularities, is all wrong. It is true, that Judas Iscariot was a traitor, and so was Benedict Arnold, but these isolated cases do not prove that all the people of America are traitors, or that all the members of the christian church are impostors; not at all.

Mr. DIXON. The gentleman did not understand me. My idea was, that the people could not discover instinctively who were and who were not traitors.

Mr. ROGERS. I am coming to that. The gentleman was arguing from particular instances, and applying them generally to the people. I would have the sheriff elected for two years, for I go for a short term, and then re-eligible, and the people I believe have too much intelligence to re-elect a corrupt man. As to the argument of not requiring bonds of the sheriff, I have heard similar things during the whole of last

summer from those who were opposed to an election of these officers by the people at all.

Thus, in my county, it was said by those who sought to cast ridicule on the principle, that we desired to elect standing jurors and witnesses. As to a sheriff oppressing the people in view of securing his re-election, that would be just the opportunity for the people to pay him back, and I desire that he shall pass that ordeal. If he is a good officer I want the people to have an opportunity of rewarding him by re-electing him to the office.

Mr. CLARKE then offered the following amendment to the amendment:

"That judges of the circuit courts are elected, but no person shall be eligible to the office of sheriff, or the assistant or deputy of any sheriff, unless he shall have obtained a quietus six months before the election for the amount of all public moneys or dues for which he may be responsible."

On motion, the committee rose and reported progress.

The question being on granting the committee leave to sit again, leave was refused—a count being had—ayes 25, nays 29.

And then the convention adjourned.

TUESDAY, NOVEMBER 6, 1849.

Prayer by Rev. Mr. LANCASTER.

#### LOUISVILLE CHANCERY COURT.

Mr. HARDIN from the committee on Circuit Courts, offered the following, which, on his motion, was referred to the committee of the whole, made the special order of the day for to-morrow, and ordered to be printed:

SEC. —. The Louisville chancery court shall exist under this constitution, subject to repeal, and its jurisdiction to enlargement and modification by the legislature. The chancellor shall have the same qualification as a circuit court judge; and the clerk of said court as a clerk of a circuit court, and the marshal of said court as a sheriff; and the legislature shall provide for the election of the chancellor, clerk, and marshal, of said court, at the same time that the judge and clerk of the circuit court are elected for the county of Jefferson, and they shall hold their offices for the same time.

#### COMMON SCHOOLS.

Mr. TAYLOR, from the committee on education, made the following report, which, on his motion, was referred to the committee of the whole, and ordered to be printed.

#### ARTICLE —.

SEC. 1. The diffusion of knowledge and learning among men being essential to the preservation of liberty and free government, and the promotion of human virtue and happiness, it shall be the duty of the general assembly to establish, within \_\_\_\_\_ years next after the adoption of this constitution, and forever thereafter keep in existence, an efficient system of common schools throughout this commonwealth, which shall be equally open to all the white children thereof.

SEC. 2. The fund called and known as the school fund, consisting of \$1,225,768 42, secured by bonds given by the state, and payable to the board of education, and \$73,500 of stock in the Bank of Kentucky, also the sum of \$51,223 29, being the balance of interest on the school fund for the year 1848, over and above the charges against that interest for said year; all of which said sums of money and stock, and the interest and dividends accruing thereon and therefrom, be, and the same is hereby, set apart, dedicated, declared to be, and shall remain, a *perpetual fund*; the principal of which shall never be diminished by legislative appropriation or enactment. The interest thereof, together with any other fund that may arise by taxation, heretofore or hereafter imposed by the general assembly in aid of common schools, shall be *inviolably* applied and devoted to the creation, support, and encouragement thereof in this commonwealth, for the equal benefit of all the children therein, whose instruction shall be provided for by law; and no law shall be made authorizing said fund, or any part thereof, to be diverted to any other use or purpose whatsoever, than that to which the same is hereinbefore dedicated.

SEC. 3. The interest arising from the fund in the second section of this article mentioned, as also any sum which may have arisen, or may hereafter arise from taxation imposed for the purposes aforesaid or otherwise, shall, in any system of common schools which the general assembly may establish, be distributed among the several counties, in proportion to the number of children therein.

SEC. 4. It shall be the duty of the general assembly to provide for the investment of the sum of \$51,223 29, in the second section of this article mentioned, in some safe and profitable manner, the interest upon which shall be applied as in said second section directed.

SEC. 5. Whenever, for the period of one year, there shall remain unused of the fund set apart and made applicable by the second section of this article to the establishment and support of common schools, the sum of ten thousand dollars, it shall be the duty of the governor to fund the same, which shall constitute a portion of the permanent fund for the support of common schools; the interest arising thereon only to be applied in aid thereof, as in the second section of this article mentioned: *Provided*, That if any county have failed to organize common schools therein for five years, it may, at any time after an organization, draw whatever sum may then be due to it, provided the same has not been funded as herein directed.

SEC. 6. The general assembly shall provide the ways and means for the prompt payment and safe custody of the interest now due, or which may hereafter accrue upon the bonds given by the state, and payable to the board of education.

SEC. 7. There shall be elected, by the qualified electors in this commonwealth, a superintendent of public instruction, who shall hold his office for \_\_\_\_\_ years, and whose duties and salary shall be prescribed and fixed by law.

#### BILL OF RIGHTS.

Mr. DIXON. I desire at the proper time to offer an amendment as a substitute for the second

section of the bill of rights, or the article which is placed third in order in the report made by the chairman (Mr. Stevenson) of the committee on miscellaneous provisions. I wish now to give notice of my intention, and if in order, I will present my substitute that it may be printed for the information of the convention, and referred to the committee of the whole.

The secretary read it as follows:

Sec. —. That all power is inherent in the people, and all free governments are founded on their authority and consent, and instituted for their peace, safety, and happiness, and the security of their property. For the advancement of these ends, but not for their defeat, they have at all times an unalienable and indefeasible right to alter, reform, or abolish their government in such manner as they may think proper.

Mr. MORRIS. If I understand the proposition of my honorable friend, he means to insert, by his substitute, into the general provisions of the constitution, into our bill of rights, the spirit of a preamble and resolution which he brought into this house some weeks ago, to provide solemnly and explicitly, that whilst the sovereignty of this land resides in the people—whilst the people have a right to change, alter, and to abolish the fundamental law of the land, and to do every thing for the security of their lives, liberty, and property, yet that they have no right, no legal power to destroy any of these great principles which were the inducements to all governments—the pillars upon which all society rests—and without which our government would lose the features of republicanism and degenerate into despotism. He means to place the constitution in such a light as that there shall be no mistake with regard to the powers which they have a right to exercise, and those which are even beyond the people themselves, or any set of men clothed with authority from them. He means to place it beyond all cavil and construction, that the lives, the liberties, and property of our people cannot, even by the people themselves, be taken away. He wishes that hereafter there shall be no misunderstanding with regard to this point—that the constitution shall plainly set forth that the power to destroy property without compensation or the consent of the owner does not exist. This is clearly established to my mind, by the original resolution reported to this house by the committee; but it is plain to my mind only by implication, and it has and will again admit of great variety of construction and difference of opinion. It is to avoid this variety of construction, to place the matter clearly and distinctly before the country, that this substitute is offered. I most heartily concur in the propriety of the provision, and when the proper time arrives will, if it be necessary, give my reasons fully and explicitly. I hope it will be printed and duly considered by every member of this house. It is a proposition involving a great principle.

Mr. STEVENSON. I concur in the propriety of printing the substitute now offered by my friend from Henderson. The object of the committee in altering this section—it will be seen, was to render it more specific. They have changed this section by adding after the words,

“peace, safety, and happiness,” the words, “security and protection of their property.” I concur with the gentleman from Henderson, as well as with the gentleman from Christian, (Mr. Morris,) that nothing should be left to a doubtful construction in the bill of rights, so far as security goes, and I shall go most cheerfully for the proposed amendment, if in the opinion of the convention the object has not been already clearly secured by the section as reported. The only change, if I understand it, in the proposed amendment, is by adding the words, “and not for their defeat.” I had supposed when this matter was discussed in the committee, that after setting out clearly, openly, and distinctly with the proposition that the object for which all free government was framed, was the peace, safety, happiness, security, and protection of the property of the people, that any government founded in contradistinction to these principles, would be contrary to the whole spirit and genius of the government. But if the amendment is not sufficiently strong, no gentleman will go further than myself in making it so. I hope this amendment will be referred to the committee, that an opportunity may be given for a mutual interchange of opinions, and if the present section is not considered sufficiently strong, I shall go with my friend in his amendment, to make it stronger.

Mr. DIXON. I will remark that in presenting this amendment my object was to make the thing clear, which I thought somewhat doubtful. I did not wish any mis-construction to be placed on the language in the second section, and I thought it better to place the whole matter beyond even a doubtful construction. I think, gentlemen, on examination of the second section, will perhaps concur with me, that the words which I have added, “but not for their defeat” are not only necessary, but all important to prevent any misconstruction of the powers of this, or any future convention, over property.

The motion to print and refer was agreed to.

#### INSTRUCTIONS TO A COMMITTEE.

Mr. CHAMBERS. When the convention was in committee of the whole a few days ago on the report of the committee on the court of appeals, the word “four” was stricken out and the word “three” was inserted by a majority of the convention, who thus expressed the opinion that there should be but three judges of that court. The whole report was afterwards referred to a joint committee, consisting of three of the standing committees of this body, to whom I desire this convention to give instructions on this subject, to govern them in preparing the report which they may hereafter present. I believe the subject has been sufficiently discussed, and therefore I shall say no more than to ask for the yeas and nays upon the resolution which I now offer.

*Resolved*, That it is inexpedient to increase the number of judges of the court of appeals, or to branch that court by constitutional provision, but that power should be given to the legislature to effect these objects, when the same shall be demanded by the people.

Mr. APPERSON. I move to lay that resolution upon the table. My reason is this. The



grand committee has had a meeting, and they seem to be going along very well. If we undertake to instruct them on the subject, there will be resolutions of instruction offered in relation to others, and the committee may be embarrassed. Now, as they yesterday proceeded so very well, I hope no such resolution will be adopted, and I move to lay it upon the table.

The motion was put, and it was understood to have been carried; but a conversation ensued on the propriety of calling the yeas and nays upon it, which was terminated by the withdrawal of the resolution by its mover, until there should be a better attendance in the house, the sense of which he desired to obtain.

#### COUNTY AND DISTRICT OFFICES.

The convention having yesterday refused the committee of the whole leave to set again on the report of the committee on the executive and ministerial offices for counties and districts, the question now came up on that report in convention.

Mr. GRAY. I move that the convention resolve itself into committee of the whole, and resume the consideration of that report.

The PRESIDENT. That report is not now in possession of the committee of the whole.

Mr. GRAY. I presume it can be recommit-  
ted.

The PRESIDENT. It may be again referred to the committee of the whole, and then the gentleman may move that the convention resolve itself into committee of the whole upon it.

Mr. GRAY. I make that motion and my reason for making it is simply this. It will be better to consider this report in committee of the whole, for according to the rules which govern the committee every gentleman can more freely express his views and sentiments there. I think also that it is due to the president of this body that he should have an opportunity to give expression to his views upon the amendments that may be offered or to offer amendments himself, which he will not be able to do in convention. At an early period of the session of this convention there was an understanding that the president should be allowed such an opportunity, and I think that when the convention yesterday refused leave to sit again, this understanding was not properly considered. By refusing to go into committee of the whole again, I think we shall not expedite business, for I suppose the previous question will not be moved until all have said what they desire to say. Sir, I move that the report be again referred to the committee of the whole.

The PRESIDENT. I beg to state to the convention that I do not wish it to change any course it may desire to pursue for the convenience of its presiding officer. I have already frequently, perhaps too often, addressed the committee of the whole, on the subject involved in this report, and I do not wish them now to change their course on my account.

Mr. C. A. WICKLIFFE. I voted yesterday against granting leave to sit again, deeming it unnecessary. I supposed that we were nearly through, and that any further discussion that might be thought desirable could take place in convention.

Mr. GHOLSON. If the president has no desire to speak on these questions or to offer any amendments to the remaining sections of this bill, I can see no necessity for again going into committee of the whole upon it. To go into committee and there consider it, when it will have afterwards to be acted upon in convention, will be to do that twice, which it is sufficient to do but once. I am opposed therefore to the motion which is now pending.

The motion to recommit was then rejected.

The report was then taken up, and the first question was on concurring in the amendment of the committee of the whole to the first section, striking out the words, "a county court" and inserting "and."

The amendment was concurred in.

The next amendment was by inserting in the second section after the words, "no person shall be eligible to the offices mentioned in this article who is not at the time twenty four years old"—the words "except clerks of county and circuit courts, sheriffs, constables, and county attorney, who shall be eligible at the age of twenty one years."

The amendment was concurred in.

The next amendment was by adding the words "or a circuit court" after the words "court of appeals," in the same section, to give the judges of the circuit courts power to grant certificates of qualifications to candidates for the clerkship, as well as the court of appeals.

Mr. KELLY. I move to amend the section, under consideration, by adding the words "in open court" after the words "circuit court." I wish this examination to take place in open court. These examinations heretofore have been made at night after the adjournment of court, when the clerk has been fatigued with the labors of the day, or before its sitting in the morning. I believe, if we wish to have thoroughly qualified certificated clerks, they should be examined in the presence of the multitude.

Mr. TURNER. If a young man is examined in open court, when there is a great crowd, the tendency will be to excite and alarm him so much that it will be difficult to ascertain whether he is qualified or not. I think a private examination would be much better.

Mr. HARDIN. I think there would be some inconvenience attending a requisition of this kind. If a man wants to run in August and the spring session of the court has passed by, he will have no opportunity for an examination unless a court is called to sit for the purpose, which I presume no one would think desirable.

Mr. KELLY. I have not moved this amendment with a view to restrict the rights of any individual in this commonwealth. I believe the rights to office should be as free as air, and no restriction should be cast on any man not tainted with crime. I have some knowledge on this subject, and I know how the best evidences can be obtained; therefore I have moved that the examination be made by the circuit court, in open court. I know if it be made at night, while the judge and the clerk are tired, it will not be thorough, and there will not be that inspection that the people will give. I am opposed to restrictions altogether, and if possible I wish to kill it.

Mr. McHENRY. I am glad the gentleman has avowed his object. It is to kill this provision; and I hope those who wish for restriction will consider this object in the vote they give upon this amendment. It seems to me that there is sufficient opportunity to examine candidates for this office, without being in open court. There is another thing that should be considered, which is, that the commonwealth is spending about twenty four dollars per day, while the court is in session; an examination in open court, then will tend to increase their expense in this proportion, and the only object to be attained by it will be to gratify a few individuals. We shall save expense and trouble by having the examination made by the judge and the clerk in private, and I conceive that it will be decidedly better.

Mr. MITCHELL. I am glad the gentleman from Washington has called attention to the phraseology in which the clause of that report is couched. I think the candidate will be examined in open court, according to the provision of the section under consideration. By the expression "court of appeals," I do not understand the judges, but the open court, and I shall move to amend so that a judge of the court of appeals, or a judge of the circuit court may make the examination. It would be exceedingly inconvenient to have this examination made in open court, for the court sits but twice in a year.

Mr. CLARKE. While a number of propositions were pending on this second section in reference to clerks, I proposed in committee to strike out all after the word, "years," in the seventh line down to the second "the," in the tenth line, which would destroy the necessity for a certificate from a majority of the judges of the court of appeals. I would prefer that no certificate should be required from any judge. There are those in this convention who believe a certificate from a majority of the judges will be necessary, and those who believe that the people are capable of judging, and that a certificate will be only *prima facie* evidence of fitness, and might be procured by persons not qualified. There seems to be a middle ground, which is that the candidates should have the certificate of one judge of the circuit court. I, therefore, desire to have the words which I have indicated struck out, letting the requisition as to age and citizenship, as it is, remain, and leaving the people in the exercise of their sound discretion and good judgment, the right to determine whether the candidate is qualified or not. I do not desire to press what I do not believe to be right, but I am convinced that no certificate that would be obtained, would furnish satisfactory evidence to the people. On the contrary, I think it would enable the candidate who held it to impose on the people, and perhaps defeat one better qualified than himself. I have no idea of requiring young men from distant parts of the state to come to Frankfort for a certificate. It is fair to presume that there will be two candidates in each county, and if they have no certificates, they must come here to get them, and when obtained they will furnish no satisfactory evidence of qualification in my judgment. I then

move to strike out the words I have indicated, and on that question I call for the ayes and noes.

The PRESIDENT. The gentleman's motion is not in order at this time, there being an amendment pending.

Mr. KELLY withdrew his amendment.

Mr. MITCHELL moved to amend the passage under consideration, by inserting certain words, so that it would read as follows, the words proposed to be added being in italic:

"No person shall be elected clerk unless he shall have procured from a judge of the court of appeals or a judge of the circuit court, a certificate that he has been examined by the clerk of the court giving said certificate under his supervision, and that he is qualified for the office for which he is a candidate."

The amendment was adopted.

Mr. CLARKE then renewed his motion to strike out the entire passage, as amended, and on this he called for the yeas and nays.

The yeas and nays were taken and resulted thus: yeas, 33; nays 52.

YEAS.—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, James W. Irwin, Thomas James, Charles C. Kelly, James M. Lackey, Willis B. Machen, William N. Marshall, David Meriwether, James M. Nesbitt, Hugh Newell, Thomas Rockhold, John T. Rogers, Michael L. Stoner, Silas Woodson—33.

NAYS.—Mr. President, (Guthrie,) Richard Apperson, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, Alfred M. Jackson, William Johnson, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Elijah F. Nutall, William Preston, Johnson Price, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spaulding, John W. Stevenson, James W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, C. A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Wesley J. Wright—52.

So the convention refused to strike out.

The convention next concurred in the amendment of the committee of the whole, striking out the concluding words of the section, a provision to the same effect having been made in another part of the article.

The second section as amended was then adopted.

The third section was read and approved, without amendment.

The fourth section was next read as follows:

"Sec. 4 Sheriffs shall be elected in each county at the same time and manner that [associate judges of the county court are elected, whose term of office shall be two years, and they shall be re-eligible for a second term; but no sheriff, or deputy, who qualified under him, shall after the expiration of the second term, be re-eligible for the succeeding term.]"

Mr. CLARKE renewed his motion which he offered in committee of the whole yesterday, to strike out all the words of this section which we have placed between brackets, and insert the following: "that judges of the circuit court are elected, but no person shall be eligible to the office of sheriff or an assistant or deputy of any sheriff, unless he shall have obtained a quietus six months before an election, for the amount of all public moneys or dues for which he may be responsible."

Mr. HARDIN. If I understand the gentleman's proposition, it is that the sheriff may be re-eligible so long as the people will elect him, provided he has obtained a quietus six months previous to the election, of the whole amount of revenue and county levy, for which he is responsible. If that be the case, I cannot vote for the amendment. I listened with much attention to my friend from Madison yesterday, and from my own long experience I am led to believe that every word he said was literally true. I am in favor of rotation in office and practical responsibility; and to insure a practical responsibility as to some officers, I know of no way but ineligibility, because there is no way to get at him, except by suits for malfeasance, misfeasance, or nonfeasance, unless we reach him by putting an expiration to the time for which he may be elected. I have no cause of complaint against any sheriff in any court where I practice, nor against any clerk or judge. I did not, in striking for a convention, and in aiming to make a constitution, do it with a view to provide places for men out of office, nor to turn present incumbents out. The sheriffs, as I remarked, do their business well, and the clerks also, and I have no cause of complaint against the judges, except as I said in relation to the judges of the court of appeals, that I think they are sometimes in too much of a hurry. But if a sheriff is re-eligible after four years, when is he to cease to be so? So long as the people will elect him he can be elected, provided he has complied with the provision of this amendment.

Now in practice, what will be the effect? The sheriff has the vantage ground in all sharpening, foxing, hooking, and every thing else, and in all manner of ways. There is no conceivable way in which the people can be ground down in which he will not be able to do it. He will have, perhaps, considerable arrearages of money behind, but he will pay up, because he will have funds in his hands, and he will get his quietus, and when the election comes on he will have from one third to one half of the voters under his thumb, so that they cannot resist him. I heard a speech some forty years ago in Bullitt from a candidate for the office of constable, by the name of Wilcoxon, and he claimed his election, on the ground that he had been a constable, and had favored the people. But a sheriff can have one third of the revenue of the county out

of the treasury, and yet if he has six months to make his quietus, I ask if he will fail of his election while he has claims against one half to one third of the voters of the county. Surely he cannot be resisted. He may have executions against a man who controls a hundred votes and how can that man resist him. The sheriff may make a return upon an execution, "not sold for want of time," or "not sold for want of bidders" and no damages can be obtained from him. He has a lever of power which I do not want a sheriff to possess.

I will venture to say, if you have no other clause except that of a quietus, the same office can be in the same family for twenty or thirty years. Do you not intend to leave the office open to all? Do you not wish to leave a competitor, a rival of the man exercising the office of sheriff, a chance to be elected? Give him a fair competition. You give the sheriff the vantage ground more than fifty per cent. It is a vantage ground that cannot be resisted at all. Suppose two thousand votes have to be given, and one thousand have an arrearage of county levy behind, and a remnant of the rest have an execution hanging over their heads; and they resist the sheriff! You might as well attempt to dam up the Mississippi river as do so. I strike for rotation and responsibility in office, and I say there is no responsibility if you allow a sheriff to be re-elected after such a term. I have reflected on this subject a good deal for the last twelve months, and I had made up my mind exactly to such a report as has been made by the gentleman from Madison, that a sheriff should be appointed for two years; and re-eligible for one term and no longer. It is a very important office. It is not so high and dignified as that of the judge of the court of appeals, or of the circuit court, but it is a most important office to the great body of the community, as much so as any in the state, for this officer operates on the high and the low and on every body; and through him, the whole administration of the law is visited on the heads of every one. I have gone as far as I can possibly go in this levelling doctrine. I was afraid when Monsieur Tonson came again, this morning, that he would take us, but he failed by nineteen votes. And I hope we shall put into the constitution enough of the conservative principle to make it at least healthy. I have struck a great deal for reform, but I cannot go to this length. I want a sheriff to go out of office at the end of four years.

Mr. GHOLSON. I suppose gentlemen will now concede the fact that the people do not know enough to govern themselves, and therefore, we must put leading strings on them, or they will go astray. We were told yesterday and this morning, that you shall not elect a clerk whom the people please, because you do not know whether the candidates are qualified or not. And now, when we come to the office of sheriff, you shall not elect, because you do know. You shall not elect a man, although he has served you honestly and faithfully. You turn round and say, we must put the bridle in the mouths of the people, because otherwise, the candidates for office will buy votes at a dollar and a half. If the gentleman from Nelson chooses to make such a declaration in relation to his own con-

stituents, he is welcome to do so. I disclaim it as applied to mine. On the one hand, we are told what we shall not do, and on the other, we are emphatically told that the object for which the people have called with stentorian voice, shall be denied, and a restriction is to be laid on them, in the choice of a clerk, and now in the choice of a sheriff, because the sheriff will buy up the votes. It was remarked by my talented friend from Henderson yesterday, that consistency is a jewel. I think our friends are about to act consistently in one thing, at least, that is to deny to the people the return of that power which they have called for. They begin to denounce persons as demagogues, and turn up their noses, and say they are sick of hearing of the supremacy of the people. For my part, I am not tired of it. Gentlemen have shown their consistency in trying to put leading strings on the people, and I will resist it at every step; though I may be overpowered by numbers, I will contend for what I believe to be broad republican equality. I can point to one on this floor, who has held the office of sheriff for thirty years, and I would ask him how he appreciates the compliment which has been paid to the sheriffs? If I ever heard the doctrine fall from the lips of mortal man, that the people cannot govern themselves, it has been uttered by my friend from Nelson (Mr. Hardin) this morning. Away with freedom, away with self-government, when we, in this hall, are to be told that our constituents can be bought for a dollar and a half by the office holder! Yet this is the argument used on this floor. We are told that after we have tried an officer, and found him faithful, we shall not elect him again, while at the same time, we are told that all power is to return to the people. And this is the way it is to be done. I have heard of such a thing as riding the people booted and spurred, and I used to think that some office holders did it; but if this, which it is now proposed to do, is not the thing, then I do not understand the use of language. My friend from Nelson has tried to convince us that the circuit court judges will be scoundrels, if they are allowed to be elected more than once. Why not carry out the principle in relation to clerks? When it suits the gentleman's proposition, then the people are any thing that is noble, great, good, and generous; and when it suits his proposition, they are knaves and scoundrels. If the sheriffs have been honorable in his neighborhood, I ask why in the name of high heaven he wants to turn them out? He has named a great many rascalities of clerks, and I wish him now to name the sheriffs who have been guilty of such rascalities as require that they should be turned out.

I believe we are going to make a farce of this constitution, and I offer the prediction, that so much will be done, that the people will vote against it; and if any thing will induce them to do it, it will be these illiberal, unjust, and anti-republican discriminations; this bridling of the will of the people, and this denying of the free choice of those who are to preside over them. If it should happen that a sheriff should succeed in one election by bribery and corruption, "murder will out," and the rascality will soon be exposed, and he will sink into the lowest depths of infamy. The whole thing resolves

itself into this, that we must protect the people from themselves. If the people are exposed to Shylocks and shavers, to be sold like sheep in the shambles, will they not be conscious of these facts? If not, they are no better than sheep, and they are the last people on the face of the earth to be trusted with the rights of self-government. If this principle is adopted in the present case, I hope that it may be made to apply to other cases also. I protest against the life estate granted to others. If the sheriff is to be cut off, cut off the clerks, and the judges; treat all alike, and do not make fish of one, and flesh of another.

Mr. KELLY. Whether the facetious allusion of the venerable gentleman from Nelson to Mons. Tonson is designed for me or not I do not care or know. He says he has gone as far in radicalism as he is willing to go, and I confess he has gone further in substantial reform than I expected, and I am glad now to see his words become the echo of his thoughts.

Mr. HARDIN. I do not intend to say but a very few words. I never said that my constituents could be bought for a dollar and a half—and I had supposed that the gentleman (Mr. Gholson) had suffered enough the other day from the gentleman from Henderson (Mr. Dixon) when he attempted to put words in that gentleman's mouth which he did not use, to warn him against playing that kind of game in future. I have never uttered a word that would justify him in declaiming for a quarter of an hour in the way he has. I said that I had been for rotation in office from the governor down, and I appeal to him if he has not heard me argue against the ineligibility of officials over and over again, as the only practical means of securing responsibility, of which heretofore there has been none at all. As I before remarked, the sheriff has advantages in entering a canvass, greatly superior to any other man. He has been sheriff for four years, and has three or four deputies in the large counties, and at least two in any county, who will know every man in the county. They will have the remains, though you require a quietus, of levies and fee bills unexecuted and due. They will pay up, out of their own means, to the government, to the lawyers, clerks, and others, and get a quietus, and still have these debts scattered about the county, no doubt, perhaps, to the extent of a thousand cases. What will be the effect? The gentleman says, that under such circumstances, he can come up and vote boldly; and it is no doubt true, though I cannot tell. He says, also, that he thinks I might have the same boldness, and perhaps I might, but I do not want to be placed in that situation. The word of God says, "Lead us not into temptation," or some such expression as that; at any rate, if it is not there it ought to be. But I can say for myself, that if the sheriff came with an execution to seize upon and sell all I possessed, even to my last bed, and was to promise to favor me a little until after election, I do not know how I should act. I should be seized, I am afraid, at least with fear and trembling. And yet my friend would come up boldly and without fear. Perhaps he would if he had the money in his pocket, and who then would be afraid? I have gone for ineligibility to secure responsibility in every office, from the beginning, and

shall advocate it to the end. I do not know that I heard distinctly what the gentleman from Washington (Mr. Kelly) said, and perhaps may not have understood him. He at least is under no obligation to me of any kind or character, nor am I under any to him, except so far as entertaining a good opinion of him, is concerned; but there was no particular necessity for his saying what he did. I advocated a convention, and have advocated it for years. I want the people to elect all their officers, and I want practical responsibility, and ineligibility to secure it. I am not against the sovereign people, but whenever I hear a man talk about loving the people over much, I let it go for about what it is worth. I love the people too; I owe every thing to them; and I have never appealed to them in vain; I do not know that I shall ever appeal to them again, but if I should, I will stake my life upon it, it will not be in vain. They know me, I mix with them, and am one of them, and no more than one of them. And in reference to my constituents, I will say that they are equal to the gentleman's constituents, in integrity, intelligence, and in every quality that ennobles men. I will not say that they possess those qualities to a greater extent than his, by any means, for I presume the gentleman's constituency are just as respectable as any other in the state.

And in relation to the sheriff, I do not know that they ever voted against me, and in my practice of forty three years, I declare most solemnly that I never sued a sheriff, for they have but a hard time of it any how. We are on the best of terms, but I do not want any man to hold the office for more than four years with the power the sheriff can exert.

I did say, and I repeat it, when it was proposed that a man should be elected clerk, possessing no qualifications, that it was a leveling principle to which I was opposed. I appeal to my friend, for I still must call him so, from Washington, if the clerk of his county did not die, and if a very popular lawyer did not get elected clerk of the county court. He is a very worthy man, a good clerk, and writes as good a hand as myself, and perhaps the only thing in which I can excel him, is in the grammatical construction of sentences. Well, the first order he made was to notice the death of his predecessor, and it was entered in this way. "At a court begun in hell it was suggested that the county court clerk had died, &c." (laughter). I saw the record brought into court four years afterwards to prove that the gentleman was a clerk, and on his being pointed out to me, I turned to him and said. "In the name of God why did you take such advantage of your competitor, as to go to hell, when every body is your friend, to hold the election?" (renewed laughter.) Since then the record has been changed, and reads, "at a court begun and held, &c." The requisition of a certificate then would have done no harm. In relation to coroners I appeal to the gentleman from Hardin if the facts I am about to relate are not true? During one of the terms of the circuit court, there was a terrible battle fought between two bullies, commencing in a grocery on the west side of the street and extending clear across the street, resulting in one of them being caught

and thrown down so as to cause his death. A coroner's jury was summoned, and the verdict of the jury, drawn out from the forms, was that one man had killed another, with six thrusts of a small sword and other weapons, and a variety of places in the body were designated as having thus been wounded. Is it not possible then that men may fill offices without possessing the proper qualifications?

I am for the people electing their governor, but let him be at least thirty years of age. I am for their electing a representative, but let him be twenty four years of age. I am for their electing a senator, but let him be at least thirty years of age, and I am for electing a judge, but let him be at least thirty years of age, and a practising lawyer. These are wholesome restraints, necessary for the safety of the great body of the community.

Mr. GHOLSON. I find that offices are made to grow in importance as it may suit the convenience of gentlemen. First of all it was the judge, then the clerk, and now it is the sheriff that is the most important officer under the canopy of Heaven. I wonder that my friend from Nelson, does not desire to provide that a certificate of qualification shall be required of the sheriff. The gentleman, I am glad to hear, now disclaims that the people can be bought like sheep at the shambles, but I submit to the gentleman if he did not distinctly, openly, unequivocally, and in so many words, declare that with the revenue means in his hands, the sheriff would buy votes, which revenue would amount to about a dollar and a half a head? I affirm that he did do it, and he has not pretended to deny it. And it was, so far as the charge applied to my constituency, that I repelled and protested against it. And he has also failed, and forever will fail to designate a sheriff who has acted in the manner he says they will do. And the story the gentleman told us about the coroner was after all merely an instance where an honest farmer was led into error by copying a legal fiction, and which form never had common sense or common honesty in it. And the gentleman and others with him, when the question comes up will contend for the retention of all these senseless legal forms and fictions. Yes sir, when the motion is made to reject all these things which stand like drift wood in the current of justice, and through whose filtering the heavenly attribute is only to be obtained, if at all, but which indeed oftener turns the current the other way, and causes the withholding of all justice, you will find him stoutly contending for their retention. Just look at the writ of ejectment and see what an utter fiction and string of falsehoods it is from beginning to end. This is lawyers sense, and it is no wonder that plain honest farmers are led astray by it.

Mr. HAMILTON. I have been listening attentively to the protracted discussion of this question, but gentlemen have failed to convince me that the sheriff should not be re-eligible. Some have said that the sheriff would take the money out of his own pocket and pay it over in order to secure a quietus. That however, is no objection to me. Others have contended that he would oppress and ruin the whole country, but this I think is a mistaken view. So far as

I am acquainted with the duties of the sheriff, his duties are prescribed by law, and a penalty provided for every neglect or violation of them. Where a precept is delivered to him, or an execution comes to his hands, he is bound to return it on a certain day, and not only that, but to endorse thereon what he has done with it. And if he fails to endorse an execution, he is liable not only for the amount of the debt, but for thirty per cent. damages. And after the execution is returned the plaintiff has the right to go and see what has been done, and to demand his money at once—the sheriff being liable to that amount, if he does not immediately account for it. If then, great evils are to arise from the exercise of the power in the sheriff's hands, which gentlemen seem to apprehend, I would go for abolishing the office at once. Experience is the best of authorities, and I can point to instances where the deputies have been in office for six, eight, or more years, and with no complaint, so far as I have ever heard, against them. In Green, the deputy has served some six or eight years, and performed his duty well. He never has carried out this desolation and oppression in that county that gentlemen have here pictured. It was the same with Barren and Hart counties; but there was a prejudice among the democrats in Hart in favor of rotation in office for the sheriffalty, and in that county the whigs had had the office so long that the incumbent, although a clever fellow, was run out, and a democrat substituted in his place. I was called upon to become one of the endorsers for the new officer. He swore in a couple of his sons as deputies, and about twelve months afterwards I heard that there were judgments out against him. I thought it best to go and see about it, and had hardly got into town when a constable handed me the notices of his failure to return executions. I went a little further, when three more notices were served on me, of his not paying over moneys—and when I got to the court house the sheriff gave me a handful of them, for his misdemeanors in office. The sons had destroyed the father, and thus involved his sureties. Some of these cases I have been obliged to follow up to the court of appeals. This is one of the results of the application of that principle for which the gentleman from Nelson is so strenuous a stickler—rotation in office. If the gentleman and others would apply this rule to their speaking, the convention would get along much faster and better. And this experience proves to me, that if a man in office is discharging his duties well, he should be re-eligible again to it.

But, says the gentleman from Henderson, was there not a Judas, and did he not betray his Lord with a kiss? Yes, the school boys in my county know that. But I ask the gentleman if this did not occur during his first term, and if he was re-elected? (Laughter.) My good book tells me that this occurred during Judas' first term—and that he was not re-elected, though he sought to be with tears in his eyes. And further, says the gentleman, what is the use of a bond from the officer? Cannot his experience tell him that so long as the officer was receiving moneys, it was necessary that he should give a bond? The first endeavor is to select a moral man—if you

fail in that, then the bond secures you. I had supposed a gentleman of his experience would not have asked such a question. His experience while speaker of the senate, in the case of the state treasurer, by which the people lost thousands of dollars, should have taught him better than to have asked such a question.

Mr. KELLY. My friend from Nelson says that by the record, the county court of Washington in 1835, was opened in hell. Whether that is the fact or not I do not know, never having been there—he may have however. But I do know that the gentleman who was the incumbent of the office, discharged his duties well, and I have never heard a complaint against him. I am sorry to see the gentleman take occasion so often to allude to the county of Washington. He denounced a distinguished member of the bar there the other day—Dabney Cosby—while speaking on the subject of branching the court of appeals. He was born and raised in Washington, and has been a candidate in the district, and the vote of the county has always told against him, and I think that to be the moving cause in this matter. The gentleman says he supposes he may call me his friend. I tell him I am his friend, and have ever been, and I have no desire to engage in a war of wit with him. He is an overmatch for me with that weapon.

Mr. NUTTALL. As I shall differ with some of my friends with whom I have been associated, in regard to this office of sheriff, it is proper that I should give my reason therefor. In the first place however, I will remark that I have not discovered in this convention any desire on the part of any one to introduce what the gentleman has styled the levelling doctrine. I suppose that every gentleman here is controlled in his action by what he considers the best interests of his constituents, and I have no idea that any vote they may give, will be governed by sinister motives. I will say one thing, and I appeal to the judgment, and well bought experience I may say, of every gentleman here, to vouch for its correctness. I will not make an invidious distinction as to counties, for I believe the people are alike all over the state, but if you give me all the sheriffs and all their deputies, and all the constables on my side of the question in a political canvass, I think I stand a very good chance of being elected in any county in this state.

A few words as to the use of money in an election. I do not say that any person of good sound understanding and virtuous habits can be bought, but I can tell what I know and what I think has been the experience of every man who has been a candidate for office. It is that money used properly or rather improperly, in an election has great power. Why do the whigs and democrats make up pony purses just before the election if nothing is to be gained by its application? Why do they do it if it is to have no effect and to produce no result? It is made up to be expended in certain sections, and parts of districts, and no man or set of men would act so idly and so foolishly as to make up these purses of money just before an election, unless they were aware that something was to be accomplished by its expenditure.



Now, I have as little good feeling for the constables as any man living, but as for the sheriffs, I make no war on that class of respectable citizens. But as for these men who go about into every poor neighborhood, and poor man's house, in the country, day in and day out, just before an election, to say that, with their executions and fee bills in their hands, they have no controlling influence in an election, is to say what no intelligent man will believe. I recollect being called into a neighboring county once, to make a speech to a large congregation of people. On such occasions I am very apt to look at the topography of the country, and the character of the people to whom I am to speak, and to enquire and find out who are the drill sergeants of parties,—and these last I have always found in the shape and persons of constables—the men who always have their saddle bags loaded down with munitions of war for the occasion, in the shape of fee bills and executions. Well, on this occasion I saw some of these gentlemen, with their saddle bags, on the ground. There was no distinguished man to meet me, and they could get no one to do it but a constable. Thinks I, old fellow, smart as you are, I shall get you; for I am *some* in a scrape of this sort. Well, I saw the moving of the waters, and it was my business, while they were concocting their schemes, to take care of myself. "Now," said I, "fellow citizens, I have come here to talk politics to you, but I see that this ground is infested with a set of cattle that are called constables. Now, I will stake my vote upon the fact, that what I am going to tell you is true—if it is not, I will agree to vote for your man, and if it is, you shall agree to vote for mine. Here is an election to come off in about two or three weeks. It is an important one,—the whigs have got their secret circular out, in which they tell you that the halt, the lame, and the blind, must all be brought up to the polls, and the democrats have also got out their circular, in which they urge the same thing in regard to the same kind of men on their side. Now," said I, "these gentry, these constables, will have you all out to-day, and I will tell you what they will say. They will tap you on the shoulder and take you one side, and say, 'here is a little execution against you of \$15 or \$20; if you will really agree to pay me it, say two weeks after the election, I will wait for you; and this is a very important election going on now, in which we all feel interested, as it is a matter of great consequence to the people.'—Now, fellow citizens, I want you to rise up here and say how many of you have the constables taken out in this way." First one and then another, and in all some seven or eight, got up immediately and avowed that the thing had occurred to them. Tell me not then that a sheriff or a constable can exert no influence with his office. Let one of these officers approach a poor man, with his little family of four or five white headed children, all depending upon him for support, with an execution in his hands, to turn him out of house and home and sacrifice his all, and it will stagger almost any man, however independent he may be. I know many sheriffs who are worthy and respectable and talented men, but if I had my way, when a man had once consented to be sheriff or constable, he nev-

er should, as long as time lasts, have a seat in any deliberative body.

My friend from Ballard, (Mr. Gholson,) whom I believe to be pursuing his notions with all candor and sincerity, says that consistency is a jewel. I am afraid then that there are very few jewels here. And in my course on this question I do not wish to be understood as crossing my tracks, but merely as yielding a little. But that money is not used for electioneering purposes, and sheriffs and constables cannot pervert their stations to the same end, is not my experience. I have run some heavy political races in my county, and there never was an occasion when I could get an equal division of these officers—say half of them in my favor—that I could not lick my competitor all hollow. But when, as is frequently the case, they all go against me, if I get elected at all, it is rarely by more than a baker's dozen. As to the use of money, I think I ought to know something about it. In the most celebrated race I ever ran, my opponent was supplied with dollar bills by the hatfull, and they were used to induce men not to vote for Nuttall. I did not spend much money to get here, because I had it not, but if I had, God Almighty knows it would have went like water. With the influences that were exerted against me, I would not have been defeated for as much money as this house could hold. I will not say that other men did not spend their thousands for me, but there were thousands spent against me. Well, my constituents are just as good as those of any other gentleman here; quite as intelligent, and they pay about \$12,000 a year of revenue to the state government.

I am for a compromise of this matter; I started in this convention with an intention to compromise on non-essentials. I yielded on the matter of requiring qualifications from clerks, and if gentlemen will all act in the same spirit, we shall give to the people a constitution which will be adopted by a large majority.

Mr. KELLY offered the following amendment to the amendment, to be added at the end thereof: "Who is not a defaulter, but willing to pay over, when legally required to do so, money collected upon any legal process to him directed."

Mr. WOODSON enquired what had become of his amendment, offered in committee of the whole, yesterday?

The PRESIDENT replied that it was cut off by the refusal of leave to the committee to sit again.

Mr. KELLY'S amendment was then adopted.

Mr. BOYD moved to strike out six and insert three months, as the time before the election when the officer should be required to have a quietus.

Mr. CLARKE accepted the amendment.

Mr. GHOLSON urged that the six months requisition ought to be retained.

Mr. CLARKE. My own preferences had been for six months. I will leave it to the house to decide, however.

The motion of Mr. BOYD was rejected.

Mr. HARDIN called for the yeas and nays on the pending amendment.

Mr. CLARKE. Having offered the amendment, it is proper that I should submit a few re-

marks on the subject. I offered it in good faith, and I am sure with no purpose to detain this convention. We have a question that involves a principle that I regard as of some importance, and which has been pending in this house for the last two or three weeks. It is as to the re-eligibility of the judges. I myself intend to vote upon that question that the judges may be re-elected by the people just as often as they come before them. I intend to impose no restraints upon the people in regard to that particular subject. I want him to be re-eligible upon the great principle that the people themselves are competent to determine whether they ought to be re-elected or not. You propose to allow the circuit court and court of appeals' clerk to be re-elected, but when you come to the office of sheriff, it is then said he shall not be re-eligible, and why? Because he is the collector of public moneys, and will secure his re-election by their use, and the use of the means he has to collect from individual litigants, against the better judgment of the people. If that were satisfactory to my mind I should at once go against the re-eligibility of the sheriff. But I am in favor of allowing every officer in the state to be re-eligible, just so long as the people shall think proper to place them in power. It is enough when you have said that they shall have a quietus for six months. And when you have said that, in the name of common sense and justice, let them be re-elected if the people think proper to do it. And when you take into consideration the amendment of my friend from Washington, requiring that they shall have paid up all the moneys collected from private litigants, you throw him then upon his own resources. He has no means to electioneer with then, save his own. Why not say that a judge shall not be re-eligible after he has served four or five years? Is there not just as much propriety in it? I refer gentlemen to the able speeches made by my friend, the elder gentleman from Nelson and others upon this floor, who are opposed to the re-eligibility of the judges. They tell you that he has more power than any other officer in the country—that the lives, liberty, property and reputation of the citizens are in their hands, and that he stalks through this land and by his fiat, strengthened by the power thus conferred in his hands, oblige those to support him who otherwise would not. Yet I have understood it to be the sense of this convention, expressed, as I am informed by the clerk, by its vote, that these judges shall be re-eligible. Talk to me about rotation in office. I ask my friend from Nelson what is his experience on the subject. Go to Washington and there you will see the southern and northern delegations in congress. Compare the delegations from Maine, New Hampshire, or New York, with those from Virginia, South Carolina, and the other southern states, and you will perceive the invariable superiority of the southern delegation in every congress. Why is this so? Because the doctrine of rotation in office obtains in those northern states. There every county composing a congressional district has its turn as it is called, and when a candidate is taken from one county at one congressional election, his turn does not come again until every other county in the district has presented its man.

Hence you rarely see in congress from these states more than one or two men who have had any congressional experience. This rule obtains in most of the districts in New York, Maine and various other northern states, and it is the rule of rotation in office. I have ever been in favor of rotation in office where it is conferred by appointment, but where the people themselves confer it, being the judges of the qualifications and the manner in which the officer has discharged his duties, I say, let the people, if he deserves it, have the power to re-elect him. Provided, however, you do not permit such election, if such things can occur in Nelson, to be secured by bribing the voters with the public moneys.

I repeat I have offered this amendment in good faith, and I want to test the question. I do not perceive myself the force of this argument, why a sheriff should not be re-eligible after he has served two or four years, and while at the same time, a judge or a clerk of the courts shall be re-eligible. I do not intend to be troublesome if I can avoid it, but there are certain great principles I intend to carry out if I have the opportunity of so doing, and if I fail in regard to this great principle of re-eligibility, so far as the office of sheriff is concerned, I then desire to test the sense of the house upon the subject of the re-eligibility of the clerks, and judges of the courts. I intend for myself to be consistent on this subject. I will not indulge in such remarks as have characterized the speeches of some gentlemen here, for it would afford me no pleasure to bring discredit on the gentleman from Nelson, if I could by any thing I might say here. If I could tell ten thousand anecdotes that would place him in an unfavorable position, I would not tell one. When I came to the legislature the first time, it was with a determined purpose, never to be personal in any remarks, if I could avoid it, and to always treat the opinions of gentlemen with respect, believing them to be expressed in candor and sincerity. And until this convention has closed its labors, I shall be found, though determined to advance such principles as I think to be right and proper, at all times pursuing the course I have indicated. It has been said by one gentleman, that I was wonderfully taken with the people, and that I had a great affection, particularly for the illiterate over the learned. Well, I regard it as a compliment, even if it be true. I do not object to it, and I am willing to be so considered. It is an old saying in regard to those who are rich, that they are able to take care of themselves, but that those who are poor require sometimes the assistance of others. Those who are learned in this community, will be able to take care of themselves, but the masses, who may be to some extent, unenlightened, compared with the gentleman, do require some assistance and some protection. I have an abiding faith and confidence in the virtue and intelligence of the people. I do believe that the people are capable of self-government, and to the election of their officers. I do believe that they are able to discriminate between the competency and incompetency of men, in making this selection. I do believe that all political power is inherent in the people, and for one, when I was a candidate before them for the

honor to represent them in part on this floor, I told them that too much power had been wrested from them by the old constitution, and that if I came here I would be disposed to restore that long lost power to the people, and let them exercise it according to their will and pleasure.

How many sheriffs are there in this state, who have held their offices for the last ten or fifteen years? And I call on the gentleman opposed to my proposition and who were opposed to the calling of this convention, believing that the old constitution was good enough, to say if it is an evidence of their consistency, when they declare there is danger in allowing the officer to hold more than four years? Why the very old constitution favored by those gentlemen, the platform upon which they stand, allowed the office to be hawked about the streets, and sold like a horse in the public market, so that he who had the most money might get the office, and perpetuate it in his hands, just so long as by a system of shaving, he could raise money to buy it. That is the system under the old constitution, and then we are told that under it, the sheriff was not a dangerous man, but now when he is to be elected by the people, and I propose that he shall obtain a quietus of all demands six months before the election, it is urged here that a most tremendous influence is concentrated in his hands, by which he will buy up all the votes of the county, in which he is a candidate. If I were satisfied that the people of this state were so corrupt, as that a sheriff, by the bare exercise of the legitimate functions of his office, could buy up the voters in the different counties of the state, I should be opposed to his being elected by the people. If I believed that such a state of moral depravity and corruption pervaded a majority of the people, I should be opposed to the people electing their judges. And I would again repeat, that there is more danger to be apprehended from allowing the judges to be re-eligible to office, than the sheriff. The sheriff may have some control over the purse of the citizen, and it may be in his power to oppress him, but the law lays down the rules which are to govern him, and if he violates those rules, he becomes responsible. But has he the life, liberty and reputation of the citizen in his hands? Not at all; but merely his purse to some extent, and that no farther than the law allows him. Then if we shall determine here that the judge shall be re-eligible, I insist upon it, that the sheriff should be, with the qualification required in my amendment. And if we determine that the sheriff shall not be re-eligible, then I shall be glad to hear a reason why the judge should be.

Mr. TRIPLETT. I have paid some attention to the amendment that was last adopted, and it appears to me there is some danger if we continue to act upon this subject, that we shall make confusion worse confounded.

Take the amendment as it now is, and it provides that no person shall be elected sheriff unless he has a quietus from the auditor, and this amendment goes one step further, and says that he shall have a quietus from all private individuals, provided a legal demand shall have been made upon him.

Now I will call the attention of the conven-

tion to this single point, when and how is the fact to be determined that he has obtained a quietus from all individuals? If you try him before the court of appeals or an inferior court, when will the case be determined and the facts ascertained? Perhaps not for six months after the election. He has in the mean time been elected sheriff, but he cannot act as such, if there is any money in his hands belonging to individuals, which he has not paid over. Why, it will take months before the fact can be ascertained. Again, what is to be the consequence provided it can be ascertained some six months afterwards that he has retained money belonging to individuals, and has not complied with the requisitions of the law, in paying it over when legally demanded. The election itself will necessarily be declared void under the constitution, according to the provision you now propose to insert, "that no man shall be elected to the office of sheriff who has not obtained a quietus." What is to be the effect of a judicial declaration that the tests which you have required at the hands of the sheriff, shall exist before the election, did not in fact exist. Are all of the acts done by him in the mean time to be void? You have made it a constitutional requisition that he shall not be elected sheriff without having complied with this provision, therefore the ordinary decision of law, that where an officer is in office, *de facto*, his acts are not void but voidable, will not apply. Why? Because the courts cannot change your constitution; they can construe the law sometimes so that great and material inconvenience shall not happen to the people—but you have engrafted in your constitution a provision that no man shall be sheriff until he has obtained a quietus, and here is a legal decision by two courts of record, that he has not done so. Take this thing into consideration then and see whether or not you can adopt the amendment as it now stands.

I occupy this position; I am opposed to the re-eligibility of the judges, and shall give my views in relation to that matter when the proper time arrives. I am also opposed to the re-election of the sheriff, and the reason is so plain "that he who runs may read" it. Gentlemen may talk about a "free fight;" they mistake the expression, it is not a "free fight" but a fair fight, that is required, and what man can have a fair fight with the sheriff for election to that office? He knows every man in the county; he knows the circumstances of every man; he has executions in his hands; he has the money of other individuals in his hands; he has the means and appliances which put it in his power—if you make him re-eligible—to secure his re-election.

Now, I want a reasonable time to elapse, at least, after his first term in office, before you permit him to become a candidate for the same office. That is the object I have in view. I do not wish that he should come forward with all the advantages which the possession of that office gives him, to contend against men who have no such advantages. The candidates for office should occupy equal ground, and have a fair fight. It is for this reason that I am opposed to the re-eligibility of sheriffs. I think that upon further reflection, gentlemen must be convinced

that such a provision as this will not work well, and ought not to be embodied in the constitution.

Mr. C. A. WICKLIFFE. I understand that the object of the gentleman, in altering this clause, applies to the paying over of money on execution. If the sheriff be a defaulter in failing to pay over money, he is to be made ineligible. My friend from Daviess objects, because the fact cannot be ascertained until long after the election has taken place, and can only be ascertained then by judgment being rendered against him. But if there be no judgment rendered against him, then there is no disqualification; that is the criterion of disqualification.

Mr. TRIPLETT. The gentleman does not precisely state the ground of my objection. Judgment entered upon the record is evidence when entered, and not until then. The sheriff is a defaulter, but he has in his hands fifty or a hundred executions, and he is a candidate for re-election. The money has not been legally demanded of him; but it is demanded between the time of becoming a candidate and the time of the election; or the motion may not have been made against him until after the election, and it is then ascertained that he was, in fact, a defaulter at the time of the election. This is the case that I put, and there cannot be a diversity of opinion in regard to it, that the sheriff may be a defaulter, in fact, at the time of the election, though there be no proof of that fact upon record. The sheriff becomes a candidate, having in his hands money which he has collected upon executions. The return day is past, but no legal demand has been made. After the election he is sued for the money; it is then entered upon the record—then it is that the very thing the gentleman from Nelson speaks of has happened. But the record of the fact is not furnished until after he has been elected, and it then appears in evidence, that at the time of the election he was not in a situation to be elected, and therefore he is no sheriff at all.

Mr. CLARKE. I understand the gentleman from Daviess to be in favor of the report of the committee. If all these evils are to result from the use of the public money by a candidate, why allow him to be eligible for two terms? If in the case of a sheriff who has been in office for two terms, or four years, and has in his hands public moneys, it is dangerous to allow him to go out among the people as a candidate for re-election, lest he attempt to buy up votes, does not the same danger exist after having served two years?

Mr. TRIPLETT. I did not say any thing about buying votes.

Mr. CLARKE. That is the argument that has been used by gentlemen against my amendment. Every solitary argument that I have heard against it, is based upon the idea that the sheriff will have the means in his hands of securing his re-election. I want to know, and I ask the chairman of the committee by whom this report was made, how it is, that a sheriff having served two years, cannot use the same means, the same influence, to secure his re-election, as he can after having served four years? If you want to get rid of an evil you must go to its root; you must say he shall not hold the office for a second

term, until he has been out of office for a certain number of years. I would like very much to know by what course of reasoning the honorable chairman of the committee, and the members of the committee who ordered the report to be made, were influenced, when they provided that a sheriff shall be elected for a second term, if there is such a manifest danger of his exercising an undue influence by means of the moneys he may have in his possession?

While up, I will refer for a moment to the remarks that were made this morning on the subject of the vote that was taken in favor of the certificate of a candidate for a clerkship. I consider that question, sir, as settled. I did all in my power to allow the privilege to them who desired to do so, to go forth to the country and offer their services without this mock evidence of qualification—as I regard this certificate to be—but I was defeated. It has been alluded to in some remarks made in reference to a motion which I submitted since. That question is now renewed, for it involves the same great principle that is involved in the question before the house—at least to some extent—that is, the capacity of the people to judge for themselves, regarding the qualification of candidates for office. And here you say the sheriff shall be elected for a second term, but that he shall not be elected after the second term—however well qualified he may be. Why should you make him eligible for a second term and then stop there?

Mr. TURNER. I am very reluctant to say any thing upon this subject, as the debate has been prolonged to such an extent, but called on as I am, and occupying the position that I do, I feel it my duty to make a few remarks.

This matter of self-government has been brought up here so often, that I think it is necessary to examine it a little, and see upon what it is based. I suppose there is no gentleman in this convention who denies that the people are capable of self-government. But although the people have a right to govern themselves, the government must be carried out upon certain fixed principles. Do gentlemen contend that the people desire to govern without fixed principles; that every one is to do as he pleases? That there are no limits or boundaries to power? That would be no government at all. This matter of liberty and equality was proclaimed in another hemisphere—if I may be permitted to allude to it—and even Napoleon himself, when at the head of his army in Italy, when seeking the subjugation of other nations by force of arms, in every letter that he wrote to his wife, invariably commenced with the words "liberty and equality." When he was endeavoring to erect one of the worst despotisms that ever existed under the sun, he had constantly on his lips the words "liberty and equality." What are liberty and equality, in their true meaning? Why, that a man may be secure in his person and property. This principle ought to be better understood in this country than in any other part of the world.

I do not talk a great deal about the rights of the people; because—and I do not intend this as any disrespect to gentlemen who do—I have never found in my experience, that those who were eternally talking about the rights of the people, felt any greater attachment to the people

than those who said but little about them. I have never found, when danger and difficulty arose, that they were more ready to expose themselves in defence of the people's rights than those who said but little about them.

The gentleman from Simpson intimates that I am in favor of the old constitution and not for making a new one. I will not refer to my action at home. If I did, it would be seen that I was among the very first in the convention movement. I believe we can make many useful amendments to the constitution. But at the same time, I wish to pursue a conservative course. It is our duty to do this, and not run beyond the power that was given to us by the people; and not pull down and destroy every sound principle of the government that has been provided for us by the wisdom of our fathers. I wish to pursue a cautious and prudent course.

Mr. CLARKE. I certainly did not wish to make a false impression in reference to the gentleman's position. Really I am not advised whether he was actually opposed to the convention or not; and if my manner indicated that I entertained such an opinion as that, it was unintentional. I remarked that there were those who were opposed originally to the convention, and I doubt very much whether the gentleman from Madison advocated the convention as far back as the year 1838, though since that time he may have discovered some new reason for doing so.

Mr. TURNER. I was not a convention man in 1838, but I voted for a convention before I was aware that so many as ten men in my county were in favor of it. I voted for it in 1847, and again in 1848, at the very opening of the polls. If the gentleman from Simpson was for the convention in 1838, he ran greatly ahead of public sentiment and public feeling. There were developments between 1838 and 1847 that convinced me the government ought to be changed in some particulars, and one great thing that led me to such conclusion was the annual elections. The people became careless as to the selections they made, in consequence of the term of service being thus limited. The mode of holding the elections, also was objectionable. I wanted to have the elections held in precincts, and I wanted the principal powers of government in regard to appointments at least, placed in the hands of the people, and not entrusted to individuals, to make appointments through favoritism, to the exclusion of merit.

The gentleman has asked why it is that we permit the sheriff to be elected for a second term and not to be re-eligible thereafter. My convictions were against the re-eligibility of this officer even for a second term, though I voted for the re-eligibility of some other officers. I voted in committee against his re-eligibility, but there was a majority for giving him a second term, while some were for leaving his re-eligibility entirely unrestricted, and this plan was a compromise made between the extremes. Those who lived under the old constitution from '92 to '98 have informed me that a sheriff could never be removed from office so long as he was permitted to be re-eligible. There may, however, be good reasons why the sheriff should be re-eligible for a second term, and not afterwards. If

you allow him to hold his office only until the expiration of a second term, he does not, within that time, acquire that degree of influence that he would have after holding the office for six, eight, or ten years. The influence of a sheriff goes on accumulating like a rolling ball of snow and becomes a tremendous machine which he can wield to subserve his purposes. If you permit this principle to exist, you will sap the very foundation of government.

Can any man make me believe that the sheriff, when he becomes a candidate has not a very decided advantage over every other candidate? In addition to his other sources of influence, he is acquainted with every lady in the county, he goes to their houses, and remains all night, he is polite to every pretty girl he meets with, and they are all enlisted in his favor. He thus brings to his aid an increased support, and unless you intend to make him a life officer, there should be a limitation upon his eligibility. Why is it that a physician who has practiced for a long time in a community, can get more votes than any body else? It is not because he has more influence over the voters directly, but it is because he reaches them through the influence of the ladies. This is an influence that is not apparent at the polls, but it is one which nevertheless has a very considerable effect. I might consume hours in showing the influence that sheriffs may acquire in this way, by which he is enabled to overcome any one who opposes him. It was thought by the committee that it would be better that he should not be permitted to be elected after the second term, inasmuch as he has it in his power, more than any other officer, to do good or evil in influencing public sentiment, because his business is with every body. You might accidentally get a bad man in that office. It is a fair compromise, I think, and I hope it will be adopted.

Mr. NEWELL. The question before the house I believe at present is the re-eligibility of sheriffs. I have listened to a great deal of argument on both sides, and I confess I am somewhat at a loss to know how to construe them. The gentlemen who appear to be opposed to the re-eligibility, say that the sheriff, after having served one term, will gather around him, such an influence that he can control the election. And how will he do it? One gentleman says, the sheriff will get acquainted with every lady and gentleman in the country, and secure an influence in that way! Another says he will use the public money which he collects, for the purpose of procuring votes, and that he will do every thing but what an honest man ought to do, and that will make him so popular that he cannot be defeated. Now in my county, if a sheriff was to act as gentlemen here say they will, he would be the most unpopular man in the county. But if the doctrine be true, that if we are to reward a public servant according to his just deserts, why should we say, he shall not be eligible for a second term? "If thou hast done well, shall it not be well with thee? But if thou hast not, let sin be at thy door." If he conducts himself well the people will say to him, "Well done, good and faithful servant," "you have faithfully discharged the duty that was entrusted to you, we will put you again in office." But to say that

the people will re-elect a man who has behaved improperly, is to falsify the true spirit and understanding of the people. It is an imputation that I am not willing my constituents shall have thrown upon them. I am in favor of the re-eligibility of the sheriffs.

Mr. MACHEN. I know the convention is becoming a little restless, and anxious to get a vote on this question; but I trust I shall be indulged for a few moments. I am aware there are members in this house, who hold the opinion that there are lawyers here who are disposed to consume too much of the time. To such gentlemen, I will say, that although I am not so much of a lawyer as I might be, those whom I represent, sent me here, not to vote merely, but to assign the reasons for my votes, and I trust I shall have an opportunity of doing so.

I am here as an advocate for the re-eligibility of these officers, and I trust I am here as the advocate also of conservative principles. I shall have to receive new teaching, before I have learned that I am departing from conservative principles, when I vest the power of election in the hands of the people. I have an illustration here of the capacity of the people to choose the second, third, ay! twentieth time an officer who has served them well. The elder gentleman from Nelson, who has so ably attempted to resist the re-eligibility of the officers of government, stands here to-day as a sentinel upon the ramparts—what ramparts, I need not say—he is placing himself against every proposition that seems to meet with favor in this house; but perhaps he is exercising a conservative influence over our deliberations, that will be wholesome in the end. At present, my judgment does not lead me to that conclusion. I believe that if we recognize the capacity of the people to elect their officers, and judge of their qualifications in one instance, we have committed ourselves to a principle that we cannot depart from. The gentleman from Henry says he will not be found crossing his tracks. I will not accuse him of it; he is not crossing his tracks, but he is rubbing them out.

The gentleman from Nelson (Mr. Hardin) says he is in favor of rotation in office; so am I. It is a doctrine that has greeted my ears, for "lo! these many years" past. But I never understood that rotation in office, implied ineligibility after having served. The people have a right to rotate and re-elect. I recollect when quite a youth, hearing much said about this doctrine of rotation, but I never adopted the doctrine in any other way than that the people should exercise the power of rotation. And certainly no constitutional provision should be made upon the question, but leave it to be settled by the people.

It does seem to me, that if we yield this point, we are in the power of those who are contending for the opposite doctrine. If we yield to those who are contending that these officers shall not be re-eligible, we yield one step, one important point, in regard to the right of the people to exercise the power of electing their officers according to their own reason and judgment. It is for this reason, that I am contending against the doctrine that is attempted to be established here. I am contending for the doctrine set forth in the substitute that is proposed by the gentle-

man from Simpson. But I regret that the amendment was made to that substitute, and I hope it yet will be stricken from it. I trust the house will retrace its steps. It does seem to me that the house will bring itself into some difficulty by the amendment that has been adopted.

Gentlemen in this convention travel with great facility across the broad Atlantic for illustrations in support of their arguments, and they apply them without much reference to their applicability. It is said that Bonaparte began by professing the utmost sympathy for the people, and ended by seeking to establish the worst despotism the world ever beheld. This may be the opinion of some gentlemen; but it was never mine. I think that he was a burning and a shining light, and although the spirit of despotism did ultimately pervade his heart, yet he was instrumental in bringing forward, and strengthening the love of republicanism, not only in this, but in all other portions of the civilized world. What was his system of laws? The code-Napoleon is a monument of purity, wisdom and greatness, such as few, if any of the European nations have given to the world. I consider it superior to any thing that ever emanated from England. We adhere too pertinaciously to the examples that are furnished us by England. Our ancestors when they separated themselves from Great Britain, severed all political connection and became in every thing except the feeling and affections of the heart, a distinct people, having a government based upon entirely different principles. It does seem to me that we should not seek abroad for principles of republican government. Here the first lessons of wisdom manifested themselves in the formation of a free government. We can gain nothing for our republican institutions from abroad. I know that the sheriffs have a great deal of power, but to tell me that they will exercise that power dishonestly and thereby coerce a re-election, is to tell me that the people are incapable of electing at all, and that the power to do so should be withheld from them.

I should, perhaps, not feel so much interest in this subject, if I did not conceive that it was striking a fatal blow at other propositions that will be before this house. I know that gentlemen make distinctions that are satisfactory to their own minds, and come to a different conclusion. I cannot see the force of the reasoning by which they arrive at that conclusion. I trust we shall leave it to the people of the state, to say who shall serve them, and how long continue to serve them, and that this convention will not attempt to apply the system of rotation. If this be done, I have no doubt our work will be favorably received, and that we shall be greeted by the people with the welcome plaudits, "well done good and faithful servants."

But the gentleman from Madison tells us, that sheriffs will pass around from house to house, and secure the influence of all the female portion of every family, and use that influence for the advancement of his selfish views. Sir, I believe the influence of female purity is a salutary influence, and that it is not to be obtained in behalf of the unworthy. I trust the gentleman will take back the insinuation, that female influence can be enlisted to subvert the institutions



of republicanism. I believe that if we allow ourselves to be directed by that influence, and the patriotism which is to be found in their breasts, we shall scarcely ever err.

Mr. President, I will no longer detain the house. I shall vote to strike out, as proposed by the gentleman from Simpson, and insert his amendment.

Mr. KELLY. When I offered the amendment sir, to the amendment of the gentleman from Simpson, I offered it with the view of obviating some of the difficulties which seemed to rest upon the minds of gentlemen, who opposed the re-eligibility of sheriffs. I did not suppose sir, that I was throwing into this house an apple of discord; but I find that I have done so, and if it be within my power, I will withdraw that amendment.

The PRESIDENT. The amendment has been adopted by the house, and cannot now be withdrawn, without a re-consideration of the vote by which it was adopted.

Mr. KELLY. I will move then a reconsideration of that vote.

The motion to reconsider was, upon a division, carried; ayes, 40; noes, 23.

Mr. KELLY then asked and obtained leave to withdraw the amendment.

The question then being upon the adoption of the amendment of the gentleman from Simpson, a division was called for, so that the question should be first taken on striking out.

On this question, the yeas and nays were ordered, and being taken were yeas, 43; nays 41.

YEAS—Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Cristow, Thomas D. Brown, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Charles C. Kelly, James M. Lackey, Willis B. Machen, George W. Mansfield, Wm. N. Marshall, Nathan McClure, David Meriwether, Jonathan Newcum, Hugh Newell, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, John Wheeler, Charles A. Wickliffe, Silas Woodson—43.

NAYS—Mr. President, (Guthrie,) William K. Bowling, William Chenault, James S. Chrisman, Archibald Dixon, James Dudley, Selucius Garfield, James H. Garrard, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, William D. Mitchell, Thos. P. Moore, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, William Preston, James Rudd, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—41.

So the convention agreed to strike out.

The question then recurred on the motion to insert, pending which,  
The convention adjourned.

WEDNESDAY, NOVEMBER 7, 1849.

Prayer by the Rev. Mr. LANCASTER.

#### COUNTY COURTS.

Mr. MERIWETHER offered the following as a substitute for the article heretofore reported in relation to county courts, which, on his motion, was referred to the committee of the whole having charge of that subject, and was ordered to be printed.

#### ARTICLE —.

SEC. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, a county court, to consist of a presiding judge and the several justices of the peace of the county.

SEC. 2. The presiding judge shall be elected by the qualified voters in each county for the term of four years, and until his successor shall be duly elected and qualified, and shall, from time to time, receive for his services such compensation as may be fixed by law, to be paid by fees, or out of the county revenue.

SEC. 3. No person shall be eligible to the office of presiding judge of the county court, unless he be a citizen of the United States, over twenty one years of age, and a resident in the county in which he shall be elected one year next preceding his election.

SEC. 4. The presiding judge of the county courts shall be sole probate judges for their respective counties, with testamentary and such other jurisdiction as may, from time to time, be given by law.

SEC. 5. The jurisdiction of the county court shall be regulated by law; and until changed, shall be the same now vested in the county courts of this state, except as herein provided.

SEC. 6. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Two justices of the peace, and one constable, shall be elected in each district by the qualified voters therein. The jurisdiction of said officers shall be co-extensive with the county. Justices of the peace shall be elected for the term of four years, and constables for the term of two years; they shall be citizens of the United States, twenty one years of age, and shall have resided six months in the district in which they may be elected, next preceding their election.

SEC. 7. Presiding judges of the county court, and justices of the peace, shall be conservators of the peace, and shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The legislature shall provide, by law, for the mode and manner of conducting and making due returns of all elections of presiding judges of the county court, justices of the peace, and

constables, and for determining contested elections; and also provide the mode of filling vacancies in these offices.

Sec. 8. Presiding judges of the county courts, justices of the peace, and constables, shall be subject to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and upon conviction, their offices shall become vacant.

#### SUBMISSION TO THE PEOPLE.

Mr. MITCHELL offered the following resolution, which, on his motion, was referred to the committee on miscellaneous provisions, and ordered to be printed.

*Resolved*, That in obedience to public sentiment clearly manifested throughout the state, and from a sense of the intrinsic propriety of such a course, this convention will submit the result of its labors to the people for their ratification; and to that end, that it is expedient either to insert in the constitution which is now being framed, a clause making its establishment conditional upon such popular ratification, or else to devise some other plan by which the approval of a majority of the voters of this commonwealth shall be a necessary preliminary to its adoption.

#### CONSTRUCTION OF COUNTY COURTS.

Mr. ROGERS. I have a resolution which I desire to offer, in these words:

*Resolved*, That the committee on county courts be instructed to inquire into the propriety of constituting the county court of all the justices in said county.

I wish to offer a very few remarks, giving my views explanatory of that resolution, and I shall do so by referring to what we have done, and what the convention seem determined to do, as I judge, from their action on the report of the committee on county courts. We first organize a county court from the bar, and that is all right, I suppose; then a circuit court from the bar, and that is all right; and then we select attorneys from the bar, and that is all right. We want to make them re-eligible too, and I believe that is all right. We proclaim our love for the people, and say that they are not only sovereign, but intelligent and wise. But it strikes me that when the report of the committee on county courts was before us, we did not carry out the principle which we had acted upon before, and that although we believe the people intelligent, we do not consider them sufficiently so to form a county court. I think the justices of the peace in the several counties should be empowered to do the business of the county court. There is no necessity of creating offices with fixed salaries of two or three hundred dollars per annum, when the labor can be performed by the magistracy of the county. We all must have some respect for this court that has done all our business in relation to estates and elections. With regard to pay, it is the cheapest court in the country. But if we create county court judges, they must have a salary, and I should not be astonished if we should be compelled to select them from the bar. I do not wish to increase the expenses of the government, unless it is necessary. I voted for the fourth judge because I

thought it necessary, and I also voted for branching the court, for the same reason: but I am opposed to dispensing with the county court. If there is not intelligence enough to select a proper court from the people, then the people are not capable of self-government. It seems to me the tendency of the doctrines we have heard here is to give the few the power to control the many, instead of giving the many the power to make laws for the good of the whole. I am in favor of county court judges from the people, because if you give the magistracy the power of jurisdiction in riots and small matters only, you allow their office to dwindle in importance, and strip from the position that which will induce any man of worth to seek it; whereas no man will refuse to sit on the county court bench. I move to refer the resolution to the committee on county courts.

Mr. MAYES. It will be remembered that the committees on the court of appeals, and the county and circuit courts are now united in one committee. If it is intended to refer the resolution to that committee, as it is now composed, I have no objection.

Mr. ROGERS. That is my motion.

Mr. BRISTOW. A resolution of that sort would seem to imply that the committee on county courts have not thought of any such thing, although it is a matter which they have been discussing for several weeks. It is necessary now, it seems, to make this a matter of solemn inquiry, because forsooth, we want to manifest our great love for the people. Our love may be misdirected, and I would inquire whether my friend who offers this resolution has not made a mistake in this case. The report of the committee on county courts, proposes to give to the people an unrestricted choice, but the gentleman wishes to restrict this office to the magistracy, in his love for the people. The whole ground suggested by the gentleman, has been considered, and I think well considered, by the committee, and I move to lay the resolution on the table.

The motion was agreed to.

#### COUNTY AND DISTRICT OFFICERS.

The PRESIDENT announced the next business to be the consideration of the report of the committee on the executive and ministerial officers for counties and districts. Before the adjournment yesterday, the convention agreed to strike out a part of the 4th section, and the question now recurred on inserting Mr. CLARKE'S substitute for the matter stricken out.

Mr. GARRARD. I desire to offer a substitute for the amendment of the gentleman from Simpson.

Mr. CLARKE. Do I understand that the motion to amend my amendment is entertained by the president?

The PRESIDENT. It is.

Mr. CLARKE. The history of this amendment so far as I recollect is this: I offered an amendment to the fourth section of the report by striking out and inserting. That was one proposition, but divisible. Afterwards a motion was made to divide the question, and a vote of the house was taken on the proposition to strike out. Mine was a single proposition but it was subject to a division. Now I appre-

hend that if before the vote is taken on the second branch of my proposition, another amendment is entertained, a parliamentary fraud may be practiced on the mover and the house. I do not know what the proposition of the gentleman from Clay is. It may be a proposition that I cannot vote for. It may be designed to destroy the effect of the amendment that I offered. What is the result? You take a division of the question, and make me vote first to strike out. With what view? With a view of taking a vote on my amendment; and when this is done, the chair entertains a proposition which destroys my amendment and makes me vote to strike out what I would prefer to the proposition of the gentleman himself. You thus make me assist him in striking out, and then insert what I would object to as more injurious than the matter struck out.

I submit if this is not placing every gentleman who voted for striking out, in a very peculiar attitude. I submit that the vote should be taken on the second branch of my proposition. If that is rejected the gentleman's proposition may then be brought forward to fill the blank which has been occasioned by striking out.

There is another point. I supposed I should have the right to perfect my amendment, before a vote was taken upon it. This is a parliamentary privilege; but it is not in order for another gentleman to offer for it a substitute; my motion was to strike out and insert, and why did gentlemen vote to strike out? Because they wished to insert my amendment. If then, this be so, it seems to me that no other motion can be entertained until my motion is disposed of; and then if that which I propose is rejected, the question can be taken on the gentleman's amendment. I appeal from the decision of the chair.

Mr. DIXON. I am satisfied the decision of the chair is correct. I understand the gentleman to have made a motion, which embraces two distinct propositions—the first is to strike out, and the second to insert. Now, that there were two distinct propositions is certain, from the fact that there was a division called for, and it was decided by the chair to be in order. I believe the gentleman will not deny that it was so. A rule of this house makes a motion to strike out and insert, divisible. It was not so, however, under the old rules of the senate. The first question then is on the motion to strike out, and it having been decided in the affirmative, the question is on the motion to insert. I understand the gentleman to say, that all who vote for the motion to strike out, are bound to vote for the motion to insert. He is mistaken in that. Gentlemen voting to strike out, may be actuated by different reasons; some may do so for the purpose of getting rid of that portion of the section, with a view of getting in other matter, which would be more acceptable to them and to the people of Kentucky. And others may have a different object in contemplation. Then there is a blank to be filled, and the gentleman says it is not to be amended by any other person, and he tells the house, he alone has a right to perfect it. But is that so? Has he a right to perfect it? And if he has, has nobody else the same right? Does he take the sole control of

the proposition, and have we nothing to do with it? Why, I understand we have a right to vote for that proposition as well as the gentleman. The very argument he uses shows at once that he is wrong. If one has a right to perfect it, another has. But, as it now stands, it is merely a proposition to fill a blank, and we have a right to perfect it. Each member of the convention has that right as well as the mover. There can be no difference of opinion about the matter. I do not myself care any thing particularly about it. I voted to strike out, because I did not like the proposition as it stood. Others may have had a different motive. Perhaps they intended to substitute something else in its place. I have yet to learn that because a mere motion is made to strike out, that every gentleman intended to vote for the proposition which the gentleman was about to offer as a substitute.

Mr. CLARKE. I have been struck with the facility with which gentlemen put words into the mouths of others, and then make speeches on them. Now, I tell the gentleman from Henderson I did not say that those who voted to strike out were bound to vote for the insertion of my amendment.

Mr. DIXON. I certainly understood the gentleman, in effect, to say so, but I do not wish to misrepresent him.

Mr. CLARKE. I stated that I had made a motion to strike out and insert. It was a divisible proposition. The vote might have been taken upon it as a single question, or the question might have been divided, as it was divided, and the question taken on striking out.

Now, here is a section reported by the chairman of a committee. It is before the house to be acted upon. I make a proposition in relation to it, that is entertained by the chair. But, under the rule, a delegate has a right to call for a division of the question. What is there pending? It is my proposition, and nothing else. But a division of the question is called for, and the first vote is taken on striking out. Those who vote for striking out, vote with what understanding and for what reason? They vote for it because a proposition has been submitted which they prefer to the report of the committee. They are not bound to adhere to the proposition which has been proposed, but they vote for striking out, because they would rather have the amendment proposed, than the original section, or that part of it proposed to be stricken out. That is the purpose for which they vote. The gentleman from Henderson says that they have a right to amend. I admit it, at the proper time, and no gentleman in this convention would be more unwilling to restrain that right than I should be. But has any proposition been made to amend by any friend to striking out? No sir. There are two ways to defeat a measure. One is, by getting a gentleman who voted with the majority to move a reconsideration of the vote. Another is, by clogging the amendment proposed, so as to defeat it by cutting up those first in favor of it. I deny that the proposition which has been offered this morning, comes from any friend, or any one favorable to the amendment I proposed, but it is one of those means used for breaking down an amendment. I would not restrain my friend from Henderson or any other gentleman from

perfecting the amendment, but it seems to me there is a fitness in the time when the amendment should be made. Now, if the proposition I have offered be accepted by the house, take a vote on it. If there are those who think they can propose a better one, they will not vote for mine. But when forty-three delegates on this floor have voted for striking out with a view to the insertion of this amendment, to say that it shall be clogged and crippled, before the vote is taken, and that too, by the enemies of striking out, it appears to me, with all due deference to the opinion of the chair, will be placing a hardship upon the friends of striking out, which may hereafter result in unpleasant consequences; for you may insert something more objectionable than the original section itself. If you entertain the proposition of the gentleman from Clay, you make us assist you in voting for a proposition more objectionable than the original section was. I trust every gentleman on this floor who voted for striking out for the purpose of testing the great question, whether the officers of this government shall be re-eligible or not, will vote against any efforts made by the enemies of this proposition.

Mr. BROWN. I voted with the gentleman to strike out, but I think he is wrong if he supposes that those who voted to strike out are bound to vote for the insertion of his proposition. We may vote to strike out, but may not like what is proposed to be put in. If that is not the case, there is no propriety in dividing the question at all.

Mr. CLARKE. Sir, I have accomplished my purpose, and I will withdraw my appeal from the decision of the chair.

The PRESIDENT. I rise to explain—

Mr. C. A. WICKLIFFE. To enable the chair to make his explanation, I will renew the appeal.

The PRESIDENT. Although I have been a long time in a deliberative body, I have never presided over one before, and never studied the rules with that precision which induces an over-weening confidence in any decision that I may make. All the decisions that I have made, have been made to the best of my judgment at the time, and in all my future decisions, I shall act on the same principle. A motion to strike out and insert being divisible, the question can be taken on striking out, in order to save time; for, if words are struck out, there is no necessity to perfect them. Now, it is true the gentleman who offers an amendment has a right to perfect it, before his adversary's proposition is submitted. That I understand to be the parliamentary rule. When a proposition is made to divide a question with a view to save time, still the motion to insert is subject to amendment, and, as I understand it, individuals are not pledged to vote for the insertion because they voted to strike out. I may vote to strike out because I do not like the original provision, and then there will be a blank left. I can then very consistently refuse to insert—I can leave a blank—or I may afterwards move to insert something else. But while it is depending as a question of amendment, it is subject to amendment upon the motion of any individual in the body. If I am wrong, I should like to be put right, because the question will, in all probability, arise again.

Mr. C. A. WICKLIFFE. I have no particular solicitude on the subject, as the mover has waived his appeal; but I agree with the chair that it is very desirable to settle the principle involved in this question in accordance with the laws of legislative bodies. Differing in some respects from the presiding officer, as well as the gentleman from Henderson, I will state my views in regard to it. When the question is made to strike out and insert, it is but one question. The difference between us is, that the presiding officer and the gentleman from Henderson, regard it as two. It is only one question; but to decide it the presiding officer has to tell the house twice, or if the yeas and nays be called the clerk calls twice, to enable the members to vote on the whole proposition, each branch separately. By way of testing the correctness of this principle, the gentleman from Simpson has proposed to amend by striking out and inserting. He induces me and others to vote with him to strike out because we dislike the original article; he has extracted my vote to strike out, and has accomplished his purpose, but can he then, without leave of the house, withdraw his amendment? I say he cannot, because the house has commenced voting upon it. Here is the rule laid down by Jefferson: "When it is moved to amend, by striking out certain words and inserting others, the manner of stating the question is, first to read the whole passage to be amended as it stands at present; then the words proposed to be struck out; next, those to be inserted; and lastly, the whole passage as it will be when amended. And the question, if desired, is then to be divided, and put first on striking out." It will be seen by the language used here, "the question," that it is a single question. What next? "If carried, it is next on inserting the words proposed. If that be lost, it may be moved to insert others." Now if they vote to reject the amendment, it will be in order to move to fill the blank with something else; but having obtained my vote to strike out, they cannot take up the amendment, and make it such as to deny me the privilege of voting to fill the blank with what is first proposed to be inserted. I will now withdraw the appeal.

The PRESIDENT. The question has not been decided. I will examine the rules that apply to this question with reference to future decisions.

Mr. DIXON. The rule which the gentleman has read does not apply to this house at all.

The secretary then read Mr. Garrard's substitute for the amendment offered by the gentleman from Simpson.

"The presiding judge, or associate judges, of the county courts are elected, whose term of office shall be two years, but no sheriff, or deputy who qualified under him, shall be re-eligible for the succeeding term."

Mr. GHOLSON. I feel a desire to see even handed justice done here. I have but one vote, and that shall be cast with an eye single to that purpose, to treat all officers alike. If one officer is to be ineligible, I shall vote to make all so. When I am convinced that it is best to make fish of one and flesh of another, and that the people are not capable of self-government, I may go for invidious distinctions.

Mr. CLARKE. This amendment of the gentleman from Clay brings up the question of re-eligibility, broadly and flatly. The report of the committee makes the sheriff eligible for a second term. This, in my judgment, will be to turn him loose on the community without responsibility, with his sacrificial knife whetted to cut and carve in any direction for two years, and then he goes out of office. If it be true that the sheriff is in the habit of shaving and inflicting oppressions on the people, you place a curb on him by making him re-eligible; because conduct of that sort will not be tolerated by the people of Kentucky, and if he indulges in conduct of that kind, the result will be, the people will turn the backs of their hands upon him and he will be defeated.

A great deal has been said about conservatism, which seems to mean every thing and nothing. The best illustration of it, as some regard it, is in this proposition to curb the sheriff for one term by the hope of re-election for a second term, and for one term only. He is to be reined up the first term, and the second he is to be turned loose to oppress and shave every body he pleases. The whole question of re-eligibility turns on the decision of this, and the gentleman has very properly brought it up. It is said a sheriff shall not be re-eligible, but it is insisted that a clerk and judge shall be. Where will my friend from Nelson be found on this question of re-eligibility in his lengthy, able, and powerful speeches? Why, he will refer to the vote upon your record, and say that you have said a sheriff shall not be re-eligible, and then show the comparative importance of these two officers, and their relative power. He asks nothing better than a vote against my proposition. He will show that a judge has the life, property, liberty, and reputation of the citizens in his hands, and even the sheriff himself. He will then ask you with what consistency you can go for the re-eligibility of a judge, while you have acknowledged the danger of making a sheriff re-eligible on account of his power over the feelings of the people. I remarked to a friend this morning, that a judge had the lives of the people in his hands, in certain cases. He replied, that he thought the jurors had a greater influence, because they were, in criminal cases, judges of the law and the fact. I rejoined that the jurors were inclined to defer to the opinion of the judge. There is nothing more natural than that the opinion of a learned judge should have weight with a jury, and it does always have more or less effect. In the county of Barren, a negro was apprehended for a high crime, brought before a jury, who found him guilty, and the judge was about to pass sentence of death. The lawyer moved in arrest of judgment, and set up a claim, under an old statute, for benefit of clergy. Judge Buckner decided he was entitled to benefit of clergy, and although the offence of which he was found guilty was one of the highest crimes known to our laws, he was released. Not two months afterward, a slave was tried for arson in the county of Warren, and found guilty, and the counsel moved for the benefit of clergy. The judge, however, declared he was not entitled to it. Now, one or the other judge must have been wrong.

If you tell me that because a sheriff collects the county revenue, and especially because he has the influence of the ladies on his side, he will exercise a power dangerous to the public interests, I will tell you that even your clerks can wield a powerful influence, by virtue of the office which he holds. There is no proposition to make a clerk ineligible because he has held the office two or four years, yet he has a thousand fee bills in his hands, from fifty cents to one and two dollars in value. These fee bills have the virtue of an execution. Make him a candidate for re-election, and he will put them in the hands of the constable. When the constable makes his report, and tells him whom he is oppressing, the candidate will get on his horse, and ride around, and say to individuals against whom he has claims, "I am in a sort of a scrape—I can borrow money at ten per cent., however, and I must do it if I indulge you. But I cannot indulge you if I am defeated." Suppose a young man wishes to marry, and comes to the clerk for a license. He may say to him, "well, young man, I am about to be a candidate for clerk—I will make you a present of a license, and you must help me in my election." He goes home under the full impression that the clerk is the very cleverest officer in the world, and uses his influence among his friends for his re-election. I do not say that this will be the case, but I say there is as much probability of it, as that the sheriff, who collects the revenue, will use the influence which his office gives him, to secure a re-election.

I recollect reading in Esop's Fables, or some other book, of a goose which had under her charge a brood of goslings. A fox came up on a very cold night, and begged to be permitted to enter the little house occupied by the goose, but was refused. The fox then imploringly said, "Oh! let me enter, or my nose will freeze off." He obtained permission to put his nose in. After a little time, he declared that his head and shoulders were freezing off, and he got the consent of the goose to enter so far. Very soon afterwards, he said he was freezing all over, and then he got permission to enter the house. He then instantly set to work, and ate up the goose and goslings. This is an entering wedge to the destruction of re-eligibility. Just say that the sheriff shall not be re-eligible and you have let in the nose of the fox; after awhile the principle will be applied to the clerk, then the head and shoulders of the fox are in, and when it is applied to the judge the whole body will be in, and these officers will all be devoured together.

I repeat, that this substitute to my amendment brings up the whole question of re-eligibility. I am prepared to see the question settled now. I shall go for the re-eligibility of the judge, though you defeat me in respect to the sheriff. There are many gentlemen, however, who will not do it. I shall violate my consistency, believing, as I do, that all should be re-eligible, if I go for the re-eligibility of a judge, and permit the sheriff to be turned away without the privilege of re-election. I shall go for the re-eligibility of the clerk, and if I get part, I shall be in part satisfied. If I lose all, then I shall be driven to the conclusion that there are those in this convention, who consider the people incom-

petent to determine whether a man is worthy to be elected or not.

Now I have been taught to believe that the longer an officer has performed his duties, the better he will be able to discharge them. But you say however honest, or well qualified, or though there be nine out of ten in favor of him, the people shall not elect him, and you drive them to what? To take up a new man of whom the people know nothing, in the place of one in whom they have the utmost confidence.

Mr. GARRARD. I propose to modify my amendment by striking out the word "two," so as to leave it with the convention to fill the blank as they shall think proper.

While up, I trust the house will pardon me for occupying a short portion of its time. The gentleman from Simpson, in the beginning of his remarks, pronounced my amendment—even before it was read—a fraud. Upon what principle it can be denominated a fraud, I am at a loss to understand. I am conscious of one thing, however, and that is, that the remark cannot apply to me. I have been constantly in favor of electing sheriffs for two years, and no longer. And it was for the purpose of carrying out that object that I moved my amendment; and not for the purpose of inflicting a fraud upon this house, or upon any member of it.

Mr. CLARKE. I apprehend that I used no such term in reference to the gentleman. I remember when I was discussing the question as to whether the amendment was in order, that I assumed—not that his amendment was a fraud—but that the entertainment of the amendment by the house, would be virtually practising a fraud—though perhaps that was too broad an expression—but the house will understand I mean a parliamentary fraud—upon those who had voted in favor of striking out. I hope my friend from the county of Clay, will not for a moment suppose, that I intended to impute to him, the offering of a proposition for the purpose of practising a fraud. There is no gentleman for whom I have a greater respect.

Mr. GARRARD. The explanation of the gentleman from Simpson is entirely satisfactory; and as he and myself have been good friends since we met, I will give to you and this convention an idea that has occurred to me, and if my friend from Simpson, should think proper to profit by it, I shall consider that I have at least done my state some service. The book that we are publishing, of the proceedings and debates of this convention, already contains some three hundred and fifty pages. The statesmen and sages who come after us will, in future years, read that book and put it in the hands of their children that they may learn how to make constitutions. But I tell my friend, that I think there will be many things in it that those wise and scrutinizing men will dislike to set before their children as an example for them to follow. You will recollect that some years since, there was a great noise in the country, growing out of a proposition introduced into the United States senate, by a distinguished senator from Missouri, in regard to expunging a resolution in relation to a celebrated individual. "Expunging" was a new word at that day. But when the sages I have alluded to, come to read this book,

expunging will certainly be the order of the day. One word further. The gentleman from Simpson has alluded to a celebrated fox and goose, and her goslings; and, sir, although I do not understand myself, as being alluded to as the cunning fox, yet from the great care the gentleman has kindly manifested in regard to those who voted with him yesterday, I have no doubt he must have intended himself as the goose.

Mr. CLARKE. My friend from Clay—although I have attempted to appease him—seems still inclined to indulge in his witticisms. It may be very possible, and I doubt if it is not true, that there are those who may put into the book which records our debates, some things which they may not themselves like to read hereafter. I do not say that my friend from Clay, when he goes home to his constituents and tells them that he has recorded in the book of the proceedings of this house, that they should not have a right to vote a second time for the same candidate for sheriff, may not wish to withdraw that part of the record from posterity, and those even who now exist. It is true that in the fable that I related, the goose was deceived and her goslings destroyed; but I did not intend to be understood as saying that the gentleman from Clay was the fox, for I do not think he has cunning enough for that. The gentleman did not display cunning enough to entrap us. Though he introduced his nose within the covert of the goose, I do not intend he shall get his head and shoulders in. I prefer that he should stay there until he freezes.

Mr. CHAMBERS. The amendment proposes to make the deputies of sheriffs ineligible as well as the sheriff. Now, I am not at all certain that the sheriff should be made ineligible; but feel very certain that his deputies should not. I cannot consent that one man's holding an office should make another man ineligible. I profess to be a liberal conservative, and go for electing all the officers, and for tests of qualification where they will do good; but I cannot approve of making such evidences of qualification, however obtained, operate to make the officer ineligible, much less another man; but for some other reasons I shall vote to make the principal sheriff ineligible after a second term.

Mr. IRWIN. I am opposed to the re-eligibility of sheriffs; but I incline to the opinion that two years is too short a period, as the business of the second year will, (as a matter of necessity) have to be entrusted to his successor, and no gentleman will take the sheriffalty, under the circumstances. I shall move, if not done by some other member, to increase the sheriff's term to four years, and to be ineligible thereafter either as principal or deputy.

Mr. HARGIS. I was one of those who voted to strike out; and I did so because I did not like the proposition as it came from the committee, nor do I like the amendment. I am in favor of a sheriff holding his office for two years, or one term only. I do not consider the office of sheriff, like all the others that have been alluded to, and the reason given by the gentleman from Simpson, is the very best of reasons why he should not be re-elected. He says he will go on cutting and carving for the first two years. There is a good deal of truth in that, and it is a



strong reason why he should be allowed but one term, and then be compelled to wind up his business. The sheriff under the present constitution holds his office only for two years, and I have never heard any complaint upon that ground.

Although I am for the re-eligibility of perhaps every other officer of government, this is an officer that I am opposed to making re-eligible, for the reason that the longer he is in office the more will he have it in his power, to influence the election. I have seen sheriffs turned out before the end of their first term, and have known men who have purchased the office; but I have never known a case in which the duties have been satisfactorily discharged after the first term. In order then to get clear of a sheriff who may be found remiss in his duty, and to give the people a fair chance, I will make him ineligible after the first term. I do not think that this will have any effect as an entering wedge, in opposition to the re-eligibility of other officers. It ought not to have such effect, for I do not believe that there is any other officer that ought not to be re-eligible.

Mr. GHOLSON asked for the yeas and nays on Mr. GARRARD'S substitute, and they were taken, and resulted thus:

YEAS.—Mr. President, (Guthrie,) Wm. K. Bowling, Wm. Chenault, James S. Crisman, Archibald Dixon, James Dudley, Selucius Garfiede, James H. Garrard, Ben. Hardin, John Hargis, Mark E. Huston, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Thomas N. Lindsey, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, William D. Mitchell, Thos. P. Moore, John D. Morris, James M. Nesbitt, Wm. Preston, James Rudd, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—37.

NAYS.—Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, William Hendrix, Thomas James, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Nathan McClure, David Meriwether, Jonathan Newcum, Hugh Newell, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spaulding, James W. Stone, Michael L. Stoner, John Wheeler, Charles A. Wickliffe, Silas Woodson—47.

So the substitute was rejected.

The question then recurred upon the adoption of the proposition of the gentleman from Simpson.

Mr. GRAY. It seems to me that a majority of this convention are in favor at least of making these officers ineligible, after having served a certain number of years. I have a proposition to submit, in order to test the sense of the house

on the subject, and it is that the sheriff, without regard to the deputies, shall be ineligible, after having served two terms, until after one term shall have elapsed—giving him the right to be elected two terms out of three. I propose to insert the words, "that associate judges of the county courts are elected, whose term of office shall be two years, and they shall be re-eligible for a second term, but no sheriff shall, after the expiration of the second term, be re-eligible for the succeeding term."

Mr. BROWN. I would enquire if that amendment is now in order. The same thing, in substance, has been once stricken out, by a vote of the convention. The parliamentary rule is, I believe, that the same matter that has once been stricken out shall not be again re-inserted.

Mr. GRAY. The gentleman misunderstands my motion. There is this difference between what has been stricken out and what I propose to insert, and it is, I think, a very material difference. My motion is in reference to the sheriff, and not the deputies.

The PRESIDENT. I am inclined to think the proposition is in order—the matter that is proposed to be inserted not being the same as was stricken out.

Mr. BRISTOW. I will merely remark upon this subject of re-eligibility, that my mind is made up, to the effect that all our officers had better be made re-eligible; but in deference to the opinion of others—in whom I have great confidence—I intend, when the proper time arrives, to move a reconsideration of the vote by which the provision regarding the re-eligibility of sheriffs was stricken out. After all I have heard on the subject, I am of the opinion that if these officers are not to be re-eligible, the provision that was stricken out is a better one than any which we can substitute for it. I will therefore move to reconsider that vote.

The PRESIDENT. The motion to reconsider cannot be entertained, according to the rules, until to-morrow.

Mr. MERIWETHER. I voted myself for the re-eligibility of the sheriff; but I can see no objection if that vote is to be reconsidered, to reconsidering it to-day. I therefore move to dispense with the rule.

Mr. IRWIN. I see no good reason for reconsidering that vote. I could suggest a reason to my friend from Todd, why it should not be reconsidered.

Mr. MERIWETHER. If the gentleman does not desire a reconsideration, I will withdraw my motion.

Mr. IRWIN. There are several delegates absent.

Mr. BRISTOW. It is for that very reason that I wish a reconsideration. I will renew the motion to dispense with the rule.

The motion being put, it was, upon a division negatived. Ayes 51. Noes 26. Two-thirds not voting in the affirmative, the rule was not dispensed with.

Mr. BRISTOW. I now give notice that I will renew the motion for reconsideration to-morrow.

Mr. TURNER. As any thing that we may do in relation to this matter, will probably upon a reconsideration of the vote be reversed, I propose

that we pass over this section, and proceed with the residue of the report.

The question being taken, it was decided in the negative.

Mr. TURNER. I can see no objection to passing over this clause and taking up the residue of the report. It will save time eventually.

Mr. CLARKE. I hope the house will act upon this amendment. I would like to see some indication of the opinion of the convention upon it.

The PRESIDENT. It is certainly in the power of the house to pass over this section; but the difficulty is, it will appear very awkwardly upon the journals; perhaps the convention had better proceed with the section.

Mr. TURNER. I have no objection.

Mr. MERIWETHER. I understand the question to be now upon the substitute for the proposition of the gentleman from Simpson. I voted in favor of striking out the clause that rendered the sheriff ineligible; and one of my reasons for doing so, was because it extended to them. I will therefore now vote for the proposition of the gentleman from Christian, in favor of rendering the high sheriff ineligible for the second term, and the deputies eligible.

Mr. APPERSON. I was very much like the gentleman from Jefferson, I thought we were going to exclude rather too many. It is necessary that there should be a great many deputies, especially as the elections are to be held in every district, it will be requisite to have special deputies in every district. I am disposed to support the principle contained in the proposition of the gentleman from Christian.

Mr. TURNER. I am willing to support that proposition—with one exception—the necessity for which I think will be obvious to all, that he shall not be called on to act as deputy for the succeeding term.

Mr. GRAY. I have no objection to that. I will accept it as a modification. The proposition was so modified.

Mr. DIXON. I shall vote for the proposition submitted by the gentleman from Christian; not because I prefer it to the one that was submitted by the gentleman from Clay; but because I think it is the best proposition now before the convention. I hope it will be adopted.

Mr. NEWELL. I cannot vote for the substitute. It is in fact providing for what we have been contending against. It is carrying out the principle that we have been contending against—that these officers shall be ineligible.

Mr. MAYES. I shall certainly give this proposition my hearty support; because it is carrying out the very principle which I think of all others should be carried out, and that is that sheriffs ought not to be re-eligible, after the first term. I am in favor of the re-eligibility of judges, and I think it would be right that clerks should be made re-eligible; but we all know that the duties of a sheriff differ very materially from that of judges and clerks.

Mr. IRWIN asked for the yeas and nays on the substitute.

Mr. BRISTOW. I intend to vote affirmatively on this proposition, and I do it, not because I believe exactly in the correctness of the reasons given; but the great principle of rotation will

come up, and I think that four years is a sufficient length of time for a man to hold the office of sheriff. It is an important office, and I am willing that the deputies shall contest the office for themselves.

The yeas and nays were then taken, with the following result, yeas 45, nays 38:

YEAS—Mr. President, (Guthrie,) Richard Apperson, William K. Bowling, Francis M. Bristow, Charles Chambers, William Chenault, James S. Chrisman, Archibald Dixon, James Dudley, Se lucius Garfield, James H. Garrard, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, William Preston, James Rudd, James W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, Geo. W. Williams, Wesley J. Wright—45.

NAYS—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Beverley L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benj. F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, James M. Lackey, Willis B. Machen, Geo. W. Mansfield, Alexander K. Marshall, William N. Marshall, Nathan McClure, Jonathan Newcum, Hugh Newell, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spaulding, Michael L. Stoner, John Wheeler, Charles A. Wickliffe, Silas Woodson—38.

So the substitute was adopted.

Mr. MERIWETHER. I have a small amendment to come in at the close of the section. It is as follows: "Nor shall the high sheriff be eligible for a second term, unless he shall have obtained a quietus for at least three months before his election."

Mr. PRESTON. I believe that provision is made in a part of the report of the legislative committee for this very subject.

Mr. MERIWETHER. I will then withdraw my amendment.

Mr. HAY. I move to fill the blank with the words "two years."

The motion was agreed to.

The question then being taken upon the original section as amended, it was adopted.

The fifth section was then read by the secretary as follows:

"A constable shall be elected in every justice's district, who shall be chosen at the same time, in the same manner, and for the same term that justices of the peace are elected. He may execute the duties of his office in any part of the county in which he resides."

Mr. PRESTON. I will move to strike out the words "he may execute the duties of his office in any part of the county in which he resides." The effect of striking out these words will be to leave the jurisdiction of constables to be settled by the legislature instead of pre-

scribing it by a constitutional provision. In looking over the old constitution I find that sheriffs, constables, coroners and surveyors all made constitutional officers; but there is no provision in that constitution, or in any other that I have seen, prescribing the jurisdiction of these officers. I suggest to the chairman of the committee, that this is not the appropriate place for regulating the jurisdiction of constables. It does not prevail in any other constitution, nor does it in our's. I am perfectly willing that the legislature shall have full power to regulate their jurisdiction. The objection I raise is, that it shall not be done by constitutional provision.

Mr. TURNER. I am opposed to striking out this provision. The eighth section provides that every officer shall reside within his district during his continuance in office; but there is a propriety, an absolute necessity, in fact, that an officer, of this description, shall do business in any part of the county. We cannot always obtain the services of a sheriff in the remote parts of the county, and it is necessary that a constable shall be permitted to execute process; but if he has to stop and deliver up his authority to another, the criminal may in the mean time escape. As far as respects the duties of the office, the gentleman from Louisville is mistaken, if he supposes there is any attempt to prescribe those duties here. That is left to the legislature altogether; but it is right and proper, according to the views of the committee, that the constitution should declare that he is a county officer and can do business in any part of the county—that his jurisdiction is co-extensive with the county. If you strike out this provision, the legislature may, if they think proper, confine him to a single district. I desire that he shall be a county officer. And if it is a proper principle, it is right to insert it here.

Mr. PRESTON. There are a great many things that are right and proper in themselves, that nevertheless ought not to be inserted in the constitution. We are to presume that every thing in the statute book is right and proper; but I would not put every thing that is in the statute book in the constitution. The old constitution simply declares, that the officers shall be constitutional officers, but it does not pretend to prescribe or limit their jurisdiction. It provides that coroners, justices of the peace, and surveyors shall be created, without prescribing their jurisdiction. There is not a constitution in any state in the union that prescribes the jurisdiction of a constable, and I do not believe that it should be done here. If such a provision be inserted, it will be beyond the power of the legislature to control the jurisdiction of a constable. I can see no propriety in encumbering the constitution with a provision of this kind.

Mr. MERIWETHER. The gentleman from Louisville says that if this clause should be retained, the legislature could not hereafter confine the jurisdiction of constables within narrower limits, if it should be deemed advisable to do so. Is it right that the legislature should have such power? They are to be elected by districts. Suppose a constable has an attachment against an individual, who is passing into another district; or suppose the case of process against the parties to a note, and the principal

resides in one district, or in one ward of a city, and his security resides in another. Here there would be a necessity for having more than one officer to serve the process.

Mr. PRESTON. My argument was not based upon the assumption that the legislature would necessarily restrict the jurisdiction of this officer.

Mr. MERIWETHER. I am aware of that; but I think it would be improper to give them the power to do it.

Mr. MITCHELL. My opinion is, that the report, as made by the committee, is correct. I think that the power to make legislative restriction should be taken away; and one great reason is this: If you have a constable in each district, why, he will necessarily be regarded as the only officer entitled to execute the duties of the office within that district; but if you give him the privilege of exercising the duties of a constable throughout the county, you afford to the citizens of the county the opportunity of choosing among those officers, the one most prompt and diligent in discharging the duties of that office. It will have the effect of exciting emulation among them. For this reason, I believe they should have the range of the whole county, and that legislative restriction should be taken away in regard to curtailing their jurisdiction.

Mr. IRWIN. In the report of the committee on county courts, there is this provision: "The several counties in this state shall be laid off into districts, of convenient size, as the general assembly may, from time to time, direct. Two justices of the peace and one constable shall be elected in each district, by the qualified voters therein. The jurisdiction of said officers shall be co-extensive with the county." I think, sir, that we may as well strike out the whole provision on this subject in this place, and leave the section I have just read to be adopted when we come to consider the report of the committee on the county courts.

Mr. TURNER. I deny that the subject belongs to that committee, at all. They had no right to say a word upon the subject. This county court committee, with the two others that are associated with it, making a committee of thirty, seem to think that there can be nothing done in this convention, unless they do it. It appears to me, that the remaining seventy delegates have a right to do some part of the business. So far as I have seen of the business done by that committee, I think they are making a constitution that will be set aside by the people.

The PRESIDENT. The gentleman will understand that it is not in order, to refer to the proceedings of any committee.

Mr. TURNER. I beg pardon sir, I was but following the example of the gentleman from Logan, who was arraigning myself and my little committee before their betters.

Mr. IRWIN. I am not a member of the committee of thirty, and I have no desire to deprive the gentleman of any honor, that he may obtain by regulating the office of constable.

Mr. TURNER. I take no pride—as I have said repeatedly—in having to do this business. In all probability there will be a motion to strike out the provision which the gentleman has read

from the report of the county court committee. It is not satisfactory to all of us; but this is a small matter sir, and might be determined without any very lengthy debate.

Mr. GHOLSON. I think sir, with all deference to the opinions of other gentlemen, that we should be pardoned for attaching some little importance to this matter. Now if a constable be restricted to his particular district, the people are deprived, to a great extent, of his services. So far from being restricted to the district, he should not even be confined to the county; but should be permitted to go to the very extremity of the state, in pursuit of a fugitive from justice. If a constable be confined to his district, in case of sickness or other disability, his place cannot be supplied by another. There can be no harm at all events, in providing for contingencies of this sort. I will further remark, that from the very beginning of this report, every thing seems to have gone wrong end foremost. Here is a provision, in regard to the continuance of the office of constable. It is to be regulated by another office which is not yet provided for. "A constable shall be elected in every justice's district, who shall be chosen at the same time, in the same manner, and for the same term, that justices of the peace are elected." And we have not yet provided for justices of the peace.

Mr. HAMILTON. It does appear to me, that the regulation of this whole matter, in relation to the jurisdiction of a constable, properly belongs to the legislature. Under the present constitution, those who fill the office of constable, discharge the duties of that office in any part of the county, and that is precisely as it should be; but if any change should hereafter be desired, it can be made by the legislature. It should not be done by constitutional provision. While up, I may be permitted to say, that we are consuming much time with unnecessary speaking, and I think it would be well to have a committee of ten members appointed, to be termed the "speaking committee," and have the senate chamber, or some other apartment fitted up for their use, so that those gentlemen who wish to indulge in much speaking, may have an opportunity of doing so, without interfering with the business of the convention, and we shall then relieve gentlemen from the painful necessity of seeking to expunge a great deal of superfluous matter from the journal of our debates, and we shall be able to make much greater progress with the business for which we are assembled.

Mr. RUDD. I hope the motion to strike out will not prevail; for if there is any part of the state that will suffer more than another it is the city of Louisville. I want a constable when he has occasion to serve a process, to go into any part of the city, and not to be confined to a particular ward. I hope the gentleman from Louisville will withdraw the proposition, for there would be great disadvantage arising from it, if the legislature should pass a law confining the jurisdiction of a constable within a particular ward or district. I do not myself believe that they would pass such a law. I could not suppose for a moment, that a body of men, composed of one hundred, would be so inconsistent, so want-

ing in common sense, as to do it. But I hope the proposition will be withdrawn.

Mr. WILLIAMS. I would call the attention of the mover of this proposition to the effect it would have. The section provides that one constable shall be elected in each justice's district. If these words be stricken out, the inference will be that the jurisdiction of each of these constables is to be confined within his particular district. I do not suppose that it is the intention of the gentleman, that their jurisdiction shall be thus restricted.

Mr. PRESTON. The gentleman from Bourbon and my friend from Louisville, have both misapprehended me entirely. I think that when we trust the legislature with the power of branching the court of appeals, and of increasing the tribunals of the state, and of increasing the power and jurisdiction of the higher officers of the government, that it is carrying the matter rather too far now to fix the jurisdiction of a constable in the constitution. It is a matter that I am not anxious about; but I do insist that it is not proper to encumber the constitution with provisions of this description. I do not want to usurp every power that the legislature should hereafter exercise. All that I wish is that the constitution shall remain silent upon this subject.

Mr. TURNER. If you do not retain this provision the constructive effect will, in all probability, be that the constable will only have jurisdiction in the district in which he was elected. You make him a constitutional officer, and the legislature will have no power to enlarge his jurisdiction, if there be no intimation contained in the constitution, as to its intent and meaning in regard to the jurisdiction of these officers.

Mr. DIXON. I think the gentleman from Louisville is right in the motion which he has made to strike out. I do not agree with the gentleman from Madison, that because this section requires the officer to reside within the district, it is an inhibition upon the power of the legislature to authorize him to do business out of that district. I think the gentleman from Louisville is right for this reason. The part of the section proposed to be stricken out, confines the duties of the constable within the limits of the county. And it becomes a question whether it is best, by constitutional provision, to confine his duties within the limits of a county. It might be advisable, to give a constable the right, under certain circumstances, to follow a criminal beyond the limits of the county.

Mr. TRIPLETT. I think that the motion of the gentleman from Louisville ought not to prevail, but on the contrary it seems to me that the jurisdiction of a constable ought to be extended—and this debate has suggested to me a matter—not of very great importance certainly—but one which ought not to be overlooked. And I give notice now, that to-morrow, or at the proper time, I will offer a proposition to this effect, "Resolved, that the general assembly be instructed to provide by law, that whenever a criminal process shall come into the hands of a sheriff or constable, such officer shall have power and authority to follow and arrest the suspected criminal in any county within the state." I do

not know any thing that can conduce more to the proper administration of justice than such a provision.

Mr. PRESTON. I will ask the secretary to insert these words in the section proposed to be amended, "and whose jurisdiction and duties shall be prescribed by law."

The question being taken upon the proposition of the gentleman from Louisville, it was rejected.

Mr. CHAMBERS then moved to amend by inserting in lieu of the 5th section, the following: "There shall be elected in every county in this commonwealth, one constable for every two justices of the peace; he shall hold his office two years, with such jurisdiction, duties, and responsibilities as shall be prescribed by law."

The amendment was rejected.

Mr. IRWIN then offered the following, as an amendment; being a part of the report of the committee on county courts.

"The several counties in this state shall be laid off into districts of convenient size, as the general assembly may from time to time direct. Two justices of the peace, and one constable shall be elected in each district by the qualified voters therein. Justices of the peace shall be elected for the term of four years, and constables for the term of two years; they shall be citizens of the United States, twenty-one years of age, and shall have resided six months in the district in which they may be elected next preceeding their election."

Mr. TURNER. This is a proposition for the establishing of part of a court, and is therefore a matter over which this article has no jurisdiction. It was under the consideration of the united committee on the judiciary, to whom, at a proper time, I intend to move to refer this matter also, and to add the committee on ministerial officers to their number.

The amendment was rejected.

Mr. GARFIELDE moved to amend the section by striking out the words in the second line, "and for the same time," and to insert the words "for the term of two years." He thought two years long enough for the term of a constable.

Mr. TURNER. As the committee will undoubtedly act together on this subject and make the several reports so as to blend together, I think the gentleman had better withdraw his proposition.

Mr. GARFIELDE. My only objection is, that to say now that the constables shall be elected for the same term as the magistrates, may restrict the action of the committee, who have this last class of officers in charge.

The amendment was rejected.

Mr. DESHA. I have an amendment to offer, and I beg leave to state to the house, I shall vote against myself. My desire is to test the sincerity of members as to this question of re-eligibility. I am one of those who contend that the people are capable of selecting their officers, not only for the first, but for the second and all other terms, and in the votes I have and shall give, I go in favor of re-eligibility in its fullest extent. The arguments made by gentlemen here who are in favor of the ineligibility of a sheriff, it does seem to me apply at least, in proportion to

the magnitude of the office, to the constable. There is not to be one constable, but fifteen or twenty, and they have an amount of money in their hands greater than any other officer, and combined, they would wield an influence fully equal to that of any sheriff. It does seem to me, therefore, that the same principles will apply as strongly in the one case as in the other. I do not expect to make any extended remarks now, or to occupy the time of the convention at any time with long speeches, for I came here to act, and shall ever be found in my place to carry out the views of those who sent me here.

My amendment, which I shall vote against, is to add after the word "election," in the third line, the words, "and he shall be re-eligible for one term only."

Mr. NESBITT. I am in favor, as a general rule, of the re-eligibility of all officers, but I believe that the cases of the treasurer of the commonwealth, and the sheriffs of counties, ought to form an exception to the general rule. If we do make them thus form an exception, I believe that after years will prove its wisdom. I do not desire that those who have the custody of the public money, shall become candidates for office with that money in their pockets.—Whether this objection applies to the constable or not, I am not certain. I do not suppose he becomes a collector of the public revenue, and I hope he never will be allowed to become so. But if I thought that day would ever come under legislative provision, I would at once vote that he should serve for two years, and then go out and make a settlement, when, if they chose, and he proved worthy, the people might elect him again for another two years. I would let him go in for two years and stay out for two years, before he should be re-eligible. I think all those officers who handle the money of the people, should, by the people represented in this convention, be required at stated times to make a full and final settlement. I am not afraid of this cry of inconsistency. Some gentlemen have said, that if we vote that the sheriff shall be ineligible for a succeeding term, that then they will violate their own opinions in regard to the balance of the officers of the country, and vote down re-eligibility in every other officer just because we make an exception in the case of a commonwealth treasurer, or sheriff.

Mr. NEWELL called for the ayes and noes on the amendment.

Mr. TURNER moved to lay the amendment on the table.

The PRESIDENT ruled the motion out of order.

Mr. WM. JOHNSON. I believe that this whole subject, about which we have been talking for some time, is an improper one for consideration here. I think that the legislature of the country can dispose of this matter of constable, and define how many each county shall have, and far better decide upon all those matters, from time to time, than could any fixed constitutional provision. They had this power under the old constitution, and I think they ought to be continued in its exercise. I should prefer some amendment declaring that the legislature may provide for the election of a suitable number of constables in each county in the state.

And I may deem it proper to introduce such an amendment at the proper time.

Mr. MAYES moved as a substitute for the amendment, the words "and he shall be re-eligible for a second term, but no constable shall, after the expiration of a second term be re-eligible for a succeeding term."

Mr. DESHA accepted the substitute in lieu of his own amendment.

The question was then taken on the amendment, and it was rejected; ayes 21; nays 58; as follows:

YEAS—Mr. President, (Guthrie,) Wm. K. Bowling, Archibald Dixon, James H. Garrard, Richard D. Gholson, Ben. Hardin, Mark E. Huston, James W. Irwin, Thomas James, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, William D. Mitchell, John D. Taylor, Howard Todd, Philip Triplett, John L. Waller—21.

NAYS—Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Christian, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Ninian E. Gray, James P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, Alfred M. Jackson, William Johnson, Charles C. Kelly, James M. Lackey, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Nathan McClure, David Merivether, James M. Nesbitt, Jonathan Newsum, Hugh Newell, William Preston, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Squire Turner, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—58.

Mr. BOYD moved to strike out all of the section after the word "chosen" in the second line, and substitute in lieu thereof the words following: "For two years, at such time and place as may be provided for by law."

The amendment was adopted.

Mr. TURNER. That amendment strikes out the provision in regard to the extension of jurisdiction. I therefore move to add at the end of the section, as amended, the words "whose jurisdiction shall be co-extensive with the county in which he resides."

The amendment was adopted.

The section, as amended, was then agreed to. The sixth and seventh sections were then read, and agreed to.

The eighth section was then read.

Mr. GARRARD moved to strike it out, on the ground that the matter came more properly under the general provisions of the constitution, and was provided for by another report.

Mr. TURNER had no objection, and the section was stricken out.

The ninth section was then read.

Mr. NESBITT moved to strike it out.

Mr. TURNER. I hope it will not be stricken out, for there certainly ought to be some tri-

bunal to try clerks. Under the old constitution, we have had them tried before the appellate court, and no tribunal could be more competent.

Mr. NESBITT. I desire that the clerk of the circuit court shall be removed upon indictment, the judge of that court being the judge of the law and the fact. I desire the clerks of the county court to be removed in the same way, the judge of that court also being the judge of the law and the facts. As for the clerk of the court of appeals, I am willing that he shall be removed as may be thought proper.

The motion to strike out the section was agreed to.

The tenth and eleventh sections were then read and agreed to.

The twelfth section was then read.

Mr. TURNER moved to insert before the word "appointment," the words "election or."

The amendment was adopted, and the twelfth section agreed to.

Mr. TURNER wished to offer an additional section, as an individual, and not in behalf of the committee.

The proposed new section was then read as follows:

"A county court assessor shall be elected in every county, at the same time, and in the same manner that the presiding judge of the county court is elected, who shall have power to appoint such assistant assessors as may be necessary and proper."

Mr. TURNER. It is suggested to me that we had better leave the term of service blank, and first adopt the principle contained in the amendment. I think there is no gentleman here but will see the propriety of having an officer of this kind. This duty of assessing the property of individuals and preparing a list of voters, is a very important one, and it has been very badly executed heretofore, as all must know. Some counties in the state pay twenty per cent. more revenue on the value of their property than do other counties, and some counties in the state have a full return made of the number of their voters while others do not. This is all owing to the present system of allowing the county courts to appoint the assessor, whereby, men, lacking in the proper qualifications for the discharge of the duties get the office. There should be a regular officer, elected by the people, for the purpose, with a term, say of four years, and then if the people would select proper men, we would have this business done better than it has been heretofore. A long term would also induce competent individuals to accept the office. Some may object to the proposition to allow the assessor to appoint his deputies, but the proposition was thus framed for this reason. There are a great many of the smaller counties in the state, where one officer would be sufficient, while in others, such as Jefferson and Madison, three or four would be required. The assistants would be responsible to the assessor, and should be appointed by him. The relations between them should be similar to those between the sheriff and his deputies.

The thirteenth section was then agreed to.

Mr. NESBITT moved to amend the section so as to adopt the principle, that each county should



be divided into assessor's districts, in each of which, the people should elect an assessor.

The PRESIDENT declared the amendment to be inconsistent with the section as adopted, and therefore out of order.

Mr. NESBITT. I move a reconsideration of the vote adopting the section. It might happen that a man elected the assessor of a county would appoint two or three of his sons as his deputies. These are responsible officers, and the people ought to choose them.

Mr. TURNER. I hope the motion to reconsider will not prevail. I think it far better to have one individual to take charge of, and be responsible for, the whole business.

Mr. GHOLSON. I suppose the sheriff will be as likely to appoint his sons deputies, as the assessor, and yet no objection has been urged against that. The assessor should be the responsible head of his office.

The motion to reconsider was not agreed to.

Mr. TURNER proposed to submit an additional section, providing for the manner in which the commissions of the officers, provided for in this report, should be made out; but it being suggested that he, as chairman of the committee, should make a separate report on the subject, he withdrew it.

A verbal correction was then made in the 11th section, and the order of numbering the sections directed to be changed so as to conform to the amendment of the report.

The question was then announced to be on the adoption of the report.

Mr. CLARKE called for the yeas and nays.

Mr. WOODSON, in order that the report might be fully examined before final action was had, moved to adjourn.

Mr. TURNER moved to refer the report to the committee of thirty on the judiciary.

The PRESIDENT declared the motion not to be in order, while a motion to adjourn was pending.

And then the convention adjourned.

THURSDAY, NOVEMBER 8, 1849.

Prayer by the Rev. Mr. NORRIS.

#### JURISDICTION OF CONSTABLES.

Mr. TRIPLETT offered the following resolution, and it was adopted.

*Resolved*, That the committee on miscellaneous provisions, be instructed to inquire into the propriety of authorizing the general assembly to provide by law, that when a sheriff, coroner, or constable, has a criminal process against any person who shall escape from his county, after the process comes to the hands of such sheriff, coroner, or constable, such sheriff, coroner, or constable may follow and arrest such fugitive from justice in any other county in this commonwealth.

#### CONSTITUTIONAL AMENDMENTS BY THE LEGISLATURE.

Mr. JACKSON offered the following, and on his motion it was referred to the committee on the revision of the constitution and slavery:

WHEREAS, our constitution is a solemn conventional agreement among freemen, and the three great departments of government created by it are bound to obey its provisions; and whereas, it is violative of the principles of republican governments, for any of the co-ordinate branches of such government to have any control, either directly or indirectly, over the organic law. Therefore,

*Resolved*, That it is inexpedient to give such power to the legislature as would enable it to propose amendments to the constitution, or as would invite it to embark in constitutional agitation.

#### POWERS OF THE GENERAL AND STATE GOVERNMENT.

Mr. GAITHER. I offer the following resolution:

*Resolved*, That a select committee be appointed to report to this convention what powers have been delegated to the United States; also what powers have been prohibited by the constitution of the United States, to the states, with a view to enable this convention to act understandingly, in forming a constitution for the government of the state of Kentucky.

I have been waiting for some weeks past, with the hope that some gentleman would present, in some tangible form, a proposition of this kind to the convention. We were notified when we met here, that this convention was clothed with all power, save that delegated to the federal government, and of course the commonwealth covers the whole ground, with the exception of prohibited and delegated power. We are about to frame a constitution, and so far as I am concerned, and so far as the people of Kentucky are concerned, we desire to have the whole ground covered. Without having laid before the convention a view of that fact, we are surely thrown greatly in the dark. We know that since the foundation of our government, there has been a dispute as to the powers existing in the federal government, and those which belong to the states. These disputes have led to convulsions, which shook the integrity of the Union, and created doubts in those abroad, whether we should sustain the principles on which this government was organized. I think before we go further, we should understand the ground we occupy, and I desire to occupy the whole ground to which we are entitled, and not a solitary inch beyond it.

I have presented this resolution with a view of bringing this subject before the convention. I have witnessed with deep interest the discussions that have incidentally touched upon this subject. I know that the state and federal government have been divided on this matter, and we have had statesmen of talent, wisdom, and experience differing in their views in regard to it, and we want to know what ground we should occupy in forming a constitution for the state of Kentucky. We are apprised that under the doctrine as held by one school of statesmen, a large circle of the powers of the federal government are regarded as held by implication and construction. Another school believe that the perpetuity of the Union depends on the adherence to a strict construction of the doctrines as laid down in the constitution. It is important

that the issue should be now made understandingly. It is true that we have now hanging over us on this subject, a question that has unhinged the hopes of the perpetuity of this government, the enlarged powers of the federal government, and the powers granted by implication, have laid the foundation of that broad platform which has been laid. But the government that has stood thus long under our present constitution seems to have solved the problem that the people are capable of self government. I have noticed that there were two altars in this convention at which the different parties seem to worship, the sovereignty of the people, and the independence and purity of the judiciary. Those gentlemen who had chosen to worship at these different altars, perhaps equally pure and patriotic, have come to conclusions at war with each other, yet they may be induced by compromise to unite. From long reflection I have come to the conclusion to worship at the altar of the sovereignty of the people, and while I do this I make no imputation on gentlemen who entertain different opinions. My conclusions have been drawn from long observation of the practical working of a free government. We have gone on prosperously, and I look on the problem of self government as solved. For a long time the purest and best of men doubted this fact. There was ground for these doubts. There had been failures in all efforts that had been made, and it was for the wisdom of the American people to solve his problem and show the evils that had caused all former efforts to prove abortive.

Three forms of government are all that have existed; monarchy, in which the sovereignty rests in one; aristocracy, in which it rests in a few wise and intelligent individuals; and democracy, in which it rests in the mass of the people. These three primitive forms of government constitute the basis of all forms that have been instituted. In the United States, equal rights, equal privileges, no monopoly, and no exclusive privileges, constitute the elementary principles of our government. In the carrying out of this machinery in the commonwealth of Kentucky, through the constitution we may devise, rests the practical effects which may be anticipated in the government.

I have witnessed, long and feelingly, the struggles that have presented themselves in the volcanic convulsions which our government has passed through, during the last thirty years, and even longer than that, and I have traced, without any intention of partizan purposes, the causes and the results of those convulsions, and if you will attend to them, and examine them impartially, you will find they all originated in the position maintained by one of the great schools to which I have referred, by exercising power by construction and implication under the federal government, and having never been able to carry out their doctrine for the useful purposes for which this government was constituted. We know, that at the early threshold of this government, Hamilton, who was the master spirit of these doctrines, and a more intelligent man never lived, nor more honest, pure and patriotic in motive, but from his early education, his talents and patriotism were pervert-

ed, and his views and notions of free government were, as I think, erroneous.

He, it is true, doubted the capacity of the people for free government, and even Washington, whose motives and purity of motive no man dare impugn, doubted, but he said that so far as he was concerned, or his power extended, when he was called to the executive station, they should have a fair trial. A period of seventy odd years has demonstrated the fact, and it seems to me, that there must be a blind devotion to the Hamilton school, to assume that ground still. I do not believe in the incorruptibility and infallibility of men. They possess many frailties, and are subject to many errors. I am well aware that we say the people can do no wrong, but thus far we are in error. They are subject to error, and for this reason. Social governments and political societies have agreed that they will establish fundamental principles, which may be their guide, so far as written constitutions are concerned. They have thus acknowledged their liability to error, and that though government is an evil, it is a necessary evil, and one to which all men will cheerfully submit.

So far as relates to the purpose of my resolution, I desire to present it to the consideration of this convention, whose duty it is as the representatives of an honest yeomanry, to make known to them what rights they have conceded to the federal government, and what we grant to them. Can we attempt to frame a constitution without having brought to our view the extent of these powers that we have retained untrammelled by delegation?

Enough upon the subject of our federal relations. We stand as one member of a confederacy, as one independent sovereign state claiming and knowing that Kentucky will maintain what properly belongs to her, against any power that may make inroads upon her rights. I want this so established in our constitution that our posterity may know when the conflict shall come—as come it will, what position Kentucky will occupy among the states of this confederacy. We know that the clouds hang heavily in that quarter where exists a jealousy of freedom, and Kentucky knows well how to appreciate her attitude, in the great struggle which threatens us. We shall show our sister states that we know what position belongs to us on the platform that covers the whole, and that we have the courage and bravery to keep the station which we now occupy. We occupy the position of the key-stone of the federal arch on this great question that has threatened the integrity and perpetuity of the Union.

I hope this convention, when they make their report, will notify the different portions of the confederacy what position we take, in such a way that they may be easy on this subject; that the north may know we are not to be moved from the position that we occupy in relation to the constitution of the United States, and that we may admonish our southern brethren they need be no longer jealous of the position we occupy. We know the importance of the Union and the benefits to be derived from it. We will have them understand that we will maintain our position, and they may have no fear that Ken-

tucky will leave any room for jealousy on the subject which has so much excited them and upon which they have had a kind of monomania.

Much has been said upon the causes and the reasons which operated to produce this convention. My own reflections have been long and well matured on this subject. I shall not, however cavil with my colleagues as to who had the honor of first bringing about this convention. I have long had the honor to represent my state in a legislative capacity. The journals of 1817 will show that on examination of the elementary principles of my government I found, as I conceive, that we had outgrown the principles before adopted and then existing. I was then in favor of a convention, not on account of mal-administration of officers, but in consequence of the radical defects in the organic law, in reference to the rights of the people. What were the rights of the people under this constitution? Once in four years you had the privilege of voting for a governor, lieutenant governor, and senators, and once a year for representatives. On all the globe was there ever a government so despotic in some respects as ours? It is true that under the influence of public opinion the vessel of state moved on harmoniously. But it was not long before the statesmen of the time found the latitude of the ship of state. The life and good behaviour tenure of office had its effect on the people, and they determined to have a different constitution. It was not on account of mal-administration of office, and giving office to sons and sons-in-law, that convinced the people. Their conviction was drawn from more essential and important sources, and they look to us now for the exhibition of important principles on which we act, and if we shrink from fear of the cavils of individuals, they will hold us to a high responsibility. We shall deserve the reproach that must fall on us.

I have heard here, and elsewhere, that all free governments are founded on three pillars. This is a Blackstone doctrine, however. Our government is based on a single pillar, and that is the people. Those pillars that have been represented as sustaining the governmental dome, may properly belong to the government of Great Britain; but to apply it to our government, it will be necessary to turn it upside down, and then you will have a fair representation of it. Our government is based on one pillar, and that, the people. The executive, legislative, and judicial departments, are but different portions of the superstructure. We, then, as those on whom the superstructure is based, are bound to maintain purity and integrity in the sphere which properly belongs to us. We have heard with pain, for the past thirty years, of the attacks made upon the legislative character of our state. It was originally made by those who do not believe in popular governments, and whose cowardice made them afraid to attack the people themselves, but who did it as nearly as possible through their representatives. Your legislature has been held up as an unworthy, corrupt, log-rolling curse, and as exhibiting the worst passions of human nature. Now, is this right? We have heard it here, and is it right that we should quietly hear our agents, emanating di-

rectly from us, thus vilified, and not come to the rescue? I have had the honor, for some years, of sitting as an humble representative from my county, in a legislative capacity, and as I came out of doors I have often heard some insulting remark like this: "You have done no harm today, I hope." I passed such remarks by, and when I mingled with the representatives of the country, I always looked on them as having an atmosphere about them reflecting the dignity of the people. I say, then, if you wish to preserve the government pure, come to the rescue of the three great departments of it. Let the people know that they are the medium through which the government must be carried out, practically. Come to the rescue of the legislature, which may feel degraded by the insults thrown upon it—repel the insinuation that they are not to be trusted—maintain their position, and if the people have been unfortunate in selecting an unworthy man, let them turn him aside, but do not let the whole department suffer.

The executive department, too, has suffered. This is an important office, and although I have never had the honor to be an incumbent of it, I feel a pride in maintaining the dignity of this office; and those slurs and taunts that have been cast upon this branch, are calculated to bring into disrepute the duties of that office.

The next department is that of the judiciary, and a very important one it is, but I must confess that I have never been able to consider it more important than the other departments, all of which are essential in carrying out the principles of this government.

Much has been said about the importance of an independent judiciary. I like an independent representative, and an independent executive, and an intelligence and moral firmness in any officer that will lead him to do his duty regardless of what cabals and individuals may say, considering that the mass of the people require nothing but what is right, and when it is done, they will give their sanction to the act. Your judiciary is essential and important, but I have never been able to convince my mind that it was the most essential portion of the superstructure which the people have erected to carry out their will. Who are the judiciary? They are composed of men. What are their duties? They are prescribed by the statutory provisions of the country. They are, perhaps, as good men, but not better than the mass of the people that surround them. An independent judiciary, in the generally received import of the expression, means absolute. An independent judiciary, that is to be absolute and above the mass of the people on whom rests, as a basis, the superstructure, seems to me to be an absurdity too intolerable to be sanctioned for a moment. Now the subject of an independent judiciary as it relates to other counties has been frequently presented to you. What was the proposition of an independent judiciary in Great Britain? Was it not opposed to some separate and antagonistic interests on the part of others? Have we in this country separate and antagonistic interests to those of the people? We have not, and therefore the term independent judiciary is an anomaly, and does not belong to those notions we apply to government. Have we, in this govern-

ment, any antagonistic interest to those of the people? If we have, let its advocates come out boldly and produce it. Shall it be found in the private corporations and privileged orders that you create in the shape of bank barons or knights of the spindle? I presume none are now at least ready to come forth and avow that doctrine. Then I know no ground upon which to claim for any functionary of government, that kind of independence. The idea is absurd, and does not belong to that school of political doctrine, which I have been taught to believe correct.

Upon the subject of the independence of the judiciary I have no fears, in bringing them upon the same ground, and requiring them to be inducted into office by the same propelling power that the balance of the functionaries of government are. I have no apprehension that their integrity, honesty, or independence, will be weakened or destroyed thereby. Can you make any rational man, whose prejudices are not absurd, and whose mind is not warped by the Mansfieldism of the fixed sources of Blackstonism, believe that the individual who receives judicial power from the golden pen of the executive, sanctioned by the senate, will certainly be an independent, honest man, when, if he receives his power directly from the ballot box, from the sovereign people of the country, he will be converted into a rascal at once? I have a better opinion of the lawyers of the country, the class from which we select our judges. I am not one of those advocates of the sovereignty of the people, who believe that they can commit no error, or are infallible; but I do believe the mass of them are capable of self-government, and that the vessel of state must sail upon that current. And he must be a sceptic indeed who does not subscribe to that doctrine. Although the manner in the management of the rudder of the ship of state may have run ashore, yet once in that current, the vessel of state is irresistibly forced on to the accomplishment of the great purposes of government. We have had convulsions, and trying times in the political history of this country, which, if they have not demonstrated to ourselves, they have to the old world at least, that our government is based on a solid foundation, and that the people are in reality capable of self-government. I have heard various projects suggested by which gentlemen desire to preserve the independence of the judiciary, and its sovereignty, from the contaminating touch of the mass of the people. It was but the other day that we heard it avowed, and declared, that they could not trust the people, nor even themselves. Now I take it for granted, that when a man gets into a position that he cannot trust himself, that his neighbors themselves ought not to trust him. And what was this project that was to preserve the independence of the judiciary? It was that the state should be laid off into districts, and that the legislature—the very branch of government that in the next breath was declared to be the most unworthy—should select the lawyers, and recommend them to the senate, and that body should nominate one of them to the governor, who should commission him as an officer.

The theory of our government is the separate

and distinct divisions of its powers into three departments. The judicial, legislative and executive officers are co-ordinate, and should be kept separate and distinct; but there is, and ought to be, a responsibility some where, and where can it be more safely deposited than with the body of the people, who are solely interested in the correctness and faithfulness of their operations? It is argued, that when you elect a judge upon the great principle of the sovereignty of the people, that of course you must subject him to the influence of that sovereignty in giving his judicial decisions. This arises from a mistaken view and wrong conception of the purposes for which our government is instituted. We the people profess not to be skilled in the technicalities of law or statutory provisions, but we do claim, and it is due to us to acknowledge that our motives and purposes are, that justice and equity should be regarded by the functionaries of government. And we have sufficient of common sense to know when this is, or is not done, and when it is not, we have a right to arraign those functionaries for their failure in the performance of that duty.

It has been argued here with scarcely a dissenting voice that the judiciary is the great reservoir and safeguard of the liberties and rights of the people; but I myself have not come to that conclusion. I have witnessed the operations of the judicial arm of the government, and paid some attention to the judicial history, not only of our country, but of times past in other governments. And I find, that according to their number, there were as many blood-thirsty despots and tyrants, and infinitely more, among the judiciary, than ever disgraced the legislative halls of any country. Let any man read the history of the state trials in Great Britain, and he will learn that the best blood the world ever saw, has been sacrificed at the shrine of judicial tyranny. Mark the history of the United States, and what will you there discover in relation to the judiciary? Does it exhibit them in a light to be regarded as the depot and reservoir of our liberties, and the asylum to which we must carry ourselves for safety? In this country we have been taught a different doctrine, it may be however, of a school which certain portions of this community will not recognize or adopt. We are told, and every man who has regarded the practical operations of our judiciary, must concede it, that they are embarrassing and suppressing the liberties of the country, gradually, yet certainly, by their decisions, and by their operations on the political acts of government, depriving the sovereign people of many of their rights. They are the great high priests of political-jesuitism, and passive obedience and non-resistance will be the inevitable consequence, if the people listen to the doctrines being inculcated by many of the judiciary. I am one of those who are not afraid of establishing the judiciary department of the government upon the basis of the sovereignty of the people, and of holding them to that accountability to them, that the balance of the functionaries of the government are held. I can see no necessity for any distinction. I have never seen a family where the parents foster and set up one of their children, as the favorite and

champion of the rest, that there was not distrust and turmoil, and a kind of family feud arising that rendered them unhappy, and blasted their prospects hereafter. All human institutions partake of the inherent frailty of humanity, and from the time they are put in operation there is a constant tendency to dissolution, and the only way they are to be preserved or restored is, by bringing them back to primitive principles. And the only way to do this is through the ballot box. Therefore, if we are willing to do what our constituents expect of us, we must provide them with a constitution, in which the ballot box will be brought to bear on all officers, from the constable to the chief justice. Let them not be appointed for too long a time either, for frequent accountability secures the faithfulness of all agents. Then we shall have a guarantee that the purposes of this government will be accomplished, and we shall demonstrate to the world, that we, as a people *en masse*, are in reality capable of self-government. Your constituency—my constituency at least—expect that we shall give them the liberty of selecting their own agents, and that in the selection of those agents, they shall not be required to trust them too long. Experience and the practical operations of mankind have demonstrated to us, that to trust men too long is sometimes a little unsafe. We have seen men, in whose political integrity and honesty we have had the greatest confidence, change their position, and this admonishes us that we ought not to trust them too long. The notion I have long since adopted is, that this is a bad world, and the fewer we trust the better. Call your officials to account as soon and as often as possible, before their powers corrupt them, and if they have done well, reward them by re-election if they desire it. Now, your judiciary, as well as your representative branches of the government should be placed precisely in that condition. I make no distinction, for they are all functionaries of the government of the sovereign people, appointed as the agents to carry out some of the attributes of that sovereignty; and they should occasionally be brought in review before us the people. We have no motive to do wrong; we may and do commit errors, but as between errors committed by ourselves in mass, and those committed by individuals, I have no hesitation in making a choice, for if the people err it will not be wilfully.

And permit me to say there are doctrines contended for here upon this subject of the judiciary which involve imputations upon the integrity, sincerity, purpose, and motives of the people, that I cannot subscribe to. If I believed that in the selection of a judge, the mass of the people would take a man who never saw a law book or who had no knowledge of the science of law, I would not vest that power of selection in them. But it is an imputation, I repeat, upon the integrity, capacity, and motives of the people, that I am not willing for one moment to subscribe to. It is a doctrine which belongs to the past, when men doubted the capacity of the people, and not to the present or the future. In regard to sheriffs and constables, I must acknowledge, that if my feelings would permit me to sacrifice principle to policy or expediency, it would be to make those

functionaries who handle the public money ineligible. But I think there is a surer and better remedy than this. If I understand the practical operation of the theory of those who contend for the ineligibility of the sheriff and constable, it amounts to this: You elect him and put him in office, and say this is your only chance, and so go on and be a great scoundrel. And like the small-pox, which must have its various stages, and its confluent and distinct character, so must be your progress in rascality in office, certain that we shall cast you off as soon as you are pitted and discovered. Then we will bring forward others to take the infection. I want a better remedy than that. If there are perquisites appertaining to their offices which induce such corruption, I desire that the legislature should curtail them, and enact statutes to punish that kind of land piracy. But to go on and put one man in office and tell him to go ahead in his career of rascality, and then after his term of rascality has expired to put him in another, would be, in the course of time, to establish a class of graduated villains, educated to swindle and rob the community. I can subscribe to no such doctrine.

I never like in my profession to apply a remedy when I am satisfied that it is so powerful in its character that it may engender a worse disease than the one it seeks to remove. I prefer to bear it patiently, in the hope that nature and the recuperative powers of the body will combat and overthrow the evil. I have faith in the efficacy of the practical operation of the ballot box. It was presented the other day most eloquently by the gentleman from Todd, (Mr. Bristow.) It will elevate the character of the elector, and induce an honest pride in the voters by making them satisfied that in reality they have some interest in the government. It will be practically demonstrating to them that they do possess that interest. Although I have never been a great electioneerer, nor ever approached a man to seek his vote in any form or shape, yet I have been mortified in times past, when in a canvass the question was incidentally brought up whether a man would vote for me, to hear him reply, I do not care much who is elected, it will do me no good as I have no interest in the government. I want now to convince the voters that they do have an interest in the government, and thus enlarge their views and elevate their pride. This will provide a corrective for the evils of which I have just spoken. They will review the action of the public officials when they come to decide upon their re-election, and will feel like freemen, and that their rights are equal and on a par with the most wealthy and influential man in the country. Our doctrine, if I understand it aright, and I say without intending to be offensive, the democratic doctrine, is equal rights and privileges against monopolies or class legislation in any shape or form. Now upon that doctrine, it is maintained by the opposite party, that we are not a free government unless we have universal intelligence. If that is correct, then it is like the cure for the toothache, once recommended here, two drops of yellow jackets honey. We never can procure it, and therefore good bye to free government. The doctrine of equal rights and privileges will do most to secure it, and in this way: you say to the people, as intelligent

men, you have your rights, and you will know when they are invaded and when to defend them; and while you do that you will be defending the rights of men who may be ignorant of them, but who stand precisely as you do. And in that way all will have the benefits of equal rights and privileges. But take the opposite doctrine, and let us get a scale by which we will judge of the capacity of men when they come to the ballot box, and where will it lead you? There is no stopping place—none short of the throne. There is the only place to which any man who advances that doctrine can resort. These are the ideas which appear to actuate the minds of men who ask us if it is possible that we can submit the selection of a judicial officer to men who know nothing about law. There is a deep seated and intelligent appreciation of right and justice among the masses that will carry along with it all except this floating vote that has been referred to as existing under the present system where the people are allowed little freedom, which, when you enlarge that freedom, will give birth to an honest pride that will deprive those men of power who expect by their money to secure the destruction of an election.

I must acknowledge that I have been somewhat harassed by the views and declarations made upon this floor. Your reporter there takes down these declarations, and they are to be handed down to posterity, and to go abroad, and what will be the impression created by reading them? Why, that we, the people of Kentucky, are perhaps the most corrupt, the most bribed and bribing set of people that ever existed on the face of the earth! It is an unfair representation, and I regret that those declarations have been made and spread upon our journals to go abroad. I believe the people of Kentucky have formed an opinion of the Yankee character, from the hosts of Yankee peddlers who swarm about the country, cheating and defrauding them; but it is a most unfair idea of the Yankee character. Nor should the instances of those who seek to obtain power and position upon the jesuitical principle, that the ends justify the means, be taken as indicative of the character of our politicians or our people. He who obtains a seat in the legislature, in congress, or upon the judicial bench, or any where else, by these vile and corrupting means, is unworthy of the trust, and a disgrace to the atmosphere he occupies. Do not then proclaim it to the world and to subsequent generations, that we are a set of bad and corrupt men in our elections. Sustain the representative character of the state, one of the most important and essential, as it is, of your functions of government. Give to the judiciary department the respect and dignity that is due it, but do not look upon it as a power we are not to approach, and which is not to be touched, without the hazard of incurring the penalties which, in olden times, were inflicted on the sacrilegious hands that touched the sacred ark. They are our agents and functionaries; and here is a great error men fall into in relation to our whole political machinery of government. The people are sovereign; all admit that. Some, however, believe that when you invest a judicial officer with power, that the judicial attribute of sovereignty is conferred on him; and so also in regard to your

legislature and executive. They seem to believe that the people are the subjects and not the sovereigns. That is the great error, for the sovereignty is not departed from the people. These officers are only the functionaries clothed with the powers to carry into operation the will of the sovereign people, and a part of the superstructure only of that great fabric, the base of which is the sovereign people. In this view there can be no difficulty on the subject. If we entertain the other view, then the people are not the sovereigns but the subjects, and go to the ballot box only to designate and to transfer their rulers.

I must ask the convention to excuse me for the latitude I have taken in the discussion of this subject. I did, however, feel it due to myself and the convention, that this subject should be brought before us, while we are beginning to lay the foundation of the constitution. I desire not to trespass or to encroach upon the powers delegated to the federal government. I desire not to assume a solitary atom of that power which the state prohibits itself from assuming; but all powers not thus delegated are retained by the state and the people of Kentucky. And hereafter, when the subject shall again come up, I may indulge in an analysis of what are called state rights, and a fair, philological view of the machinery of our government, so that hereafter, when the struggle shall come, Kentuckians may feel what is the ground they have to defend. I will promise them to be the first to go to the rescue, and the last to leave the ground.

Mr. TRIPLETT called for the reading of the resolution, which was read as follows:

*Resolved*, That a select committee be appointed to report to this convention what powers have been delegated to the United States; also, what powers have been prohibited by the constitution of the United States to the states, with a view to enable this convention to act understandingly in forming a constitution for the government of the State of Kentucky."

I have never heard so broad a speech built on so narrow a foundation. I suppose, sir, that the true object of the gentleman from Adair, in offering the resolution, was to prevent the powers of the general government and the powers of the several state governments, from becoming like the disease he spoke of, confluent—the one running into the other—such is its length, its breadth, and its scope; and if it had pleased the gentleman from Adair to stop at that point, I would have joined him in all sincerity, in the passage of the resolution. But upon this narrow foundation, he has chosen to spread a broad speech, in which he has avowed sentiments with which I cannot agree. Has it come to this, that we are to be told, that we cannot have an independent judiciary, at the same time that we acknowledge the existence of the great principle, that the people are competent to self-government? Are we to be told that he who worships at one shrine must turn his face to the east, while he who worships at the other, and a more immaculate shrine, must turn his face to the west. Of all the doctrines that we have heard promulgated in this house—and God knows some of them are bad enough—this is the most objection-



able, that the people are capable of self-government, and he who believes this cannot subscribe to the universally admitted truism, that they can and ought to have an independent judiciary. So far from these two great principles being antagonistical, they are identically the same. That is, the principle of the capability of the people for self-government—and it is a principle as firmly fixed as a rock of adamant—and the principle that the judiciary must be independent, so far from being antagonistic to each other, cannot exist apart. You say that the people are not capable of self-government, when you declare that that department cannot be independent. I do not think that the people will applaud any advocate of their rights, who declares that they cannot exercise the power of self-government and at the same time have an independent judiciary. So far from this being true, I look upon the three great divisions of government, into separate and independent departments, the executive, the legislative, and the judicial, as the very foundation of a free government; and the attack it has pleased the gentleman from Adair to make upon one of these departments, may, if not answered, not only shake it so as to make it totter, but to topple it from its broad foundation, and lay it prostrate in the dust.

Was it supposed necessary by the gentleman from Adair, that in order to protect the legislature, of which he has been a useful member, and I may say an ornament, that he should turn around and lay his blighting hand upon another and weaker, and I must say the weakest department of our government. Sir, potent as is the arm of this convention, I hope it is not strong enough to destroy the influence of, or bring into contempt the judiciary department; even though they put upon it the identical maledictions which the gentleman bestowed upon it, as he rode through his district in the last canvass. It is to be hoped the judiciary will be able to defend itself and maintain that position in the respect and affections of the people so necessary to the efficient and proper discharge of its necessary duties; and the legislature will be able to defend itself and maintain and occupy its proper sphere of action, without infringing on, or interfering with the powers properly assigned to either the judiciary or the executive departments. But the voluntary defence of the legislature by the gentleman from Adair, shows that it is necessary, in his opinion, to defend in advance that department. And why this premature and volunteered defence, unless the gentleman anticipates encroachment by this, the strongest, on the judiciary the weakest department of the government?

The volunteered defence of the gentleman from Adair of the Legislature, when no man has attacked or wished to attack that department of government, was uncalled for, and I hope and believe unnecessary—this is one of the cases in which the blood of Douglas must defend itself. When the Legislature confines itself within its legitimate sphere of action, the passage of such constitutional and wholesome laws as the wants of the people have dictated, or expediency requires, they need no defence; and when they wander beyond that constitutional boundary,

and venture into prohibited or improper ground, by passing laws not called for, or against the wishes of the people, even the talents of the gentleman from Adair cannot save them from condemnation.

But I arose principally to draw the attention of the house to the previous part of the remarks of the gentleman from Adair. I hope that we will not establish as one of the canons of this house the principle, that if we acknowledge that the people are capable of self-government—that the judiciary is not to be independent. I have heard the capability of the people for self-government reiterated until I am heartily tired of hearing of it. Every one who rises in this house proclaims this fact, as if it were not acknowledged on all hands. Is there a man to be found in this state who denies it? And yet each gentleman deems it necessary to pour forth a long tirade upon the capability of the people to govern themselves. Why, its frequent reiteration here would seem to imply that it is a questionable matter. Why keep eternally asserting that which nobody denies? Is it for the purpose of creating a little popularity at home; is it that a little political capital may be obtained? Is it not probable that we may do great injury to the high standing and republican character of Kentucky, by iterating and reiterating this acknowledged and common place maxim, that the people are capable of self-government, by causing it to be believed *abroad* that there are delegates on this floor who deny its truth? Is it necessary to reiterate that which has never been denied in Kentucky, much less in this chamber? It seems to me to be in extremely bad taste, to say the least of it. With the balance of the gentleman's speech I agree. He uttered a great many sentiments which no man disagrees with, and which I will assist him in sustaining.

But let us turn our attention for a moment, to the resolution itself. Great and herculean will be the task that the gentleman imposes upon the committee, in drawing the line of distinction, that exists between the powers of the general government on one side, and the powers of the state governments on the other. They lap so frequently, I hardly think this convention will go through the labour of drawing the line of demarcation between them; nor do I think it necessary. There are particular powers which remain with the states until used by the general government. There are numerous powers that remain with the states until the occasion arises for their exercise by the general government. And when exercised by the general government, the states have lost their power over them. There is a large class of powers of this description, without touching upon the principle of nullification, and God knows I would rather be in the midst of a hornet's nest, than bringing the nullifiers about my ears. A nullifier was never known to be convinced, by any argument, that he was wrong.

The resolution, in my opinion, cannot do much good. But if the gentleman from Adair wishes that the committee should be formed, and is willing to act as chairman—and I tell him beforehand, that he is hardly aware of the difficulty of the task he has undertaken—I for one, will sustain his proposition.

Mr. GAITHER. I regret that I should have drawn upon myself an attack from my friend from Daviess. I did not anticipate such an attack. I have been hitherto silent in this convention, but I have believed that the country and the convention, desired that this subject should be understandingly presented, before we proceed to act upon it. I can assure the gentleman, that on the subject of nullification, I am as averse to enter as he is. The hornet's nest will never be brought about his head by me. I acknowledge, however, that I have as much aversion to the doctrine of passive obedience, and of non-resistance, as I have to nullification. If I had to die a political death, and had my choice, as to the manner, I would prefer to die by convulsion, rather than collapse. Sir, this term independence, as applied to the judiciary, is one which I think is not correctly understood. What does it mean? Does it mean absolute and unqualified independence? If I have understood the purpose of the people of the commonwealth of Kentucky, it has been, that in the organization of the government, the judiciary should not be placed beyond the reach of the people; that they should not be made entirely independent of the people. If the gentleman will substitute the terms intelligence and firmness, for independence, we could comprehend the meaning of those terms, as applied to the judiciary. I am glad that the gentleman has coincided with me in some of my views on the subject, and so far as the herculean task of which he speaks is concerned, I have no great desire myself, to take a prominent part in it; but I desire that the subject shall be investigated by those who have complained, or have at least entertained a belief, that the states hold their powers by a kind of courtesy. I will not shrink from any duty that shall be imposed upon me, and yet I could desire that it should be committed to other hands than mine.

Mr. DIXON. I have no intention sir, to make a speech in relation to the resolution of the gentleman from Adair. I believe I shall vote for it, because it is a resolution that proposes an enquiry, and I have no doubt that a report upon the subject will be useful to the house. But I merely arose to enter my protest against some of the positions of the gentleman from Adair, in relation to the views and opinions that have been expressed by some of the members of this convention, upon certain great questions. The gentleman says that he is astonished, and he supposes that those who come after us will be astonished, when they read the journal of our debates, and find that the character of the people has been falsified, that they have been represented as being corrupt, as being the basest people on the face of the earth, and less capable of self-government than any other. I think the gentleman is mistaken, if he supposes that any delegate upon this floor has uttered such a sentiment. No such sentiment has been uttered; at least in my hearing. I would like to know of the gentleman, from what quarter such a declaration as that has proceeded.

Mr. GAITHER. I do not intend to particularize; but I have heard it proclaimed here, that the people have been purchased at the ballot-box, that their votes have been brought into the mar-

ket, and every gentleman was appealed to, to say whether he did not know that such was the fact.

Mr. DIXON. That is a very different thing for the sweeping charge upon the people of Kentucky, that they are all corrupt. Gentlemen have asserted the fact, that there are such things in Kentucky, as corruption and bribery on the part of politicians, and that men have been purchased to vote contrary to their opinions. When it is asserted that politicians have attempted to bribe persons to vote for them, gentlemen assert only what is true, and what I presume the gentleman from Adair, will not deny. But the gentleman will not pretend to say, that any delegate upon this floor has declared that the people of the state are, as a whole, corrupt, or anything other than that some men might be bribed.

Mr. GAITHER. I can inform the gentleman that I have no personal knowledge on the subject.

Mr. DIXON. I like the gentleman's speech in some respects. It was broad and expansive, eloquent and beautiful. He certainly took a wide range. He reminded me very much of a philosopher, who once got upon the highest peak of the Alps, I believe, cast his eyes to the great Heavens, which threw in unmeasurable space, their broad, deep canopy around him, and then to earth, taking in at a single glance land and sea, islands, continents and worlds, and in the sublimity of his thoughts and the pride of his imagined power, exclaimed, "attention, the universe." "Islands! continents! and worlds! wheel into line! to the right about face—forward march." The universe is before us, and eternity the prize. The gentleman seems to think that to control every thing on the face of the earth he has but to give the command "fall into line, forward march." Sir, we do not march at all, when the gentleman attempts to drive us, by throwing up to us the charge that has been uttered here, that we are anxious to maintain the independence of the judiciary, because the whole people of Kentucky are corrupt. We make no such charge. I have taken the ground that the judges ought not to be re-eligible, especially the circuit court judges. But do I therefore assert that the people must be corrupt? I take this ground from the conviction that it is necessary that the judges should be preserved pure and immaculate and not subjected to temptation, and that the people should not be oppressed by corrupt judges.

I am not certain whether or not I understood the gentleman as insinuating that the thunders of nullification have been heard from delegates in this convention. I do not think there are any nullifiers upon this floor. I am satisfied there are none.

I cannot reply to the gentleman's remarks on this point, because I do not know precisely to what they lead. But as I remarked, I listened to his speech with much pleasure. There was a great deal in it which I fully concurred in. But I cannot consent that the statement shall go forth that any delegate in this body, has made the charge that the people of the whole state are corrupt.

Mr. GAITHER. I would inform the gentle-

man, that I intended no allusion to him or to any other delegate in particular. I apologised at the outset for the desultory manner in which I was about to address the convention as conforming somewhat to the indulgence that has been granted to others. I have not hitherto troubled the convention with any remarks of mine, and I desired the indulgence of the house, in order that I might take a range, similar to that which has been indulged in by other delegates.

The question was then taken upon the resolution and it was adopted, and the president appointed the committee as follows—Messrs. Gaither, Clarke, Dixon, Lisle and Mitchell.

#### QUALIFICATIONS OF CANDIDATES.

Mr. GHOLSON. I move that the committee of the whole be discharged from the further consideration of the resolution which I sometime since submitted in reference to the qualification of officers. It is as follows:

*Resolved*, That the good people of this commonwealth are fully competent to judge of, and decide upon the qualifications of all candidates for any office, whether the same be legislative, executive, judicial, or ministerial; wherefore, a certificate of election, according to law, is the only certificate of qualifications that shall ever be required to enable any citizen to enter upon the discharge of the duties of the office to which he may be elected."

The object I have in view in making the motion is this: It seems to be roundly asserted here this morning, on all hands, that the people are capable of self-government in the broadest and fullest sense of the term. This idea has been reiterated time and again on both sides of the house. Now, sir, I want to ascertain how many gentlemen there are who will affirm, that the people are competent to judge of and decide upon the election and qualification of all officers, and then deny to the people the right to make such decision. If gentlemen are not prepared to do this, then I want to know how many gentlemen there are who are not willing to meet this question fairly, and who will perhaps move to lay the resolution on the table, to amend it, or in some other way to avoid a direct vote upon this plain and unequivocal proposition, which has so often been asserted here. When I had the honor of introducing this resolution, the objection that was made was, that gentlemen did not want to be forced into a vote hastily. They have now had time to make up their minds, and ought to be prepared to vote upon the subject. I want this thing distinctly understood. My object in calling up this proposition now is, that my constituents may know that I have done all, that in my humble capacity, I was able to do, to prevent the infliction of so great a wrong upon them. They want to see how gentlemen will vote in regard to a proposition that has been so broadly asserted.

Mr. R. N. WICKLIFFE. As I have given some votes lately, sir, that some of my friends in this house seem to think indicate a want of confidence or faith in the popular intelligence—in the capacity of the people to decide for themselves upon these matters—I should like to submit a few remarks in regard to the reasons which have influenced me in giving those votes.

With regard to the eligibility and re-eligibility of officers, gentlemen seem to think that when you vote against the eligibility of officers it indicates a want of confidence in popular intelligence. The delegate from Simpson, who seems to entertain this view, is the chairman of the committee on the legislative department of the government. That committee has made a report, and in their report they have incorporated a provision which exists in the present constitution: it is—"that no minister of the gospel shall be eligible to a seat in the general assembly of the commonwealth of Kentucky." Now he is not simply prescribing the qualification for a candidate, but he is proscribing a large, intellectual and moral class of the community from any participation in the concerns of government. I ask the gentleman, with his views as he has promulgated them in this house, how he can defend and vindicate his position before his constituents? You undertake to prescribe the qualifications of a candidate, and the gentleman says that is inconsistent with the idea of the competency of the people for self-government; and yet, at the very same moment, you not only prescribe qualifications for a candidate for the legislature, but you actually proscribe men from any participation in legislation. I think it likely that I shall agree with the gentleman as far as the report of the committee is concerned, and I shall probably vote for it; but I cannot see how, with the peculiar doctrines which he promulgates, I could go before my constituents, and vindicate the propriety of that vote, if it be inconsistent with the popular intelligence, to prescribe the qualifications of candidates for office.

A gentleman asserted a few minutes since, that there was nobody who doubted the competency of the people for self government. Sir, it is doubted. It is doubted in Europe; there it is not admitted. I am a firm believer in the doctrine of the competency of the people for self government. But there are many men who doubt it in this country. I have heard many worthy and intelligent men express their doubts in regard to it; but I think those doubts are predicated upon a mistaken notion of government. Where did the doctrine originate, that the people are not competent to the purpose of self government? It came sir, from Rome; the people there were divided into two classes, the patricians and the plebeians. The patricians had all the political power in their own hands, although constituting a very small part of the body politic. The plebeians were a majority of the people. But it was declared by the patricians, that the plebeians were not competent to self government. There was a marked distinction between the two classes; the plebeians had not only no political rights in the commonwealth, but they had no civil rights. The two classes were not permitted to intermarry with each other. And it was not until the people went out to the sacred mount, and determined that they would not return until some rights were granted them, that they got even the privilege of assembling at the door of the capitol and saying "veto."

How is it in this country? We see here all the people, the learned and the unlearned, the rich and the poor, have always constituted the body politic; and will any man say that they are not

competent to the purpose of self government? Any man who so declares, stultifies himself as a part of the community. The federal constitution says "we, the people." All constitute the people, and instead of any man sneering at the capability of the people for self government, he ought to endeavor to elevate the people, and place in their hands that power, and those rights, to which they are entitled.

Now, this is my idea as to what is the theory of our constitution, and I desire to restore to the people the power of selecting their own officers. David Hume, if my recollection is right, lays down the three cardinal principles upon which governments are based. He was a high tory, and a jacobite—not a jacobin—the very reverse of a jacobin. In characterizing the various forms of government, he assigns strength to a monarchy, wisdom to an aristocracy, and honesty to a republic. Now, whether he was right or not, in other respects, is not the question, but he was unquestionably right, so far as relates to the fact that honesty is the characteristic of a republic. When, therefore, I propose to restore these powers of government to the people, of which they have been to some extent deprived, I do so because I would place them where there is a disposition to do right; and a disposition to do right is half the battle.

I confess it would be difficult to convince me that a learned and accomplished judge, and an honest judge, could not determine upon the qualifications of a clerk better than the collected mass of the community; and it is no imputation on the intelligence of the people to say so. It is no imputation on your intelligence to say that you cannot determine whether a physician is well skilled in his profession. Why do we take it out of the hands of a judge and give it to the people? Because the judge may not do right. The disposition on the part of the people is to do right, and we believe in their capacity and intelligence to judge of these matters. Hence it is that we are going to restore this power into the hands of the people. We go for restoring it to a place where there is at least a disposition to do right, and some times that disposition does not exist on the part of a judge, or other appointing power.

But I rose merely for the purpose of showing that in the votes I have given, I have not been actuated by any distrust of the honesty or capacity of the people, and that it is not inconsistent with that idea to prescribe the qualifications of candidates for office. The federal constitution does it; and the same thing is done in every constitution. Hence it is that I have voted as I have, and not with the view of impeaching the general intelligence of the people.

Mr. CLARKE. Without any intention of making a speech upon the resolution—for I intend my course shall be indicated by the vote I give—I am unexpectedly constrained to ask the indulgence of the house for a few moments, in consequence of the reference that was made to me individually, by the gentleman from Fayette. I had not supposed that I would be drawn into this arena, without some manifestation of willingness on my part to become an humble soldier at least, in the contest. The principle by which I am governed in regard to the selection of offi-

cers is this. I have always believed the people competent to elect their own officers, and at the same time, to judge of their qualifications.—But sir, sometimes officers who are not qualified may be chosen. The people may be imposed on, and in many instances doubtless will be; but there is a motive operating with them that will correct the evil, which motive does not exist if you will let A, B and C make the appointments—if you confer the power of appointment upon one man, or a hundred. If you let the people appoint for themselves, what is the result? If they make a bad appointment, they are themselves injured, and they will be prompted to remove the individual, and thus repair the injury. This is one of the great reasons why I want the people to have the power of appointing and of removing, at limited periods of time their own officers. They have a motive for removing if the appointment has been a bad one, whereas, if you entrust the power of appointing to a few men, they will perhaps have no motive, except to continue the oppression. Now I have said repeatedly, that I am willing that a candidate for the clerkship shall be a citizen of the county, and of the state for a certain length of time, and that he shall be of a certain age. These, to some extent, are qualifications, but when you tell me that he shall have the certificate of a judge, I have remonstrated against it.

But I am arraigned by the gentleman from Fayette, because I have, as chairman of a committee, reported that no one who is a minister of the gospel shall be eligible to a seat in the legislature. Well, sir, there are interests perhaps higher than governmental interests. My own conviction is, that when a citizen of the state takes on himself to follow our meek and lowly Savior—when he takes on himself the care of governing and protecting his little flock—when he takes on himself to go forth and preach the doctrines of christianity, I do not care to what denomination he may belong, I believe that the purity and influence of such a man ought not to be impaired by allowing him to enter into the political arena. And there may be other potent reasons why he should not. There have been instances in which whole communities have been driven to the perpetration of acts, at which every feeling of humanity shudders, when religious fanaticism, growing out of sectarianism, has been allowed to mingle with politics. I want no man who is entrusted with the spiritual care of the people, to engage in political discussion, or to have any thing to do with legislation. I want no such man to have a seat in the legislative halls of the state. I want to proceed upon the same principle upon which our fathers proceeded, in forming the federal government. I want to keep religion and politics separate—I want every one in the country to worship God according to the dictates of his own conscience; but if he has torn himself from the world, and dedicated his talents and labor to his God, in the promulgation of the eternal principles of christianity, I have thought, and still think and believe, that it would be doing religion itself injustice—it would be in violation of the great principle on which we set out, that religion and politics should be kept distinct, that he should not be permitted to engage in political strife; and

I, for one, will not subscribe to the doctrine, that a minister of the gospel shall be eligible to a seat in the legislative halls of the state.

You may search through all history, from the beginning of christianity down to the present time, and you will scarcely find an instance where the liberties of the people have been lost, where revolution and blood-shed have been the order of the day, unless it be where some religion has been established by law, and where the people, to enforce it or to get rid of it, have rebelled.

I will detain the convention no longer upon this subject. I have said, and repeat now, that I believe the people to be competent to self-government; and I believe that this exception was placed on the records of the constitution to detract, to some extent, from the competency and ability of the people to judge for themselves, and I believe that every page that bears the impress of such a sentiment, fixes upon the commonwealth a blighting, withering stain, so dark, deep, and damning, that neither time nor circumstances can obliterate it.

If I have the misfortune to differ with gentlemen, it must be my misfortune. I repeat, I am thoroughly satisfied and convinced, that no certificate of a judge should be required from a candidate for the office of clerk. I repeat, I am thoroughly satisfied and convinced, that if a sheriff has discharged the duties of his office with ability and fidelity, and to the satisfaction of those among whom he lives, the people should have the right to place him again in office; and I intend, as far as my vote will go, to carry out this principle. If, in endeavoring to carry it out, I shall be surrounded by conflicting elements in the two extremes, and overwhelmed by the force of the torrent, I will fall, if fall I must; but if, Phoenix-like, I can rise again, and defend the principle at some other time, I will again defend it.

Mr. C. A. WICKLIFFE. I have no objection to take the vote upon discharging the committee, if it be the pleasure of the house to consider the resolution at this time. I rise, however, for the purpose of saying, that if this discussion is to progress, and we are to have the whole field of declamation and argument opened upon the subject of government, it had better be upon the resolution itself, than upon the motion to discharge the committee. In order to get rid of that discussion which is out of place upon a motion of this kind, I shall feel compelled to move to lay it on the table.

The PRESIDENT. I shall hereafter hold it out of order to discuss the merits of a proposition upon the motion to discharge a committee, or to go into committee to consider it.

Mr. JACKSON moved to lay the motion to discharge the committee of the whole from the further consideration of the subject on the table.

Mr. BRAUNER called for the yeas and nays on that motion.

Mr. GHOLSON asked the gentleman from Muhlenburg to withdraw his motion, so that the question could be taken directly on the motion to discharge the committee.

Mr. JACKSON. I would be glad to accommodate my friend from Ballard, but so deeply impressed am I with the impolicy of the introduc-

tion here of these mere abstract propositions; and so well convinced am I that such discussions cannot be promotive of a good end, that I cannot consent to withdraw my motion.

The yeas and nays were then taken and they resulted thus—yeas 56, nays 25.

YEAS—Mr. President (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, Thos. J. Gough, Nimian E. Grey, Ben. Hardin, Vincent S. Hay, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, Wm. Johnson, George W. Kavanaugh, Thomas W. Lisle, Geo. W. Mansfield, Martin P. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thos. P. Moore, John D. Morris, Jonathan Newcum, William Preston, John T. Robinson, Ira Root, James Rudd, James W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Phillip Triplett, Squire Turner, Jno. L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—56.

NAYS—Luther Brawner, William Cowper, Lucius Desha, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Rich'd D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Charles C. Kelly, James M. Lackey, Willis B. Machen, Alex. K. Marshall, William N. Marshall, David Meriwether, Wm. D. Mitchell, Hugh Newell, Elijah F. Nuttall, Thos. Rockhold, Ignatius A. Spaulding, Michael L. Stoner, John Wheeler, Charles A. Wickliffe—25.

So the motion was laid on the table.

#### COUNTY AND DISTRICT OFFICERS.

Mr. TURNER moved to take up the report of the committee on the executive and ministerial officers for counties and districts.

The motion was agreed to.

Mr. TURNER. I submit the following as an additional section:

"All officers provided for in this article shall be commissioned by the governor, and continue in office until their successors are commissioned and qualified; their term of service shall commence one month from the day of their respective elections."

There was something said yesterday about allowing these officers to act without commissions, merely having the election and return recorded in the office of the county court. The committee, however, thought they had better be commissioned by the governor. According to the present prospects there will not be a great deal else for the governor to do. And it appeared to the committee advisable that there should be one uniform period at which they should enter upon the duties of their respective offices, and they have fixed that period at one month after the day of their election.

Mr. HARDIN. To make the provision in this report harmonize with the report of the committee on circuit courts, I will suggest the propriety of making the term of office commence with the date of the commission.

Mr. TURNER. We had that matter under consideration, for I had noticed that the committee, of which the honorable gentleman is chairman, had made such a report; but it seems to me that this is preferable. According to his report, the same description of officers living here, could be commissioned a week sooner than those living in the distant counties.

Mr. C. A. WICKLIFE. I think it would be imposing rather too great a task upon the governor, to compel him to issue commissions for all these officers; and in regard to the commencement of the term of office, it had better be from and after the election, and continue until his successor is duly qualified.

Mr. TURNER. The difficulty in making the term commence from and after the election is, that officers will act before they are commissioned; before they have given bond, for a great portion of them are required to give bond, for the proper discharge of their duties.

Mr. APPERSON. Although constables are to be constitutional officers, much inconvenience may arise from requiring them to be commissioned by the governor. Cases frequently occur where it is necessary to set forth in the pleadings that an individual is a constable, and it would be highly inconvenient sometimes to send down to Frankfort for a copy of the commission that it might be used in evidence. A motion against a constable is made before a justice of the peace in a remote county, and the party would have to send to the seat of government for a copy of his commission. At present you have only to send to the county court and get a copy of the order making him a constable.

Mr. ROOT. I think if the governor is to be required to issue commissions for all these petty officers, he will be able to do but little else. We are loading the constitution with a great deal of unnecessary matter, making specific provisions in relation to many things that had better be left to the control of the legislature.

The question being taken, the amendment was rejected.

Mr. MERIWETHER moved to add at the end of the section, the words, "and where any city shall have a separate representation, in one or both houses of the general assembly, such city, and the county in which it is situated, may have separate municipal regulations and officers, such as may be provided for separate counties, all of which may be regulated by law. And until such legal regulation is made, the county of Jefferson shall elect separately from the city of Louisville, a county court, sheriff and county clerk."

Mr. PRESTON. I understand the amendment of my friend from Jefferson proposes the separation of the city of Louisville from the county of Jefferson. As it would be tantamount to dividing the county in two, and as I am a representative of that constituency, and not believing it is called for by them, I object to its being engrafted on the article now under consideration. I believe in the right of this convention, or of the legislature under it, if so authorized, to create any new county, or to invest the city of Louisville with any municipal privileges they may think proper, but that part of this amendment to which I particularly

object is, where, after referring to what the legislature may do in the premises, it is declared—"and until such legislative regulation shall be made, the county of Jefferson shall elect, separately from the city of Louisville, a county court, sheriff and county clerk." This then is a proposition to declare, in this constitution, that the city of Louisville shall be separated, for all county purposes, from the county of Jefferson, and that a virtual partition of the county shall take place. Now, what motive my friend from Jefferson has, in making this motion, I cannot discover, unless, indeed, it be this: The county court clerk's and sheriff's offices are valuable ones in the city of Louisville, and extend in their jurisdiction to both city and county; the political divisions are such that there is a majority of whigs in Louisville of some five hundred, in a poll of five thousand votes; but in the county, parties are very nearly equally balanced, out of a poll of two thousand five hundred votes, there being scarcely ever a majority either way of more than fifty. The majority in the city of Louisville therefore, at present, controls the election of those officers.

A large sum of money has been expended in the erection of a very handsome court house and jail, to be used by the city and county in common. The sessions of the courts, and the clerk's offices are now held in the city. What confusion will be produced by such an act of this convention as the gentleman proposes—by commingling the jurisdiction of the courts and officers of the county and city. This convention assembled here for the purpose of framing an organic law, to govern the state at large, and not to produce the schism which will prevail in localities in regard to the partition of existing and the erection of new counties—not for the purpose of agitating little local interests, nor for the purpose of carrying out sectional views. These are not fitting subjects for the consideration of this convention. No such movement as the gentleman indicates was ever agitated in Jefferson county, as I understand, during the last canvass. Neither was it agitated in the city of Louisville.

Now, what is the proposition of the committee on the legislative department? They have provided in their report, that cities may, for the purpose of representation, be separated from the counties in which they are situated, whenever the public necessities may require it. Thus far I am willing to go. But I do object to bringing into this convention a proposition to create separate tribunals in Louisville, from Jefferson, and to provide for the election of different officers. The gentleman from Jefferson submitted this proposition to me, I say it in justice to him, and I told him that I did not believe that our constituency expected this move to be made—that so far as engrafting a general declaratory provision that the legislature may, from time to time, act in regard to the establishment of municipal courts and privileges, and the election of officers in cities and counties, I had no objection, but I did not want this last clause of the proposition carried before this convention. I wanted nothing more than a general declaratory clause, applicable not only to the city of Louisville, but to other cities. I dislike



this special legislation, even in the legislature, but much less should it enter into the proceedings of this convention. And it was for this reason, I asked the attention of this convention to the subject. If they go on in this way, other counties may desire a division, or the creation of new counties in the state, and all the perplexing consequences resulting from the admission of such a principle, would flow into the convention, to disturb and embarrass its action. Why is the separate organization of these offices, referred to in the last clause of this gentleman's amendment, sought, unless it be to commence in advance, this movement of the democracy upon the whig ascendancy in the city and county? The county court decides the county levy, but those members of it who are appointed from the city do not exercise that right. If the gentleman however, apprehends that the county court system proposed by the committee on that subject, is to be carried into effect, and believes that the city of Louisville should not have the right to vote with the county of Jefferson, for these judges who are to decide the levy with the county, why I am willing that this matter shall be referred to the committee of thirty, for part of the subject matter falls within, as I consider, their jurisdiction, to report a fair mode; but I am unwilling to tack to the end of this report, when the house is rather tired, and anxious to get through with it, a proposition for a distinct and utter separation of the city and county.

Mr. MERIWETHER. I am aware that a portion of the matters embraced in this amendment belongs more properly to the other committee, but a portion of it also belongs to the report now under consideration, and therefore, it is offered as an amendment here. I apprehend that the joint committee of thirty, have about as much to get along with, without any addition to their labors, and therefore, I cannot accede to that portion of the gentleman's proposition. I regret extremely that the gentleman has thought it necessary to introduce the terms whig and democrat here; his motive is with himself. As for myself, I have come here prepared to vote and speak without reference to the whigs or democrats in any way whatever. But I will proceed to answer the objections of the gentleman. He seems to think I propose a separation of the city and county. You, Mr. President, know that I have stood here as a representative in the legislature, from Jefferson county, for many years in opposition to that separation, and the creation of a new county. But if you do not go as far as my amendment proposes, a separation will be effected, unless indeed, you adopt the proposition of the gentleman from Nelson (Mr. Wickliffe) which provides that no new county shall be created, unless it contains a certain number of square miles, and which proposition under the circumstances, I cannot go for. And if you do adopt the proposition of the gentleman from Nelson, and do not adopt this, then we are tied up forever, as a portion of the county of Jefferson, and then if you adopt the proposition that has been reported, with reference to county courts, we never can obtain justice. What is our condition there now? The mayor and council of Louisville imposes the taxes on the

city, and disburses them, but here you will give to Louisville, having five thousand voters, and Jefferson, having but two thousand five hundred, the right to vote in the election of the men who are to impose taxes on Jefferson, and disburse their revenues. Is that right? You give us no power in voting for mayor and council, who levy your taxes, and disburse your revenue—none; and we want none, but I do object to a population of five thousand being permitted to vote in the election of officers who are to levy our taxes, and disburse our revenues. Why, I have been taught to believe, that taxation and representation, should go hand in hand, in this government.

But the gentleman does not object to giving the power to the legislature. He says that our constituencies have not been consulted on the subject, and probably he wishes to consult his. Of course my rule of action should not govern his, but I have never thought it necessary to ask my constituents what I shall do. I do what I believe to be right, and trust to the decision of that constituency if the action be right or not. I introduced the term "any city" in my amendment, because other cities may occupy the same relation to their counties, as Louisville does to Jefferson, but I do not make it obligatory on them thus to act. As to the gentleman's objection to the county of Jefferson being allowed, by constitutional provision, to elect their officers, is he not aware that an election will take place before the legislature meets? A county court then will be elected for four years, with power to grind down Jefferson, and a majority of two thirds voting for their election, who have no interest in the matter. Besides, I wish to preserve the symmetry of the thing, if nothing else, and therefore, if it is proper that we shall have a separate county court, it is just as proper that we should have a clerk for it also. The gentleman says if this proposition is adopted, we may be flooded with propositions of a similar character. But there is not a city in the state, which is similarly situated, and whose population entitles it to a separate representation, and therefore, there is no apprehension to be entertained on that score. Believing as I do, that the good sense of this convention will at once see the propriety of this measure, I submit it to them.

Mr. BROWN. As this question involves in some degree, the interests of the President, I move that we go into committee of the whole, in order that he may have an opportunity of participating in the discussion.

The PRESIDENT. It is not necessary for me. I am not in favor of the amendment as offered, though I am willing that the legislature should give the cities separate representations when they are entitled to it. I have no desire to address the convention on the subject.

Mr. PRESTON. I am in favor of any proposition that will apply equally to all the cities of the state. The cities of Covington, of Newport, and Paducah, and probably under the new railroad improvement, the city of Henderson, may desire this thing, and all may be effected by the legislature. As I before stated, I desire no special legislation in the constitution at all. If the gentleman will draft a general proposition, giving a general power to the legislature to

establish courts with separate municipal rights and privileges, and with the power of electing separate local officers, it is my belief, that I shall go for it. But to attempt, in this manner, to divide Louisville from Jefferson county, I do most strenuously protest against. There has been no petition, no movement on the part of the people, no public desire manifested for such a separation; and the result would be, that the courts still being separate for all municipal purposes, would yet sit in the same place. The people of Jefferson would have to say to those of Louisville, we will not trust you with the election, but still we claim the right of sitting in town. In other words, there would be two counties in one—a sort of political monster, unknown in the country. And it would produce such a jumble, that for the present, at least, I find it impossible to see through it.

Now I admit, in some degree, the justice of my friend's remark, and confess I was hurried a little too far, a moment since, in using the words whig and democrat. I should be glad never to hear those terms used in this house, but still I only spoke the plain truth. All the county officers of Jefferson would be obliged to come to Louisville, where the court house was erected, to reside and do their business, and what a confusion would this create? I hope the gentleman will suffer his proposition to go to the committee of thirty, or that he will amend it as I have suggested.

Mr. RUDD. This is certainly a new matter to me, and one which I have never heard spoken of until I came to this convention. I can hardly see the object to be attained or the advantages to be derived from its adoption. I do not see that it will be either a benefit to the city of Louisville or the county of Jefferson. They have heretofore mutually acted together, so much so that it has really become a matter of difficulty to tell whether a man is a citizen of the county or of the city. And yet the gentleman generally understands pretty well what he is after, and is pretty keen in viewing things in advance, and there may be advantages to be derived from the separation that I have not yet discovered. I have, it is true, given no reflection to the subject, but yet it seems to me that Jefferson county will certainly be the loser by the separation. As to the magistracy of the county, the majority was on the side of Jefferson, and I have never yet heard the first man complain of the action of the magistracy of Louisville in regard to them. They generally acted cordially together. The public property, the court house, etc., is the common property of the city and the county, and it is located in the city of Louisville. My opinion is, that if you once provide for the election of a separate and distinct magistracy, sheriff and clerk for each, it will follow, as a matter of course, that there will be a separate jail and court, and thus finally two separate and distinct counties. And what benefit would result to either? It reminds me of some of the emancipationists who clamored so loudly for the freedom of the blacks, without pointing out one solitary mode by which it was to be done, or where the black or the white race was to be benefited, and yet they wanted at once to sacrifice \$61,000,000 of property. The expense for new

public buildings would be heavy on the people of Jefferson, and therein at least I think the gentleman would be doing his constituents a positive injury. As for the matter of political ascendancy in either the county or city, I think that in framing this constitution such considerations should be laid aside and forgotten. But who knows but what at the very next election that comes off the city of Louisville may not be thrown on the side of the democracy, or that the county which is now democratic may not become whig? This new constitution we are about to frame will certainly introduce a new order of things. Nor does any man know upon what side he may be thrown. I am a whig, as firm and staunch as any in the state, and yet if I saw that party adopting a wrong policy I would vote against them to-morrow. I am governed by principle and that alone. But in framing an organic law which is to govern not only the present generation but posterity, considerations of this kind should be disregarded and the general good alone kept in view.

I should really regret very much to see any collision grow up between the city and the county on this subject, and as for the gentleman himself, he has often stood up for Louisville manfully, and we of the city would dislike very much to lose his aid by a division. I hope therefore, we shall remain united, unless some palpable, tangible injury would be inflicted on Jefferson county thereby, which can be pointed out so plainly that no man can mistake it. For myself, I want neither legislative nor constitutional separation. Let us remain where we are. United, we form a large population and command respect throughout the state from our numbers; and I desire that we shall retain that position. The county derives great advantages from its connection with the city. It has increased in population thereby, and in the valuation of real estate, and the citizens of the county derive many other benefits in the way of the city magistracy and other conveniences. The city certainly has never thrown any obstacles in the way of the county, none at all; and has always permitted the county magistracy to levy their tax as they please. And as for taxes, we are taxed almost to death in Louisville. The taxes amount to about two-fifths of our whole income, and even the legislature of the state made us pay one half per cent. for improving the public lands where the state derived three or four per cent. of benefit. This is one of the most gross acts of injustice ever inflicted upon a community; and I hope another legislature will remedy it. But this is not the point of discussion.

I hope the convention will not interfere with this matter or attempt to partition this county as proposed in the gentleman's amendment. The people of the city and county are one and the same people almost. It is true I have no connection in this county, but my wife has, and I want that we shall hereafter, as heretofore, all keep together. I have no connection scarcely of my own, standing as I do, pretty much alone; and therefore, I want no divorcing in this matter. I hope the gentleman will therefore withdraw his proposition, and allow us to go on together as we have heretofore, hand in hand and

heart in heart. We are improving in the city of Louisville, and our population and business is increasing. The dutch population too, was spreading over the county and doing much good, and teaching the would-be-fashionable young men how to earn an honest living, by the cultivation of the land. We are a mixed people—we have Italians, French, Germans and Dutch, and yet we are all united. They are spreading over the land of the county, turning the wilderness into productive gardens. All this was for the benefit of Jefferson county, as well as for the city of Louisville, and the county would therefore lose rather than gain by the separation. If the gentleman has any land he wants to sell, I can insure a half dozen Germans ready to purchase it for garden purposes. I hope the gentleman will conclude to withdraw his proposition, and let this matter rest.

Mr. MERIWETHER. I deprecate a separation as much as the gentleman. It is what I have been against for years, as all know. Why do they wish to make it appear that I am for a separation? Is it a separation that I propose? To some extent it is, but the gentleman last up has given the strongest reason for a separation. Did he not tell us that the city of Louisville was taxing her citizens to death? Will you give them the power to tax the whole county of Jefferson to death? But he says he wants all to go together. Would it not be as well for the gentleman to withdraw his opposition, and then we shall all be together. I would be perfectly content to leave it with the legislature except for the reason that one election must take place before the legislature can act. You take the proposition that there are to be three members of the county court; they must lay the tax and disburse the revenue. Will the county of Jefferson get more than one member of the county court? The city of Louisville has a relative population greater than all the rest of Jefferson county, and one member of the court will be as many as the county can expect. Then comes the process of taxing to death and the disbursement of that tax. Is that right? I am willing to leave it to the legislature, but I am not disposed to run the risk of being left in this position for four years. My colleague is absent on account of sickness in his family, but it is a point on which he and I have conversed and about which we are agreed.

Mr. C. A. WICKLIFFE. I rise to correct the mistake into which the gentleman from Jefferson has fallen. He says there will be no legislature convened before an election will take place. No election can take place till the legislature has convened. As far as I can form an opinion it is the intention of the convention that an election shall take place in August 1850. The first officers elected under the new constitution will be the legislative and executive officers created by it. They will have to carry out the provisions of the constitution in reference to the election of officers, and I believe the committee has fixed in their own mind that the first election of the judicial and county officers shall be in April or May 1851. The legislature will be elected in August 1850 and the other officers cannot be elected till the following spring.

Mr. MERIWETHER. I cannot for the life of me see what is in contemplation in the minds of the committee or of the convention. If the constitution as now reported is adopted, it will not be as the gentleman has stated. I would be perfectly content to have it arranged in that way, if the election were not to take place as I supposed, but according to the report of the committee, such is not the fact. We are to vote on the constitution in April or May next. The election of officers under the constitution will take place in the summer or fall following. The present constitution provides for an election at another period and there will be an election unless these provisions are altered.

The question was then taken on the amendment, by ayes and noes on the call of Mr. PRESTON, and it resulted thus—yeas 24, noes 61.

YEAS—Alfred Boyd, Luther Brawner, William Cowper, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Alfred M. Jackson, George W. Kavanaugh, Alexander K. Marshall, William N. Marshall, David Meriwether, James M. Nesbitt, Hugh Newell, Elijah F. Nuttall, John T. Robinson, John T. Rogers, Ira Root, John Wheeler—24.

NAES—Mr. President (Mr. Guthrie), Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, William Bradley, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffe, Henry R. D. Coleman, Benjamin Copelin, Archibald Dixon, James Dudley, Chasteen T. Dunavan, James H. Garrard, Thomas J. Gough, Ninian E. Grey, Ben. Hardin, Vincent S. Hay, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, George W. Johnston, Charles C. Kelley, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, William Preston, Thomas Rockhold, James Rudd, Ignatius A. Spaulding, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—61.

Mr. MERIWETHER then moved to strike out all the latter portion of the section in relation to the election of officers.

Mr. PRESTON suggested that it would be better to postpone the further consideration of this subject for the present.

Mr. MERIWETHER assented, and the further consideration of the whole subject was postponed accordingly.

#### NEW COUNTIES.

On the motion of Mr. C. A. WICKLIFFE, the convention resolved itself into committee of the whole, Mr. JAMES in the chair, on the report of the select committee in relation to the formation of new counties. The secretary read the article as follows:

## ARTICLE —.

SEC. 1. No new county shall be formed with an area of less than three hundred and fifty square miles; nor shall such new county be formed, if by doing so it reduces any county out of which it shall be formed, in whole or in part, below an area of four hundred square miles; and in running the lines or boundary of such new county, no such line shall run nearer than ten miles of the county seat of any county.

Mr. C. A. WICKLIFFE. I will offer, on my own responsibility, an amendment which I think will carry out the views of the select committee, though I have not had the opportunity to submit my amendment to them.

"Nor shall any new county be created, if the county or counties, out of which the same shall be formed, in whole or part, shall be reduced in the number of qualified voters below the ratio of representation for the time being."

I presume there is not a member present in this convention, who is not fully sensible of the evil of the multiplication of the number of counties in this commonwealth, and I think it is our duty to prescribe some limitation on future legislation, which will give stability to the counties as at present organized. The committee could base their action on no better criterion than the number of square miles, and in this article it is provided that no new county shall consist of less than three hundred and fifty square miles, and no old county shall be reduced below four hundred square miles. The amendment that I propose contemplates another condition, and that is, that no old county shall be reduced below the ratio of representation as established by law. With these guarantees fixed, I think we may look forward to something like peace in forming new counties, and none will be made, except the mass of the people require a separate county organization.

Mr. MACHEN. I regret that this question is brought up to-day. As an individual member of this house, I regret that it has come here at all. It does seem to me, that before we finish, we shall have placed sufficient oblogs upon this constitution to weigh it down to death. In endeavoring to carry out the principles of conservatism, which seem to be so highly appreciated on this floor, I think this will be the result. I stand here the representative of a divided people on this question. It may be their misfortune to be divided, and mine to be their representative here, but when that principle is placed in the constitution, I think I cannot be mistaken in stating to this house, that more than half the county is against you, no matter how wholesome the balance of the constitution may be. I know that gentlemen who reside in old counties where every thing is settled to their satisfaction may contend that no further change shall be made in municipal regulations for the convenience of the country. But I hold that the people are competent to determine whether their convenience requires a change, and when you tie their hands and say they shall no longer exercise the power of free volition on these matters, as was said to Sampson under the pillars, that his hands should no longer be loosed, they will rise in their majesty and burst the cords by which they are

bound, and they will show that they have rights although they are minorities.

I am no disorganizer. I advocate no disorganizing principles, but the rights of minorities. What is the condition of this state? Look at the map. Have counties been arranged with reference to territorial beauty or symmetry of form, or even with a view, in all cases, to convenience? I assert that no such principle has been carried out. Population has been concentrated in one portion, by certain surrounding circumstances, and the other portion of the county asks that they may have a separate organization. The weight of population for the time being determines where the county seat shall be, and as the more remote portions are settled, that county seat becomes inconvenient. Now, what are the people to do under these circumstances? Shall the convenience of those who originally organized and gave shape to the county be consulted, or the convenience of the majority within the limits of the county? It is for the aggrieved to come forward and show their grievances, and it is the duty of the legislative department to redress these grievances. I am told that it is a matter of economy. What is the purpose or government? It is that the greatest good may be secured to the greatest number of citizens. How is this to be accomplished? By having local accommodations, to bring the business of every man near to him. What was the doctrine respecting the branching the court of appeals? It was, that justice might be brought to every man's door. I take it that the same principle runs into the organization of counties. They are built up and circumscribed, for the purpose of bringing business convenient to the inhabitants, and for promoting the ends of justice. Who shall say that this shall be withheld from the people?

As I said before, those who are well situated may, perhaps, satisfy themselves that it is proper and right to tie the hands of others. For one, I will not do it. My health is not good to-day, and I trust the subject will not now be acted upon, as I desire to be heard in reference to it. It will prove a dead weight on the constitution, and shall we, for the purpose of carrying out our sectional views, or promoting our sectional convenience, place that in the constitution which will be the death of it? One tells us that a certain thing will be the death of it, and another says another thing will do it. Every man knows that this thing will carry a tremendous vote with it. Look at the position of Fayette county, and the other central counties. What is their size, compared with many other counties? They are not half the dimensions of some others, and yet they are satisfactorily arranged. They wish for no division, but shall they withhold the power of dividing from those which do wish it?

Let the voice of the people prevail in the legislative hall, and I know that although the legislature does frequently run wild, the voice of the people will be heard; and we have no other way of having it heard. There has been a disinclination, for years, to organizing new counties, and on this subject the legislature may be trusted. More than one-half the counties are satisfied with their present organization. They

will not hastily, and without due reflection, establish a new county, and I think we may safely leave the whole matter to the legislature, without having their hands tied.

Mr. HARDIN. I had occasion to turn my attention to this subject when an effort was made to cut up the county in which I live, and I will venture to say this state has more counties than any other state in this Union, according to the number of square miles, unless it be Ohio. New York has a territory of about 48,000 square miles and 58 counties; Pennsylvania has a population of about 2,000,000; 48,000 square miles, and some 60 odd counties; Maryland has a population of 500,000, with more than half the territory of Kentucky, and 11 counties; and Virginia has 100 counties and 63,000 square miles. Ohio went off in the same kind of mistaken policy in reference to counties; but it is now provided in the constitution of that state that no new county shall be made having less than 400 square miles. In Mississippi, the smallest counties contain 375 square miles. I was very glad when my colleague presented this proposition. I inquired of him why he did not make 400 the lowest number. He replied that he wanted to make room for a few new counties, and that is the reason he fixed upon 350 square miles. Now, I think this will accommodate the gentleman from Caldwell. He has provided very judiciously that no county shall be encroached upon, and also that no county shall be reduced below 400 square miles. If there are grievances in relation to the size of counties, those grievances can be provided for by this resolution. But as I have before said, there is a place where we must stop. We cannot always grant all that is petitioned for. We know how this thing starts, and there is no end to it when it is started. A man wants to be a county clerk, and he will press it; and here is a man out of office, and he will press it; and then there are men who want the seat of justice nearer their town, and they will press it; and where there is a little miserable town at the cross roads, the people there will press it; so it is that a thousand little petty interests are brought to bear in the making of new counties. Now, I do not think that a man gets any advantage from living in one of these little chicken stealing towns. It may furnish a market for the neighboring country, but it brings in a squad of free negroes who steal. I hope something of this kind will prevail. I have never heard of a measure more demanded than this is in the part of the state from which I came.

Mr. BROWN. I regret that this matter has come up now. I think this provision would be imposing too much of a restriction upon the power of the legislature in forming new counties. My constituents are somewhat interested in this matter, and I would like myself to have the consideration of this subject postponed for the present. It may be that the provision of the report can be so shaped that it will not affect seriously the interests of my constituents. I hope it will be postponed till we are prepared to meet it as we desire.

Mr. TRIPLET. There are three or four delegates on this floor in rather a delicate position in casting their votes on this subject. I am somewhat in the condition of the gentleman

from Caldwell. I have no inclination to sit quietly, as Sampson did, in the lap of Delilah, and have my strength shorn away. There are counties where individuals are compelled to travel from twenty to twenty five miles to get to the county seat. There have been several propositions, as the gentleman from Nelson (Mr. Hardin) well knows, to divide my county. My position in relation to that county is such that it may be supposed I am opposed to the division of the county. I do not know whether there is a sufficient number of square miles in that county to allow of its division according to the required plan. I think we had better let the subject lie over for the present. I am in favor of the general principle contained in the proposition of the chairman of the committee.

I am not one of those who believe that when we leave this hall, all the virtue, intelligence, and integrity, of the state will depart. Other gentlemen will come here having practical common sense and virtue enough to carry on the government. Unless they have, there will be no use for a constitution at all. I do not wish to leave any thing to the legislature that ought not to be left to them. Draw the line of demarcation between the constitution and laws according to general principles, and I think smaller matters may be left with safety to the legislature.

Mr. MAYES. I will take this occasion now to remark that there is nothing so extraordinarily new in the proposition of the select committee, as that gentlemen need be alarmed at it. There are eleven new states of the union, having new constitutions, and the framers of which thought proper to guard against disorganization in making new counties, by inserting a provision in their constitutions, that the counties hereafter to be made should not be larger, or reduced to a smaller size, than a certain number of square miles. I have no disposition to press the proposition upon the house, if gentlemen are not sufficiently informed on the subject to be able to discuss it at this time. It is an important subject, and one in which the people of Kentucky have felt, and do feel, a deep interest. I am satisfied the people of this state look to the convention, to put some restriction on the legislature, in regard to forming new counties. I entertain no doubt about it. At the proper time, I have some statistics on the subject, which I wish to present to the consideration of the convention; for I desire that they shall see the making of new counties costs the state a great deal of money. I am also solicitous to prove to them that one great source, out of which has grown a large expenditure of money, has been the erection of new counties. And I wish to show them that the private interests of private individuals have suffered from the practice of making new counties, for a particular purpose. All these facts will be substantiated, with a view to be reflected upon, and then we should calmly and deliberately determine whether this thing should be checked—not stopped, but checked, and a wholesome restriction put on the legislature. Kentucky contains forty thousand five hundred square miles, and one hundred counties, and there is but one state of the whole union, composed of thirty states, which has a greater number of counties, and that is Virginia,

which has a population of one-third more than this state. Year after year, when the legislature meets, there are numerous applications made for new counties; not that justice may be brought to the door of the people, but to advance the interest of some one who wishes to be made a clerk, or something of that sort. I could show, if it were necessary, that there is no danger of the constitution losing strength if this feature should be incorporated in it. It will add to the strength of it. If it is not inserted, as I believe it ought to be, it being called for by the people, there will be much dissatisfaction manifested by them. I have discovered, during the sittings of this convention, that it is a very ready argument with some gentlemen, when they are opposed to a proposition, to say that it will greatly clog the constitution when it comes to be submitted to the people, and probably cause it to be rejected. If it be right and proper to incorporate this feature in the constitution, the people will approve it, and I have no idea it will be considered a weight on it. But I want gentlemen to have time, in order that they may avail themselves of all the necessary means of information, to enable them to give a vote in accordance with their wishes, and therefore, I move that the committee rise.

The committee rose accordingly, reported progress, and obtained leave to sit again.

The convention then adjourned.

#### FRIDAY, NOVEMBER 9, 1849.

Prayer by the Rev. Mr. NORTON.

#### COMMITTEE OF ARRANGEMENT AND REVISION.

Mr. McHENRY offered the following resolution, which was agreed to:

*Resolved*, That a committee of ten delegates be appointed, to be styled the committee of arrangements, whose duty it shall be take into consideration the several articles that have been agreed to by the convention, and that may be agreed to hereafter, and arrange, revise, and classify the same.

#### FEES OF CLERKS AND SHERIFFS.

Mr. HAMILTON offered the following resolution, and it was rejected:

*Resolved*, That the legislature, at the first session after the adoption of the new constitution, shall appoint three fit persons to examine into the propriety of reducing the fees of clerks and sheriffs, and to report the same, with a list of what the fees ought to be.

#### LEAVE OF ABSENCE.

On motion of Mr. MAYES, leave of absence was granted to Mr. Chambers for a few days.

On motion of Mr. WOODSON, leave of absence was granted to Mr. Taylor, for five days.

#### COMMISSIONERS ON ACCOUNTS.

Mr. WILLIAMS offered the following resolution, and it was agreed to:

*Resolved*, That the select committee on the pub-

lic debt, be instructed to enquire into the expediency of establishing, by constitutional provision, a board of commissioners, to be appointed annually by the governor, or by the judges of the court of appeals, one from each appellate district, whose duty it shall be to make annual examinations and settlements of the accounts of the several receiving and disbursing officers of the state at large, and to report the same, when made, to the legislature.

#### COUNTY AND DISTRICT OFFICES.

The convention resumed the consideration of the report of the committee on the executive and ministerial offices for counties and districts.

Mr. MERIWETHER withdrew the amendment which he offered yesterday, before the adjournment, and for that, he offered the following substitute:

"When any city or town shall have a separate representation, in either or both houses of the general assembly, the county in which such city or town may be situated, shall be invested with the privilege of having such separate municipal governments, courts, and offices, in the same manner as may be provided for separate counties; but such county may hold its courts, and have its public buildings and offices within, and jointly with, such city or town; and all public officers may reside therein."

Mr. PRESTON raised the question of order, that this amendment was not admissible, inasmuch as it was scarcely a modification of an amendment which the convention yesterday rejected.

The PRESIDENT overruled the point of order.

Mr. PRESTON then moved to refer the whole subject to the committee on county courts.

Mr. BULLITT. I prefer that the house should decide this question. It strikes me that we should do our own business, without the intervention of so many committees. I would prefer taking the sense of the convention upon it. It is a matter in which my county is deeply interested, and I wish to be able to record my vote upon it. If in order, I will now give my views upon this subject, and I will be very brief. I desire to do this now, because I have left a sick wife to come here, and may not be able to continue here.

The PRESIDENT. The gentleman from Jefferson has the floor and will proceed.

Mr. BULLITT. The principle in this and all representative governments is, that representation and taxation shall go hand in hand. It was that principle which caused the separation of the U. States from Great Britain. It has been carried out in the U. States government, and in all our state governments. It is a subject so trite and so well understood, that I shall not detain the committee by giving my views upon it. The proposition of my colleague, in which I entirely concur, is intended to have a general bearing on all the counties in the state, which may have a city with a separate representation; but it applies particularly to the county of Jefferson, which has a large city in it, and both city and county have a separate representation on this floor. Why was there a separate representation to both city and county? It was to carry out the principle that



taxation and representation should go hand in hand. The city having an entirely different set of interests, it was necessary that she should have a separate representation in the legislature.

We know that the interests of the city are peculiar. She has peculiar advantages derived from legislation, with her banks and various institutions, and she is bound to bear her peculiar burdens. Let her have her peculiar advantages and burdens. This is the reason why she has a separate representation, and why each people have a separate voice in laying the taxes which each must bear. Why has the city of Louisville a different organization from ours? We have our county court and a joint circuit court. Louisville has a chancery court, and a municipal court, which has a vast amount of business. The county organizations would not be sufficient for the city, and in carrying out that principle, for years back, if not from the first, the county, by law or by agreement, has her tax levied and disbursed by her own magistrates, while the city attends to her own taxes. We have got along in perfect harmony in this way, and if the present constitution and laws continue, I have no idea there will be any difficulty in the future. But what is now proposed, by entering into these details in the constitution, changes the relation between the city and county. The city having so large a majority, would control the whole in reference to number of judges and secure two, while the county would have but one. I desire to have our relations remain in *statu quo*, and the only way to do this, is to let the city have control and management of her own affairs, with which we have no wish to interfere. And there are good reasons why we should not. The people in each portion know their own business and what belongs to their own interests, and we ought to permit each to regulate its own affairs.

That is all we ask, because if a change is made, they having so large a majority, would place our interests in jeopardy. I have no idea it is the wish of the city of Louisville to oppress the county at all, but we have heretofore lived in the utmost harmony, and I desire that we may not be placed in the power of the city. Why should Jefferson county be in any manner under the control of the city which has a city chancellor, a mayor, and judge, and entire control of these matters with which we do not wish to interfere? I think the same principle applies in regard to county organization. This plan which we propose may be badly drawn, but what we desire is, that we may be placed in the same condition as other counties in the state. Why not separate, it may be asked? We do not wish to separate; and if we do, there is a difficulty in the way. We have public property to the amount of \$100,000 in the city, which we do not want to give up. We simply ask that the present state of things may remain. The city has shown no disposition to meddle with our affairs, nor has the county any disposition to meddle with those of the city, but we want to stand on the footing of other counties as regards taxing, and as regards legislation and representation.

I know no other mode. We do not want to interfere with the circuit court. We do not want a jail. But why shall we not elect our judge, and our magistracy? And why not a sheriff as

well as to take the deputy of the high sheriff? It is a county as large as many others. But I wish to call attention to the remarks of the gentlemen from Louisville (Mr. Preston.) He says: "Now what motive my friend from Jefferson, (Mr. Meriwether.) has in making this motion I cannot discover, unless indeed it be this: the county court clerks and sheriffs offices are valuable ones in the city of Louisville, and extend their jurisdiction both to city and county; the political divisions are such that there is a majority of whigs in the city of Louisville of some five hundred in a poll of five thousand votes, but in the county parties are nearly equally balanced out of a poll of two thousand five hundred votes, their being scarcely ever a majority either way of more than fifty. The majorities in the city of Louisville therefore at present controls the elections of those officers." Again he says: "Why is the separate organization of these offices referred to in the last clause of the gentleman's amendment sought, unless it be to commence in advance this movement of the democracy upon the whig ascendancy in the city and county." I regret to refer to this fact, and I do it with the utmost courtesy to the gentleman, for I mean nothing offensive to Louisville or its representative; he must pardon me, however, for differing from him on this subject. Supposing the facts to be as I have stated them, how do we stand? I stand here, commanded by the people of Jefferson, to know no distinction between whig and democrat on this floor, and at a large meeting in our county in which they solemnly determined to elect a whig and a democrat, they required the pledge that their delegates should know no parties here. I shall be found carrying out the spirit of this pledge, and I call on my democratic friends to note my vote in this particular. When we come to fix the ratio of representation I shall go for what I think right for the whole country. Whatever application this may have to my colleague, he can say for himself. We canvassed the county together, and a more honorable man I have never been with, and we stand pledged to know neither whig nor democrat. I have referred to this matter merely because I thought the remarks of my friend from Louisville bore the construction which I have given them.

Will any man here make a different constitution because it may have a whig or democratic bearing. I have always been a whig and expect ever to remain such. I voted for Gen. Harrison, Mr. Clay and Gen. Taylor for the Presidency; I never voted for a democrat except last summer. I would say for my county, that if she chooses to be democratic, she has as much right to be democratic as Louisville has to be whig. I do not want this thing held up in *terrorem*. I expect to be a whig, I want to stand or fall on principles; and if the county cannot support her whiggery, I do not wish to call on the city of Louisville for help. Shelby county has a whig majority of six or seven hundred. If the county of Jefferson is to be under whig rule, let us go to the county of Shelby. That being an agricultural county, the people know better what tax to lay on negroes, horses, and other stock. The people of Louisville have peculiar interests in the city of Louisville, which they have not

in the county. But I must protest against the idea that there is any intention to effect this thing for the sake of whiggery or democracy. Have I not shown the strongest possible reason that we should stand in *statu quo*? Is there a man who can say that I ask any thing that is unreasonable, that the county shall have the sole right to elect the officers who shall lay and disburse the county revenue? It seems to me that if the matter is properly considered, gentlemen will agree with me.

Mr. KELLY. I think the committee on the county court is not the proper committee, and I move to refer the subject to the committee on the legislative department.

Mr. BULLITT. This applies to all the counties. The city of Louisville is not mentioned in the amendment.

Mr. KELLY. I think the committee on the legislative department is the proper one, as they can make a general provision by which all grievances of this kind can be met. This may be a private fight, however, and I will not interfere.

Mr. C. A. WICKLIFFE. This proposition seems to be one which I cannot well comprehend. It is to have two county court organizations in the same county, to have two sheriffs, and two clerks' offices for registering deeds and wills, whose jurisdiction shall be co-extensive with the bounds of the county. I admit there is weight in the ideas suggested by both the gentlemen from Jefferson upon the subject of the revenue and the county taxes. I do not know that the mode of organizing the county courts, as contemplated by the committee, will contain any constitutional inhibition which will prevent the legislature from meeting the difficulty in this case. The legislature will not be prohibited from giving to any county a tribunal for levying the revenue. They may make the magistracy a tribunal for this purpose, for the county levy is not imposed on the citizens of the city, nor can the levy of the city be imposed on the citizens of the county. The county court as now organized, sitting in Louisville, has heretofore, by some legislative enactment, exercised the power of taxation outside of the city. They now control this business by a kind of common consent. Now if the evil be as the gentleman has supposed, why may they not give to the county of Jefferson a board for taxing the citizens separate from the city of Louisville? There is no inhibition, and I think it will be a much more congruous arrangement than to have this double county court in the same county. I rose with a desire to preserve harmony in the provisions of the constitution, and I think they would be any thing but harmonious with double county courts sitting at the same time, or at different times, with two sheriffs, one running into the city of Louisville and the other in the county of Jefferson. These are evils which I think should not be engrafted in the constitution, and it would be much better to leave the legislature to act on the subject. Let the magistracy be organized into a board to impose taxes, or let them adopt any other system which may be deemed appropriate.

Mr. PRESTON. I do not desire to take up the time of the house on this matter. The reason that I resisted the proposition was not for

the purpose of placing the county of Jefferson under the dominion of the city of Louisville, or that the city should have the power of exercising any political tyranny over the county. The gentleman from Jefferson who presented the resolution, moved in the first part of it, only those things which the legislature already have the right and power to do; but in the latter part, he urged a proposition, with that parliamentary dexterity for which he is remarkable, which would permit the county to be cut in two by a sort of proviso. It says, in effect, that the county and city shall be divided until further orders. That there shall be distinct sheriffs, clerks, and municipal tribunals and officers. The resolution containing that provision was voted down yesterday by a majority of about fifty eight to twenty four.

So far as I yesterday used the terms whig and democrat, I said, I could conceive no other reason, no other practical object in this measure but to produce a county contest for local officers. I, Mr. Chairman, have been indebted to my democratic friends as well as to my whig friends for my place on this floor, and I am happy to have received substantial testimonials of kindness from both parties in the only political canvass I ever made. For the remark I made I have no apology to offer; I said I saw no reason for dividing the city and county, but to have a county race for county officers, and I yet see none, as I have no knowledge of any existing grievances which demand such redress.

What would be the mode of levying the county revenue, if the resolution of the gentleman were to fail? It would be the very same which has prevailed for the last eight or ten years. The only difference would be, that instead of the appointment of a magistracy by the governor, on the recommendation of the county court, the people under the new constitution will elect them; yet the gentleman seems to think such a magistracy, so chosen, would impose intolerable burthens, by taxation, on the people of Jefferson before the legislature could convene.

That the general assembly have a right to provide for the appointment of a separate clerk of the court and sheriff in the city of Louisville, and to invest it with the separate rights of a county, there can be little doubt. But to claim that the county of Jefferson shall have separate elections, officers and courts, and yet come to the city to hold those courts, would be like demanding that new counties should be established, but yet should have the right to hold their courts at the county seat.

If the gentleman desires a general declaratory provision, I have no objection to it; but it is only acting in reference to that which the legislature will have a right to do, whether we act on it or not. I am willing to say that a board of county magistracy may lay the levy and disburse it; but I am opposed to a division of the county and city, with separate sheriffs and county officers, having a mixed jurisdiction. According to the resolution the legislature would be compelled to divide the city and county, for that is imperative. It declares that the county and city shall be divided. It says, "the city or town shall be invested," &c. I believe it is more advisable for this convention to refer this matter

to the action of the legislature which shall convene under the new constitution, than to attempt to regulate it themselves.

I am not certain that the city of Louisville would not be willing that this arrangement should be hereafter made; but there has been, as yet, no petition from any quarter on this subject, no public movement on the part of the citizens before the election, and it would be unprecedented to consummate such an act under such circumstances. It seems inappropriate for this convention to enter upon such duties, and for these reasons I am opposed to it. I, therefore, to manifest the arrangement to which I would assent, offer this as a substitute.

"Cities or towns, entitled to separate representation, may be invested with the privilege of a separate municipal government, and of having separate courts and separate officers, in the same manner provided for separate counties, and on such terms and conditions as the general assembly may by law provide."

Mr. MERIWETHER. From indisposition, I have been unable to enter at length into this discussion, but I beg the indulgence of the house, while I give some reason for the adoption of my amendment. The gentleman from Louisville says it is now a separation if that amendment is adopted. I use the same language with reference to counties, that the gentlemen of the committee used with reference to cities. What is the language of the report of the committee on the legislative department?

"Provided, That when it shall appear to the legislature, that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in both houses of the general assembly."

I use that language to meet the contingency, that a county may have the privilege of separate municipal government; and I ask why, when a city may claim a separate municipal government, you turn us over to the legislature? Is the proposition right? Then why not act on it here? Will not this proposition be met by the same resistance in the legislature, that it meets here? Why provide for every county, whether she wishes a separate representation or not, and turn us over to be taxed with the city of Louisville? The gentleman from Nelson says, this can all be regulated by law. Suppose it can. Does it follow that we should not act on it here? Is there any provision introduced into this constitution, that the legislature should not have provided for? Are we to leave all to the legislature? Surely not. Then why not let the constitution bear on this point?

Mr. C. A. WICKLIFFE. I did not say, if we passed the constitution as proposed, the legislature would have power to do what the gentleman desires to do. I said, the legislature had power to remove the only evil of which complaint was made, in the reason given for the adoption of this principle. I will read the act that relates to the regulation of the business of the county court of Jefferson, and other purposes.

"That from and after the passage of this act, the justices of the peace of Jefferson county, residing without the limits of Louisville, shall constitute the court for laying the levy of the

county of Jefferson, and appropriating and disbursing the same; and the justices of the peace of said county, residing in Louisville, shall not preside in laying the levy in the county of Jefferson, or in appropriating or disbursing the same."

Now, if you pass the provision in reference to county courts, as proposed, all the evils in representation and taxation can be avoided.

Mr. MERIWETHER. It must be recollected that under the old constitution, the taxing power in the county was not elected by the county at large. The county court appointed resident magistrates, such as might be thought necessary throughout the county, and if the gentleman had looked a little further, he would have seen that the city of Louisville would not have more than seven magistrates. But it is now proposed that this county shall have three judges, to be elected by the voters of the city and county jointly; and I will ask you, if the city has five thousand votes, and the county two thousand five hundred, which will control in the election? Does it not properly belong to the county court to lay the levy, and disburse the taxes? Then, if the city join with the county, in the election of a county court judge, we shall never have a resident of the county a member of that court.

My honorable friend from the city of Louisville, remarked yesterday, that he could see no motive I could possibly have for making this proposition, unless it was to get up a party race in the county, that the democrats might stand a chance. The gentleman has done me injustice, and I humbly conceive he does himself injustice, when he submits a proposition of that kind. Had I as little charity as the gentleman, might I not charge that he wanted to confine the whig majority of the county to the city of Louisville? But I will not do this. I believe the gentleman is actuated by no such motive. Might I not also, if I had the same amount of charity for the frailties of others as he appears to have, charge that the gentleman was determined to confine the county of Jefferson to the city, and oppress her by taxation, till the county would be forced to petition for a new county, in order to get clear of the burden? And that would leave \$100,000 in possession of the city, which the county had contributed toward the public buildings. But I am confident the gentleman is actuated by no such motive. But, says the gentleman, why should we claim to hold our courts in the city of Louisville, if we, in the county, have a separate organization? The reason is, because we have paid upwards of \$80,000 toward the erection of public buildings, \$75,000 of which was for the court house, and \$16,000 toward a jail, and we claim the right of holding our courts there, because we have expended our money in the erection of these public buildings. Is it any inconvenience to the city? The court house is capacious enough for us all. It is no inconvenience. We now hold our separate courts there, on such days as to prevent any inconvenience. We have contributed \$16,000 toward the jail, and we claim the right to confine in that building those who may violate the laws. On account of indisposition, I shall say no more at present. I shall leave this matter to the convention. Let them dispose of it as they

may think proper, and I will bow in humble submission. I have discharged my duty to those who sent me here.

Mr. TURNER. There is a great principle involved in this case with respect to which it may be necessary to say a word. I think no people should be taxed unless by the vote of those who pay the tax. I think the proposition should come up in connection with the report of the committee on the legislative department. I think some provision should be made, so that the cities growing up on the Ohio shall not finally control the agricultural portion of the state. I want the agricultural interest to govern the legislation of the country. That question is involved in this case between the representatives of the city and the county. By legislating for the agricultural interest we may avoid being governed by the influence of our cities, as they are in the state of New York. The policy of states which are controlled by a few large cities, is as shifting as the wind. This is especially true with regard to the state of New York, of which it is said, as goes the city so goes the Empire state. I protest against basing representation exclusively on population, in order to avoid being influenced by large cities. I am willing to go with the gentleman from Jefferson as far as respects the principle of taxation outside of the city, that it should be exclusively within the power of those outside to levy and disburse the revenue. Otherwise you may select people in the city to tax those out of it with whom they have not a common sympathy. But, I am in hopes that this county court, as indicated, will not be organized, or if so, organized on different principles, and that we shall have one, or three judges, but I am in favor of one, and that the magistracy of the district may levy and disburse the money. This will be acting on the same principle as the legislature of the state. The legislature levies a tax on every part of the commonwealth. Suppose, that instead of having this done by the legislature, you authorize the governor, treasurer, and comptroller to do it, would the people be satisfied? It would be a levy made by a few individuals, and not by the representatives of the people. I would suggest to the gentleman to withdraw his proposition for the present, for I think this can be satisfactorily arranged when we come to that point. I do not think, nor do I suppose any gentleman believes that the county court of the city of Louisville ought to lay a tax for the balance of the county, although it may have the power to do so, because the great body of the voters will be in that portion of the county.

Mr. PRESTON. The gentleman from Madison has precisely apprehended what I think we should do. We do not desire to tax the county of Jefferson through any representative selected by us. If the gentleman from Jefferson will withdraw his resolution, and propose that a board of magistrates shall lay the county levy, and the magistrates of the city of Louisville have nothing to do with it, I am willing. I am opposed to having separate courts, separate clerks, and separate municipal organizations.

Mr. C. A. WICKLIFE. I do not know that I was understood by the gentleman from Louisville. I am decidedly opposed to separate organizations.

My opposition is based upon principle against giving the legislature power to create too distinct organizations in one county.

Mr. RUDD. Both the gentlemen seem to have a great desire to be heard on the subject of dividing the city of Louisville from the county of Jefferson, for the whole tenor and scope of the resolution, offered by the gentleman (Mr. Meriwether), and which is before the house is to that effect, and is susceptible of no other meaning. I am, perhaps, as well, if not better acquainted with the county of Jefferson as the gentleman who first spoke, but not the last, for he has been, I believe, in every house in the county, and I have not. I have large interests in the county of Jefferson outside of the city of Louisville, and I pay my taxes to it punctually, without having any voice in the direction of its affairs. I want the county to understand what was the character and force of the arguments of the gentleman representing Jefferson. The gentleman, (Mr. Bullitt,) in the course of his remarks adverted to the principle adopted in all representative governments, that representation and taxation should go hand in hand, and he did so in order to prove that the county of Jefferson has been taxed not according to its population and its own representation but the representation of the city of Louisville. Now an effort was made to impress the convention that this is a fact, but there is not a particle of truth in it, not that I mean to say the gentleman has made a wilful misrepresentation. Both the gentlemen well knew that a law was passed giving to the county of Jefferson, solely and entirely the power to have its own magistracy impose its own taxes, and collect and disburse its revenue. Neither the city of Louisville, nor any man in it, has had anything to do with the management of the affairs of that county. And yet they come forward and say that, according to the new judicial system, about to be adopted, Louisville will have a great ascendancy and advantage over the county of Jefferson, on account of its larger population. We do not desire any such thing, and do not ask it. We wish Jefferson to regulate its own affairs. We know it would not like to bear a portion of the taxation of Louisville—for that is more than double what its people have to pay. No they do not ask it nor do they want it.

The gentleman last up said (and I do not know where he obtained his information, which astonished me) that the county of Jefferson has disbursed for the erection of a court house and jail, the sum of eighty thousand dollars. I have been a member of the city council for many years, and I know that when the county of Jefferson has been called upon to pay up its proportion of money, on account of public improvements, it did not advance more than thirty thousand dollars. If it has given a larger sum, the fact has escaped my memory. If there be any thing to show that the county has done so, then I am very much mistaken. All the money went through the hands of the city council, and was paid out by them, to those who contracted for the erection of the buildings, and I being a member of it, had as good an opportunity of knowing all about the matter as any one in this house. The buildings were erected

at the joint expense of the city of Louisville and the county of Jefferson, and the repairs are kept up by the citizens of Louisville. The city and county defray the expenses of maintaining the circuit and county courts, the jail, &c. Although there are five thousand voters in the city of Louisville, and but two thousand five hundred in the county of Jefferson, yet Louisville pays one half of these expenses. The bills have to pass the county court, and if it decides they are correct, they are paid by the city. Here you see the lesser power ruling the greater. The county has an equal share in our police court. It is always open to them. It is supported wholly at the expense of the city, which pays I think, two hundred dollars—I do not recollect exactly the sum—over and above what is appropriated by the legislature, in order to procure the services of a competent officer to preside over the court. Our chancery court is, likewise, thrown open to the citizens of the county as well as to those of the city. Louisville being centrally situated, almost every man comes there to transact his business. If the county were to be separated from the city, then the best position in which to place the county seat would be in the suburbs of Louisville.

Now, I think I can see what is the object and aim of this movement. It is, sir, to obtain a separate jurisdiction; to have courts, sheriffs, clerks, and a magistracy exclusively their own. They want a municipality or county court, just outside of Louisville, and then claim to have it in the city, because they know it would be unpopular in the county, for all its business is done in the city. Now is it to be supposed that where there are only three thousand seven hundred voters, that it is absolutely necessary to erect a separate and distinct court which cannot be as convenient as the present one. They cannot have the same advantages as they have at present, and yet they want a court merely for the sake of serving a few officers outside of the city. I do not know that the gentlemen have their eye upon any particular person, but the object is plain—to obtain a separate court, in order to accommodate a few men who are in want of office. The people of the county have complained of no grievance—pointed none out. The gentlemen seemed to suppose that the city of Louisville would overrule and control Jefferson county. We do not want to do any such thing. We never had but one high sheriff in Louisville. Perhaps I may be mistaken in saying so, but as far as my memory serves me, we never had but one. Now, where is the grievance? It seems to me that the gentlemen are asking for Jefferson, what the body of the people of that county do not ask for themselves. For my part, I believe they are opposed to this movement. I claim to know something about it, and that is my candid and deliberate opinion. This movement, I contend, is only calculated to produce strife and contention between the city and county. Louisville does not wish to have anything to do with the general arrangement of the affairs of the county, but desires that it shall remain perfectly independent. The gentlemen say the county does not wish to interfere with the city. No doubt of that, for we all know they do not want to be taxed like the people of

Louisville. Why separate the county from the city? Why not keep them united? To separate them is to bring about contention and strife. Leave them as they are; they ask no division. And I have no idea that the house will make a separation between them, particularly when no such request is made, either on the part of the county of Jefferson, or the city of Louisville.

Mr. JAMES. This is a question of a local character, and one in which I have no particular interest, except as I desire such information on the subject as will enable me to vote understandingly. It affects the city of Louisville and county of Jefferson, alone. I presume the president may have something to say on the subject, and some information to submit to the convention. And, in order that he may have an opportunity to do so, I move that the convention now resolve itself into committee of the whole upon this question.

The motion was agreed to, and Mr. BROWN who had been presiding for the President, retained the chair as chairman of the committee.

The PRESIDENT. It seems to me there are some considerations involved in the proposition of the gentleman from Jefferson, that have not been brought to view in this convention. The proposition is this; that "when it shall appear to the legislature that any city or town hath a number of qualified voters, equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation in both houses of the general assembly, which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and thereafter, elections for the county in which such city or town is situated, shall not be held therein."

Now, that is a proposition that in the county of Jefferson there shall be two county court clerks and two county sheriffs. What an inextricable confusion that will make. Which one of these county court clerks is to have possession of the records of the county of Jefferson, where the muniments and titles of both city and county are held? Which one of the two sheriffs will be required to attend the court? And when a writ is directed to the sheriff of Jefferson county, which is to have it? In truth and in fact, the proposition of the gentleman is, in substance, to make every city and town, having a separate representation, a separate county in effect, with a joint jurisdiction, with two county courts, two sheriffs, and two clerks. That is a matter, I conceive, we ought not to do, and which no legislature should do. The proposition involves a difficulty that in my mind I cannot get over. I do not want two county court clerks squabbling about who is to have the records of the court. Well, if you go on and concede that the county court of Jefferson shall be a new establishment, then every man will have to search the records of the old and new courts, before he can find the document which he wishes. If the county court of Jefferson takes them, the city of Louisville will then have the trouble of searching the records. The county will have the privilege of taking the court there, and will throw the burden and inconvenience upon the

city. I do not think gentlemen have contemplated what this matter will lead to. I was in the legislature when Louisville was invested with a separate representation. Louisville, at that time, was whig, and the county of Jefferson was democratic, with a controlling majority over the whigs. And Louisville was invested with a separate representation against the will of the representatives of the county of Jefferson, and over their heads. I had the honor of representing her a first time. I think that was in 1831. In 1837 this act was passed, which the gentleman from Nelson read:

"That from and after the passage of this act, the justices of the peace of Jefferson county, residing without the limits of Louisville, shall constitute the court for laying the levy of the county of Jefferson, and appropriating and disbursing the same."

After the passage of that act, it was not possible for a justice residing in Louisville to impose taxes upon the people of Jefferson county, so that it was left to the magistrates outside of the city to lay that levy and disburse it. And, there was no question as to when the people should be taxed for their own support, for the people were as fairly represented in the county of Jefferson as any where in the state. The second article contains another provision:

"That the business of the citizens of Jefferson county, and others without the limits of the city of Louisville, shall, by order of the county court of Jefferson, be heard on the first week of each month, commencing on the first Monday, and continuing till all the business of the citizens of the county of Jefferson, and others residing without Louisville, shall be heard and disposed of, after which the business of the citizens of Louisville may be heard and disposed of; and the business of the citizens of Louisville shall, by order of the county court of Jefferson, be heard on the second week of each month, commencing on the second Monday, and continuing until all the business of the citizens of Louisville shall be heard and disposed of, after which, business of those residing out of Louisville may be heard and disposed of."

This regulated the business of the court, so that citizens residing in the county should not have their business interrupted by the citizens of Louisville taking up more time than was necessary. And so we have also provided for those expenses which should be borne mutually by each, from that time to the present; and in the third section this provision was made:

"That the county court of Jefferson, the justices of the peace residing without the city of Louisville presiding, may agree with the city authorities of Louisville to build a jail at the joint expense of the county and city, each contributing proportions as may be agreed on; they may also agree as to who shall appoint the jailer, and for the custody, management, and repair of the jail."

They had previously agreed upon building a court house, which has not yet been finished. The proprietors of the town of Louisville, when they laid it off, gave four lots for public buildings. Two lay east of sixth street and north of Jefferson, and two lay west of sixth street and north of Jefferson. The court house was first

built in 1808, on a lot east of sixth street; afterwards a court house was built on the lot west of it. Subsequently the court house was pulled down and a jail built on the lot east, and a court house was built on a lot west, and when they came to build the present court house, the city of Louisville purchased the two lots adjoining, running to Fourth street, and agreed with the county of Jefferson to contribute a certain proportion, and take the two lots west of sixth street, and they would build a court house on four lots running from fifth to sixth street, north of Jefferson street. And the court house was there built, and the city of Louisville contributed her proportion. When they came to build a jail, it was erected on the lot north of Jefferson and most westward of sixth street, leaving the lot west of Sixth street not built upon, and the city contributed a certain sum, and also the county of Jefferson. According to my recollection, the sum contributed by the county of Jefferson, to both court house and jail, was \$30,000. The amount of property which other gentlemen have claimed was made up by the increased value of these lots, which were given by the proprietors for the public buildings, and which never did exclusively belong to the county of Jefferson outside of Louisville. The county of Jefferson has contributed liberally and fairly to these public buildings, and the court house and jail belong to the county of Jefferson and the city of Louisville as public property, for their joint benefit, and there is no ground of complaint on that subject, in relation to the joint expense that each incurred to keep up these two establishments. And the only question now is, whether a city or town, under a provision of a law of the commonwealth, shall have a separate representation, a separate or joint county court, a joint sheriff, and if you will, a separate sheriff, and these two distinct operations going on at the same time. How is this property to be divided? Who is to have it? Is the county to build again for herself? On going out, is she to give up all this property to the city, and build again for herself? Is this a subject matter to be settled in the convention, and is it proper that it should come up here in the constitution? In effect, it is forcing a separation, and constituting the cities separate from the counties. The circuit court of Jefferson has jurisdiction in the limits of Louisville, and when organized under the new constitution, will still be for the whole county of Jefferson. The process runs, "to the sheriff of the county of Jefferson." Deeds are to be recorded in the county courts where the respective property lies, and you have two county courts within the county of Jefferson. It strikes me gentlemen have not contemplated the difficulties connected with this subject. I was willing that, whenever a city should be entitled to a separate representation, the legislature should have the right to provide that the municipal affairs of each should be uncontrolled by the other. I do not desire to have any thing to do with laying the levy in the county of Jefferson or paying their expenses, nor do I wish that the county should interfere with the affairs of the city of Louisville. But I think we cannot get on in the way indicated, and I shall be compelled to vote against both propositions as



they are now presented. I did desire that the proposition should be referred to the committee on the legislative department. They did not adopt my suggestion, and they were not bound to do it. Indeed I was desirous that we should get together and endeavor to agree upon the subject. Under these considerations, and with these difficulties in the way, I cannot vote for either proposition, and if no gentleman wishes to speak I will now ask that the committee rise.

The committee rose and reported progress accordingly.

Mr. PRESTON then withdrew the amendment he had offered. He had merely offered it to show his willingness to meet his colleague on fair ground.

Mr. MERIWETHER. I should not have again troubled the convention, but for a discrepancy which appears to exist between the gentleman from Louisville and myself, in reference to the contributions made for these public buildings. The first suggestion made by the President was as to which court should have the custody of the present records. I apprehend no difficulty on this question, as it is a matter which the legislature can readily decide. But I spoke with reference to the contributions with a distinct recollection of the matter. When it was determined to remove the court house from one side of sixth street to the other, it was ascertained that there were two lots which were not necessary for the purposes of the county—the city and county each owning one half of the interest therein. It was arranged between a committee on the part of the Louisville city council and a part of the county court, that the city should buy out the interest of the county in those two lots, and a price was agreed upon. The county agreed to pay \$75,000 towards the erection of the public building, and the city agreed to go on and complete it. The city agreed to take the interest which the county of Jefferson owned in these two lots at some \$37,500, and the remainder of the \$75,000 was paid in money, for I was one of the commissioners on the part of the county to pay it, and know the facts. Then the question came up as to the erection of the jail. The city now owned all the property on the west side of sixth street, and at that time the jail was on the east side. Then the county of Jefferson paid back to the city, I do not recollect what amount, to acquire a proportion of the title in the property upon which the new jail was to be erected, which was to be deducted from the \$16,000 contributed for the erection of the jail. The city now owns the residue of the two lots on the west side of sixth street, not now occupied by the jail, and the deed of conveyance was made to take effect whenever the city of Louisville shall complete the court house according to contract. Therefore, the amount which has been contributed by the county is some \$91,000.

But all seem to agree that we should have a separate tribunal of some sort or other for the levying and disbursement of taxes. Well, if there is not a separate clerk, who is to record the proceedings? Will you permit us merely to levy our taxes and then appoint for us an officer for their disbursement? What else is the proposition of gentlemen than that we shall be allowed a separate court to tax ourselves, but the ex-

ecutive officer of the court must be appointed by the city? Is this right? Why do you give to every county in the commonwealth the privilege of electing its clerk? It is because other counties should not interfere with them. Then I ask for the people of Jefferson the same privileges that are extended to other counties. Let us not only have the right to levy our own taxes, but also of appointing the officer who is to collect and disburse them, and the clerk who is to record the proceedings.

The gentleman from Louisville (Mr. Rudd,) insists that my colleague and myself are in favor of a total separation. Now, if it is not known to him, it is to others here, that I have stood up strenuously in the legislature, session after session, against any proposition to divide the city and county. I know that my colleague as a citizen of Jefferson county, has also opposed any such division. Then why will the gentleman persist in attributing motives to us that our past action, so far from justifying, directly contradicts? I am sure that my colleague and myself, and I doubt not the citizens of Jefferson county, will feel indebted to the gentleman for having taken us under his guardianship, and for having been good enough to inform us what the citizens of that county require. We acknowledge our inability to discharge our duties to them here, and tender to him our thanks for the kind interest he has seen proper to manifest in our welfare. But I profess to know something of the feelings of the people of Jefferson on this subject, and I beg leave to be governed by my own judgment, as to what their wishes are, in preference to yielding to his mere opinions on the subject. And the gentleman appears to think that my colleague and myself have some favorite individual whom we want inducted into office. This, as I remarked in reply to the other gentleman from Louisville, is a most uncharitable suggestion. Were I disposed to be as uncharitable as he is, might I not infer that he has some favorite in the city of Louisville upon whom he wishes to confer the joint offices. Why, independent of the business of Jefferson, that of the city of Louisville would afford an office that would be a fortune to any man who might get it. The business of Jefferson will be such as to induce some of the best citizens of the county to accept those offices; and yet the gentleman wants to have both devolved on the same individual. But the gentleman says further, that he has heard of no general complaint on this subject. I admit it and we only desire to protect ourselves from the probability of such a thing hereafter. Because there has been no grievance heretofore, will you deny us the right of protecting ourselves against such a contingency hereafter? The same gentleman also says that the police court of Louisville is open to the citizens of Jefferson. Now I beg leave to differ with him. It is true if one of our boys happens to stray in Louisville and kicks up a dust there, then the city police take hold of him; but in no other instance do they. The county has agreed that the boundaries of the city police jurisdiction for the suppression of riots shall extend half a mile around the city; and to that extent and for that purpose alone, do they have jurisdiction over the county

of Jefferson. Well there is another objection made—that these officers of the county will reside in the city. Will that be any detriment to the city? Even should the county choose to elect a resident of the city for any of these offices, would it be any cause of complaint to the city? But the point most exclusively dwelt upon by all the gentlemen from Louisville, is that it is a virtual separation of the city and county. I beg leave to differ with them. To a certain extent, and for certain purposes there will be, and there ought to be a separation. But we shall be united for other and for all purposes, for which it is desirable we should be united. So far as I am concerned, I now leave this question to the disposition of the convention, conscious of having discharged my duty towards those who sent me here.

The amendment of Mr. MERIWETHER was rejected, the yeas and nays being ordered on the call of Mr. Rudd, yeas 21 and nays 55, as follows:

YEAS—Alfred Boyd, Luther Brawner, William C. Bullitt, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, Peter Lashbrooke, Martin P. Marshall, David Meriwether, James M. Nesbitt, Hugh Newell, Elijah F. Nuttall, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ignatius A. Spaulding, John D. Taylor—21.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Wm. Bradley, Francis M. Bristow, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, James Dudley, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, William Hendrix, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, Jonathan Newcum, William Preston, James Rudd, James W. Stone, Michael L. Stoner, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—55.

Mr. MERIWETHER then moved a reconsideration of the vote, adopting the section providing that sheriffs should be re-eligible for a second term.

The motion under the rule would lie over until to-morrow, but on the motion of Mr. TURNER, the rule was dispensed with.

Mr. GARRARD then moved to lay the motion to reconsider on the table.

Mr. HARDIN suggested that as the house was thin the roll should be called.

The roll was accordingly called, and eighty-one members answered to their names.

The question then being taken on the motion to lay on the table, by yeas and nays, on the call of Mr. CLARKE, it prevailed—yeas 44 nays 40, as follows:

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling,

Francis M. Bristow, William Chenault, James S. Chrisman, James Dudley, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, Richard L. Mayes, John H. McHenry, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, William Preston, Larkin J. Proctor, James Rudd, James W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams—44.

NAYS—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, William C. Bullitt, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Chastain T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Thos. J. Hood, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, William N. Marshall, Nathan McClure, David Meriwether, Jonathan Newcum, Hugh Newell, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spaulding, Michael L. Stoner, William R. Thompson, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—40.

The report of the committee on executive and ministerial offices as amended was then adopted.

#### LOUISVILLE CHANCERY COURT.

On the motion of Mr. HARDIN, the convention went into committee of the whole, Mr. BRADLEY in the chair, on the article reported by the committee on circuit courts, in relation to the Louisville chancery court, as follows:

"SEC. —. The Louisville chancery court shall exist under this constitution, subject to repeal, and its jurisdiction to enlargement and modification by the legislature. The chancellor shall have the same qualification as a circuit court judge; and the clerk of said court as a clerk of a circuit court, and the marshal of said court as a sheriff; and the legislature shall provide for the election of the chancellor, clerk, and marshal, of said court, at the same time that the judge and clerk of the circuit court are elected for the county of Jefferson, and they shall hold their offices for the same time."

Mr. HARDIN. The committee on circuit courts reported this article, and it was drawn up by the presiding officer of this body, a gentleman who has long practiced in that court. The report was a unanimous one from the committee.

The PRESIDENT. I desire to give the convention the information I possess upon the subject of this court, and upon the necessity of its continuance. I inferred from the report of the committees on the court of appeals and the circuit court, that there would be doubt and difficulty as to whether the Louisville chancery court would exist under the proposed constitution, and in order to have the question settled, a resolution was referred to the committee on circuit courts, requiring them to take the subject under

consideration. They have accordingly reported the provision under consideration. The Louisville chancery court went into existence on the 13th of April, 1835, and to that court was transferred many of the causes which were pending at the time in the Jefferson county circuit court. All, however, were not thus transferred, but some were retained in that court and decided there. There have been 6,600 and odd cases brought or removed into that court, of which 5,290 and odd were finally settled by decree or dismissal. And there were some three or four hundred more partially decided, leaving altogether about 1400 causes for the docket of that court. There are also some 900 or 1000 causes which have not been disposed of or decided in any way. Such is the present condition of the business in that court, and upon examination it will be found that each year during its existence there have been upwards of 400 causes finally decided and disposed of by it. The court has also the jurisdiction of settling the rights of guardians, administrators, and executors, within the city of Louisville, and of causes of this character some 290 and odd have been settled and disposed of, and others are in a course of final disposition. They are settled before a master in that court, and examined by the chancellor, and if approved, declared to stand as *prima facie* evidence. Including these causes, there has been upwards of 450 causes disposed of by the court annually since its establishment. Ordinarily the court sits two days in the week, on Tuesdays and Fridays, and gives opinions, hears motions, and transacts its business generally. Causes are submitted to the judge most generally upon briefs, and during the period he is out of court, he has the examination of records to make, and of the authorities referred to by counsel, and such as are necessary for his own information. Independent of these two courts a week, and the time he labors during the balance of the week in preparing his decrees, the judge grants injunctions, restraining orders, and *ne exeat*, and he is likely to be applied to every day, and is frequently applied to many times in the day, to examine the records and decide as to attachments. Independent of these duties also, many writs of *habeas corpus*, and nice and intricate questions of the custody of children and the power of parents and guardians over them, are brought before him. Then all collision cases are to be tried by jurors, and when he has prepared the *venire* he is to have a day fixed for it, and that is always some day that is not a regular court day. And we have been engaged in the trial of some of these collision cases for a week and some times ten days, on a single cause. So also in regard to contested wills, they are tried in that court, and some of them consume a considerable time. But the heaviest jurisdiction in relation to juries are in collision causes. It is in fact a mercantile court, for the transaction of nearly all of that description of business that connects itself with the mercantile affairs of the county, both as to shipping and attachments against foreign debtors, together with the usual amount of chancery business of liens upon buildings, and assignments, and settlement of estates, and winding up of partnerships, embracing all that variety of jurisdiction that under our system of laws devolve particularly upon the chancery part of the circuit courts.

It was from the great accumulation of business in the Jefferson circuit court, on the chancery side, and the fact that the common law and criminal business occupied its whole time, so that the chancery side of the docket was hardly ever reached, except by motion, that induced the legislature in 1835 to establish this court. The business of the community has been done in that court with great facility, and the chancery business kept down. A great many of these causes are tried in that court, in from fifty to sixty days from the time they are commenced, if they are plain cases. Where they are complicated, and where they require a greater time to prepare them, of course it takes a longer time, and occasionally a cause falls back, either from the neglect of the parties, or the difficulty of getting at the facts. But I have seen no court during the period of time I have practiced, that transacts its business with more promptness and certainty than it. And although amongst the mass of cases that come to the court of appeals there have been a fair number of reversals, yet there have been a large proportion in which the individuals have been fully satisfied, and which have never been brought to the appellate court. I am satisfied that the chancery business of the city of Louisville and the county of Jefferson, will require the whole labors of a judge, and that it cannot be done without it. A large portion of the business done in that court, is of persons who reside without its jurisdiction, and who were connected with Louisville by the commerce and trade of the city and county. It was the conviction of these facts that induced the legislature to establish the court in the first instance, and it is under the same impression and the belief that no arrangement can be made that will be more beneficial to the litigants or to the community at large, that we have been induced to ask that it shall be recognized by the constitution, and take its fate in the legislature of the country, as experience may dictate it best deserves. Either to have it repealed, or to have its jurisdiction enlarged or diminished, as the interests of the county may demand. I am satisfied that if the convention shall diminish the number of courts in the commonwealth, if they do not leave us the chancery court, that at least they will be compelled to establish an additional circuit. I do not believe, from the immense number of criminal cases falling to the lot of the Jefferson circuit court to try, that it will be possible for one judge to do the criminal business, the common law business, and the chancery business, that exists and has existed for the last three years in the city alone. The city is growing and increasing, and with it will increase the necessity of having a court of justice always open, and always ready to transact the business constantly arising in a place of increasing trade and commerce. We cannot safely dispense with such a court in the city of Louisville, and all I ask is, that it shall be permitted to exist. I see that in the draft of the bill, the marshal of the court is re-eligible to office. This I do not desire, and I move that the marshal of the court be ineligible for a succeeding term.

The amendment was adopted.

Mr. TRIPLETT. I concur in the opinions expressed by the President as to the necessity for

the existence of the court, but I want to guard it against an evil that has some times happened, and may happen again. I therefore offer the following as an additional section:

"The jurisdiction of said court shall be restricted to suits where the property or estate, or some one or more of the defendants reside in Louisville."

My object is obvious on the face of the amendment itself. This court is now to be made a constitutional court, and I want to know the limit of its jurisdiction. The jurisdiction of all the circuit courts throughout the state is limited by law, and I now want to limit the jurisdiction of the chancery court of Louisville. So far as regards Louisville, and in causes where the defendants or one or more of them reside in that city, let the court have jurisdiction. Otherwise, every man who is in the habit of visiting Louisville, or who may do it occasionally, is liable, when caught in town to be sued there, and thus the court would exercise jurisdiction over a suit, the subject matter of which, and many of the defendants might pertain to a remote part of the state. Are you willing that your constituents shall be obliged either to stay out of Louisville altogether and thereby neglect their business, or if they go there be liable to have process served on them, and detained to attend to a long and sometimes complicated chancery suit? It is to guard against this that I have offered my amendment.

Mr. PRESTON. I do not see the force of the objection urged by the gentleman from Daviess. The Louisville chancery court has vested in it all the chancery jurisdiction which was formerly reposed in the Jefferson circuit court, and thus, if the separation had never taken place, the same persons under the same circumstances only, would have been subject to suits in the Louisville chancery, as on the chancery side of the Jefferson circuit court. And this is all the jurisdiction we have proposed to give this court in this report—a jurisdiction that is exercised by every circuit court on its chancery side in this commonwealth. There are two classes of action—those which relate to fixed property, which are local, and transitory actions, which it is right and proper should follow the person. The Louisville chancery court, therefore, received only that jurisdiction which the circuit court on its chancery side possessed anterior to its establishment, and it was thus established only because the business was so great under the advancing wealth and population of the county, that it was necessary to make the division in order to administer justice.

The gentleman certainly would not deprive the chancery court of Louisville of that general jurisdiction over subjects which every circuit court in the commonwealth possesses. If the man be in debt, and the remedy be in chancery, he may be served with process in Fayette, or Hickman, or Mason counties, and tried in the circuit courts of those counties under precisely similar circumstances as in the chancery court in Louisville. There was no difference in the proceeding, and yet the gentleman does not object to the jurisdiction of the circuit courts in such cases. Now the chancery court of Louisville exercises a jurisdiction, which, after the

experience of ages, has been asserted and declared in the courts of England and in every state of the Union, over a certain class of action relating to matters which being transitory in their character, the remedy should be obtained wherever the person of the defendant is found. And this is the jurisdiction always exercised on the chancery side of the circuit court, and of which no complaint has been made. We only ask that that jurisdiction shall remain undiminished here, and leave it to the legislature to provide for its restriction or extension as necessity may dictate. If it should be found to work, as the gentleman apprehends, the legislature will have power to restrict it. This is not a constitutional court, over which the legislature is to have no control, as the gentleman seems to infer. The clause reads in this way, "The Louisville chancery court shall exist under this constitution subject to repeal, and its jurisdiction to enlargement and modification by the legislature." There is therefore no difficulty in reaching the subject of jurisdiction by legislation, if it should hereafter become necessary.

Mr. TRIPLETT. It is true that this court has heretofore existed by law, but the legislature when it created it did not do that justice to the balance of the citizens of the state which was due to them. Therefore now, when this convention is about to make the court a constitutional one, by requiring its continuance, I desire to do that which the legislature should have done at the time it first established the court. This proposition can be made so clear that no man can misunderstand it. I have drafted this amendment with some care, and the gentleman's objection to it does not lie. By my amendment, if the defendants or any one of them reside in Louisville, or if their property being transitory, is in Louisville, then the chancery court there would have jurisdiction over it. But I do not want to give that court jurisdiction over all the citizens of the state, wherever they are. Suppose my amendment does not pass, why the very evil now existing will continue to exist, and we know it. We all know that never, up to this day, have we had power sufficient in the legislature to prevent this very evil of which we now complain. I know from my own personal knowledge, as do other gentlemen in this convention, that the jurisdiction of suits has been transferred to the Louisville chancery court, when neither the subject matter in controversy nor one of the defendants has resided in that city. The case of Spotts was removed there, and the land involved lay in Henderson county, and every one of the defendants lived there except one by the name of Barbour. He was passing through Louisville, and was served with a *subpoena*, and he was only a nominal defendant. Are delegates willing then that their constituents shall be forever hereafter liable to be subjected to this inconvenience, provided the legislature does not correct it. And if the circuit court possessed the same jurisdiction, and had exercised it in this way, I ask if, according to the gentleman's own proposition, the legislature should not have deprived them of that power? Take an instance that might occur at the seat of government here. Suppose a man comes here on business which it is necessary for him to transact, and which can-

not be transacted any where else,—ought the circuit court of this county to have jurisdiction over a tract of land in Hickman county, where all the witnesses are residing, merely because this man, as one of the parties in the suit, was caught here, in the transaction of his necessary business? I say no. It is wrong, and there is not a man here, who, if his constituents were placed in that condition, would not resent it. Then if it is wrong why should we not remedy the evil?

Mr. C. A. WICKLIFFE. I was a member of the legislature when the chancery court of Louisville was organized, and a larger jurisdiction was given to it than I thought it ought to have; but as it now exists, the jurisdiction of that court, in chancery matters, is no larger than the jurisdiction of the circuit court. If a man from Daviess county, against whom a claim exists, for which he might be sued in chancery in his own county, should go to Louisville, process might be issued against him there, by the circuit court. He could be held upon a writ of *ne exeat*, or I believe, as it is now called, a writ of "*no go*"—and the chancery court can do no more. If one of the defendants in a large suit should happen to be there, the circuit court can issue process against him, and the chancery court has no greater power. And it appears to me that if we transfer the jurisdiction in a certain class of cases, from the circuit court to the chancery court, the latter should have as plenary powers as the former. I should be unwilling to give to the court the power to bring persons from another county by process issued from that court; but I think they ought to have the same degree of jurisdiction that the other courts have. I do not understand the chancery court as possessing greater power, as regards jurisdiction, than the circuit court possesses, in chancery business; but be that as it may, I think we had better leave the regulation of the internal jurisdiction of the court, as well as its jurisdiction over transitory persons and property, to the legislature.

The PRESIDENT. The jurisdiction of the chancery court of Louisville, is precisely what the jurisdiction of the Jefferson county circuit court was, in relation to chancery business, before the chancery court was established; not more and not less. It has the same jurisdiction that every circuit court in the commonwealth of Kentucky has, in relation to chancery matters. Now, if there is a grievance in relation to the jurisdiction of the chancery court, I would suggest to the gentleman, that this court ought not to be made an exception, and that he should make his amendment to prohibit the legislature from granting the same jurisdiction to the other courts in the commonwealth. I am very sorry, sir, that the gentleman has instanced, in support of his argument for curtailing the jurisdiction, that outrageous case of fraud in Spott's case. The children were infants, and there was a combination between the judgment creditors, and the administrator of the estate, who fully administered upon it, and then bought in a large and valuable tract of land for a nominal price, under the pretence outside, that it was bought in for the benefit of the heirs. The sheriff made the deed with a full knowledge of all the facts. It was one of the most outrageous frauds that

was ever practiced upon infants. I have seen the record; it has been passed upon by the court of appeals. It is a case that shows how the rights of those who have no one interested in their behalf, and who cannot look after their interests themselves, may be trampled upon through the means of a court of justice. It is one of the strongest evidences showing the remedial power that exists in the breast of the chancellor. But that it should be made an argument to restrain the jurisdiction of the chancery court, is somewhat extraordinary. If it is the sense of the convention, that the jurisdiction of this court should be restrained, make the restriction applicable to the other courts; but do not restrain this, and let the jurisdiction of the balance of the courts remain as it is.

But the gentleman says that this court should not be permitted to issue process against a man who resides in another county. If a man goes into a neighboring county, and owes a debt therein, the sheriff can serve process on him, and he must answer to the demand in a court of law; and so it is in a court of chancery, unless it is a suit in relation to real estate, where the recovery is to be direct for the thing itself, and the action is termed local, and has to be brought in the circuit where the property lies. But where the chancery court issues process upon the ground of fraud, the party may be served with process, wherever he may be found. There are many cases in which this jurisdiction is very appropriate. A man comes into Louisville, and sells a negro, who proves to be unsound; the individual guilty of this kind of fraud, may be prosecuted where the fraud was transacted. A man buys a quantity of goods without any intention of paying for them, or obtains goods by false pretences, or false representations, as to his ability to pay; he is within your jurisdiction, and process may be served upon him, wherever he may be found. I insist that it is a subject that ought to be regulated by the legislature.

This report proposes to leave the existence of the court, and the extent of its jurisdiction, entirely with the legislature. Is not that sufficient? Are we going to legislate upon every minute point, in making a general law? If so, we are likely to be kept here forever. Now I submit the question, whether we ought to provide for the jurisdiction of the courts within this state, or whether we should leave it to be done by the legislature. If we undertake to make this court an exception, it will look very extraordinary. Are we to declare that all the courts in the commonwealth should have the same jurisdiction that now exists, except the chancery court of Louisville, and that shall have less than all the other courts in the state? That is the effect of the gentleman's proposition. If he wishes to limit the jurisdiction of all the courts, by a general provision, when the whole subject matter comes up, let him make his proposition; but I protest against its being added to this bill, and the jurisdiction of the chancellor, either more restricted, or more enlarged than it is elsewhere.

Mr. TRIPLETT. I was in hopes that some other person would reply to the argument of the gentleman, on the other side. I have already attended to the remarks of the two gentlemen

from Louisville, and to the reply made by the younger gentleman from Nelson, and I ask this house, calmly to reflect, what are the arguments made use of against my proposition? Has there been a solitary reason urged against it? I previously acknowledged the fact, for the purpose of saving time, that the circuit courts have got this jurisdiction, as the gentleman states. But I tell you candidly, that my object is to circumscribe the jurisdiction of the Louisville chancery court. In reference to Spott's case, it was a most outrageous fraud, and I had some part in exposing the fraud; but that is not the question. The question is as to the *locus in quo*, the place where the action ought to have been brought. Ought it not to have been brought in the county of Henderson, where the parties resided, and where all the witnesses, and all the records were? If any proper cause could be shown why it should not be tried there, it could have been remedied by a change of venue. Let us reflect for one moment on the proposition that I have submitted. I believe that in its true construction, it will include the cases put by the gentleman. Whenever a contract is made in Louisville, let the trial be had there; if a fraud be perpetrated there, goods obtained under false pretences, the amendment that I have proposed covers the case; if it does not, add to it the words, "where a contract expressed or implied is made in the city of Louisville." You will then cover the whole ground, and if any lawyer on this floor gives it as his opinion, that the amendment, as drafted, does not cover the ground, then I will move to add the words that I have suggested.

The mere question is, shall your constituents, because one of them happens to go to Louisville, be sued there, and all the balance of the defendants be brought there? If the owner of a tract of land lying in Hickman, or in Knox, or in any other of the border counties of the state, be sued, the courts there should have jurisdiction, not only over all the defendants in the case, but over the subject matter. What is the effect of giving jurisdiction to a court in a remote part of the state? Does any gentleman say it ought to be so? But the gentleman says, that I am drawing a distinction between the chancery court of Louisville, and the ordinary courts having jurisdiction in chancery cases. Be it so. Have they shown that my proposition is wrong? No sir, so far from it, they show that the provision ought to be extended to all the other courts. My maxim is to remedy the evil, where it occurs, and believing it to be my duty, as far as I am able, to provide that this evil shall exist no longer, I desire that this clause shall be inserted in the constitution.

Mr. PRESTON. I rise merely to answer one or two points in the remarks of my friend from Daviess. He says he has heard no reason yet advanced why his amendment should not be adopted; if he has heard none from the distinguished gentleman who preceded me, I am almost hopeless of convincing him. "The deaf adder heedeth not the voice of the charmer."

Mr. TRIPLETT. I did listen, but I did not hear.

Mr. PRESTON. I understand that the practical application which the gentleman from

Daviess desires to make of his proposed amendment to the report, is to limit the jurisdiction of the Louisville chancery court, as he frankly admits, in a manner not known in any other chancery court in Kentucky; to curtail it of the rights enjoyed by every other circuit court on the chancery side; to deprive it of jurisdiction that has, from time immemorial, been exercised by such courts in this country and in England, from whence we have derived our system of jurisprudence. He has alluded to the case of Spotts' heirs and Barbour. I have not read that case, but it seems to me that the gentleman is not taking the proper course to cure the evil he complains of. He is endeavoring to do it by restricting the jurisdiction of the chancery court, when the injury he complains of arises from the decision of the appellate court.

Mr. TRIPLETT. The gentleman does not understand me; I do not object that the decision was wrong, I only cite the case as an instance, where the defendants, as well as the subject matter of the suit, were in another county.

Mr. PRESTON. The gentleman proposes that the Louisville chancery court shall take cognizance of nothing except those cases where the contract has arisen, either in Louisville or in Jefferson county. Do I understand him?

Mr. TRIPLETT. That is one class of cases.

Mr. PRESTON. Let us examine the effect of this proposition. Suppose one of our citizens, in London, borrows a thousand dollars of another to come home, and to recover the debt he needs the aid of a court of equity. In every court in the state, you may assert your right by bill of discovery, except in the chancery court of Louisville.

Mr. TRIPLETT. You cannot file a bill of discovery in any chancery court, unless there has been a suit at common law; so that the illustration of the gentleman is not applicable.

Mr. PRESTON. I will not make an argument on the illustration. The general principle is, that the debtor, in any personal contract, may be sued wherever he goes. A debt contracted in one county of the state may be asserted in another; all actions arising upon contracts, and personal actions of every description, may be commenced wherever the defendant may be found. The gentleman now proposes to curtail this jurisdiction, and make personal actions local, and I conceive this contrary to the whole current and policy of the law. What will be the effect of the gentleman's amendment? If I enter into a contract with him in Louisville, requiring for its enforcement the aid of the chancellor, and afterwards go down to Owensboro', he can sue me upon the contract there; but if I make a similar contract with him there, and he comes to Louisville, I cannot bring suit upon it. Does he call this equality? Is there any good reason why the chancery court of Louisville should be deprived of the rights that the circuit court of Daviess and every other circuit court in the state possesses? All that we ask is that its jurisdiction shall be the same as that of other courts; with this we would be contented; and I really think the convention will be satisfied that it would be highly improper to deprive this court of the power which the other courts possess.



Mr. TRIPLETT. I will amend my proposition by adding these words, "contracts which have arisen directly or indirectly in Louisville."

Mr. PRESIDENT. I am exceedingly sorry that the gentleman did not comprehend my objection. I did not intend to argue as to what was or was not the proper jurisdiction of the court. I only asserted that the jurisdiction of the Louisville chancery court was the same as the jurisdiction of all the circuit courts in the commonwealth; and that it was not proper that this convention should determine the limits of the jurisdiction of that court. That if it were necessary to limit the jurisdiction of all the courts, there would be a more proper time and place for it. If the legislature of the commonwealth cannot be entrusted with the regulation of the jurisdiction of this tribunal, and it is necessary that we should determine the limits of jurisdiction, then let us determine as to all the courts, and not select one single court, merely because the gentleman may suppose that he can array prejudices against the particular locality where the court is held, in order to lessen the jurisdiction of that court. The suit, which the gentleman alluded to, was brought by persons who did not reside in Louisville. They chose that tribunal; perhaps, sir, they may have had a preference for the lawyers there. When a man goes to law he is very apt to make choice of a lawyer in whom he has confidence. Well, the gentleman says, that the citizens of this commonwealth shall not have this privilege. I maintain that it is their privilege to bring their suits wherever they think proper.

I submit that this is not the proper place to determine the jurisdiction of the courts. It is a matter for legislative enactment, and should not be made a constitutional provision.

Mr. TRIPLETT. It is necessary to put myself right, for I do not wish to be misunderstood in regard to this matter. I did not start until I knew I was right, and I do not intend to be put wrong.

This is a special court established for a special purpose; therefore the gentleman's simile is not applicable because the others are general. I am the last man in the house, to appeal to prejudice that exists against Louisville, if any does exist, but it is rather extraordinary to hear gentlemen so frequently referring to a supposed prejudice, if none does exist.

The PRESIDENT. I did not say there was a prejudice, but that the gentleman might array prejudice against Louisville.

Mr. PRESTON. The gentleman is mistaken if he supposes that I asserted that any prejudice exists.

Mr. TRIPLETT. I am glad to hear it. So far from arraying prejudice against Louisville I would remove any prejudice if it were in my power. It is not on account of any prejudice against the place, but simply because it is a city to which a large majority of the citizens of the state are compelled to go on business. And the question is—and it is a plain and simple one—whether they shall be sued when they go there on business, and be compelled to carry their witnesses there, and in some cases there are fifty or a hundred witnesses. It is a subject in which every body is interested.

In answer to the younger gentleman from Louisville, I will say there is not a solitary case that was quoted by him, in which the common law courts have not jurisdiction. The gentleman supposes the case of a man who borrows a thousand dollars in London, and he thinks that the chancery court should be permitted to issue process against the debtor in such case. But the common law courts have equal jurisdiction over the matter, and when you get jurisdiction, then your bill of discovery follows of course; your writ of *ne exeat regno*—by the way, the word does not sound well in a republic. All writs in that court follow the writs of common law, and I tell the gentleman that there is not a case that was stated by him, that cannot be answered. I have no doubt it is our duty to adopt the amendment.

The question being put, it was upon a division, rejected, ayes 22 noes 28. So the amendment was rejected.

The committee rose and reported the amendment.

The question then being upon concurrence in the amendment reported by the committee.

It was concurred in.

Mr. KELLEY. I wish to amend the report by inserting an amendment to provide that the Louisville chancery court shall exist under the constitution like all other chancery courts in this commonwealth.

I am not quite satisfied with this part of the report. Every lawyer in this house knows very well that it has been the custom of the chancery courts in this country, as well as in every other, to encroach upon the business of the common law courts. It is for this reason that I move this amendment.

The PRESIDENT. There is no other chancery court in this commonwealth.

Mr. KELLY. There is a chancery side of every court.

Mr. TURNER. This constitution does not attempt to fix the jurisdiction of the court at all. It leaves it just as it is, subject to be increased or diminished by the legislature. And every other court in the commonwealth is just in that situation. It is just where it ought to be in my opinion. I think the committee have discharged their duty exceedingly well: they could not place it upon a better footing.

Mr. APPERSON. So far as the gentleman from Madison is concerned, it may be very explicit, and all very well suited to his taste. I am not prepared to say it is to mine. I do not understand it well enough. So far as I do understand it, I am not pleased with it; and I would prefer to understand it, because I should regret, exceedingly, to be obliged to make an assault upon it, as at present advised. Before its final passage, I shall ask to be heard upon its merits. I should be glad to have it passed over for the present.

The convention then adjourned.

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SATURDAY, NOVEMBER 10th, 1849.

Prayer by the Rev. Mr. NORRIS.

Mr. DIXON, at his request was discharged from further service on the special committee

raised on Mr. Gaither's motion to consider and report on the powers of the general and state government.

#### COMMITTEE OF REVISION.

The PRESIDENT announced the following as the select committee of ten, appointed under the resolution offered yesterday, by Mr. McHenry, to arrange and revise the several articles of the constitution that may be adopted, viz: Messrs. McHenry, Moore, W. C. Marshall, Garrard, Machen, Bowling, Garfield, Williams, Lisle, and Stone.

#### LEAVE OF ABSENCE.

On motion, leave of absence was granted to Mr. Edwards, until Wednesday next, to Mr. Robinson, until Tuesday, to Mr. T. J. Hood, for a few days, and to Mr. Wheeler, for a few days.

#### REPORT FROM A COMMITTEE.

Mr. DIXON from the committee on the executive for the state at large, made the following report, which on his motion was referred to the committee of the whole and ordered to be printed.

#### ARTICLE —

##### *Concerning the executive department.*

SEC. 1. The supreme executive power of the commonwealth, shall be vested in a chief magistrate, who shall be styled the governor of the commonwealth of Kentucky.

SEC. 2. The governor shall be elected for the term of four years, by the citizens entitled to suffrage, at the time and places where they shall respectively vote for representatives. The person having the highest number of votes shall be governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the legislature may direct.

SEC. 3. The governor shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected.

SEC. 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years next preceding his election.

SEC. 5. He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths, or affirmations, prescribed by this constitution.

SEC. 6. No member of congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor.

SEC. 7. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected.

SEC. 8. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall

be advised so to do by a resolution of the general assembly.

SEC. 9. The governor shall have power to fill vacancies that may happen by death, resignation, or otherwise, by granting commissions, which shall expire when such vacancies have been filled according to the provisions of this constitution.

SEC. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly, in which the power of pardoning shall be vested. That whenever the governor shall remit a fine or forfeiture, or grant a reprieve or pardon, he shall enter his reasons for doing so on the records of the secretary of state, in a separate book; and on the requisition of either house of the general assembly, the same shall be laid before them, and published if they deem proper.

SEC. 11. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SEC. 12. He shall, from time to time, give to the general assembly, information of the state of the commonwealth, and recommend to their consideration such measures as he may deem expedient.

SEC. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SEC. 14. He shall take care that the laws be faithfully executed.

SEC. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

SEC. 16. He shall, by virtue of his office, be speaker of the senate, have a right when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote.

SEC. 17. Whenever the office of governor shall become vacant, the lieutenant governor shall discharge the duties of governor until his successor shall have been duly elected; but no new election shall take place to fill such vacancy, unless the same shall have occurred before the first two years of the time shall have expired for which the governor was elected; and if, during the time the lieutenant governor shall fill such vacancy, he shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government for the balance of the term.

SEC. 18. Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the sen-

ate, the senators shall elect one of their own members as speaker for the occasion.

SEC. 19. The lieutenant governor, while he acts as speaker of the senate, shall receive for his services, the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received, and been entitled to, had he been employed in the duties of his office.

SEC. 20. The speaker *pro tempore* of the senate, during the time he administers the government, shall receive, in like manner, the same compensation which the governor would have received had he been employed in the duties of his office.

SEC. 21. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state during the recess of the general assembly, it shall be the duty of the secretary for the time being, to convene the senate for the purpose of choosing a speaker.

SEC. 22. The governor shall nominate, and, by and with the advice and consent of the senate, appoint a secretary of state, who shall be commissioned during the term for which the governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts of the governor, and shall, when required, lay the same, and all papers, minutes and vouchers relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined on him by law.

SEC. 23. Every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor, within ten days (Sundays excepted,) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 24. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

SEC. 25. Contested elections for governor and

lieutenant governor shall be determined by both houses of the general assembly, according to such regulations as may be established by law.

SEC. 26. The legislature shall provide for a term not exceeding two years, for the appointment of treasurer, auditor of public accounts, register of the land office, and such other officers of a public nature as may become necessary, and shall prescribe their duties and responsibilities, and, until otherwise directed by law, such officers shall be elected by the qualified voters of this commonwealth.

SEC. 27. A board of commissioners shall be appointed every two years by the judges of the court of appeals, one from each appellate district, whose duty it shall be to make an examination every two years, of the accounts of the receiving and disbursing officers of the state at large, and report to the legislature.

#### COURTS OF JUSTICE.

Mr. C. A. WICKLIFFE, from the joint committees on the court of appeals, circuit courts, and county courts, to whom were re-committed the reports of the committees on the court of appeals, circuit courts, and county courts, reported the following amendment as a substitute for the whole of said reports, which, on his motion, was ordered to be printed, and the consideration thereof postponed to Tuesday next:

#### ARTICLE —.

##### *Concerning the judicial department.*

SEC. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, (which shall be styled the court of appeals,) the courts established by this constitution, and in such inferior courts as the general assembly may, from time to time, erect and establish.

SEC. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law.

SEC. 3. The judges of the court of appeals shall hold their offices for the term of eight years, from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the governor shall remove any of them on the address of two thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

SEC. 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business: *Provided,* That whenever a vacancy shall occur in said court, from any cause, the general assembly shall have the power to reduce the number of judges and districts, but in no event shall there be less than three judges and districts. In case a change in the number of the judges of the

court of appeals shall be made, the term of office and number of districts shall be so changed as to preserve the principle of electing one judge every two years. The judges shall, by virtue of their offices, be conservators of the peace throughout the state. The style of all process shall be, "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

SEC. 5. The general assembly, at its first session after the adoption of this constitution, shall divide the state, by counties, into four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one judge of the court of appeals.

SEC. 6. The judges first elected shall serve as follows, to-wit: one shall serve two; one four; one six, and one eight years. The judges, at the first term of the court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The judge having the shortest time to serve shall be styled the Chief Justice of Kentucky.

SEC. 7. If a vacancy shall occur in said court, the governor shall issue a writ of election to fill such vacancy, for the residue of the term, and another judge shall be elected by that district, to serve until the expiration of the time for which the judge was elected, whose death, resignation, removal, or other cause, produced such vacancy.

SEC. 8. No person shall be eligible as judge of the court of appeals who is not a citizen of the United States, a resident of the district for which he may be a candidate, two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to eight years.

SEC. 9. The court of appeals shall hold its sessions at the seat of government, unless otherwise directed by law, but the general assembly may, from time to time, direct that said court shall hold sessions in any one or more of said districts.

SEC. 10. The first election of the judges of the court of appeals shall take place on the second Monday in May, 1851, and every two years thereafter, in the district in which a vacancy may occur, by expiration of the term of office; and the judges of the said court shall be commissioned by the governor.

SEC. 11. There shall be elected, by the qualified voters of this state, a clerk of the court of appeals, who shall hold his office for the term of eight years, from and after his election, and who may be removed by the court of appeals for good cause, upon information by the attorney general; and in case the general assembly shall provide for holding the court of appeals in any one or more of said districts, they shall also provide for the election of a clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications,

and be subject to removal in the same manner as the clerk of the court of appeals.

SEC. 12. No person shall be eligible to the office of clerk of the court of appeals unless he be a citizen of the United States, a resident of the state two years next preceding his election, of the age of twenty one years, and have a certificate from a judge of the court of appeals, or a judge of the circuit court, that he has been examined by their clerk, under the supervision of the court giving said certificate, and that he is qualified for the office for which he is a candidate.

SEC. 13. In case of a vacancy in the office of clerk of the court of appeals, the governor shall issue a writ of election, and the qualified voters of the State, or the district in which the vacancy may occur, shall elect a clerk of the court of appeals, to serve until the end of the term for which such clerk was elected: *Provided*, That when a vacancy may occur from any cause, or the clerk shall be under charges upon information, the judges of the court of appeals shall have power to appoint a clerk *pro tem*. to perform the duties of clerk until such vacancy shall be filled, or the clerk acquitted.

SEC. 14. The general assembly shall direct by law the mode and manner of conducting and making due returns, to the secretary of state, of all elections of the judges and clerk or clerks of the court of appeals, and of determining contested elections of any of these officers.

#### ARTICLE —.

##### Concerning Circuit Courts.

SEC. 1. There shall be established in each county now, or which may hereafter be erected in this commonwealth, a circuit court.

SEC. 2. The jurisdiction of said courts shall be, and remain as now established, hereby giving to the general assembly the power to change or alter it.

SEC. 3. The right to take an appeal, or sue out a writ of error to the court of appeals, is hereby given in the same manner, and to the same extent, as it now exists, giving to the general assembly the power to change, alter, or modify, said right.

SEC. 4. At the first session of the general assembly after this constitution shall go into effect, they shall divide the state into twelve judicial districts, having due regard to business, territory, and population: *Provided*, That no county shall be divided.

SEC. 5. The general assembly shall, at the same time that the judicial districts are laid off, direct elections to be held in each district, to elect a judge for said district, and shall prescribe how, and in what manner, the elections shall be held and conducted, and how the governor shall be notified of the result of the election, and who has been chosen: *Provided*, That such election shall be held at a different time from that at which elections are holden for governor, lieutenant governor, and members of the general assembly.

SEC. 6. All persons qualified to vote for members of the general assembly, in each district, shall have the right to vote for judges.

SEC. 7. No person shall be eligible as judge of the circuit court who is not a citizen of the United

States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to eight years.

SEC. 8. The term of office of the judges of the circuit court shall be six years from the day of the election. They shall be commissioned by the governor, and continue in office until their successors be qualified. The removal of a judge from his district shall vacate his office, and when a vacancy may happen from any cause, it shall be filled as hereinafter prescribed.

SEC. 9. The general assembly, if they deem it necessary, may establish one district every four years; but the judicial districts shall not exceed sixteen, until after the population of this state shall exceed one million five hundred thousand.

SEC. 10. The judges of the circuit courts shall, at stated times, receive for their services, an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

SEC. 11. The judges of the circuit court shall be removed from office by a resolution of the general assembly, passed by two-thirds of each house. The cause or causes for such removal shall be entered at large on the journal of each house.

SEC. 12. The governor shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney, in penal or criminal cases.

SEC. 13. If a vacancy shall occur in the office of judge of the circuit court, the governor shall issue a writ of election to fill such vacancy, for the residue of the term, and another judge shall be elected by that district, to serve until the expiration of the time for which the judge was elected, whose death or other cause produced such vacancy: *Provided*, That if the unexpired term be less than one year, the governor shall appoint a judge to fill such vacancy.

SEC. 14. The general assembly shall not change the venue in any criminal or penal prosecution; but they shall provide, by general laws, the mode and manner in which changes of venue in such cases may be had.

SEC. 15. In all trials for treason or felony, the commonwealth shall be entitled to peremptory challenges of jurors, equal to one fourth the number allowed the accused.

#### ARTICLE —.

##### *Concerning County Courts.*

SEC. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, a county court, to consist of a presiding judge and two associate judges, any two of whom shall constitute a court for the transaction of business.

SEC. 2. The judges of the county court shall be elected by the qualified voters in each county, for the term of four years, and shall continue in office until their successors shall be duly qualified; and shall receive such compensation for their services as may be provided by law.

SEC. 3. At the first election after the adoption of this constitution, the three judges shall be elected at the same time, but the associate judges,

first elected, shall hold their offices for only two years, so that, thereafter, the election of the presiding judge, and that of the associate judges, will not occur at the same time.

SEC. 4. No person shall be eligible to the office of presiding or associate judge of the county court unless he be a citizen of the United States, over twenty one years of age, and a resident of the county in which he shall be chosen, one year next preceding the election.

SEC. 5. The jurisdiction of the county court shall be regulated by law; and, until changed, shall be the same now vested in the county courts of this state.

SEC. 6. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Two justices of the peace shall be elected in each district, by the qualified voters therein, for the term of four years, each, whose jurisdiction shall be co-extensive with the county. No person shall be eligible as a justice of the peace, unless he be a citizen of the United States, twenty one years of age, and a resident of the district in which he may be a candidate six months next preceding his election.

SEC. 7. Judges of the county court, and justices of the peace, shall be conservators of the peace. They shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The legislature shall provide, by law, the mode and manner of conducting and making due returns of all elections of judges of the county court, and justices of the peace, and for determining contested elections, and provide the mode of filling vacancies in these offices.

SEC. 8. Judges of the county courts, and justices of the peace, shall be subject to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant.

SEC. 9. The general assembly may provide by law that the justices of the peace in each county shall sit at the court of claims, and assist in laying the county levy and making appropriations only.

#### LEGISLATIVE DEPARTMENT.

On the motion of Mr. CLARKE the convention resolved itself into committee of the whole, Mr. MERIWETHER in the chair, and proceeded to the consideration of the report of the committee on the legislative department.

The report was read at length, and it was afterwards taken up by sections.

The first section was read and adopted without amendment, as follows:

SEC. 1. The legislative power shall be vested in a house of representatives and senate, which together shall be styled the general assembly of the commonwealth of Kentucky.

The second section was read as follows:

SEC. 2. The members of the house of representatives shall continue in service for the term of two years from the day of the general election, and no longer.

Mr. BARLOW, to test the sense of the com-

mittee, moved to strike out the word "two," and insert "three," as the number of years during which the house of representatives shall continue in service.

The amendment was not agreed to, and the section was adopted without amendment.

The third section was read as follows:

SEC. 3. Representatives shall be chosen on the first Monday in August, in every second year; and the mode of holding the elections shall be regulated by law.

Mr. LISLE moved to strike out "Monday" and insert "Thursday."

Mr. ROOT. I hope the amendment will be adopted. I presume it is scarcely necessary to say more than a single word in favor of it; and that is that while elections are held on Monday it occasions the desecration of the Sabbath, which in a christian land we should endeavor to avoid.

Mr. TRIPLETT. The gentleman has, perhaps, overlooked the fact that the mode of conducting our elections is to undergo some change. His remarks may formerly have had some applicability, but it seems to have been determined that this convention will divide the counties into such districts that every man may, without inconvenience, go to the voting place in his precinct on Monday, and return to his home after exercising his franchise as a freeman.

Mr. ROOT. Every one knows that an election more or less agitates the public mind, and it is impossible to hold the election on Monday without occasioning the violation of the Sabbath. On that day there will be party arrangements made, caucus consultations held, and a marshaling of forces for the contest on the succeeding day. But hold the election in the middle of the week, and the desecration of the Sabbath may be avoided. I think it ought to be done, and that we, as a christian people, should make a constitutional provision that may have a tendency to avoid the desecration of the Sabbath, by preparations for a political contest.

Mr. CLARKE. Monday is the day on which elections have been held in this commonwealth for the last fifty years; and I do not remember to have heard one word during my canvass for a seat in this convention, in favor of a change. I heard no complaints that elections on Monday necessarily involve a violation of the Sabbath. I have had but little political experience, but I have had enough to satisfy me, that before an election there will be consultations, and a marshaling of forces, and whether the Sabbath occurs the day before, or three days before the election, candidates and their friends, if they think proper, will desecrate the Sabbath day. I do not see that much is to be gained by the change if the amendment should prevail. But sir, we should not forget that the people in this state have been accustomed to vote on Monday for the last fifty years. They have been reared to that custom, and I have heard no complaints of it, to call for a change. So far as I am concerned, however, I have no choice on the subject.

Mr. LISLE. I concur fully in the remarks of the gentleman from Campbell. I do not say that the day on which the elections should be held was made a subject matter of discussion in

the late canvass; but, sir, I will say that the course which has been generally pursued on the day before an election is very much to be deprecated; and there will be great propriety in making a change. If any steps can be taken to avoid the desecration of the Sabbath at such times, I hope every gentleman will agree with me that it ought to be done. The counties may be divided into election districts, as has been suggested, but still the Sabbath will be desecrated; and I think there can be no serious objection to the change which I propose.

Mr. APPERSON. I am decidedly in favor of this amendment, and it is not the first time that I have reflected upon the subject and given expression to my opinions. It is not material what day you may fix, but as Thursday is in the middle of the week, it seems to be more likely to avoid a desecration of the sabbath. Now although I have no instructions on this subject, I know that in my county, and in the county of Simpson, there are very many good people who pray that it may be changed to some other day than Monday. In many of the states of this union other days are fixed. In Virginia and Tennessee I believe Thursday is the day fixed; in Ohio and Pennsylvania the elections are held on Tuesday. But I prefer Thursday to any other day.

Mr. TALBOTT. I am in favor of the amendment, sir, and I am somewhat surprised that any gentleman should object to it. It has been our custom to hold our elections for three days—on Monday, Tuesday, and Wednesday—but, sir, it is understood that for the future, the elections are to be limited to one day. Which of the three days may be determined upon can be a matter of but little importance, and therefore I presume that day will be fixed that will be the least objectionable. I have merely risen at this time to suggest to the mover of this amendment to select Wednesday instead of Thursday, Wednesday being one of the three days on which the elections have heretofore been held. There can be no doubt that the sabbath has been greatly desecrated, and as a christian people we should avoid it as much as possible.

Mr. HARDIN. It is not a matter of much importance whether it is Monday or Thursday. The only reason why I shall vote for Monday is, that we have always voted on Monday. Under the old constitution, we voted on the first Monday in May; now we vote on the first Monday in August. One day is just as good as another. All the difference on account of religious opinions is but of little consequence. I reckon the candidates are busy for several Sundays before the election. I will not say that they do not go to hear preaching, but they are generally on Sundays doing a little talking, and they will be busy on Sunday if we fix it on Thursday, or any other day.

So far as my experience goes, and it is considerable, the whole week before the election is devoted to arrangements. If one candidate forces on the other, public meetings, he must meet him; but from the Monday previous to the election they are making their arrangements, and generally they lie on their oars on Sunday. That has been my practice. I work uncommonly well during that week and then lie still on Sun-



day. I consider that I have done all that I can and then I leave the matter in the hands of the people and the Almighty. I would as soon have it on one day as another, except that we have always had it on Monday. We had it first in May, as I have said, and then after carrying it on seven or eight years, they fixed it on the first Monday in August. And I well recollect the reason why the elections were changed from May to August, as stated to me by Mr. Felix Grundy. It was, that the people who had to travel a great distance, as many did at that time, might be able to cross the streams when they were low, there being few bridges at that time.

Mr. TALBOTT. I understood the gentleman from Nelson (Mr. Hardin) to say, that he would not be governed by any sort of religious sentiment or consideration whatever in voting to fix the day for holding the elections hereafter. Sir, I did not expect to influence that gentleman's vote, or reach his feelings, by any considerations of that sort; he never has had, I believe, a very great fondness either for religious principles or religious people; but we all know that the sabbath has been greatly desecrated under our present mode of holding elections on Monday, and it is to avoid this difficulty, that I go for the amendment of the gentleman from Green—for Wednesday or Thursday, instead of Monday.

Mr. IRWIN. I am for having the election on one day, and I believe that day should be Thursday. The principle reason with me for favoring Thursday is, that on that day the election in Tennessee comes on, as well as in Virginia, and as they are adjoining states, I know there is frequently some interference. If, as is some times the case, they should happen to be opposed to a candidate it would go hard with him. I do not regard the question as of religious importance, for I never knew the sabbath desecrated for the purpose of canvassing for candidates.

Mr. HARDIN. I remarked that I did not care whether the day was changed or not, except for the reason that the people have always voted on Monday, and what they are accustomed to, is always agreeable to me, if it is not positively wrong. I said also, that whether the election was on Monday or Thursday, there would be as much sabbath breaking in one case as the other. I am sorry that the gentleman from Boyle made the personal remarks he did. I think he said it was a matter of indifference to me whether the Sabbath was kept or not.

Mr. TALBOTT. I understood the gentleman to remark that he would not be controlled by any sort of religious sentiment or consideration whatever in casting his vote on this subject. If I misunderstood him, I will not attribute to him that sentiment. I am not disposed to misrepresent any gentleman.

Mr. HARDIN. I made the remark, that the people would be about as much engaged in making arrangements for the election on Sunday, if the election is on one day as another. I acknowledge very candidly, and I acknowledge it with a degree of shame, that I am not a member of any church. I have encouraged my family, black and white, to go to church, and I have contributed toward the erection of meeting houses, perhaps as much as any man, and no man

is more devoted to the great christian scheme than I am, even the gentleman from Boyle not excepted. I have never played the Pharisee, nor prayed and bellowed in the public streets, nor proclaimed my religion from the house tops; and the personal remarks of the gentleman from Boyle were entirely unnecessary, and as I think without provocation. Is it possible that the gentleman is offended at the remark which was attributed to me the other day? I was misrepresented in one remark which I made respecting him. Instead of saying the gentleman "broke down just this side of the flood," I said he "broke ground on this side of the flood."

Mr. TALBOTT. I have had no disposition to allude to the gentleman personally, to criminate or recriminate, to attack or be attacked by him in any way, either personally, socially, or politically. I came here with none other than the spirit of kindness, and I have malice against no man. But I understood the gentleman to have made the remark which I attributed to him, to be published to the world; but I withdraw my remarks, since he has explained what he said, and denies having made the statement.

Mr. HARDIN. I meant in what I said the other day, that the gentleman commenced his argument just about the time of the flood. I did not intend any personal remark to the gentleman from Boyle, nor have I had any but good feelings in any remarks I have made in reference to any gentleman. I bear good feelings to all, and I intend to keep on good terms, and if I attack a man, to break a lance with him, I will do it like a true knight, for I detest a man who will make an attack with a battle axe.

Mr. GHOLSON. I hope this debate on this unimportant matter may end. I will however say, that I agree with the gentleman from Nelson. If persons are disposed to violate the sabbath, they will do it whether the election comes on one day or another. If the election comes on Monday, they will lay aside canvassing on the Sunday generally. Monday is a time-honored day, but the question is of no sort of importance, and I hope the vote may now be taken.

Mr. GRAY. I prefer that the election should occur on Tuesday. It is one of the days on which we have been accustomed to vote, and one which will avoid the desecration of the sabbath. It is a day fixed for the election of the president of the United States, and I think there is a great propriety in having all elections on the same day of the week. The people expect us to fix on some day, and I think Tuesday will suit them as well as any other.

Mr. RUDD. I am in favor of continuing Monday as the day for holding the election, but in preferring that day, I am not governed by exactly the same reasons as those assigned by gentlemen who are disposed to be religious. I like that day for several reasons. It has been the custom of this state for the last fifty years, to commence its elections on a Monday, and there is no occasion to change the time. It is a very great day in Kentucky, when the people, in their majesty, are called upon to express at the polls, their opinions for or against the candidates in the field. The day, in short, is a great political sabbath, and one that should be well observed and regarded. I am glad to perceive the re-

ligious feeling which seems to animate the delegates in this house, and I would suggest to them, whether it would not be well for the people, in view of the election being held the day after the sabbath, to purify and prepare themselves for that event, by attending church, or remaining at home, taking rest, and calmly reflecting upon the important duties they will, as good citizens, be required to perform on Monday. By pursuing this course, they will be enabled to give a correct and honest vote, and also promote the religious interests of the country and its political welfare. Select any other day, and men would not go to the polls in quite as pure and serene a state of mind as on a Monday. I fully agree with the gentleman from Nelson in the remark, that all the canvassing is nearly over on the Saturday night preceding the election. The gentleman from Logan has said that Virginia and Tennessee hold their elections on Thursday, and therefore, he is in favor of that day for holding our elections, inasmuch as the voters in those states will not have an opportunity to interfere with us. Now, the game is perfectly fair for one political party as for the other. It is, as a gentleman remarked the other day, a fair fight, and there is no difficulty about it. Illinois and Indiana hold their elections on Tuesday, and Ohio on Monday, and the people of those states might cross the river and interfere in our elections; but we must keep a good look out, and prevent them. It has been said here, that the sabbath is violated on account of the election, by many persons and politicians. Well, I have nothing to do with their transgressions. I am not the conscience-keeper of any man or set of men. If men deport themselves in a moral and exemplary manner, and do not infringe on the civil and religious rights of their fellow citizens, I conceive we have nothing to do with their religious views and habits.

Mr. McHENRY. There is a reason which applies to the voters in my part of the state, which inclines me to prefer Monday to any other day. I think there will be more votes cast on that day, because there will be less inconvenience in being present on that day. There are, as we all know, many young men, who labor at a distance from home, and especially in the season when the election is to take place, who will desire to vote. Now if the precincts are small, these young men will find it very convenient to be at home with their families on the Sabbath, and to vote in their precincts on Monday, whereas it will be very inconvenient to leave their labor, at a distance of fifteen or twenty miles, and return to vote. Many of these men hire by the month and commence in the first part of the month and that is why I prefer the first Monday. I think also, we should not change old customs unless some good reason can be given; but I think gentlemen who are disposed to desecrate the Sabbath, will do it just as much if the election is on one day as another. These reasons have satisfied me that we ought to continue the day to which we have been accustomed.

Mr. MAYES. I think we are giving too much consequence to this proposition. The gentleman from Boyle has said, that he has heard no good reason why the day fixed by the committee should not be changed. The proposition is

affirmative, and I suppose it should be the duty of the mover of the amendment to give reasons for the change. If I were satisfied that fixing the election on Wednesday or Thursday would prevent the desecration of the Sabbath, or tend to do it, I would certainly be disposed to vote for it, but I do not think it will change the matter in that respect. The people are generally satisfied with Monday for the day of election, and if it has been customary to violate the Sabbath in consequence of its being on that day, I have not hitherto known it. The practice has not existed in my part of the state; but if gentlemen can satisfy me that it will be better to have any other day than Monday, I shall vote for the change.

Mr. TALBOTT. This is the idea, I wish to convey in the remarks I have made. If the election should be held on Monday in place of Wednesday or Thursday, that persons would meet, on the Sunday immediately preceding the election, not merely for the purpose of violating or desecrating the day, but as this is the day on which all the churches of every denomination in the land meet for purposes of public worship, that those candidates and politicians who have no religious scruples, and who care not for the day; who wish to band their men and organize their parties would take advantage of these collections to get their men together and arrange for the next day. Although the candidates themselves might be at home, yet sir, here would be the inducement held out, and the facilities afforded for their friends to visit those worshipping assemblies, and by drinking and electioneering desecrate the day, disturb the congregations, and thus decoy off otherwise sober and sensible young men to some groggery or elsewhere, for political training and seduction; and by bribery and fraud to obtain their votes, and by drinking and otherwise, hold them together until the next day; an end, in my opinion, they could not possibly accomplish, if the election was held on Wednesday or Thursday. Every man would then be scattered throughout the land, engaged at his respective trade or occupation. It is sir, to avoid this difficulty and to attain this end that I go for the amendment of the gentleman from Green.

Mr. LISLE. I know it is with great difficulty that the house can resist the argument of my friend from Louisville, but still I differ from him as to the propriety of holding the election on Monday. If I believed what he stated to be true, I would be the last man to change the day of voting. If I believed that such a course was taken as to prepare men to give a better vote by the business in which they were engaged the day before, that they would in consequence give a better vote for the interests of their country, I would be the last man to change the day. But I believe it is not so, at least in many parts of the state, and I still insist that the interest of the country requires that the day should be changed. I make no pretensions to religion, but I believe that the highest and best interests of the country require that the religious institutions of this country should be maintained. I believe the destinies of the country depend on their preservation.

I have not been engaged in politics till this

year, yet most of us have witnessed the scenes that have occurred on the day preceding the election, and I desire that they may be avoided on the Sabbath if possible. I think the remarks of the gentleman from Ohio are not perfectly correct. We have changed the day for holding the presidential election, and what was the consequence? The gentleman wishes to retain Monday because he thinks it will be more convenient. Is this a fact? Though the last presidential election was held on Tuesday there was as large a vote cast as was ever cast in the state. This shows that it was not inconvenient. If the Sabbath has been desecrated when but few officers were to be elected, how will it be when we elect all the officers that we propose to elect? I think the duty we owe to a large portion of our constituents—I speak with reference to my own—requires that a different day should be taken. It should be the object of this convention to give a fair opportunity that all classes may participate in the benefits which the constitution is to confer.

Mr. ROOT. Although it has been suggested that it is a small affair to waste the time of this convention upon, if gentlemen will reflect but one moment, they will find that much time has been wasted on more trivial subjects. Notwithstanding what gentlemen may say about being purified by going to church on the Sabbath before the election, those who have had experience in political life, know full well that instead of being purified by attending the house of God on the day before, they come to the election reeling, and covered over with sins and iniquities of the canvass. If Monday be fixed on as the day for election, and this constitution stand fifty years, all the wholesome influences of fifty Sabbaths will be obliterated and blotted out. It will do away with one whole year of Sabbaths given to the sons of Adam to fit themselves for a seat in a purer and more happy clime. They talk about electors that have been excited in a controversy waged in bitterness till Saturday night and then resting in quiet on the Sabbath. But I think it has not been thus nor will be in future, but the host of battle will continue their efforts, and hold on to victory or defeat. Look at the example of other states in this christian land, and you find that where they have recently revised their constitutions they have made their elections come on some other day than Monday; and cannot the representatives of Kentucky, a large, free, christian people, concede so small an amount to our holy religion by which our very liberties are to be preserved, as to fix an election a little removed from that day. Talk about the purity of election, the Sabbath day of election! To the shame of Kentucky, be it said, that our elections have been any thing else than pure. Directed by party rancor, and led on in many cases by the vilest demagogues, the public mind has been agitated, seething and boiling; and will you permit him who leads in this excitement to enter into the sanctuary of the Most High God, and there interrupt His worship?

It has been urged that the people have been accustomed to vote on Monday. This is not so. A great majority have voted on Tuesday and Wednesday; but even if it were so, does the gentleman, like those who, in the time of the revolu-

tion, had such a reverence for the old institutions of the mother country as to earn the title of Tories, entertain such a reverence for old customs, because they are old, as to insist on the continuance of this day.

This is an age of reforms, and among these reforms is the purification of society, intellectually and morally. We may make as good a constitution as man can form, yet without moral and intellectual culture, your laws are like ropes of sand. Let what influence this delegation has—solemn, sober and intelligent as they are—let their whole moral force be turned in favor of the christian sabbath. Gentlemen say that it will make no difference with regard to the observance of the sabbath, whether the elections are held on Monday, or any other day of the week; but it will make a difference, and it seems to me it is contrary to the common sense of every man in this house to say that it will not, for every one knows that the day before the election is the great day in which the party leaders are particularly engaged. If the election is in the latter part of the week, the sabbath will then be quiet.

Mr. NEWELL. I do not think there is much importance attached to the day in which we vote. I do not believe that forced prayer is good for the soul, under any circumstances. A man can commit as much crime on a Monday as on the sabbath. It strikes me that with some men, the day on which an act is committed makes a great difference. It makes no difference what a man does on other days, as they seem to think, if he draws on a long face, and goes to meeting on the sabbath.

Mr. WOODSON. I see by the eighth section of this report, that the voters of the commonwealth are required to vote in their own precincts, and no where else; or, at least, they must be residents in the precincts in which they vote, sixty days previous to the election. Most of the county courts come on Monday, and a great many persons in different counties have business at the different court houses on Monday. Some precincts are large, and if some of the voters must attend the court on Monday, they cannot go home and vote in their own precincts. I think Thursday a better day than Monday. I will offer another consideration which may strike the minds of some gentlemen. My experience is that the week of the election is lost by a large portion of the citizens of each county. They go to the election on Monday, stay Tuesday and Wednesday, and squander away the remainder of the week. It is a matter of economy and saving of time to have the election on Thursday. To say that we should vote on Monday merely because we have done so, is not a reason that would influence me. It is no argument to me to say that a thing should exist merely because it has existed.

Mr. RUDD. I am sorry that anything I have said has aroused the religious feelings of my friend from Campbell, for I thought I was rather advocating and aiding the views which he entertains. It seems, however, that I have not been so fortunate. The gentleman has spoken of the disorderly and irreputable manner in which the sabbath preceding the elections is spent in this state, and has intimated that the day is no bet-

ter observed in Louisville. I beg the gentleman from Campbell not to judge my constituency by his own. To save the gentleman's feelings in reference to the alleged desecration of the sabbath, he says he would be in favor of Tuesday, Wednesday, or Thursday, or any other day than Monday. As to Thursday, that would be the very worst time that could be fixed upon, for men would gather together on the Sunday previous to the election day, for the purpose of consulting and arranging matters in relation to the ensuing election, as they could not break in upon the business of the week, and lose three days in canvassing immediately before the contest should begin. Monday, as I have already said, is the very best day that can be selected, and I have given many reasons why it is so. I will give another, there are a great many mountain boys and boys from the flats on Green river, who are not quite as particular about their dress and personal appearance as we of Louisville, and do not put on a clean shirt, and other apparel until Sunday. They are laboring men, and cannot do it. Well, these poor fellows on the sabbath before the election, put on their clean clothes, and perhaps go to church, and the following morning they attend the polls and give in their votes. Change the election to Thursday, and these men cannot appear on the election ground in as clean and comfortable condition—to say nothing about their having to abandon their labor in the middle of the week, causing an interruption to business and much inconvenience to their employers. As has been truly remarked by a gentleman on this floor—if a man sins on a Monday, it is the same as if he had done so on a Sunday. There is no difference. Murder is the same every day of the week, and so is drunkenness, or any other crime. I say the people are accustomed to vote on Monday; but the gentleman says they are not, and that they vote more on the Wednesday. I say they do not, and that more than one half the votes are given in on Monday. I shall now conclude with the expression of my hope that the convention will not change the day of election, for it is the best and most convenient one that we can select.

Mr. GRAY. I ask for a division of the question.

The question was divided accordingly, and taken first on striking out "Monday," which was not agreed to. The motion to insert consequently fell with it.

Mr. WOODSON. I desire to amend the section by inserting after the word August, the words "between the hours of nine o'clock A. M. and seven o'clock P. M."

If there is any thing on earth that we should preserve more free from contamination than any thing else in a free country, it is the right of suffrage. I have listened to eloquent speeches and discussions on this floor, on the subject of man's capacity for self government. It has been said that the people will not be influenced in such a manner as to affect the right of suffrage. Notwithstanding I think the people are capable of self government, I, in common with every other man, must admit that many improper influences are used throughout Kentucky. Indeed no one can doubt, who has had his eyes open to the history of the past in this commonwealth, but

what money has had a powerful influence in all elections. Indeed, treating and bribing have been resorted to in some portions of the country, to a great extent. So much money has been required to carry on a canvass, that it has operated against the election of virtuous men, who happened to be poor. Now, in Kentucky, there has been an almost universal condemnation of three days elections. Why? Because, on Monday night the polls being closed in one part of the county, Tuesday and Wednesday were spent in carrying the news, and if it was a close contest every means was employed to procure the election of the respective candidates. If the provision in the present section is retained, my impression is, that improper influences will continue to be exerted. I admit, if we have but one day, we shall accomplish much against improper influences. But have we done all we can, and all we are required to do on the present occasion? I do not wish to see the constitution encumbered with any thing that ought not to be in it. I wish to see no more detail than is necessary, but I have heard gentlemen say that if this provision is permitted to remain, the legislature will have power to prescribe the hours in which the election shall be held. I think this will not be done. The constitution is the supreme law of the country, and it declares that elections shall be held on the first Monday in August. There I consider the phraseology as including the entire day. Suppose the legislature should enact that elections shall be held between nine and seven o'clock. There would be an act of the legislature; but on the other side, there would be the constitution. The judges of the election would, in nine cases out of ten, put a construction on the constitution by which they might keep the polls open the entire day. What would be the consequence? I have known the polls kept open till midnight under the present constitution. What is the language of the old constitution?

"Representatives shall be chosen on the first Monday in the month of August, in every year; but the presiding officers of the several elections shall continue the same for three days, at the request of any one of the candidates."

I have known them kept open till midnight. Why? Because they wished to get voters to come in who are often brought, even against their wishes, to elect a favorite candidate. The liberties of the people of this country depend on the free, unbought exercise of the right of suffrage. If the amendment I offer is adopted, it will accomplish this object, because they cannot know who is ahead among the different aspirants for office. But if the polls are kept open through the entire day, do we not know what will be the result? Efforts will be made to keep the polls open that the neighboring precincts may be heard from, and when heard from, great efforts will be made to carry the election of a favorite candidate. But, if this is adopted, when the hour of seven arrives, the polls will be closed, the people will have voted for their representative or member of congress, and there will have been an exercise of the free, untrammelled right of suffrage, upon which the liberties of this country, to a great extent, depend. In looking to the future I see nothing more alarming than

the manner in which our elections are likely to be carried on, because merit is not regarded as it should be by the voters, and we know that voters are bought and sold in lots, of dozens and fifties. By this amendment you cut off the ability of individuals to practice these frauds on the right of suffrage, on the great mass of the people of Kentucky. I do not see what good reason can be offered against the amendment I propose. Shall I be told that the people cannot all come to the polls and vote within the hours I have pointed out. I have allotted ten hours for voting. If, in populous places, as in the county of Jefferson and Fayette, they have not time to come to the polls, it will be an easy matter for the legislature to make more precincts so that they can. When this is done, the bribery and corruption, which now exist, will cease.

Mr. HARDIN. I did not distinctly understand the reason that was assigned by the gentleman for fixing the hours of 9 o'clock in the morning and 7 in the evening as the limit for the continuance of the elections. The sun will rise, I believe, on the first Monday in August about 5 o'clock, and yet we are to wait four hours before the polls will be opened. I apprehend that some inconvenience may arise from deferring the hour of commencing. It will be better I think to fix an earlier hour. It is important to afford an opportunity to old men to give their votes before the crowd becomes too great. I am opposed to making any change in reference to the hours for opening and closing the polls unless some good reason be assigned why it should be done.

This government has been in operation about fifty seven years, and ever since it commenced, the plan that we have pursued in reference to this matter has been found to work very well. We have never seen any good reason for making a change.

Mr. WOODSON. As the gentleman is anxious to have an opportunity to get to the polls—as he is becoming an old man—I will move to insert “6” in place of “9.”

Mr. HARDIN. I have no objection to that.

Mr. PRESTON. As a member of the legislative committee, to whom this subject was referred, I will state, for the information of my honorable friend, that at one time the committee considered it would be proper to insert a provision regulating the hours at which the polls should be opened and closed; but upon consideration, the committee struck out that clause for the very reason that has been urged by the gentleman from Knox why it should be inserted. In the first place, we thought that as we were reducing the number of days on which the election should be held, from three to one, we ought not to declare that the time of election should be confined to the fraction of a day; we thought it would not be proper to restrict the time of election beyond a day. In the next place, we knew of no evil that had resulted either in this state or any other, from merely declaring the day on which the election shall be held without prescribing hours. We have been living some fifty odd years under the present constitution, as the gentleman from Nelson has observed, and no practical evil has resulted from the course that has been pursued; and in looking over the constitutions of other states, I do not find a single one where it

has been found necessary to restrict the time of holding the election beyond one day. For this reason we thought it would be better to leave it unrestricted, by using the words “one day,” instead of defining the hours, as it was unprecedented to do so, and consequently we did not deem it necessary to introduce such restriction here.

Mr. C. A. WICKLIFFE. I am obliged to the gentleman from Knox for offering this amendment, and I shall vote for it as now modified. Gentlemen say that no evil has resulted from the different constructions given to the word “day” in our present constitution. I think, sir, if I had George Knight here, from Shelbyville, I could prove the reverse. He was defeated once, when a candidate for congress, by means of the polls being kept open until 12 o'clock on Wednesday night. I can state for myself, that in the first essay I made for a seat in the congress of the United States in 1822, with the full knowledge that I was at the time three if not four hundred votes ahead, an effort was made at sundown to keep the polls open until 12 o'clock, on the ground that that hour was the termination of the day. All the officers of election were opposed to me; but one of the judges, believing that such a proceeding was not one that could be justified by a fair interpretation of the constitution, after candles were lighted, noted the state of the polls, and rose from his seat and said he would preside no longer at the election. His declaration had its effect, and the recollection of an election that had taken place not long before being fresh in the minds of an honest community, they cried out “no midnight election.” The candles were blown out, and the election was declared to be over. These are two instances that have occurred to my memory in which difficulty has arisen from the want of stated hours for the opening and closing of the polls. I suppose that it is understood and intended by this convention that no election shall be held after sundown, and to commence at 6 o'clock, I think is early enough. I shall vote therefore for the proposition of the gentleman from Knox.

Mr. APPERSON. I think it is very necessary that there should be a specific limitation as to the hour of opening and closing the polls. There are frequent instances of continuing the election until 12 o'clock at night. I can appeal to my friend from Lexington if this has not been the case in his county. But on the other hand, the polls are sometimes closed at an early hour. There is no uniformity, and this want of uniformity has been productive of much difficulty. In the county of Montgomery, in 1843, I wanted to introduce votes in the afternoon of the day of election, but I was told that they could not be received. My opponent got his certificate of election in consequence of the polls being closed at an early hour; but upon a proper representation being made, we run the election over again, and I obtained my seat to which I was entitled before. There is a great want of uniformity. In some counties, the election is held after night, in others it is terminated before the sun goes down. Let us fix the hours in the constitution and then there will be nothing to quibble about.

Mr. HARDIN. I am willing to agree to the

resolution, if the hour of 6 be inserted, not on my own account, but for general convenience. We cannot make a provision in the constitution for extreme cases; it is utterly impossible.

Mr. CLARKE. I can add very little to the remarks of the gentleman from Louisville, in favor of the section as it is. The objection to the section is, that if it remains in its present shape, the polls in the different counties may be kept open until 12 o'clock at night. It was thought by the committee that the legislature of the state would have the power, if any evil should result from a practice of this sort, to change it. As was remarked by the gentleman from Louisville, we did once agree to insert in the section that the polls should be opened at a certain hour, and closed at a certain hour; but when the committee agreed to amend this portion of the section by this provision "and the mode of holding elections shall be regulated by law," they concluded that it would not answer to restrict the voting to a particular hour of the day, but that the legislature would have the power, if it should become necessary, hereafter to impose such restriction. It is also true that we examined the constitutions of all the different states, and according to my recollection, we found no constitution where there is any such restriction as that proposed by the gentleman from Knox.

Suppose the polls are held open in every county until midnight, and illegal votes are given, the party injured has his remedy. I have no recollection of an election in the part of the country where I reside, in which the polls were kept open after sun-set; but I am of the opinion, that if exception should be taken to voting after sun-set, or if it should be the sense of the people of the state, that a limit should be placed on the time of voting within one day, the legislature will have full and ample power to impose that restriction. I shall vote for the section as it stands and against the amendment.

The question being taken on the amendment, it was adopted.

The secretary then read the 4th section, which was adopted without amendment, as follows:

Sec. 4. No person shall be a representative, who, at the time of his election, is not a citizen of the United States, and hath not attained to the age of twenty four years, and resided in this state two years next preceding his election, and the last year thereof in the county, town, or city, for which he may be chosen.

The 5th section was then read by the secretary as follows:

Sec. 5. The general assembly shall divide the several counties of this commonwealth into equal and convenient precincts, or may delegate such power to such county authorities as they may by law provide; and elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, and in the several election precincts into which the counties may be divided: *Provided*, That when it shall appear to the legislature that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town, shall be invested with the privilege of a separate representation, in both houses of the general assembly, which shall be retained so long as such city or town

shall contain a number of qualified voters equal to the ratio, which may, from time to time, be fixed by law; and thereafter, elections for the county, in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation, unless such county, after the separation, shall also be entitled to one or more representatives.

Mr. IRWIN. I will move to strike out the three first lines of this section down to the word "and," and insert the following:

"The general assembly shall cause the several counties of this commonwealth to be divided into civil districts, each of which shall constitute an election precinct."

The object I have in view in proposing this amendment, is this. It will be recollected that the counties are to be laid off into districts, for the purpose of holding the elections for members of the legislature, and I suppose the elections in those districts will proceed in the same manner as they would in counties. The house will readily perceive the object of the amendment. As it has been considered necessary to make election precincts, for the members of the legislature, I think we ought to provide that such other officers as we may have to elect, shall be elected at the same places.

Mr. PRESTON. I will remark to the gentleman from Logan, that the house has not yet decided that these districts shall be established. It may probably do so; I suppose it will. But there is nothing in the first part of the section that precludes the legislature from doing precisely as they may desire in this matter. If it should hereafter be determined to establish these districts, it will be entirely in the power of the legislature to do so; but as yet such districts have not been provided for.

Mr. IRWIN. I take it for granted, the counties will be laid off into districts or precincts for the purposes of election, and my desire is that they shall harmonize.

Mr. McHENRY. Before the question is put I will move to strike out the words "equal and," in the second line. The word "convenient," I think will be sufficient. It will then read, "The general assembly shall divide the several counties of this commonwealth into convenient precincts."

Mr. PRESTON. I have no objection to that.

The amendment was agreed to.

The PRESIDENT. I have a difficulty in regard to the section as it stands, which I will suggest. The authority given to the legislature, to divide the counties into districts will occasion a great amount of local legislation, on the subject of these precincts, in the establishment of them and in the alteration of them from time to time; and it strikes me that the legislature never can act as well as the local authorities who are familiar with the position of the county, and although this section permits them to delegate the power to the local authorities of the several counties in the commonwealth to make these divisions, still the legislature will have a revisory power over them, and that revision will lead to an immense amount of local legislation, which I desire, if practicable, to avoid. That is the difficulty



which presents itself to my mind, in relation to this part of the section.

I see it is intended that there shall be districts for electing justices of the peace.

Now it would be very inconvenient to have two sets of districts in the several counties, one for political elections and one for the election of justices of the peace and constables. I would like to see the districts that may be laid off for one purpose, subserve the purposes of both.

It strikes me that it had better be left to the local authorities of the county, with some such provisions superadded, as that the number shall be but so many, so as to give to each county the necessary number of magistrates. I merely make this suggestion for the consideration of the gentleman from Logan.

Mr. IRWIN. I know that the counties along the state line in Tennessee, have been laid off as I propose here, into civil districts. I suppose the amendment that I have offered will answer the purpose which the gentleman from Louisville has just alluded to.

Mr. PRESTON. In regard to the clause to which the gentleman from Logan alludes, it was in the contemplation of the committee when the section was drafted; and I suppose it entered into the consideration of some of the gentlemen of the committee, as into mine, that there ought to be double power in regard to these precincts, by the legislature reserving to itself, in the case of its tyrannical exercise, the right to remedy any evil resulting from the misuse of this power by the local authorities, or in case they refuse to exercise it. That is an answer to the first objection. The second objection is already embraced in the reply which I made a few moments since, in regard to the amendment of the gentleman from Logan. We were not advised at the time this report was made, as to what would be the ultimate action of the committee, on the subject of the county courts, as to organizing justices districts within counties. I presume the committee will have no objection—I shall have none—that the members of the assembly shall be elected in the same precincts provided for the election of the justices of the peace. But the section may be incongruous, perhaps, with the various propositions that may be submitted. All that we intend to do here, is to declare that equal and convenient precincts shall be established, and when the committee of arrangement takes up the subject, they will make those various provisions harmonize, and probably these precincts for magistrates will be the very best for all other purposes.

Mr. C. A. WICKLIFFE. If the gentleman will refrain from pressing his amendment, I think the committee and himself will agree in regard to this matter, and that his views may be carried out. My idea is, that we should provide for the county courts, and if the respective counties and districts amount to no more than one-half of the number of the justices of the peace allotted to the county, it may be so arranged. My idea is, that as the committee on county courts have agreed that two magistrates are to be allotted to each district, they may make the civil, as well as the election districts correspond.

The question was then taken on the amendment, and it was rejected.

Mr. HARDIN. I would invite the attention of the chairman of the committee to a part of the fifth section: "Provided, that when it shall appear to the legislature, that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation in both houses of the general assembly." I want to know if the committee intend that a city that has the number of inhabitants that is fixed as the ratio for representation in the senate, shall be entitled to elect a senator? I think the section needs some modification. Some delegates on this floor have directed my attention to this provision in the fifth section, and I have had occasion to examine it. There is another section in this bill, which refers to the apportionment of representation; and the term ratio, here, is used with reference as well to the representatives to the lower branch of the general assembly as to senators. This section may, perhaps, be obnoxious to the charge of being a little ambiguous; but my own opinion is, that no construction will be regarded as a fair one, that does not permit a city or town, where there is the requisite number of qualified voters, to send a senator. My own impression is, that this will be the fair construction, although if it be considered ambiguous, I have no objection that the section shall be amended, so that this intention may be more clearly expressed.

Mr. LINDSEY. Mr. Chairman, I move to strike out the words "in both houses of the general assembly," believing we go far enough in separating a town or city from her county, for representation in the lower branch of the legislature. These words stricken out, the report of the committee will read as the present constitution does, and that has been construed to withhold from cities and towns separate representation in the senate.

Counties are made for the convenience of citizens, to enable them to carry on their affairs where the agency of the government is necessary, and representation has to be apportioned in reference to them, as well as to population.

The county of Jefferson, for example, has her courts, and offices for the transaction of county business in the city of Louisville. The interests of city and county are blended, and all legislation for county purposes applies to both. It appears to me, the general rule that keeps the people of counties together in the selection of their representation, is far enough departed from, in giving separate members in the house of representatives to a city or town.

Mr. HARDIN. I only rose originally, and do so now, to say that I certainly do not intend to deny that a city should be entitled to senatorial representation when they have a sufficient number of voters, and if a better substitute is not provided, I will prepare one.

Mr. PRESTON. I will ask leave to make two verbal amendments by striking out the word "legislature," and inserting "general assembly," in the seventh line, and inserting the words "either or" in the tenth line of this section.

The amendments were agreed to.

The question then recurred on the amendment

proposed by the gentleman from Franklin, to strike out from the tenth line, the words "in either or both houses of the general assembly."

The PRESIDENT. Under the present constitution, and under, I believe, as gross a construction as was ever put upon such an instrument—after the city of Louisville became entitled to a separate representation in the lower branch of the general assembly, and it was forced upon her, and after she had the ratio that entitled her to a senator, it was denied to her; and she has never had a senator, though she has had, at two periods when elections were held, a sufficient number of qualified voters to entitle her to one. And the phraseology of the provision that has been reported here, was intended to place on the correct ground her rights, and the rights of all other cities that shall in time grow up in the commonwealth of Kentucky. The city of Louisville, and the county of Jefferson, though having voters enough to give two senators, have but one; and the consequence is, that the city of Louisville has the power completely to control and swallow up the county of Jefferson, by force of her superior numbers, and the disproportion will continue to increase, and the effect will be, that the voice of the county of Jefferson, will be entirely suppressed in the senate of Kentucky, for all time to come; unless she may control the vote, by taking the choice of two individuals, whom Louisville may present; and though she may have a sufficient number of qualified voters, exclusive of Louisville, to entitle her to representation in the senate, she never can have it under the restrictions that will be put into the present constitution, and the city of Louisville never will have it.

The present constitution was intended to make representation as equal and uniform as it could be, and that the voice of freemen, whether in the city or upon the mountain, should be the same in making the laws that are to govern them and their posterity. The considerations, and the reasons that operated to prevent the city of Louisville from having representation in the senate, appear to have been of a selfish character. In order that other sections of the state might enjoy that representation to which they were not entitled by numbers, a senator was refused to Louisville, although she was entitled to one according to the construction put upon the constitution. Under the constitution that we are about to make, we expect that equal rights and equal justice in regard to representation will be meted out to all portions of the state. I do not desire to lessen the voice of any section of the state in the legislature. I desire that we shall come, as near as we can, to an equal representation in the legislature, and I hope and trust that gentlemen will not consider themselves at liberty to deny to us, in Louisville, or in the county of Jefferson, the same right of representation which they claim for themselves. And here is the ground where we shall be able to test the devotion of gentlemen to the principle of equality of rights, about which they have declaimed so much.

The amount of political authority that they take from the freemen in the city of Louisville, and from the freemen of the county of Jefferson, they appropriate to themselves; and so far

as they appropriate it to themselves, and stifle the voice of a number of freemen, equal to the ratio that will give a senator, to that same extent do they deny that they are in favor of giving equal rights, and equal privileges, and equal political power to all the people of the commonwealth.

I could not, however much I might debate the subject, put the convention more fully in possession of the ideas I have upon this subject, and of the feeling of injury that will visit the bosom of every individual who has his rights thus trampled upon.

Mr. CLARKE. When the committee approached this question, there were various plans suggested, or rather there were three principles suggested on which representation might be based. The one, however, that we considered the proper principle, was, that it should be based on population. I am aware, sir, that the provision contained in the section, which was regarded as ambiguous, and perhaps to some extent may have been so, was inserted for the purpose of enabling towns and cities in the state to be fully and fairly represented. Every member of the committee who assisted in its insertion in this bill, did so for that purpose, and none other. I was unable to discover why the citizens of a town should not be represented, where the citizens of the country were represented; and I thought if we established population as the basis of representation, that it was but fair and right that the population of a city, wherever it might be, should be fully and fairly represented. I apprehend that there is no gentleman here, who will say, that if there are four thousand legal voters within the limits of the corporation of the town of Frankfort, and four thousand voters be the ratio fixed by law for a senator, those four thousand voters should not be represented in the senate of the state. While I make this statement, I know that perhaps after the lapse of fifty years, these cities may grow to be so large that in sending their concentrated influence into both branches of the legislature, they may, perhaps, to some extent, overshadow the balance of the state; but we have laid down the great principle, that representation shall be based upon population, and we cannot—unless we depart from that principle, and I believe it meets with the sanction of every gentleman in this house— withhold from a city the right to be represented in both houses of the general assembly, and at the same time extend the right to the citizens of counties.

I think the amendment made by the gentleman from Louisville, destroys all that want of distinctness that was thought to exist by other gentlemen. After having inserted the words proposed by him to be inserted, there can be no doubt as to the interpretation, and a city or town having fifteen hundred qualified voters, and fifteen hundred being the ratio of representation in the lower house, the city or town would be entitled to a representation in the lower branch of the general assembly; and if she have four thousand, and that be the ratio for senator, she will be entitled to a senator in the legislature of the state. That is all right sir, and it is, as I now remember, nothing more nor less than the

sense of the whole committee that made this report, or authorized it to be made.

Mr. LINDSEY. I made the motion to strike out in all fairness, not intending to point at Louisville, or any other place in particular. I did it to preserve the old constitutional provision, and not extend separate city representation to both branches of the general assembly, as proposed by the report of the committee. I think, as was remarked when the motion was made, there is propriety in adhering to the constitutional rule now in being, and of not extending it.

The honorable chairman of the committee on the legislative department contends, we must look to population alone as the basis of representation. The general principle is right, but it has to be applied to other matters than population. We have to apply it to population arranged now into counties, cities, and towns, an organization and arrangement we would not de-range or break up for twice the inconveniences that may result from slight inequality in representation.

This far, political and civil regulations and property must necessarily affect the principle that representation shall be based on population.

I need no better argument and proof of what I have just stated, than is furnished by the whole section reported by the committee. Take their rule of apportionment, and apply it to any ratio you choose to assume, and see whether there will not be inequality. Counties having two-thirds the ratio are to have one representative—giving here a violation of the rule. Counties having the ratio fixed and two-thirds more, violate it again; and so in placing residuums in any form you can assume. Indeed sir, it is obvious, you cannot take population alone, as the basis, without disregarding the established internal organization of the state, and producing more difficulty than slight inequality will cause. And were you to make new lines and new internal arrangements geographically, they would be ever varying and changing as population increased or diminished.

To my mind, inequality in a greater or less degree must ever exist until we have a more permanent and fixed population, and better and more equal county organization—matters I do not expect to see.

We are sir, then to take population not in the aggregate as we may find it at any apportionment, but we must take it as we find it fixed and circumscribed by county lines, and the best rule is that which will leave the smallest numbers unrepresented, and at the same time give to each county some weight and voice in the administration of state affairs.

Where taxation and fair representation go together, as they do in the governments on this continent, though the representation may not be based wholly on population, but as nearly so as is convenient to existing county arrangements, and having in view the balance of power among the counties, there is no danger, as the honorable president of the convention has argued, of liberty and equality being trampled in the dust.

I put it to honorable delegates, when they give to the city of Louisville, for example, her separate city representation, backed too by the

force and power of the representation from Jefferson county, having county interests in common with the city, and swallowing up, perhaps, and adding to her representation the force and power, to some extent, of a neighboring county, by her residuums so easily made at any period, do we not give enough without increasing her political influence and strength, by adding city senators. It appears to me we do all that is right, and as much as should be asked. And we do not do that violence which honorable gentlemen suppose, to the rule, that population shall constitute the basis of representation.

Counties having cities and towns ought not to influence us to break up county organizations for them, because they may not have city as well as county influence in both branches. Although we may slightly deviate from the rule, that population is to be the basis of representation, no more than those of us of smaller counties having no cities or towns, should expect to see county organizations abandoned, because when they are regarded, inequality of representation may result in numbers above or below the ratio or in residuums. It will be found, when cyphered out by any rule, the old constitutional plan is as fair and as equal as we can make it.

But sir, government is to look to other matters than equality of representation. The weak are to be protected from the more powerful; the poor from the overshadowing influences of the rich. We may not be able to effect these desirable ends by any constitutional rules to be applied to individuals; but sir, we may, in looking to counties, preserve, to some extent, a fair division of power and influence, and keep the stronger from swallowing up, in the legislation of the county, the interest of weaker counties.

Some of the arguments of my Louisville and Jefferson county friends on the proposition to separate the county and city, and give them separate municipal organization for county purposes, might be applied here, but I only make reference to them.

You know, Mr. Chairman, that this principle of preventing large interests from destroying smaller ones, is always provided for in your acts of the general assembly, creating corporations for any purpose. The voting or representation goes by shares until you arrive at a certain number, and then decrease rapidly in the hands of the holders of large numbers so as to prevent large interests from wholly overpowering small ones. I will not proceed, sir, to state the rule by which they calculate influence in this way. The reason of it is obvious enough. It is a fair one, sir, to apply to representation to cities where there must, in the nature of things, be a concentration of strength from numbers, wealth and talent, and a union of interests that will always give force and effect to the wishes or wants of a people thus situated. These things are not to be found in the diversified interests of a people scattered over a large territory and following pursuits of various kinds, not dependent one on another as in cities. And when, sir, with these powers staring us in the face, we depart from this county arrangement, in order to give city representation, and we place no restriction on the increase of a city's popular representation in that house of the general assembly which

governs the taxing power, the representation from cities here ought not to complain if we refuse to depart from county organization as to senatorial representation.

There is another view of the matter not to be wholly disregarded. The several representatives from the smaller counties seeing the superior advantages which concentration of wealth, largeness of population, and union of interest, found in cities, will have over their people scattered in large territories, especially when they are giving to the cities representation, where taxation can alone originate, have the right, on the principles of self-preservation, to check that superior influence, in some degree, by holding, themselves, more weight in the senatorial branch, which branch of the government we know is not designed or intended to represent single interests, or the immediate popular will, as in the house of representatives.

For myself, I would as soon give a city an increased number of representatives over what she might be entitled to by the apportionment, as to give her a separate senator. He will represent a single interest as much so as if he were a representative in the lower branch, while other senators throughout the state will represent several interests, as distinct as separate county organizations can make them—or the limited number of senators allowed, must necessarily require several counties, not having cities, to be united to form a senatorial district.

Sir, as a city grows in population and wealth, and her concentrated power expands thereby, so will her overpowering political influence widen. For when she gets two or even three senators, there will be but one common interest to represent—the one city's glory to promote. None of her senators will be like those who represent several counties, who have always to compromise between the several county requirements and wants and regard all alike. They will strike always, ever and alone, for their city's promotion and power, and nothing else.

We are not taking from a city any right or privilege she has heretofore enjoyed. The report of the committee is extending her power and influence in the legislative department. We are asked to give it; shall we do it? We are not bound, as I have tried to show, on the principle contended for by the chairman of the committee, as he has assumed as the basis of representation. We ought not, for the other reasons I have hinted at; and I do believe when you look to proper equality and balance of power in the senate, you will concur with me and cause the motion to prevail. I am too unwell to enlarge further, and should not have made the motion in the first place, or spoken now, had other delegates indicated a purpose to do so.

Mr. TURNER. I did not expect that we would reach this subject to-day, and therefore I am not prepared to express my views upon it as its importance requires. But I will submit some suggestions. I have no desire to do injustice either to the people of Jefferson or Louisville, or of any other portion of the state, but it does seem to me, that by the adoption of the principle contained in this section, a great injustice will be inflicted upon the general interests of this commonwealth. I concede that representa-

tion ought generally to be based on population, but I believe also that there are just and proper exceptions to that rule, the reasons for which, at a future day, may strongly develop themselves in Kentucky. The southern and interior portions of the state are and ever will be agricultural. An agricultural population is never so dense as a manufacturing and commercial one. Now take the people along the Ohio from one extreme of the state to the other, including the cities and a strip of territory of ten miles in width along that line, and their pursuits will ultimately be commercial and manufacturing, and are so now to a considerable extent. What is the great and predominating interest that should be secured by our policy here? It is the agricultural—the rights of those who have invested their capital in agriculture. But unless we adopt some proper safeguards, the time will come when that interest will be entirely subservient to the commercial and manufacturing interests of the state. Take that region of country along the Ohio to which I have referred, and the prospect is that the time will come, and probably within fifty years, that it will include a majority of the population of the state. The cities and manufacturing establishments that are rapidly growing up all along that river, give ample promise that this will be so, and I am not opposed to their growth or pursuits. Shall we, in fixing upon a basis of representation, put the great agricultural interests of the whole state entirely within the power of that strip of territory along the Ohio? By what kind of population is that territory to be filled up? There is a very clever population there now, or a large part of it is such, and I doubt not a great portion of it will continue to be so; but there will be a great portion who will have no kindred feeling with the great agricultural interests of Kentucky at all. It will be manufacturing and commercial in its characteristics, and will comprise many, nay I apprehend a majority, who prefer different institutions from what exist in Kentucky; those institutions I mean which created the excitement last summer. No man can doubt that those influences are growing up in a manner which will shake to its foundation the great institution we have come here to protect, unless we guard it in fixing the basis of representation. Mark how this institution is crumbling away all along the Ohio, and how unsafe this description of property is becoming on that margin of the state. Mark who are taking the place of the black population, and observe the feelings of the great portion of the people who are filling up these manufacturing towns and cities all along the river. They are generally hostile to the institution of slavery, and disposed to go hand in hand with its enemies that live across the river. Then it behooves us to look to this state of things, and to guard against its effects. If we are not willing that our property should be placed within the reach of those coming over and settling on our borders, and who do not possess a kindred feeling on the subject with the residue of us, we must provide a barrier to their political power and action in the constitution we are about to make.

As the gentleman from Franklin, (Mr. Lindsey) has said, representation is not in the United

States, or in any part of the world, based entirely on population. There may be and there are reasons in the organization of every government why it should not be exclusively based on this principle. I am utterly opposed to basing representation on property; it should be based on population where it is stable and fixed in its residence, but not where it is floating and unsettled.

It is not right where the interests of a community would be insecure under its allowance. Why is it not adopted in the constitution of the United States? It was seen that the large states would swallow up and control the small ones, so that their influence would be as nothing in the affairs of the federal government, unless the same power was given them in one branch of congress as was given to the larger states. And the compromise was, that in the house of representatives, white population should be mainly the basis of representation, but that in the senate each state should be on an equal footing, the small with the large states. Little Delaware has as great a voice in the United States senate as the empire state of New York. Again, white population is not the sole basis of representation in the house of representatives in congress—nor is representation in a majority of the states of the Union, based without exception on numbers.

My honorable colleague and myself represent a pretty large county, but if you adopt the proposition now pending, the little and the interior and second sized counties will be greatly wronged.

A large county will be allowed on that ratio one senator, or one-thirty-eighth of the power of government, while several small counties would not have that power, though their population should come within ten votes of the ratio. The result would be, that a certain number of voters in a town or city would give the county and town a senator, when if the same number was distributed between two counties they would have none. The principles embodied in this report would therefore destroy the influence of the small and second sized counties in the state in its senatorial representation. Half a dozen of them would be huddled together to get a representative in the senate, and the cities and towns, constantly increasing, would soon gain the entire control of the legislation of the state. Adopt the report, and the strip of country on the Ohio river to which I have referred, in less than fifty years, will govern the state. What then will be the result? Wherever commerce and manufactures prevail all know that the people are generally disposed to more extravagance in the public expenditures. Great wealth is accumulated in a few hands by these pursuits. This is not the case among an agricultural people, most of whom after supplying their families with the necessities of life find it difficult enough to pay their taxes, let them be as low as they may. Their nett profits are small. The result would be, that these commercial and manufacturing people, disposed as they are to go on a more extravagant figure, would tax the agricultural interest to a burdensome extent, and would shape the policy of the state to subserve their interests and not the interests of agriculturists.

But what is more important, increasing in the way I have described, they will, as soon as they

attain a majority here, attempt to decide whether we shall keep a certain portion of our property or not. Now, I have not changed my opinion as expressed some weeks since, that it is better not to bring more of this property here, for this was one of the objections I have long entertained to investing more capital in slave property. I believe it is against our interest to increase that property, because I have apprehended the danger I have alluded to, and because I believe that if we do not adopt some basis of representation that will secure the power of the commonwealth to the great agricultural interest, the institution will go down. I still adhere to all I said on the subject of slavery early in the session.

What has been the increase in these Ohio river counties? When I came here in 1823 as a member of the legislature, Campbell county was scarcely populous enough to secure it one representative. Since then it has been divided, and Kenton made from it, and now Kenton and Campbell, according to the ratio proposed here, would have three or four representatives and nearly two senators. And there are other points all along the banks of the river growing up in the same way. What has been the growth of the other parts of the state? But little comparatively, except at the mouth of the Tennessee river, which send two or three more representatives—and every apportionment exhibits the fact that the power is stealing away from the great agricultural interests of the state towards the Ohio river, and going over to the commercial and manufacturing interests. And its tendency thus to withdraw from the southern and interior parts of the state, is strongly exhibited under the basis of representation proposed in this report. Those river counties now send here men who agree with us in sentiment mainly, but there is a feeling coming across the Ohio that may send here men who will speak a different language and sentiment from what these gentlemen do. They were this year very near carrying Louisville, or at any rate, were strong enough to do a great deal of mischief. And I believe that in Campbell they were very near doing the same.

Mr. ROOT. Not at all.

Mr. TURNER. Does any one believe that this representation from along the banks of that river, in fifty years to come, from present indications, is likely to be in favor of that institution we have been assembled here, in part, to protect? Can any one believe it, when they see the change that is going on in the character of the population? The tendency of this incoming population is to accumulate in cities and in manufacturing establishments, and their sympathies are not with us. I think that one-thirty-eighth part of the power of this commonwealth is as much as Jefferson and Louisville, or as any county should ask; and I believe that the residue of the state ought to have the other thirty-seven parts. I do not blame the gentlemen from Louisville for attempting to secure all the power they can, because their constituents would be displeased with them if they did not; but still, they must be aware that it is not safe to the balance of the state, and that it is the duty of those representing the agricultural interests to oppose it. There has been something said in regard to the

foreign vote—I mean the vote of those who come in from other states, and foreign countries. Go to the manufacturing establishments along the river, and you will find one-third, if not one-half of the population there to be those who are not Kentuckians by birth. Well, suppose the whole country along the river settled in the same way, are we disposed, when they become a majority of the population of the state, to let the whole agricultural interests of the state, including the mass of the native population of the country, be governed and ruled by these immigrants? I see a state of things which I believe will eventually result in giving the majority and full control, to the hands of people not favorable to the institutions of Kentucky; and I am for checking it before it is too powerful to control. Let us begin at once. I mean no disrespect to any of the river counties, for it is a state of things which I have no idea those residing there desire to produce; but that it will result in the way I have pointed out, I think is most manifest. Go now to the towns and cities on the Ohio river, and contrast the condition and appearance of things to what they were some years ago. Who compose the waiters at the taverns, and the servants and laborers of the towns and cities? Who do you find filling these stations? Not the blacks that we once saw there; but another description of people who are continually coming in, and who are ready to act in concert with others out of the state, against the institution of slavery, and who will break down our institutions after a while, if not checked by our action. I understand this to be particularly true of Louisville. This part of the population is constantly migratory—is unstable, and feels very little community of interest with native Kentuckians. It is here to-day and gone to-morrow. I mean a large part of it. They never have, and never will settle in the interior, to any great extent, while the institution of slavery exists. Their natural inclination is to the banks of the Ohio river, the vicinity of different institutions from ours. Well, it seems to me that no county in the state ought to have more than one senator, especially when a large proportion of the population to uphold it is such as I have described. And I see no reason why this matter of senators for Louisville is brought up in this section, relating to representatives. Why, if it is not intended to make an invidious distinction, is it not placed in those sections where the residue of the senate is provided for, and which we have not yet reached? It does not belong where it is. Is it to secure Louisville first, and to let the balance of the state struggle for the residue of the senators? Shall we put no limitation on the number of senators or representatives a city shall have? Shall we allow one city, if it grows large enough, to govern the whole state? I have thrown out these suggestions on this subject, somewhat crudely, as the question has come up when no one expected it would, and ask for them the consideration they may be entitled to. The provision of the old constitution, that no county shall have more than one senator, is far preferable to the report of the committee, in my estimation. Let the representation in the lower house be mainly on the basis of population, if you choose—not, however, without some limita-

tion as to cities—but when you come to the senators, let no county have, in any event, more than one senator, if she does embrace a city within her boundary. One-thirty-eighth part of the whole legislative power of this commonwealth is as much as any county ought to ask, and as much as the convention ought to grant.

Mr. DIXON. I do not understand that this question is confined to the cities of Louisville, Covington, or any other cities in the commonwealth. The gentleman who has preceded me, I understand in the remarks which he has thrown out, to assume this position—that it is not right that the people living upon the banks of the Ohio river, embracing a district of country ten miles wide along the extent of that river, and the people living in the cities there, or the cities in any part of the state, should be placed on an equal footing, so far as representation is concerned, with the balance of the state.

Mr. TURNER. I did not take that position. I said that I was willing cities should have separate representation from the counties.

Mr. DIXON. I am certainly not deceived in the effect, at least, of the gentleman's argument. What was that argument? Was it not that the whole of the country lying on the banks of the Ohio river, from its upper to its lower extremity, was to be inhabited by foreigners, paupers, emancipationists, and men without property, who, in all probability, were to control the elections in this country in time to come, and who also would be adverse to the best interests of the people of the state? Did I not, then, understand the gentleman's argument aright? The disfranchisement of a large number of the freemen of Kentucky, and for what purpose? Because, first—a vast multitude of foreigners, emancipationists, and men without property, collect together in cities; and from the exposure of the borders of the state on the Ohio river to the free states, the same kind of population will inhabit the whole country, commencing at the lower and running up to the upper line of the state, and including a distance of ten miles from the river. These people, says the gentleman, will have no common interest with the agricultural community; that if permitted to exercise the right of suffrage, the time will not be distant, when they will control the elections of the state, and emancipate all the slaves. Although a pro-slavery man myself, in the fullest extent of the term, I am not for disfranchising any citizen, and depriving him of the right of suffrage, lest, at some future period, he vote at the polls that slavery shall no longer exist in Kentucky. To disfranchise the non-slave holders of Kentucky from the apprehension that they may, at some future period, vote against the institution of slavery, is to arouse the whole of that class of the population against the institution, and to insure its final overthrow.

But I will here say to the gentleman, that in the legislature, if the question of slavery is guarded in the new constitution, as I apprehend it will be, that body can never have or exercise any legislative power over the subject. We will never give to the legislature the right to free the slaves, unless with the limitation that the owners shall be fairly compensated for them. I have no fears, then, of letting all the freemen of Ken-



tucky be fairly represented in the legislative department of the government. All who are subjected to the burthens of government should be justly and equally represented in the body that makes the laws by which these burthens are imposed. To deny this, would be to tax the people without their consent—to subject them to evils better suited to the abject condition of the serfs of Russia, than to the proud spirit of the freemen of Kentucky.

Representation in this state is not to be equal; it is to be made unequal on the borders of the state,—it is to be confined to a particular class of people, and distinctions are to be made between the freemen of this commonwealth! This I understand to be the principle asserted by the gentleman from Madison, and by way of carrying out this new policy, and of counteracting the effect of allowing all these people to vote, he insists that the basis of representation in the towns and cities should not be the same that it is in other parts of the state, or, in other words—numbers being established as the basis—a larger number of voters should be required to elect a senator or representative in the towns and cities, and the country bordering on the Ohio river, than should be required in other parts of the state. This, certainly sir, was the gentleman's argument, or it was nothing at all. It is not merely to defend the free citizens of the cities of Louisville, Covington, or the citizens of any other city, who fall under this proscriptive system of the gentleman; for those cities have champions here upon this floor, able and competent at all times, to defend their interests and their people against whatever assaults may be made upon them; but it is to defend my own constituents from this unjust assault, that I protest against the gentleman's doctrines.

The people on the borders of the river and in the towns, and the people of the state who own no property, are to be adverse to the interests of the balance of the people of Kentucky, and especially to the interest of the slaveholders. This I do not believe will ever be the case; but of one thing I am certain, that the way to prevent it is not to disfranchise, under the provisions of the constitution, that portion of the citizens who may happen not to be slaveholders. I am for protecting slavery, but not for departing from, or striking out of the constitution of the state, the great principle which secures the equality of suffrage.

The principle which is asserted in all free governments is, that numbers, and not property, shall form the basis of representation. This is the principle asserted in the report of the committee, and which I am not disposed, unless for better reasons than have been given by the gentleman from Madison, to depart from. I will make no distinctions between the citizens of Kentucky, in the right to exercise the elective franchise, nor will I make the basis upon which that right exists, broad as applicable to one class of the people, and narrow when applied to another; equal rights to all, and exclusive privileges to none, at least so far as the right of voting is concerned, should be the motto of every republican.

The gentleman from Madison, by way of illustrating his theory, has attempted to show that the interests of the people who inhabit towns

and cities are antagonistical to those who live in the country. I deny the correctness of this position, and maintain that their interests and pursuits, if not identical, are nevertheless mutual and dependent on each other.

It is the division of labor which preserves and stimulates all the various industrial pursuits of the land; for if all men were to engage in the same business, it is clear that the world would be flooded with the surplus of whatever might be the products of their labor, and which would waste and rot for the want of a market. It is from the fact that the people of the world are engaged in a thousand different pursuits, that a market is afforded to each for the surplus product of his labor. The manufacturer, the mechanic, the man of commerce, and the farmer, are all dependent on each other; and that system of policy which weakens the one destroys the interest of the other. The mechanic builds a house for the manufacturer and receives in return for his labor money or the fabric which is manufactured. He affords to the manufacturer a market for a portion of his goods. He builds for the farmer a house and he receives in pay his breadstuffs and other articles raised on his farm, and thus becomes a market for the farmer. The manufacturer, with his thousand operatives, whilst he buys from the agriculturalist the raw material which he works into the beautiful fabric, buys from the farmer and is dependent on him for all the articles of food which are necessary to the subsistence of his hands. His manufacturing establishment is a great home market for the farmer. The law which protects him, therefore, protects the farmer. I have said that but for this division of labor and diversity of employments we would have no market, and the people engaged in all the different industrial pursuits are dependent on each other. The sugar planter of the south, whilst he sells to the farmer of the west the sugar which he every day consumes in his family, receives in return the mules and horses and breadstuffs which are necessary in carrying on the operations of his plantation. They afford mutual markets for the surplus products of the labor of each other. If all were mechanics, all manufacturers, all sugar planters, or all of any other pursuit, ruin and blight would fall on their entire business; do not force then too many people to engage in agriculture, lest you break down the market for his surplus products and destroy where you afford protection.

Build up your cities and your towns then in the midst of agricultural communities, let them increase to their tens of thousands and their hundreds of thousands, and the vast multitude of merchants and mechanics, and manufacturers and professional men, and every description, must look to the farmer for all the means of subsistence. Is it not to the advantage of the farmer then that these towns and cities should grow up in his midst? He finds in them a market for his beef, his pork, his poultry, his eggs, his vegetables, his flour, his meal, his corn, nay, for every article that he raises on his farm, and of which he has a surplus. Is it not manifest then to all, that where you establish such a great market in the midst of an agricultural country, you, so far from breaking down the interest of the ag-

gricultural community, are giving to it its very life and strength.

Where is the farmer who lives in the neighborhood of Louisville, or any other large city, that does not feel the advantage he derives from bringing his property to that great market? All must see and feel the value of it. All the great manufacturing establishments of the country are in this way advantageous to the agricultural community at large. Does not every one see that when you establish a great manufactory with its hundreds of working men, that you have thus employed that number of persons who otherwise would be engaged in the agricultural pursuits of the country? Is not a market at once opened to the farmer, which is of great advantage and benefit to him? All must see and feel it. Look at the iron region, and we find there a thousand men engaged in the manufacturing of iron. They have also in use hundreds of horses, mules, and cattle. Where do all these animals—these horses, mules, and cattle, and the corn and forage required for them, come from? Was it not from the farming community at large? And does not the gentleman see at once the necessity that this great division of labor should exist, with a view that all shall be employed and a market opened for all? Break up all your cities, and let their populations go to raising beef, and pork, and cattle, and tobacco, and hemp—away with trade, manufactures, and commerce. Throw all into the agricultural interest, and then you will see the farmer, instead of reaping that return for his labor which he now does, crushed by this blighting system, and deprived of every market for his produce. It is wrong on principle to assert on this floor that there is any difference existing between the people of any portion of the state, or that there is any antagonism in these interests. This great principle of the division of labor is one for which I have contended all my life, and it is right in itself. I am for building cities and villages, and manufacturing establishments wherever it is possible and profitable. And I am not for giving either to the people there, or to those elsewhere in the state, exclusive advantages or privileges, but for putting them all on an equality. This great system of the division of labor is the very protection of all the great interests of the country, and whenever that principle is departed from those interests must suffer. Then I will not go with the gentleman from Madison. I will go for drawing no such invidious distinctions between the people in the exercise of the right of suffrage. I will not go with him to revive the old English, rotten, borough system, which, springing out of the division of all the lands of England by William the conqueror amongst his great followers, limited representation to property or territory, and crushed, beneath the iron heel of a dark despotism and a splendid aristocracy, which followed in its train, the hopes and freedom of a great people for centuries. We have flung from our constitutions and our statutes the English doctrine of entails, and primogeniture, and property qualification, as the basis of representation, and I cannot go with the gentleman when he attempts, in effect, to revive them in carrying out the principle he has here today asserted.

The gentleman seems to think that the time is rapidly approaching, when we shall be overrun by a foreign population, and because a foreign population may settle along the banks of the Ohio, or in the city of Louisville, or some other city, that the great principle of equal representation should be denied them. Does not the gentleman know that if he excludes the foreigner according to his basis of representation, that he will also exclude with him the native born American citizen from the benefits of that principle? When he strikes at the foreigner of the cities, and along the banks of the river, he strikes also, him who is born within the limits of the state, and destroys all at a single blow. I protest against this doctrine of the gentleman from Madison. It is unjust to the people of that portion of the state to which he alludes, and destructive to a great fundamental principle. The true basis of representation is population, and nothing else, and I protest against any other principle being introduced into the constitution we are about to form. I am not for giving a man the right of suffrage merely because he is rich or has property. The poor man, ever ready to protect and defend the interests of his country, merely because he is poor, I would never exclude from the right of suffrage. The gentleman's doctrine is to establish a new basis of representation, perhaps of property, or at least something other than population, and I will not go with him in sustaining it. Let every freeman in Kentucky, unless he has been guilty of some crime which should disfranchise him, exercise the glorious privilege of the elective franchise. When the country calls to arms, and her enemies are on her borders, do you then stop to enquire whether the soldier is a property holder or not? Who is it that is the first to listen to the tap of the drum? Whose spirit is it that is first aroused by the ear piercing life, and who is it that is the first ready to march to the rescue, when the country is invaded, or its flag is in danger? The rich man is confined to his home by interests that he is loth to sacrifice. It is the men without property, but who are ready to yield up what is far dearer to them than property, their lives, when the country demands the sacrifice. They are the men we all look to, when the country wants soldiers for her defence. Let it not then be proclaimed as the doctrine of the people of Kentucky, that the basis of representation is to be established here, other than that of population. Any thing else would be unjust, and I never will subscribe to it. I will not here stop to inquire whether foreigners should have the right to vote. I know not whether that question is to be discussed, but one thing is certain, that foreign citizens ought to be permitted to exercise all the privileges that appertain to citizens. If you make him a citizen let him exercise the privileges of a citizen. Do not give him the shadow, while you deprive him of the substance. Do not mock him with the idea that he is a citizen, while at the same time you deprive him of all the privileges of citizenship. For my part, I can never go with the gentleman. His doctrines are wrong in every particular. They are wrong to the people where I live, they are wrong to the people where he lives, and they strike at the very foundation of the liberties of all intelligent peo-

ple. They are wrong to the people of this state, they are wrong to the people of the United States, and they are wrong to the whole world. The whole world is looking anxiously to the great progress of free principles, and the establishment of free governments not only in the United States, but in all Europe. A mighty struggle is going on in the popular feeling in the old world, which is crumbling the thrones of despots to ruins. The old corruptions and ancient abuses are passing away, and the spirit of liberty is struggling with an energy that will be irresistible wherever its votaries are united in defence of its sacred cause. That spirit is onward, and it is marching to triumph. It is dear to the heart of every American, and rather than to yield or abandon it, he would tear that heart from his bosom, and throw it, a bleeding sacrifice, at the feet of his country. For one, I would do it.

Mr. PRESTON. As it is rather late, I would not now attempt to detain the committee but for the singular ground taken by the gentleman from Madison. It is a position so different from what he has heretofore occupied on this floor, and the arguments he used are so unfounded, so unjust, that I feel, though the youngest representative from Louisville, bound, on this floor, to point out the errors which have characterized them, to denounce them as unfit to be entertained by this convention, and as contrary to every true principle of liberty, and to every right which should belong to the citizen. What is the proposition in the report of the committee? Is it iniquitous, is it unjust, does it speak to a section, does it apply only to Louisville, or is it in its operation as wide spread as the state of Kentucky, and as fair as the character of the bold race that live upon its soil. This proposition does give Louisville a representation in both houses of the general assembly, which technicalities in former times deprived us of. And the legal acumen which mark many in the house has been exerted in order to inflict a vital stab on the true principle of representation. What is that principle? Representation rests on three grounds. It can be based on territorial extent, it can be on property, and it can be upon the free hearts and bold arms of our countrymen, upon numbers, upon population, and it must be upon one of these, or upon combinations of them.

Kentucky was the first state in this confederacy that asserted the proud doctrine that the principle of representation was based on territorial extent, or upon property, but upon the number of her brave citizens. That it was the free bodies and the free minds of Kentucky, and not the hoards of an Astor's wealth, or the extent of a Van Rensselaer's possession that was to be represented. In England, they adopted, as my eloquent friend from Henderson has stated, the principle of territorial extent, and what was the creature of that infamous principle, for all infamous principles will breed monsters in the progress of time. It was the borough system. It caused old Sarum to be represented when the town of Birmingham was unrepresented, when old Sarum with two members had not a citizen within her borough, and when Birmingham contained forty thousand free, white, adult males. It was this that called for the reform bill. The principle of the repre-

sentation of property has been exploded, and we now have a single point to rest the right of suffrage, and the extent of representation upon. And that is the number of free white male citizens.

Mr. R. N. WICKLIFFE. If the gentleman from Louisville will give way, I will move that the committee rise.

Mr. PRESTON assented.

Mr. TURNER. I desire to make an explanation at this time, that it may go out with the gentleman's speech, with the permission of the gentleman from Louisville. So far as I recollect the argument of the gentleman from Henderson, it was, that I wished to raise up an aristocracy in the country. Now my argument was directly the contrary. Commerce and manufactures produce ten times the amount of aristocracy that the agricultural interests of the country do.—The poor farmers who live scattered about all over the country, and barely raising surplus enough to pay their taxes, have not the means to engender or to gratify aristocratic taste or habits. I am against raising up a great city aristocracy to govern the country, and I was objecting to those who are here to-day and away to-morrow, coming in and voting in our cities and controlling the interests of the state. In the large cities you would find one third of the population of this class, and of those who never settle there permanently.

The committee then rose and reported progress, and obtained leave to sit again, and The convention adjourned.

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MONDAY, NOVEMBER 12, 1849.

Prayer by the Rev. Mr. BRUSH.

#### ORDER OF BUSINESS.

Mr. MERIWETHER submitted the following:

*Resolved*, That the convention will proceed in the following order to dispose of the reports of the several committees:

- 1st. The report of the committee on the legislative department.
2. The report of the committee on the judicial department.
3. The report of the committee on the executive department.
4. The report of the committee on the militia.
5. The report of the committee on slavery.
6. The report of the committee on education.
7. The report of the committee on miscellaneous provisions.
8. The report to be made on the mode of revising the constitution.

And that said reports be taken up and disposed of in the foregoing order."

Mr. C. A. WICKLIFFE. I do not myself fairly comprehend the derangement, or arrangement of business at this hour, which that resolution proposes. I see not why we should depart from the ordinary course. The report on the legislative department will, I suppose, come up to-day, that having the priority; and I think the convention should take up that which is

most convenient. I make the suggestion, because to-morrow, at least it was so announced, the report of the committee on the judicial department, and the circuit and county courts, will come up as the special order.

Mr. MERIWETHER. If the gentleman from Nelson will reflect, he will see that if the present order of business be maintained we cannot get at the report he alludes to under the rule, without a vote of two-thirds. It is true, the report to which the gentleman refers has been made the special order of the day for to-morrow, but he cannot have forgotten that there are other special orders that have precedence. My object in presenting this resolution is, that each gentleman may know when the report, in which he is most interested, is to be acted upon. Without such a resolution, I apprehend the report of the legislative committee, which was under consideration on Saturday, will have precedence over all others, until it is disposed of. It is not with a view of giving precedence to any particular report that I offer this resolution; but I thought the legislative, judicial, and executive branches should be considered in succession, so as not to distract the mind of the convention from these great leading objects. That was my sole reason; and gentlemen will perceive that, so far from giving precedence to the report of the committee of which I am chairman, that report is placed nearly last.

Mr. CLARKE. I do not very well understand why this proposition is offered this morning. It comes in at a very singular time, and I do not well comprehend it. There has been an order of business adopted, which has been acted upon from the commencement of the session to the present time. That order has not required the legislative committee to report first, and the judicial committee next, and so forth; and I do not well comprehend the propriety of this resolution this morning, unless it is designed that the reports of one committee, where they have thought proper to report what belongs to another, shall have precedence. Now, if this arrangement of business is to obtain in this house, and it is to accommodate those interested in a particular report, what will be the result? Why, it will be that when a report is before the convention, in which they are not interested, they will not be here, and you will not have a quorum to do business. I understood from the honorable mover of that proposition, that there might be a particular report in which gentlemen are interested, and that these certain gentlemen ought to know when it will come up. Sir, there should be no report in which gentlemen are not interested. Gentlemen should feel an interest in every report; and I am not inclined to change the order of business here to accommodate gentlemen, so that they may be absent when the reports, in which they have no particular interest, are before us. Sir, I want our business to proceed on a well settled principle. And I again repeat, that I am at a loss to know why this resolution comes in this morning. I shall vote against it till I see more of the effect, point, and object to be accomplished, than I now see.

Mr. MERIWETHER. If the gentleman is dull of comprehension, it is not my fault. He says he cannot understand it. Sir, that is not

my fault. I am not responsible for that at all. I alluded, in speaking of the reports in which gentlemen might be interested, to the fact that there are certain gentlemen who are chairmen of committees, who, if they expected their reports to come up on a particular day, would bring their papers with them when they leave their rooms and be prepared to act upon the subjects of them. The gentleman says it will change the order of the business here. Why, what order have we had? The reports of committees have nearly all been made, and they have been referred to the committee of the whole, in the order in which they came; and they will have precedence, as they have had, without any connection with each other at all. The gentleman must be very suspicious, if he would attribute any motive to me. It is to take up those branches first that relate to each other; and that is all the motive I have. The gentleman will see that the report of the committee of which he is chairman, will be the first to be disposed of, then the report on the executive department, and next the report on the judicial department, and after which will come up the other subdivisions, and those subjects belonging especially to no particular department.

Mr. CLARKE. I know, sir, we have been in the habit when in the committee of the whole, for reasons which seemed to be perfectly satisfactory to the committee, of laying aside a report for the time being and taking up another, and that practice has been adopted for the convenience of the house, and for facility in the transaction of business. Now the gentleman from Jefferson has been pleased to say, that if I was in want of comprehension, it was not perhaps his duty to furnish me.

Mr. MERIWETHER (in his seat.) No sir.

Mr. CLARKE. Sir, I understand the remark, and I beg leave to say if I were in want, I should not come to him. I should be poor indeed if I should come to that gentleman under such circumstances, nor would I leave him so destitute, as I should do by taking away from him the small stock that he now possesses. Sir, I did not pretend to impugn the motives of that gentleman in offering the resolution. I have stated, and repeat, that I have seen no reason for this departure from the order of business in this house, since this has been a convention. It will be borne in mind, and I appeal to members of different committees, if there are not reports from one committee embracing the same subject matter that has been reported upon by another committee. Now if there is no object in this, what will be accomplished? Though the report of the legislative committee, as the gentleman puts it first, encroach, per possibility, on the legitimate business of another committee, still you make that encroachment the first matter for action; because you cannot take up the other till you have acted on this one. We have been in the habit of laying over the reports for the convenience of the house, and if convenience still require it, I do not want any iron rule laid on me, or this house to prevent it.

Mr. MERIWETHER. I am sorry that the gentleman from Simpson, (Mr. Clarke), has thought it necessary to pervert my remarks for the purpose of making a personal attack. I did

not say that if he was dull of comprehension I was bound to furnish him with it. No, it requires a gentleman of more presumption than I am possessed of to make an assertion of that kind. I said if the gentleman could not comprehend the resolution, and if he was dull of comprehension, I was not responsible for it. And, as to the gentleman's iron rule, I ask, if this resolution is not adopted, if there is not already an iron rule on the house. Does not the rule require that we shall take up the reports as they have been made, unless made the order for a particular day? And then if there are several, has not the first special order the precedence? The gentleman says that for the convenience of the house, we have dispensed with this rule. Well sir, adopt the rule I propose, and we can also dispense with it, when the convenience of the house shall require it. I again appeal to the house whether it is not expedient that we should consider the reports on the legislative, executive, and judicial departments as nearly together as we can.

Mr. HARDIN. I understand the reports of the committees are almost all in, and I understand this resolution is nothing more than making out a docket as to how we shall proceed. This is generally done by a committee, and the order is laid out so that each may know how we are to proceed. Now, we have a committee to classify and arrange our business, so that it may assume the shape of a constitution, giving it symmetry and form. The order we proceed in is of very little importance, but it seems to be proper to take up the legislative branch first, the executive next, and the judiciary next. If we do not, what will be the result? Why, we shall jump from subject to subject, and sit here till the first day of March. Are we to sit here till the last day of December? Why, then, I suppose, there will be a writ of forcible entry and detainer to compel us to give up the house to the legislature. I want to finish in four weeks. I think we can finish the reports of the legislative and executive branches this week, and when we get to the judicial department, as it has been so often discussed, I do not believe we shall be detained with the three courts more than two or three days. There is scarcely a controverted point in all the three reports, for we have made so many compromises and concessions all round, that I think there will be little difference of views in the discussion of these reports. I hope we shall go on with the legislative branch till we finish it, and then take up the executive and judicial, for I am as anxious as any man to have it finished, and I do not think there will be any controversy about it. I have no predilections. I was asked yesterday as to the best way to get on with the business. I had no conversation with the gentleman from Jefferson, but he has seemed to strike on the same plan which was suggested by some gentlemen yesterday. It seems important that we should finish. Public sentiment says we have stayed too long, and if we stay here more than four weeks longer, public sentiment will say we have not done our duty. I hope that after this day, this convention will take a recess from one o'clock till three o'clock, and then sit till five. We all know what we have to do.

Mr. MACHEN. It seems to me sir, according

to the suggestion of the gentleman last up, that it will be proper to change the order of business from that which we have pursued. We have discussed the bill in relation to the court of appeals; the county court bill has also undergone discussion, and by this time they are pretty well understood. The gentleman says these bills can be gone through with in one or two days. For one, I should like to see a commencement of business, that we may have something completed; and if our minds are made up in regard to the judiciary bill, let us take it up, for I am satisfied that our minds are not made up as to what we shall do with the legislative bill. It has not been so well considered; but while we go through with the judiciary bill, the attention of the delegates can be turned to the legislative bill, and be ready to act at a future time. I think this is a reason against taking up the order of business, as proposed by the gentleman from Jefferson. I do not profess to be more diligent than others; but I am a long way from home, and cannot go to see my family and return, as members can who live at a less distance. But I think every delegate should have a deep interest in every proposition, and if this resolution is to give a privilege to certain men to be absent, I am against it for that very reason. I want the concurrence of all in the adoption of every article of the constitution that we may mature. If the court of appeals bill, and others relating to the judiciary, can be disposed of this week, I think we had better take them up and dispose of them, and in the mean time we may agree on those points about which we now differ in reference to the legislative department. I move to lay the resolution on the table.

The question being taken, there were ayes 33, noes 40. So the resolution was not laid on the table.

The resolution was then adopted.

#### LEGISLATIVE DEPARTMENT.

The convention then resolved itself into committee of the whole, Mr. MERIWETHER in the chair, and resumed the consideration of the report of the committee on the legislative department.

The pending question was on the amendment submitted by the gentleman from Franklin, (Mr. Lindsey) on Saturday.

Mr. CLARKE offered the following as a substitute, viz: to strike out all after the word "the," in the first line, and insert the following:

SEC. 5. The "general assembly shall divide the several counties of this commonwealth into convenient precincts, or may delegate the power to do so to such county authorities as they may, by law, provide. And elections for representatives for the several counties, shall be held at the places of holding their respective courts, and at the several election precincts into which the counties may be divided: *Provided*, That when it shall appear to the general assembly that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in either or both houses of the general assembly; which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio

which may be fixed by law: *Provided*, That no city or town, together with the county in which such city or town may be situate, shall, at any time, be entitled to more than two senators; and thereafter, elections for the county in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation, unless such county, after the separation, shall be entitled to one or more representatives: *Provided, further*, That the general assembly shall have no power to pass laws prohibiting the citizens of this commonwealth from importing slaves for their own use; but may pass laws requiring the importer of slaves to take an oath, that such slave or slaves, so imported, are for their own use, and not as merchandise; and that he, she, or they, will not sell said slave or slaves within this commonwealth, within two years after such slave or slaves are imported, under such penalties as may, from time to time, be provided by law."

Mr. TRIPLETT said he also had an amendment which, at the proper time, he desired to submit, but which, with the consent of the gentleman from Louisville, he would now read, that that gentleman might know, before he commenced his remarks, that such a proposition would be offered, and be able to apply his observations to it, if he should deem it necessary.

The secretary read the amendment as follows, for the information of the convention:

"*Provided*, That the cities unincorporated, or which may hereafter be incorporated, in this commonwealth, and to which a senator or senators may be allotted, shall not together, under any future apportionment, be entitled to more than one-fourth of the whole number of senators; and whenever, under any future apportionment, the whole number of senators to which said cities would be entitled, shall exceed one-fourth of the whole number of senators for the whole state, the legislature shall apportion the one-fourth of the whole number of senators among the cities entitled, according to some just and equitable mode of apportionment: *And, provided*, That no city shall ever be entitled to more than two senators."

Mr. PRESTON. I had not anticipated sir, fully, the debate which has sprung up on this question.

At a late hour on Saturday last, when the discussion closed, I had made some few remarks in regard to what I conceived to be the true principle upon which representation was founded. I had imagined up to the time when the gentleman from Madison made his speech, that there would be but little resistance in this convention, to affording to Louisville, or to any other city, the same representative rights that are accorded to every other portion of the state. In as much as it was at a late hour that I made those remarks, and as they are the basis upon which I intend to place the principle of representation, I shall find it necessary briefly to recur to them. The amendments that have been offered this morning, are to me, matter of some surprise. I see before me a gentleman who sometimes is a little mischievous with his young friends, and who although he seemed to accord with me fully on Saturday, now tells me, that in relation to the rights of cities to be represented

—to use his own language—"he feels smartly bothered." The amendment that was proposed by the gentleman from Simpson, is also singular. He seems desirous to create a division or make a partnership between the gentleman from Madison and myself, in regard to the importation of slaves into this state. I frankly admit that I am afraid of such an alliance. I am fearful it will be what the civilians call "*societas leonina*," a lion's partnership, in which the gentleman from Madison would get the lion's share. Out of regard therefore to me, I hope he will not press it. The amendment violates also a part of the legislative report—a report which I suppose will receive the gentleman's able assistance and support, inasmuch as he is the chairman of the committee. He introduces a feature here, declaring in the thirty fourth section "that no law enacted by the general assembly, shall embrace more than one object, and that shall be embraced in the title."

It is a principle in legislation that receives my assent, but he has transgressed it in bringing up the "importation act" of negroes, in other words the act of 1833, in the final part of his proposition. I will ask him therefore to reflect for a moment, upon the propriety of withdrawing his amendment, and allowing us to consider, unperplexed, the section in the report; as I think we ought not to set so bad an example to subsequent legislatures, as to infringe the rule established by ourselves. I merely mention these facts as preliminary to the observations I mean to make in reference to the subject generally.

The amendment of the gentleman from Daviess does not propose that any city in the state shall never have the right of sending more than one fourth of the representation, but that *all* the cities of the state, collectively, shall not.

Mr. TRIPLETT. That is exactly what I mean.

Mr. PRESTON. I do not know that I can occupy that ground. I came here only claiming that the people of the cities shall not be ostracised, and claiming equal and just privileges with our rural brethren. I ask therefore, that no stigma shall be placed on our brow, that no act of disfranchisement in any shape, shall be exercised by this convention towards us, while no such restriction is decreed in reference to the population of other portions of the state. There is the same moral obligation to act towards us upon the true principles of justice, and there is no reason why we should be placed in a position different from that which the free population of the counties occupy. I ask this house, before they cripple us by imposing unjust conditions and qualifications upon our right of representation, to listen calmly, and decide justly.

The territory of Kentucky is one-fourth as great as that of France. Under the blessings of free institutions, we, in common with our common country, are advancing with unparalleled progress, in wealth and population. We have peculiar institutions. In some parts of the country white labor, in other parts slavery. But the whole great confederacy moves onward with uninterrupted prosperity,



"-----Like the Pontic Sea,  
Whose icy current and compulsive course  
Ne'er feels retiring ebb, but flows right on  
To the Propontic, and the Hellespont."

Every day we develope and demonstrate new principles in the theory of government to make us what we are, the model republic of the world. The country towards which the eyes of freemen from every part of the globe—from Hungary, from Ireland, from France, from all nations that are oppressed—are turned to obtain an example for their study and their imitation. We know that France is studded with populous cities and villages. So in time, cities and villages will spring up in this country, to become the abode of its home manufactures, and to supply the surrounding country with the necessary fabrics; while they receive in return, the products of agriculture. It was with surprise that I heard an invidious comparison between the agricultural and manufacturing classes, attempted to be instituted by the gentleman from Madison. In it there was an attempt to array interest against interest, in a manner I could not have expected from such a quarter.

Such then sir, is the attitude of Kentucky. Now, let us look at her past history. To what should we attribute this progress? There is but one solution, and that is comprised in a single word—liberty. To what should we attribute that liberty? To the great and immutable principles that were founded in the revolution, and still further carried out in 1799 in this very state.

Sir, there are but three principles to regulate representation, that have been practically acted upon by men—three principles upon which a representative government is ever based. What are they? The first is geographical extent, the second is property, the third is population. A fourth has been recommended by some, at the head of whom stands Jeremy Bentham. This last, is education, or popular intelligence. I mention this because there are no other principles, that I am aware of, upon which representation proceeds. Sir, up to 1799, the principle prevailed, that property, or territory, should constitute the basis of representation. Kentucky was the first to assert that it should rest purely on population. From the time when the tents of the plebeians whitened the sacred hill, until that auspicious day, the principle had been the continued subject of contest between the people and their rulers. In England, we find that the Norman barons who conquered that country, claimed that representation should be based upon extent of territory, because they possessed the soil. This gave rise to the borough system, and to a contest that lasted from the time of the Norman conquest, down to the year 1838.

In 1838—I think it was—the celebrated "reform bill," of Lord Grey, was introduced in the British parliament, mainly to get rid of that infamous borough system, which had grown up and increased in the progress of time, until Birmingham and Manchester, with a population of two or three hundred thousand souls, had but a single representative, while the Chiltern-Hundreds were under ministerial control, and old Sarum sent two members to parliament. But gentlemen may say that our country is entirely too wise to follow such a system. By no means.

It is now in existence in this country. I recollect a gentleman of Carolina told me that a member of the Carolina legislature had invited every one of his constituents to a dinner-party. In Virginia, the people have struggled in vain to extirpate this cancer from the body politic, and they have almost succeeded in eradicating it. In Maryland, the same principle is now in partial operation, and this doctrine, to a greater or less extent, pervades the constitutions of many states, particularly on the Atlantic border.

In some states, where the principle of numbers was forced upon their consideration, in preference to free-hold qualification, they acquiesced on the condition that paupers should be excluded, and that some other restrictions should remain. At this hour in Massachusetts, a property qualification is virtually required, by excluding paupers from voting. Let us turn to the constitution of Massachusetts.

"There shall be annually elected by the *free-holders*," &c. This, the original feature, under the popular demand, was altered in 1821, so that "every free male citizen, excepting *paupers*," &c. were admitted to the right of suffrage.

New York, under her new constitution, has done what? She has declared the broad principle that numbers shall be the basis of representation. She has adopted fully the Kentucky doctrine; this was not the case when our common confederacy was formed.

In regard to Kentucky, the last of the old thirteen states—if you may so call her—the eldest born child of the new thirty—if you so choose to style her—what principle does she set out upon? Let me read, for it is the first time certainly that this great truth ever emanated from a constitutional body. The sixth section of the constitution declares, that representation shall be equal and uniform, in this commonwealth. It runs thus:

"Representation shall be equal and uniform in this commonwealth; and shall be forever regulated and ascertained by the number of qualified electors therein."

To her eternal honor, be it said, she was the first to promulge it.

This is the principle that Kentucky has established. This is the ground she occupies, and I want those who seek to curtail the rights of suffrage in this state, to come up fairly, and point out the necessity for making an exception.

I have alluded to the evils of the borough system. There is no doubt, at this time, in the hearts of the people of many of the states, as wealth increases, a growing inclination to return to the system of property qualification. You see them attempting to effect this in many of the states, although we have always repudiated the principle here. In the state of Virginia, Massachusetts, and others, under their present constitutions, a property qualification still exists. No man, until he shall have paid his taxes, or possesses some freehold qualification, is allowed to vote. I want to occupy a broad and tenable ground, and it is, that there shall be no qualification required of a man here, except that he shall be a free white male citizen of the state of Kentucky.

Now, sir, gentlemen tell us that it is necessary to put this restriction upon senatorial represen-

tation, and they compare the counties of Kentucky to the states of this confederacy, and say that Delaware has two senators in congress, while New York has no more. He must be confident of a credulous audience who would urge, with any degree of gravity, this as a reason.

Why has Delaware two senators, and New York but two? It was because the states were sovereign that came into the compact, and the senators are the representatives of those sovereignties. The larger states had the same rights of sovereignty as the smaller; the smaller as the larger. But do gentlemen say that the counties in the state stand upon the same footing as a sovereign power. I would ask the gentleman from Madison if he would assent that counties irrespective of population shall be represented in the senate. Does the constitution of Kentucky regard counties as sovereign. In the twelfth section it says, "and where two or more counties compose a district, they shall be adjoining."

That is, it orders the joining of two or more counties together, for the purpose of representation, when circumstances require, and it seems the framers of the constitution of 1799, at least, had no idea of regarding the counties as being separate and independent sovereignties. The thing is absurd in itself. There is no parallel, or at least the parallel has no force in it.

I have claimed only, that this fifth section shall give a representative right to the cities in this state, according to population; such as has been accorded to cities in other states. The city of Cincinnati, opposite to us, was at one time the special object of the gentleman's laudation, at another of his execrations. In the remarkable speech that he delivered here, in the early part of the session of this convention, and which will be found in the record of its debates, the gentleman seems to have entertained as violent an admiration of Cincinnati, forty days ago, as he has a horror of Louisville, and the other cities of Kentucky, at this hour. Let us look at the constitution of Ohio.

"The number of senators shall, at the several periods of making the enumeration before mentioned, be fixed by the legislature, and apportioned among the several counties, or districts to be established by law, according to the number of white male inhabitants of the age of twenty one years in each, and shall never be less than one third, nor more than one half of the number of representatives."

Do you find there a regulation that Cincinnati shall not have a senator, or is there any such provision, as that all the cities of the state shall not have more than one fourth part of the representation? Ohio has been depreciated and condemned on this floor, for its illiberality on a certain question. Ohio at least has not proscribed her cities, nor her citizens.

Let us go to the state of Massachusetts, another state that has large and populous cities in her borders. Boston has in the senate a full representation. We come next to the state of New York, which contains the most populous city of the union. What does the constitution of the state of New York say?

"That each senate district shall contain, as nearly as may be, an equal number of inhabitants," etc.

The city of New York is not proscribed, nor deprived by rural jealousy, of her fair representation, according to population, both in the senate and house of representatives. New York therefore gives the same right—she does not proscribe her cities. Ohio does not—Massachusetts does not.

Now sir, in the state of Louisiana, the same influence exists that the gentleman has appealed to, in the hope of procuring the strength of numbers in this house, and of overruling a right, by appealing to the passions and feelings of classes and interests. Louisiana is similarly situated; she has the city of New Orleans, containing above one hundred thousand inhabitants, and a population of three hundred and fifty thousand in the state and city conjoined. The city contains one-half the white population of the state. But Louisville, in population, does not form more than the twentieth, or the twenty-fifth part of Kentucky. Yet, we are to have these imaginary dangers which are to flow from allowing to Louisville a fair representation, pressed upon us, in order to perpetrate an act of gross injustice and wrong. We would, if our demands were allowed, now have a representation of but one-thirty-third in the lower house, and one-thirty-eighth in the upper. How will that affect the state? The fear is idle.

In Louisiana the planters have become the basis of a splendid aristocracy. The best villages that you can see, from Point Coupee to New Orleans, on the river, are the white cottages of the negroes, clustered together on the plantations of their owners. You will find a village of five hundred souls, all belonging to a single Louisiana planter. The merchant and the lawyer there form the second class. All the important offices, state and federal, are filled by the planters. They find themselves in a position to be able to prescribe terms, by which they retain the aristocratic features of a representation based somewhat on territory. There, then, is the cause of the exception to the rule. Yet New Orleans is allowed one-eighth of the senate, and one-tenth of the house. In Kentucky, all the privilege we can obtain for the population of a city, such as Louisville, is that she shall have one senator out of thirty-eight, and three representatives out of one hundred. Are we to fall below the cities of Ohio, which are represented in the senate according to the number of people they contain? Are we to fall below the cities of Massachusetts, New York, Maryland, and Virginia? Or, are we to go far beyond Louisiana, in that aristocratic feature, and cripple our cities in their representation, in the edict that is to go forth from this convention? I put it plainly, and denounce it here, as a violation of the right of suffrage. We have no terms to make—we claim the right. If it be denied, or if it be qualified, it shall be denied or qualified against our remonstrance; and I demand at your hands, delegates, the rights which justice should accord.

We have not only been menaced with an outrage of our rights, but we have been insulted, in common with our sister counties of the northern border on the Ohio river. If our rights are denied to us, let it be so. If they are qualified, let it be so. It is against the best defence that I could interpose, and notwithstanding my fee-

ble opposition. If you are determined that the agricultural classes shall tyrannize over the manufacturing classes—if you thrust them to the earth, be it so. But never say it was done without remonstrance against the injustice, against the wrong.

The gentleman from Madison says, that this iniquitous movement is necessary to protect the agricultural, to the exclusion of the manufacturing interests. I now ask this house, if they will solemnly assert, that the manufacturing interests of Kentucky are to be proscribed? Have Covington, Newport, Louisville, Paducah, have those cities and counties along the river, so wronged and degraded and impoverished the state, that they are to be the subjects of political proscription? The gentleman seems to feel a holy horror in looking at the wretched condition—as he calls it—of the northern frontier of the state. In one sweeping charge he declared we are all teeming with abolitionism. He denounces the city of Louisville in particular, as if he did not entertain many of the sentiments, which are esteemed characteristic of that party, to which he alludes. He has eloquently advocated the law of 1833 and those sentiments upon this floor; but he has changed his position, so rapidly that you would now think him the most earnest against the abolition movement in this state. I must call the attention of the gentleman to his own remarks, recorded in the debates, and commend the chalice to his own lips.

After considering what is the curse our slaves impose on us, after proving to us by a specious calculation that slaves were worth less than three per cent. per annum, he goes on to say:

“Is there any individual here who will say that a grown working negro does not cost his master, leaving out of the question what he steals from him and sells at the nearest town, is there any one that will say, that an average expense of twenty dollars for this class of slaves is too small an estimate. This then will make a million of dollars; and there will be only a profit of two millions left.”

The gentleman now, with singular consistency, deprecates the loss of this wretched population. He said in substance in his speech of Saturday. “Where are those handsome, flat nosed negroes that were once to be found in Covington? They are all gone. They have been expelled by a wretched race, which has come in and taken their position, and now occupy the place they once did, that race that intends hereafter to destroy the institutions of our state.” The gentleman has done more in that argument to destroy the value of slave property in Kentucky, than every emancipationist that ever lived in Covington or Louisville. Let me go on a little further.

“That white labor is cheaper I have no doubt. I have never entertained a doubt on that point. I have never entertained a doubt that it is the interest of the great slaveholding community of the state to sell their slaves.”

Now, sir, in the argument of Saturday, he takes exactly the opposite ground. He occupies now a position wholly irreconcilable with that he maintained then—his logic is like McFingal's gun,

“Which when well aimed at duck or plover  
Bore wide and kicked the holder over.”

I will take the trouble to show to those who think that taxation and representation should go hand in hand, the public burdens borne by Louisville. It is a principle not to be rashly admitted, though it was asserted in the period of the revolutionary war. The true principle is maintained in the constitution of Kentucky, that representation is based on population.

Now, I have taken the population, taxable property, and taxes paid by the city of Louisville to compare them with other portions of the state. The counties of Hickman, Ballard, and Graves—counties lying at the extreme end of the state—compose the 1st senatorial district. Their gross taxable property amounts to \$2,581,600—about two millions and a half—paying \$4,018 30 per annum revenue, with a population of two thousand nine hundred and fifty eight white males. The counties of Madison and Garrard, composing the 23d senatorial district, contain taxable property valued at \$11,704,942, yielding a revenue of \$18,076, and with a population of four thousand one hundred and twelve white males. The counties of Carter, Greenup, Lawrence, and Johnson, composing the 34th senatorial district, contain taxable property to the amount of \$2,927,262, yielding a revenue of \$4,600, and a population of four thousand and fourteen. And now let us look at the Madison district, a rich central district. In Madison and Garrard combined, they have \$11,000,000 of taxable property, being four times as rich as the 1st, or 34th districts, yielding \$18,000 yearly revenue, and with a population of four thousand one hundred and twelve white males. How does the county of Jefferson compare with that district? It has \$26,697,663 worth of taxable property, and pays upwards of \$43,000 per annum taxes, and has nine thousand two hundred and eighty three white males; a population nearly equal to the whole of these three districts. Her wealth is nearly twice as great as all three of them, and while they pay \$26,000 a year taxes, she pays \$43,000, or nearly twice as much as the three combined. And yet it is asserted upon this floor, that a district paying nearly twice as much as three average districts—in point of wealth and population—of the state, is to have but one representative in the senate, while those other districts have three. Why, if property and taxation was the basis of representation, according to the principle asserted at the period of the revolution, and to which some seem to wish to return, Louisville and Jefferson would be entitled to six senators. And if population be the basis, they should have three. Is this justice? Is it right? We have in Louisville and Jefferson one-tenth of all the taxable property in the state, and we pay one-tenth of all the taxes that are paid. Have we one-tenth of the representation of the state? No! we have a thirty-third in the lower house, and a thirty-eighth in the senate. The reason why we have something like a fair proportion in the lower house is because we are not ostracised in our representation there.

The citizens of Louisville have always been as ready to give their services to the state, as the citizens of any other portion of the commonwealth. They have ever been among the fore-

most in the field. The drum has never beat a call to arms! that was not promptly responded to by them. The gentleman talks of our adopted citizens as if they were the out-casts of the earth. One fourth of the gallant army, that won for us imperishable glory on the northern line, and on the route from Vera Cruz to the capital of Mexico, were naturalized citizens. Those adopted children of the union took up arms for us; and with musket in hand, in a series of battles, that will ever remain memorable in history, asserted the character of their adopted country, in common with their native born comrades. Their acts have shed renown and fadeless lustre on the American arms. Louisville, with one twenty fifth of the population, furnished one fifth of the troops of the state; and in twenty three days from the time the letter of requisition arrived, stating that General Taylor was in danger at Palo Alto, a regiment, the Louisville Legion, reported themselves to General Taylor at Brazos, two thousand five hundred miles from their city. This exhibited a rapidity of organization and rapidity of movement, unparalleled in the country. But enough of this.

All the arguments of the gentleman from Madison are tinctured with nativism. He thinks it necessary to put restrictions on the right of suffrage, in order to shield us against the evils of immigration; but what has been the effect of this influx of foreign population in our border counties on the Ohio river? It has brought to us the knowledge of new arts, new modes of agriculture, and is developing new means of increasing our national wealth. It would be interesting to enquire what effect this concentration of the various arts of Europe, by immigration, has produced upon American industry, in stimulating American labor and exciting American ingenuity. It has produced an extraordinary state of prosperity. Near Cincinnati the culture of the grape, heretofore unknown in our country, has been introduced. Did the vine-dressers come from the county of Madison? I do not say this in disparagement of Madison. I love and respect the people of my native state, but I deem it necessary and right to make these remarks, in justice to our naturalized fellow citizens.

Vine-dressers have come from France, from the banks of the Rhine, and the Moselle, and from the tributaries of that great river until it enters the gorges of the mountains of the Tyroll, and have taught us the mode of cultivating the grape in the valley of the Ohio. They have come from the banks of the Loire and the Garonne, and from the department of the Gironde, until we have found new branches of industry springing up all around us.

We find by the Patent office report of last year, that from only three hundred acres, devoted to the culture of the vine, in the vicinity of Cincinnati, there was a return of sixty thousand gallons, yielding to the producer a profit of some \$200 to the acre.

At Louisville, that class of population of which the gentleman contemptuously speaks, has manifested the same desire for agricultural improvement. A gentleman of my acquaintance, upon ten acres of ground, raised, this year, grapes enough to make from one thousand five

hundred to one thousand seven hundred gallons of wine, which are already contracted for at \$1 25 per gallon. Yet he would never have done this, had not this culture been introduced by foreigners. Would it be just to withhold from that class of our citizens an equal participation in the right of suffrage? It would be equally unwise and unjust. The temper of the people will not bear it.

The gentleman seems to think that the institution of slavery is to rest upon the exclusion of foreigners. He says if we allow foreigners to vote, it will have the effect of destroying that institution. I tell him that that is not the way to remedy the evil, if evil exists. Let him declare that foreigners shall not vote, and he will produce perpetual agitation and eternal dissatisfaction. Will you impose burdens on them, and yet refuse them the right of suffrage? I can tell him, if he thinks by this sort of legislation to promote the great interest of the state, he is mistaken. Such a policy has always proved fatal in every age and country. Tell these men that you will not trust them to vote, and there will be a combined effort to overturn the constitution. You will produce an agitation that will be disastrous to the interests of the state. Proscribe them, and you enlist the generous and magnanimous spirit of the people among whom they live in their behalf, and there will be one united voice in favor of setting aside the constitution you have made.

Sir, it is not expedient, in my opinion, that you should so arrange matters as to create two white classes in this state with different privileges. It is important that all should be free, or if slavery is planted here by necessity, that none but slaves should be disfranchised. Create no white class that shall be deprived of the privilege of freemen—make no pariahs of society. God forefend that such a class should ever exist in Kentucky. I for one hope never to live to see the day. I do not believe the people will ever tolerate it.

I have shown what taxation is imposed on the river counties. The city of Covington already has a population of 12,000—Newport a population of 7,000. The city of Maysville, if the contemplated railroad be constructed, will rapidly advance in population. Foreign population will naturally be attracted to these points, and I do not believe there is any reason why this convention should proscribe them from the enjoyment of the right of suffrage and equal representation. If it is insisted that it is necessary to protect the state on this ground, the argument is not tenable. The gentleman alleges that there is a peculiar similarity between the counties of a state and the states of this confederacy. The resemblance does not hold, for the counties are not sovereign, and you propose to unite them for the purposes of representation.

I have shown that we pay one-tenth part of all the public revenue of the state, and that we have only a thirty-eighth part of the representation. I believe that a full consideration on the part of this house, will induce them to accord to us the right which, by a technical construction of the constitution, has heretofore been denied. If, however, the construction was right, I claim

that upon every principle of right and justice, it ought to be reversed in this constitution.

Sir, there are aristocracies different from municipal aristocracies—there is an aristocracy of wealth, as well in the county represented by the gentleman, as in the city which I have the honor to represent. There are fewer men of capital in Louisville in proportion than in the county of Fayette. There is less aggregated money capital than there is in Madison.

We are about to form a constitution, and we are about to form it, as I believe, upon broad and just principles; but I tell you, as I tell this house, that if they do us this foul, this inexpiable wrong—a wrong that we have not the strength to remedy—the people of this state will not, when appealed to on this subject, sanction the injustice. I know them, and I trust them implicitly. If we go to them with such a constitution in our hands, they will exclaim, in the language of Macbeth, deluded by the hollow promises of the weird woman of the heath:

“And be the e juggling fiends no more believed,  
That palter with us in a double sense,  
And keep the word of promise to the ear.  
But break it to the hope.”

We shall have the word of promise broken to the hope, if Louisville is to be proscribed and stigmatized, and refused her just share of representation in the senate of the state.

I have thrown out these remarks for the consideration of the house. I do not believe this convention will be unjust—I will never believe it until it occurs. I know well the people of Kentucky are brave, generous, and magnanimous, and that the delegate on this floor, who attempts to deny us equal justice, when he presents himself again before his constituents, is sure to fall.

Mr. ROOT. I have but few remarks to submit, and I should not have risen at all, in my present state of health, had it not been that on Saturday my particular section of country was pointed out and proscribed by the remarks of the gentleman from Madison. I was led to suppose, on a former occasion, that the gentleman from Madison intended to pursue a more magnanimous course. Upon the subject of the law of 1833 I stood by him to a certain extent, as far as I could go, but he a little out Heroded Herod upon that subject. And I had supposed from the position he then took, that his darling institution of slavery was not to be brought up here by himself, at all events, as the great turning point upon which he expected to proscribe the free white citizens of this commonwealth. He on that occasion denounced the institution of slavery as one upon which lay the finger of God, and whom God had condemned, would certainly wither and perish away. But he seems to have slept and dreamed upon the subject, and after having then made one of the most denunciatory speeches ever heard in any hall against that institution, and picturing it as a blasting blight on this commonwealth, he is now prepared to cast an eye about, and because he sees the growing importance of certain towns and cities in this commonwealth, to violate the great principles of our former constitution, to violate that principle which was acted on in 1798, that principle which Kentucky is celebrated for es-

tablishing, the principle of representation in proportion to population. He is prepared in this nineteenth century, in the year 1849, after all the lights of science, after all the experience in government, and after every thing that has been developed to elevate the human intellect, the learned and erudite gentleman from Madison is prepared to maintain the doctrine that representation ought not to be based on the population, but that the state ought to be marked out with an eye of wisdom in relation to a single institution. Here is the principle, and the gentleman in his seeming desire to avoid the consequences of his speech on a former occasion, is now willing to take the other extreme horn of the dilemma, and become the very prince of the pro-slavery men in this house. Sir, I do not understand the consistency of the gentleman from Madison, and I hope he will take some occasion to show it to this house. He proposes to apply the principle of representation on population to every part of the state except that along the Ohio river. The Ohio river, the overflowing population of Louisville, and the increasing population of Kenton and Campbell, and the growing wealth and prosperity along the northern frontier seem to haunt his imagination, and he is willing to make himself popular by yielding to the prejudices, the low prejudices, if any such exist in the interior, among the farming interest. He is willing to array the farming interest against those of the cities, when he knows very well that those interests are so closely connected that if you sever them and destroy one, it will produce a lasting injury to the other. But as a great argument why this proscriptive policy should be pursued in relation to those counties along the Ohio, he instances the growth of the counties of Campbell and Kenton. Look, says he, at Campbell and Kenton; in a very few years they will be entitled to four or six representatives, and with senators too in proportion to their population. What other basis of representation does he propose? Does he propose to strike at the representation of Madison or Fayette, or any other of the interior or mountain counties? No, he is prepared only to strike at Campbell and Kenton. He is prepared to make capital all over the state, by doing great injustice to one or another portion of the commonwealth. Sir, let it go forth from the halls of this house that you have made flesh of one and fish of another part of the commonwealth—let it go forth to Louisville that she is not to be represented in proportion to her population—let it go to Campbell, where the first battle was fought and the first movement was made for this convention, and where the people were unanimous for it—not upon the subject of slavery, but other subjects connected with the county courts and the miserable rotten system of the judiciary and of life estates in office—I say let it go there that they are to be proscribed and only to be represented in the house of representatives of the state—that they are to be taxed by the member from Madison and other parts of the state without a share of the representation of the senate, and every man of them is against you. And so they justly should be. I had thought that one of the principles that kindled up the fires of the American revolution was that men should be fully repre-

sented in the bodies that dared to lay taxes upon them. It was the principle that threw the teas overboard in Boston harbor—that fired the first gun at Lexington—that produced the terrible struggle at Bunker Hill, and that wound up the contest in a flood of glory at the last great struggle at Yorktown. All this was in defence of these principles of universal representation wherever the rights of taxation extended. And, sir, if this darling institution that haunts the imagination of the gentleman from Madison cannot be sustained short of denying a just and full representation to every part of the commonwealth, and without disfranchising a part of the citizens and voting population of the state of Kentucky, I say let it perish. If the whites are indeed at last to become the very slaves in protection of the gentleman's darling institution, I say let it perish. Sir, yield but the point that to defend this institution it is necessary to cut off representation entirely from those counties in the one house, and they will then ask to deprive them of representation in the other, and at last to disfranchise them altogether—and still retain the right to tax and govern them—they will reduce them to the mere serfs and slaves of the balance of the commonwealth. And all this is asked in defence of the gentleman's darling institution, that but forty days ago he said God's finger was weighing heavily upon. And if God's finger is upon it, in the name of God will it not perish? Will the puny or the powerful arm of the gentleman from Madison be able to sustain an institution that God has declared shall wither and perish away. Sir, he proposes to make Campbell and Kenton and Louisville the scape goat for all his sins. He proposes to expiate upon that section of country the sins he may have committed by saying that the finger of God is upon his darling institution.

But they are to be punished for another reason. Aliens and foreigners are coming into those cities. Yes sir, and the yankees are coming from New England there, and he says that all know that the feelings and sympathies of northern men are opposed to his darling institution. And in this—the year 1849—he is willing to proscribe northern men and to drive out those from the state who might be willing to immigrate here to proscribe and disfranchise northern men, the descendants of those brave fathers, who were at the very head and front of the whole offending during the revolutionary war—they who were *magna pars fuit* in striking out this glorious system of American liberty—and all for what? Because forsooth, the time will come, he thinks, when he will be unable to sustain his darling institution, and when a majority of the voters in the commonwealth will be opposed to it. Sir, although I am not an immediate emancipationist, or an abolitionist, and although my county stands unanimously with me upon all these subjects, I for one, look forward to the hour, and I hope in God that the hour will come, when the slaveholder and every other citizen throughout this broad commonwealth, may say to the sons of Africa, we are now prepared to transplant you to your native soil. Sir, the finger of God is on the institution. Although I believe that the negroes of this

commonwealth, and most of the states will finally be driven quietly and prudently out—yet, I believe that the hour is coming in some part of the world, either here or elsewhere, when Ethiopia shall indeed stretch forth her hands to God—when the arm of the oppressor shall be broken, and the oppressed shall go free. And the gentleman with all his proscription of the white population and his denying them the right of representation, cannot stay that hour one solitary moment. I have been denounced in some quarters as the representative of an abolition district. Sir, we have not half the abolitionism and emancipationism in my county, that there is in the gentleman's and in Fayette, and most of the interior counties of the state. So little did my constituents think of it, that probably not fifty in the whole county agitated it in the slightest degree. And yet as prudent men, as men with some little forecast, they apprehend that every institution of man—and slavery is an institution of man—must waste and perish and wither away. I was somewhat amused at my learned friend from Boyle, (Mr. Talbott,) the other day, when he undertook to prove from the Old Testament writing, that slavery was indeed a divine institution, blessed from on High—that it deserved the warmest protection of all good people everywhere—and that it was a blessing both to the master and the slave. And his display of his knowledge of scripture reminded me something of a man who was once talking volubly on the same subject to another a little more ignorant on the subject, and I was almost induced to look up and say to the gentleman from Boyle in the words of the ignorant man's reply—"did you write the scriptures." From what I have read of the Old Testament, I certainly understand that in the very passages the gentleman from Boyle quoted, slavery is there denounced as a curse. "Cursed be Canaan, a servant of servants shall he be." It was denounced as a curse upon the African race generally, and if the gentleman will take the pains to read the Old Testament scriptures, he will find that wherever a curse is pronounced on a people or a nation, the very hand that carries out the curse of high Heaven is itself accursed. Look when the children of Israel were carried into Babylon in captivity, and were held there in servitude and slavery. It was the decree of God himself, and in his own good time Darius the Mede came thundering at the Babylonish gates, and in one night the king and all his lordly courtiers perished. This was their punishment for having done injustice to the children of Israel, and making them captives, and violating the holy sanctuary of God. In all the Old Testament writings it will be found that the very hand which carries out the curse is itself accursed. Slavery, so far as the bible is concerned is neither a blessing to the slave nor the master. It is a curse, directly a curse, and the bible authorises every man to say it. If the bible held a different doctrine, I should be almost prepared to say with a learned doctor with whom I was acquainted years ago, that I would tear the leaf out. I should almost be prepared to disbelieve the whole bible if it inculcates such monstrous injustice. I am not prepared to say that God is the author of the institution



of slavery, It is peculiarly a municipal institution; it is a matter of policy, and exists now only from policy and necessity, and not by the authority or the command of Heaven. It exists because we cannot get out of it, and from policy. That is the basis upon which to place it, and when gentlemen place it on any other, they make it their darling institution, and place it among the holy sacraments. Why it offends the common sense of all mankind, and we become justly a laughing stock to the better and more intellectual portion of the world.

But we are now asked by the gentleman from Madison to yield to this jesuitical policy of sacrificing principle to expediency—that is, that you may do any deed to secure a supposed good end. The great principle that the people shall be represented in proportion to the population of the state, must now be stricken down, because, as the gentleman says, who can look forward and not see that the hour is soon coming when the strip of territory, bordering on the Ohio for ten miles in width, will contain the majority of that population? For that reason he will sacrifice that principle to policy, to Madison county, and the peculiar interests with which he is identified. I am for doing justice to every part of the commonwealth. I wish the farming interest to be fully, fairly, and ably represented. The farming interest of the state is its great interest, nor do I believe that there is the slightest danger that any other interest will ever trample over it. I believe that if the whole strength of the commonwealth was now in the hands of the citizens of Louisville, and they had now a majority on this floor, that the farming interest would have little or nothing to fear from their action. Since this state has been in existence, the farmers of this commonwealth have almost entirely been represented by the lawyer interest of the commonwealth, and yet I am bold and proud to affirm that the farming interest has been just as well represented as though the farmers came here personally themselves. It was not therefore that particular interests shall be represented, it is that men of sense, of experience, of enlightened views, and of sound policy, shall be sent here, and if they all come from one corner of the state, I apprehend no man would ever prove so recreant to his own interest, as to violate any of the great principles that operate to secure the best interests of the farmer.

But I rise only to express my views, and I have nearly done. I am happy, to say I feel proud of my town, which is Newport, in Campbell county. It well may haunt the gentleman from Madison's imagination. Notwithstanding his phillipics against my particular section of country, and his envy of our growth, our wealth, our prosperity, and our supposed future importance, I apprehend that the sound sense of the delegates here assembled, the combined wisdom of the state, will not permit them to do a thing that may be thrown upon their children hereafter, and to the disgrace of their own memory. I believe that they will not now for the first time, proscribe any portion of the commonwealth, because they apprehend that the time may come when they will have a pretty strong delegation on the floor of the legislature.

We are acting here, as some men tell us, for posterity, for our own reputation, that in future times the people may take up the book which records our proceedings and read the sentiments of the various gentlemen who have participated in our action, and say of this or that man he was at least fifty years ahead of the generation in which he lived. A proud bequest is it to the sons of those worthy sires, when the children feel proud of the sentiments uttered by their fathers on this floor. But will the descendants of the man thus feel, who says on this floor he is willing to proscribe a city or section of country because we have the power to do it—that he is willing to exercise the power because we have that power, without regard to the principle of the thing, and who is willing to violate principle and make it yield to policy? Sir, I have done.

Mr. BALLINGER. I have been, throughout the whole session of this convention, a silent listener to the protracted debates, on every subject, that have here taken place. I have, it is true, felt a deep interest in all those subjects, and whilst silent, paid that attention to them that will enable me at all times to vote understandingly upon them; but a question has now come up here, in which the immediate interests of my constituents are perhaps more intimately involved, than in any other question that could come up. That at any rate is the understanding which I have of the interest which they have in the question now under discussion. Sir, I have listened to the last two speeches that have been delivered with a great deal of interest, and I have been delighted with the eloquence of gentlemen; and it seems to me, that the last gentleman (Mr. Root) especially has exercised the greatest ingenuity possible, in withdrawing the minds of those who listened to him from the subject under debate. Sir, if he touched it in one point, I am at a loss to know what point it was. He has followed the usual course of able advocates, in advocating any cause not strong in itself, in withdrawing the minds of those who are to act, from the subject under debate, by casting a delusive and illusive veil over the whole, which will withdraw them from the consideration of that upon which they have to determine. I have listened also with delight to the gentleman from Louisville, (Mr. Preston,) and when he has confined himself to the facts which operate upon this subject, when he has not drawn upon his fancy and gone off to other subjects that have no connection with it, I have also been delighted. But when he has brought arguments and statistics to bear on the subject, instead of strengthening his cause, they are calculated to produce alarm, and to show the dangers that are to be apprehended from its success. The gentleman from Louisville shows conclusively that they are building up in his section of the state, an overweening power that is to exercise a great influence upon the state. He shows that there is a population pouring in and increasing there now, in an unparalleled degree, over all the other portions of the state. He shows that there is a power increasing there, which in connection with the increasing power of the surrounding districts, will be sufficient to carry almost any proposition that Louisville may desire to have carried,

in order to promote her own interests. What is the subject under debate here? It is not one that is to call forth loud denunciations, as if it was an atrocious position that the gentleman from Madison has assumed. Why, sir, if any one were to come in here, and not know what was the subject under debate, he would at once deem that he had been advocating a proposition here that was sufficient to draw upon his head the denunciation of all good and just men. Is there any thing atrocious in the principle he has been contending for? If there is, those who engrafted it upon our present constitution, under which we have been living for the last fifty years, are entitled to a portion of that denunciation.—Those pure and enlightened patriots, who, acting for posterity, and they did so act when they gave us a constitution under which we have lived and prospered, and whose memory we now almost idolize,—those men, I say, if the gentleman from Madison, who was the first to speak on this subject, is entitled to any denunciation, are at least entitled to their share of the abuse. It is the principle we find engrafted on the present constitution, and what is it? Every department of government is to be a check upon and protection against the other. The executive, legislative, and judiciary departments, have separate and distinct duties, and separate and distinct powers—the one is not a branch of the other. The legislative department then is divided into a senate and house of representatives. What is the use of this senate? Why not go upon the present organization of the French government, and have a single legislative assembly based upon that foundation? What is the use and necessity of the senate, if it is not to operate as a balance wheel, and is not to constitute a check upon the house of representatives? Why, that is its whole object, otherwise it would be wholly unnecessary. We find the people to be represented more immediately in the house of representatives. They come fresh and direct from the people, and represent them more immediately in all their monetary concerns. The senate is designed then, when the representatives are disposed to go into unnecessary extravagance, on account of its experience and the more mature age of its members, to step forward and check them. If it is so atrocious a principle, the gentlemen themselves are acting under it, and I imagine they would be the last to abolish it. If it is good in one association, it is good in another; if it is good in one relation, it is good in another.

Examine your federal representation, and you will find the senate there, is not based on popular numbers. Why is it not? Because it is for the purpose of protecting the great interests of society—and that minorities may be protected as well as majorities. Strike out this principle, and you at once come upon a state of things where minorities may be crushed. The gentleman himself, the young soldier who girded on his sword, and went forth to avenge his country, and vindicate her honor, would be one of the first to step forward and resist the abrogation of that principle. It is founded on a different principle from what he has assumed it to be. It is not that one sovereign shall be protected against another, but that the rights of the minority may be protected against the encroachment of the

majority. Look at the southern states, and see the helpless position they now occupy in relation to the rest of the Union. Sir, this institution we have come here to protect, and that we are seeking to perpetuate to posterity, would be swept off as with a besom of destruction from every part of this continent, if this was so. And still the gentleman will come forward and tell us that this representation exclusively on population is the only proper and right mode of action, when he himself would be the first to resist the encroachments of the majority upon the minority. If that was the only true principle, the south would now be crouching and submissive to the north, or be obliged to throw herself into a rebellious, or revolutionary attitude against the balance of the Union, and scenes of riot and bloodshed, and universal massacre ensue. And yet the gentleman will come forward and tell us that when applied to our own state, this principle is an atrocious one. Carry out his argument, and it will not bear investigation. What has he ever been contending for but that the senate is the saviour of the Union? He, like all others has been contending for the extension of the area of slavery to keep up the balance of power, and let the great balance wheel of this government roll on without a jostle. Well, how does it apply to us. We find that within a few years, our voting population has sprung from 133,000, to 155,000 voters. Where does this immense increase come from? It is not in the interior, or on the southern borders, or in the mountain country. Where is it? Why the great increase is here, upon the northern frontier, bordering upon the free states, and into which this foreign population is now pouring. It is not a native increase, it is an extensive foreign increase, which is pouring upon us, and against which we should guard. Not by excluding them from the rights which they may legitimately enjoy, but to provide against it, by keeping this balance wheel as we found it. I rejoice in the growth of the city of Louisville, and in her prosperity. Our great agricultural region is immediately connected with her. She is the market into which we throw our wealth; and the growth of every year. I wish her therefore to continue to grow and prosper, but I do not wish her to attain a position, nor the counties of the gentlemen from Kenton and Campbell and others, by their rapid increase, to attain a position to control and govern the commonwealth. What is the present population of Louisville? About 50,000. She is moving on with giant strides. She is establishing manufactures, and is drawing a population to her, and every year her thousands are increasing. Well now, the gentleman is just placing us in the attitude that he has been warning us against. He says Kentucky constitutes about one fourth of the area of France. Well suppose it does. If then, a single city can govern a country of 30,000,000 of people, cannot a single city, by her wealth and power, influence the legislation of Kentucky? Look at Paris. Why, whenever a revolution breaks out, whenever a single movement is made there, it vibrates from the centre to the extremity of France, just like an electric shock. It is always the same case. Why, the single city of Paris governs the whole of France. She overthrows a monarchy and establishes a

republic, and then she requires a standing army to keep her from again crowning some royal head with the diadem. Does the gentleman want to build up a great city with such an influence? Not that I believe the people of Louisville would ever wish to exercise it for such a purpose. But look at her condition now. She is increasing in commerce and manufactures, and exhibits a greater concentration of wealth than any other portion of Kentucky. The gentleman has referred to Boston. Well sir, look at Boston; has she not now the whole state of Massachusetts tributary to her, encircling as she has that broad commonwealth, with her iron arms. What is Louisville doing. She is building her rail roads to keep up her prosperity, to extend her influence, and to support her people. She is seeking to spread her influence all through the state. Here is a rail road extending to Lexington, and others are perhaps in contemplation, and she is indeed extending forth her arms for the purpose of grasping the whole state. Sir, that is the influence the gentleman is here attempting to bring upon the state of Kentucky. Well, to a certain extent, I want to see it, for these public improvements are a benefit to other portions of the state. But I do not wish to see her influence extended thereby, so as to control the state. I am for her legitimate influence on the floor of the house of representatives, and if that body chooses to run riot and go into wild excesses on the subject of internal improvements, as they have heretofore done, I want to have a check upon them, through the senate.

Well, how is this population made up? It seems strange, but you can get a voting population there for almost any purpose. Look at the statistics, as presented here in the second auditor's report, and we find that in 1847, when perhaps a particular object was in view, there was a voting population in Louisville alone, of near 7,000. Well, in 1848, we find that it was 5,000 and something over. It is a fluctuating population, and can be increased at will, for almost any purpose. It is here to-day, and gone to-morrow. Suppose you want to make out an apportionment bill; if the people are so disposed, you can bring in this amount of population and swell it up to any amount that may be necessary to give them a powerful representation in the senate. What is the state of the interior of Kentucky? The people there are stationary. Their pursuits are agricultural; and wealth and population, and every thing else there, is more equally distributed and divided than in the cities. You do not find those enormous fortunes, and that extreme and abject poverty there that you do in cities; but you find property more generally diffused among the people. He says that Ohio and Massachusetts and New York do not proscribe their cities. What is their situation? In Ohio they have gone to the extreme in every thing, and are trying now to get back to the position they formerly occupied. Ohio sees the evils of her position, and is trying to get back on the old conservative ground she once occupied. So will it be with the state of Kentucky, if she adopts this principle of giving to these overgrown cities as much representation in the senate and lower house as their population would entitle them to. The voting

population of Jefferson county and Louisville now amounts to some 9 or 10,000 voters. You may take four of the most populous counties in the interior of the state—Lincoln, Boyle, Garrard, and Jessamine—and they have a voting population of 5,450, and an agricultural wealth of something less than \$17,000,000. The county of Jefferson and Louisville combined, present a voting population of almost twice that amount, and Jefferson and Louisville have a monied capital of near \$3,000,000; and there is where they get a great deal more of power than the interior. We have there land, and slaves, and stock, but little monied capital. The gentleman tells us that Louisville pays \$43,000 revenue, or almost one tenth part of the revenue of the state. Sir, it is true, and that is another evidence that we should guard against this thing. Why, although he tells us of the amount of revenue drawn from that county, yet he does not tell us that some \$10,000 or \$15,000 of it are drawn out of the treasury for her expenses. She does not, perhaps, pay a much larger revenue than the county of Fayette, and Fayette has but two representatives on this floor, and it is probable, from the nature of her population, that she never will have more.

Now, I go for the amendment of the gentleman from Franklin, (Mr. Lindsey.) I think it right. It leaves this matter just as we find it in the senate, and gives the cities a full representation in the lower house. Let population be the basis there. Let the people be represented there fully. On all monetary affairs, let them have a full voice. Then let not one be subject to the influence of the other.

Now, you may take the interior portion of the state, and you will see the difference. Take the counties of Rockcastle, Laurel, Whitley, Knox, Harlan, and Clay, with a voting population not approaching that of the city of Louisville and the county Jefferson, and yet constituting a territory of upwards of one million of square acres. That whole region is to have perhaps but one voice upon the floor of the senate, while the city of Louisville and the county of Jefferson would have, under the present arrangement, looking to the increase of population that is going on there, representation to an unlimited extent. As the gentleman from Madison well observes, take a region of some ten or twelve miles on the Ohio, that would be intimately connected and interested in common, and you will find that they constitute nearly one third, if not one half, of the voting population of the state. Give to Louisville, with a population of 100,000, as she will probably attain in a few years—give to Covington, opposite Cincinnati, which has now some 12,000, and which has broke on us like a meteor, and give her a population of 50,000—give to the city of Newport an equal number, and to Maysville her increase, and to other places theirs, and you at once give them the power to control the destinies of this state. Now, is this agricultural interest to be sacrificed—to be placed like the south, dependent on the north? It seems to me there should be some balance preserved, and engrafted upon the constitution. I shall then be for the amendment of the gentleman from Franklin, (Mr. Lindsey,) which leaves the representation in the sen-

ate as it is in the present constitution, and if I cannot get that, then I will go for the amendment of the gentleman from Daviess, (Mr. Triplett,) with a slight modification, and that is, to insert one instead of two senators. That seems to me to be the just basis of representation. Now, with these few remarks to the convention, such as they are, and which I believed it to be my duty to submit, so far as I am concerned, I submit the question.

Mr. McHENRY. This question is, perhaps, one of the most important that has or will come before this convention. It embraces the whole subject of the apportionment of the representation of the state, and for myself, I frankly confess, I have had more difficulty in satisfying my own mind as to what is the right of the question, than as to any other subject on which my mind has been brought to bear. I know that the true basis of our representation is population—or as we have it in this state, the voting population. When we come to see, that in carrying it out, some inequalities exist which it is impossible for us to remedy, we should turn our minds to the matter and see how we can best arrange it so as to present as few inequalities as possible, and afford as fair a representation as is in our power. Our present constitution declares that representation shall be based entirely on numbers, and lays down as a rule, that it shall be arranged so as to present a perfect equality as near as may be, and it has been an entire failure. In some instances counties are represented where the voting population is not a thousand, and other counties who have double that number have but a single representative. Let us examine the present bill and see if it is any better, and whether inequalities do not exist in the mode we are asked to adopt, equal at least to those in the present constitution. And when we find that it is impossible to carry out perfect equality, should we not then impose some limitation to the representation of particular interests, which may otherwise become overpowerful. I have turned my attention somewhat, to the examination of what would be the operations of the plan before us. I find three rules laid down: First, every county that has the full ratio shall be entitled to a representation; if it has that ratio and two thirds over, then it shall be entitled to an additional representation; and every county that has two thirds of the ratio, shall have a representative, and those who have not two thirds shall be thrown together, and if they are not situated so as to be attached to any county not having two thirds, then they shall be attached to the nearest county adjoining, having the least number of voters. According to this mode of apportionment six counties having an aggregate of 23,974 voters, are entitled to sixteen representatives at a ratio of 1498, while six other counties having only 13,911 voters are entitled to twelve representatives, at a ratio of 1159. And twenty eight other counties having 51,987 voters have only twenty eight representatives at a ratio of 1856, thus showing in those twenty eight counties a loss of 9371 votes or six representatives and over. There are thirty three counties with thirty three representatives, at a ratio of 1233 voters, and the other twenty seven counties will

have fourteen representatives, and they will have to be thrown together as best they may to get them, but it cannot be done at all upon perfect terms of equality. This estimate is made with reference to the number of one hundred representatives, for which the ratio at present is 1522. But if we should fix the number of representatives at seventy five, the inequality would be still greater, if possible. Two counties, Jefferson and Kenton, will then have six representatives with 12,689 voters, while sixteen counties with 35,947 voters will have but sixteen representatives. They will thus lose 4525 votes, or over two representatives. There will then be twenty four representatives to be divided among the remaining fifty two counties of the state, a division which it will be impossible to make, on any thing like a perfectly equal arrangement. This proves to my mind that we cannot make representation exactly equal, according to the principle we all acknowledge to be the correct one. Was it doing then any injustice to those who were more favorably situated, because their population was more contracted, and occupied a smaller territory, to fix some limit upon the representation they should have in the house or the senate?

I shall go for the amendment giving to the city that may be entitled to a representative in the senate, a separate representative, but I would have the number limited. No city or county in the state should ever have more than one senator or five representatives. This would be giving to them one twentieth part of the representation of the state, and that ought to content them. I am willing to give them a fair representation, and this would be a fair mode of doing it. We see that owing to the great number of counties, and the manner in which they are situated, and the difference in their population, that it is impossible to do equal justice upon what we all concede to be the true basis of representation. When this cannot be done, should we not fix a limit, as has been suggested. This limit had better be applied to the cities where the people are concentrated, act together, and can bring their influence to bear more directly on a subject, than it is possible for an agricultural people, scattered all over the state. It is true that the interests of the cities are identified to some extent, with the interests of the balance of the state, but it is true also that there is a great deal of foreign capital invested in the business of the cities which has identity with the interests of the rest of the state. We know that it is for the interest of the state to keep up these great manufacturing interests among us; yet we must know also that there are combinations in those cities, foreign to the rest of the state. I know that this is not so with a majority, yet men are apt to go for their own interests, and for the interests of those more nearly connected with them in monetary concerns, than the balance of the state. This may be a broad assertion, but if we look at human nature, and see to what a great extent the idea of making money operates upon all of us, we shall be compelled to acknowledge its justice. Louisville is now, I believe, entitled to three representatives, and I am willing that she should have a senator. But I am not willing to give her more than one twentieth part of whatever shall

be decided upon as the legislative representation of the state. I prefer that we should fix it at one hundred, rather than seventy-five, as the last number would increase the ratio, and make the representation more unequal, and the proportion of influence would be greater in favor of the large cities, than it is now. While therefore I desire to see the increasing growth of these cities among us, and desire to do them no wrong, I must acknowledge that I desire to prevent their exercising an undue control in the affairs of government, by having a majority of the representation. As we can never, by any system secure a perfect equality of representation, I am for putting a limit to them, as they never can lose more votes than the other portions of the state. They will even under the plan proposed have more weight than many of the counties in the state. Take the county of Logan; under the proposed plan, she would have but one representative, and yet she has a voting population of 2151. She therefore would lose 628, almost one third of the entire voters of her county. By fixing a limitation then, can we ever do more injustice to any city that may grow up among us than is done here to Logan county? Many other counties would lose ten and twenty per cent, and some twenty two or twenty three per cent, while by fixing a limit on the cities, they would never lose so great a percentage. I am willing therefore to limit the cities to one senator and five representatives, and unwilling to go beyond that.

On the subject of slavery, I shall not remark, though I think the amendment will fail to accomplish its object and hope therefore it will not be adopted. At some other time I may give my views on the subject of slavery, but I do not think it has any connection with the present subject. Having got through with my remarks on this point, and notwithstanding that in so doing I may be considered out of order I will add no more.

Mr. STEVENSON. I do not rise to participate in this discussion, but after the gentleman from Campbell (Mr. Root) has undertaken to speak for the county of Kenton, the constituency I represent, in the manner which he has, I should be recreant—

Mr. ROOT. I spoke of Kenton in connection with Campbell, and only so far as others had connected them.

Mr. STEVENSON. I am glad to hear the explanation of the gentleman, but he certainly said that Kenton and Campbell were to be made the scape-goats, and he gave an expression of feeling in a manner which every member on this floor must have understood as intended to indicate the feeling of the northern section of the state. I do not rise to take part in this discussion now, although I may do so before the subject closes, but to say that I should be recreant to my constituents and bastard to the very title of Kentuckian, if I should hear such sentiments uttered on this floor, without, in my place, denouncing them as vile aspersions upon the character of my constituency. They may live on the border, and within the very fetid atmosphere of an anti-slavery state, but the sights they have there witnessed, and the atmosphere that is blown over to them by every breeze, has

made them but the firmer in their adherence to the principles upon which Kentucky stands. I come here yielding to no man in a firm advocacy, and sincere feeling for pro-slavery principles, and I made the race against a gentleman, to whom, in point of high talent and superior age and experience, I bow with humble obeisance; I came here as the representative, of an overwhelming majority of what Kentucky has been, and what I hope she ever will be—sound in principle, ready to defend her rights from whatever quarter the attack may come, whether from the fanaticism of abolitionism or any other, and ready to give her help to those who sympathise with her, when the cry for help shall come. As to our claim for representation on a fair and equal footing, why we would be whistled down the winds, if the sentiments of the gentleman from Campbell are to be regarded as the true current of public sentiment in our quarter. As a distinguished friend remarked to me while the gentleman was speaking, "if he had any doubt how he should vote, if the gentleman from Campbell was representing correctly his constituents, he would at once go against the proposition." We meet here to settle great and high principles, and with a common confidence in the generosity and common justice of our fellow members of this body, come from whatever section they may, and when I come, if I shall take part in this discussion, to place the claims of Covington on proper grounds, I shall point to my seat on this floor as a complete refutation of the assertion that though my constituents live on the border of the state, they will ever prove untrue to the interests of Kentucky. I am pained to hear the sentiments expressed by my friend from Campbell. I undertake to interfere between no man and his constituents, but we live in sight of each other, and I know I may say emphatically from my own experience, that he does not speak the sentiments of a large portion of Campbell, when he says that slavery is a sin, and that he would rip out the leaf of his Bible if it dared to uphold it. There are slaveholders and pro-slavery men in Kenton, who will compare with any in this convention, and I think the gentleman casts an aspersion upon them, when he attributes to them the sentiments he has indicated here this morning. I was pained for another reason, and that is the record of our proceedings. The gentleman's speech will be taken as a text by the abolitionists. When the South is fighting for her rights in a national point of view, and when gentlemen rise in the national halls and say that while they leave the poor boon to the southern states, of controlling slavery within their limits, they are forever to stand still, and never go into a territory belonging to the Union, and won by their joint valor. The text of one of the members of the Kentucky Convention will be the text from which they will preach their homilies of abolition. I felt proud of my own native state, when, at a public dinner the other day, I saw among the set toasts, "Kentucky; no enemy to southern rights will hold a seat within her Convention walls." I felt pained, that when the gentleman's speech shall be reported, we shall be obliged to make an exception to that fact in his person.

I repeat, I had not intended to participate in this discussion, but as the gentleman may be supposed by some to speak the sentiments of northern Kentucky, I felt that I should be recreant to those whom I represent on this floor, if I let the sentiment pass without an instant denial or refutation. I hope to have an opportunity to break a lance with my friend on the subject of slavery, when the resolution of the distinguished gentleman from Henderson, (Mr. Dixon,) shall come up; and at least I think I shall be willing to go before the people of both counties, and appeal to them which has most correctly represented them on the subject.

Mr. HARDIN. I have an amendment that I propose to offer at a proper time, which I will read. It is to be inserted after the word "in," in the 10th line, and 5th section.

"The house of representatives, and whenever any city or town shall have qualified voters equal to the ratio required to entitle it to one senator, such city or town shall elect a senator: *Provided*, That in no event shall such city or town ever have more than five representatives and one senator."

I know the basis of representation is population and not property. That is the basis to a great extent in the government of the United States. But there are two conservative principles in the constitution of the United States; one is, that the slaveholding states get a representation for three fifths of their slaves. To be sure they get a privilege, but they are liable to a direct tax in proportion to their representation in the house of representatives. Direct taxes, however, have never been levied but twice, and perhaps they will not be again. It is a very expensive tax to collect; it cost \$14 74 for every hundred dollars to collect it and cover defalcations.

There is another conservative principle, and that is, that the smaller states are represented in the senate as sovereignties, and Delaware and Rhode Island have the same weight as Pennsylvania and New York. The senate is a congress of sovereignties. Now, each of these features is a departure from the principle of representation according to population. It is a conservative feature which does not apply to counties. There will be no danger for twenty years to come, that these cities will have enough population for two senators. I am unwilling that any city shall send more than one twentieth part of the representatives to the house of representatives, or more than one thirty eighth part of the members to the senate. Give them five representatives and one senator, and stop them at that.

I did not rise for the purpose of making any remarks, but as I am up, I will make a single remark in answer to the gentleman from Louisville, (Mr. Preston,) who has spoken so exceedingly well, and in such very fine taste and style. He said Louisville had a large portion of wealth; that Louisville is wealthy, and that Jefferson county is so also. It is true. It is fortunately situated in the state of Kentucky. It is the garden spot of America. But much of that is owing to its position and locality; it seems to me though, that it ought not to be Aaron's rod and swallow up the rods of the other magicians.

The gentleman said that Louisville furnished a large proportion of the men that went out in the last war with Mexico. In furnishing that proportion however, it excluded a very large proportion of the balance of the state. There was no draught in Kentucky, thank God, the only draughting was, who should be draughted out and not who should be draughted in. Five thousand of the best men in Kentucky, were tendered shortly after the regiment was filled. It was considered a peculiar favor to Louisville that she got her regiment in, while four or five thousand more were rushing forward and offering their services. I consider it a favor to Louisville, and in that regard she stood forth in place of the balance of the young men in Kentucky. She behaved very handsomely, and she has had one-fourth of the officers that went from the state of Kentucky, when the balance of the state was in no wise behind Louisville. But sir, when you come to the actual fighting part, the Louisville regiment was not brought into battle. Three days Monterey was besieged and there were three day's of fighting from day break to dark, and yet they did not get in. I have no doubt they were as ready as any men in Kentucky, but why General Taylor did not bring them into action, I do not know, nor will I attempt to guess, for I might guess improperly. One thing I do know, that at the battle of Buena Vista the second regiment from the state of Kentucky was there, and how pretty they came in. Yes sir, and they bled too, and caused blood to flow from the enemy, and were called, and will be for an hundred years to come, "the bloody regiment of Kentucky." And if you go on the hill here to the burial place of the Kentucky soldiers in the cemetery, you will see some indications of it. I have examined that place, and I did not see the grave of one soldier from the Louisville legion there. I examined it yesterday with a young man from Bardstown who was under Taylor, and I did not see one from the Louisville legion. Do not understand me to say that they would not be just as ready as any men in Kentucky, but I protest against Louisville's being put up here, between Kentucky and danger, as if she stood for the balance of the state. Kentucky was ready, and to her honor and glory, her sons had to be draughted out instead of draughted in. But in relation to the regular army, I must say I regret to see it filled up with this foreign population. I consider it the high road to the loss of our liberties in less than one hundred years. It was the downfall of the ancient republics of Carthage and of Rome, and sooner or later it will be the downfall of every republic the world ever saw, that shall put into its armies foreign mercenaries. I regret very much any invidious comparison should be drawn, but I repeat what I said before, although I pity the poor Irish, the oppressed English, the Scotch, the French, the Italians, the Austrians and the Hungarians, yet is it very politic to invite many more of them here? We have to take care of ourselves. Sir. I have before spoken on this subject, and on a subsequent occasion that may present itself, I expect to speak a little more fully on this subject. I will say however, I wish to God we had some stronger naturalization laws than we have,



for no one can help seeing that the paupers who are coming here from Europe in such numbers, or wealthy men, if you will have it so, will make a population to press on the means for the support of the rest. What are we to do with the sixty millions there will be in this country in forty years, if this is not stopped in some way.

There is a great deal of force in what the gentleman from Henderson said on Saturday. Like Absalom's fair speeches, he ran off with my heart; but I have thought of it since Saturday night, and I do not believe I am as badly bothered as the gentleman from Louisville thought I was. We know there is, on the river border, a population pouring in, whose business and pursuits are on the other side of the river. What is it that is swelling the population of Newport and Covington? Why, I am told it is the population of Cincinnati that is pouring in, not to make it a business place, but a home for their families, while their business is in Cincinnati. They have no feelings in common with us. It only shows that my fears are well founded when one of the ablest men in Kentucky had to take the stump, or his antagonist, who was for emancipation, might have carried the whole county. It was fortunate that gentleman was there, and fortunate he had some good old Virginia feeling. I, too, have some of that feeling. I am no Yankee, no anti-slavery man. I would not give one good, stout, hearty Kentucky man for a dozen Cape Cod, or Passamaquoddy men; nor would I give a dozen Kentuckians for ten thousand east of the Rhine. I pity them, but my feelings are for Kentucky, and for the slave population. I see they are to be swallowed up. I see it, that with the Wilmot proviso, the slave-holding states will be swallowed up in forty years. But, thank God, I shall be gone before that time. I may, on some future occasion, speak further on this subject. My feelings are much like those of the gentleman from Bourbon. I pity these foreigners from my heart, but I love Kentucky and the slave-holding population; and I repeat what I said the other day, that if the whole of Europe were to unite to crush the United States, the last gun for liberty would be fired in the slave-holding states. The people of the slave-holding states regard liberty as a high personal privilege, which they would die for rather than give up: and where slavery does not exist, they regard it as a political right.

The PRESIDENT. I am exceedingly sorry that the elder gentleman from Nelson has seen fit to cast a base and infamous stigma upon the gallantry of the soldiers of Louisville and Jefferson county. He says he sees on that hill no name of any citizen of Louisville. If he had waited till the monument which is to be erected there was completed, he would have seen the name of the gallant CLAY, who fell fighting in the foremost ranks; and he would have learned that he was a citizen of Louisville—not born there, it is true—but a citizen by adoption, and by choice, as many other of her citizens are, and he would have forborne the stigma on the city of Louisville, a stigma insinuated, and for that reason more damnable than if it was charged direct.

I was not born in Louisville, sir, but it is the city of my adoption, and I can tell the gentleman that the spirit of freedom burns as pure and as independently in the bosoms of the citizens of Louisville, as it does in the bosoms of the citizens of any portion of Kentucky. It is true sir, the Louisville Legion shed no blood at the battle of Monterey, and it is true that battle continued two days. But where was the Louisville Legion? They were placed, by the order of General Taylor, to guard the battery that shielded those who made the charge, and for twelve hours they endured the fire of the enemy without action, unflinchingly. Why they were placed there is in the breast of that man, but upon that battery and its safety depended the safety of the army, and he confided it to those, who he believed were sufficient to defend it.

Surely, in carrying out an act of political importance, it is not necessary to slander the citizens, who with bravery and gallantry, rushed *en masse*, to the rescue of their country. The proposition is a proposition to demolish our fair portion of political rights in the commonwealth of Kentucky. It is a proposition now directed solely and exclusively against the city of Louisville, that she shall not have an equal voice in making the laws that are to govern a free people. It is an act of political injustice, and though the gentleman may have had to sleep upon it, in order to bring himself up to it, it shows that that sleep has enabled him to bring himself to perpetrate this act of political injustice, which he had some grudging about in the first instance.

The principle upon which our government is established is universal suffrage. We proclaimed it in the old constitution, and we are about to proclaim it in the new. But it will have to be struck out, if this act of political injustice is perpetrated; because it will be false, utterly, totally, unconditionally, irremediably false to the people of Kentucky, and to the world. If a free people are equal and entitled to equal rights, that is a principle, and no man who acknowledges the principle, if he acts consistently, but must carry it out in all its consequences, or he denies the principle, and says that we are not entitled to equal political rights. Well, if we are not entitled to them, and you deny that principle, where is it to end? Where is the limit to the inroads you will make on the political rights of a portion of your citizens? It will be in the will of a majority, based on no principle but that of expediency. And that majority will have a will not anchored by principle, but expediency, and it will lead to the very same degree of despotism that rules through the Autocrat of Russia, that tramples upon the rights and liberties of the continent of Europe, and has hitherto had no footing on the shores of America, or if a footing, the march and extension of free principles have been, since the days of the revolution, constantly in advance.

What is the reason endorsed by the gentleman from Madison for obliterating these principles? He says that the slave population will not be safe to their masters, if this principle is carried out. Three fourths of the votes that were cast for the delegation on this floor from the city of Louisville, were cast by men who held no slaves

—by men who did not worship at that shrine—and they cast their votes on principle. They believed that our fathers when they framed this constitution, laid its foundations in justice, and they determined that they would stand upon the platform, that private property was not to be taken without just compensation—that it was the great privilege of a free people to lay it on that foundation, and keep it on that foundation. And as the law had authorized this property, and individuals had invested in it, if it was the public impulse that this species of property should be excluded, they thought they should compensate those who had acquired it; and soberly appealing to that principle of innate right, based on the foundation of the constitution, we appealed to men to stand by the rights to property as they would stand by the rights to liberty, equality, and equal rights, and we did not appeal in vain.

We stand here representing that people and that great principle, and it is thrown in our teeth that it is necessary to violate that principle, in order to secure our negroes. I would want no other reason and argument to give me double power and double force in agitating upon the subject of emancipation, than to tell a free people, free white men, that their rights have been violated and trampled in the dust, and their equal political privileges in this government have been silenced in the legislative halls of the country in order to save that property. How do gentlemen expect to send back the delegates from the city of Louisville to their constituents? What answer do they expect them to make in relation to this question? They will say, you told us the foundations of this government were laid in justice, and that you would lay the foundations of the one you are framing the same, and would give equal laws and equal rights to all. We should say the balance of the state has deprived us of the voice of freedom, has trampled our rights in the dust. And, for what avowed reason? Because they feared the day would come when emancipation would have a head in the city of Louisville and upon the bordering counties. Thank God, emancipation has not drenched the fields of Louisville, or the bordering counties, with blood. The principles involved in this, and the reasons for carrying it out, are fraught with more evil to this institution than any other act this convention could possibly do. I tell these gentlemen who are in favor of the institution of slavery, that if it can abide at all, it can only abide on the sentiments of justice and right to the holders of slaves. Slaveholders are not a majority in Kentucky. They never will be, and whenever you destroy that principle of right which deprives a man of the power of defending private property—when you trample upon the political rights of men in order to shield it, you have unloosed a force and power which will overturn this principle. If we are to be sacrificed, if our political principles are to be crushed, and our voice is no more to be heard in the country, for God's sake let it be for some other reason, and do not sanctify and make holy that abominable reason that will work against you most fearfully and awfully. There is a jealousy against the cities. Has Kentucky ever had any reason—any just reason—to

be jealous of any of the cities in the state, large or small? And is she likely ever to have? Are they less public spirited—less desirous of enlightening the public mind, and sustaining free institutions? The city of Louisville established the first public schools where all went and received an education without charge, except from the public purse. Louisville now lays a tax on the property of her citizens of twelve and a half cents per annum to sustain the public schools in order to enlighten the rising generation, and make them acquainted with their rights. She is in advance—she took the first step and is now in advance—of the balance of the state in reference to education.

Upon the subject of internal improvements, which some men delight to denounce, but which have in their effect more than doubled, or nearly doubled, the value of the whole of the real estate in the country, where did Louisville stand? She was in favor of them, and with her voice and her aid and assistance enabled them to be carried on. And it is obvious to any one acquainted, or who will look at the records of the legislation of that time, if she had withdrawn her assistance there would have been no turnpike roads through the state, and no slackwater navigation, and she is now furnishing an example of enterprise to the balance of the cities, in the railroad she is building from the city of Louisville to this capital, and thence to the city of Lexington, and from thence through the northern portion of the state to join the Baltimore and Ohio railroad, and thus open the markets of the east. This is a thing that may and will be accomplished if we are wise, and it is the enterprise of Louisville that points to this work.

Will the citizens of Kentucky derive no advantage from this enterprise? What do they fear? Why, say they, she gets all our produce. Yes, all that you choose to bring, and she pays for it. I hope the trade of Louisville is a mutual advantage to both city and country; and it is obvious to every one who has remarked it, that within the borders of the city there is a home market, beneficial to the citizens of Kentucky. Six thousand hogsheads of tobacco inspected and sold at a home market, where the planter can receive his money, is an evidence that Louisville is growing and producing a market beneficial to the state. Is it that market that causes gentlemen to look with suspicion upon her? It is a market where you get supplies. It is more, it is a market for the enterprise of the state. All that are in Louisville were not born there. All that have trusted and confided in that city were not born there. The merchant, the man of genius and enterprise, goes there as to a market for his genius and talents which the country does not afford.

She has her medical hall and four hundred students, and I hope and trust she yields to those who come there an equivalent, and in the intelligence that she imparts she does no harm to the cause of liberty and equal rights. She educates young men in other departments, and to them the same remark is equally true. What is there that Louisville does to cause the jealousy of different portions of the state? When danger calls her citizens fly to the rescue as soon as those of any other portion of the state. I do

not say more quickly, for I do not believe it, but on a proper occasion, and in a proper field, I believe they will meet the contingencies of battle as boldly as any other citizens, and I claim no more for them.

When it comes to the matter of education, Louisville stands ready to show by her acts what she is willing to do to enlighten the public mind and sustain the pillars which sustain our government. When we consider the principles which advance a people in wealth and prosperity, the enterprise and the zeal in which she engages in them, shows that there is a patriotism in it. Is it to this that you object?

Mr. Chairman, I know the balance of the counties of this state have it within their power to put such provisions in this constitution as they may choose, and they may deny to Louisville, or any other city in the commonwealth, any representation at all—any voice in it. They have got the power. Is it expedient they should exercise it? They may exercise it by violating the great principle of equal rights. The gentlemen do not propose, I understand, to go the whole, but half way only. They will take from the present generation nothing they are entitled to, but they will disfranchise the generation to come, or lessen one-half, or three-fourths, or four-fifths of the political power in the commonwealth of Kentucky. Is there any thing to be more safe? Are the political rights of the people to be more safe? It is a violation of principle that shows a man is not at heart willing to allow to the balance of the community that freedom which he enjoys himself. If you do these things in the small, let the temptation be equal to it, and you will do it in the great. I have no more confidence in those men that have made up their minds to invade the rights of their fellow citizens, and stifle the voice of the people of Kentucky, than I have in the voice of the autocrat of Russia, who thinks and acts for the whole. If you do it in one thing, let the temptation be great enough, and you will do it in another. I know gentlemen have been contemplating this project. One gentleman fixes it upon the necessity of securing their negroes. Another wants to supply that population, which they have driven to other states, in the extension of their farms, and give to them votes for the men they have lost, and which they have replaced in bullocks. I understand it, sir. And it would be just as sensible, and no greater outrage, in my view of the subject, if they should say their bullocks should be represented in the legislature of Kentucky, to make up for the voices of the freemen congregated in the cities, if there were any way of casting the votes. I beg gentlemen to consider this principle. I know the balance of the state have the power; and I know many men claiming to be democrats, and many men claiming to be whigs, who are contemplating this proceeding, and who are sworn upon the principle of equal rights and equal justice to all; and yet, because they think they can do this act with impunity, they are preparing themselves to carry their purpose into effect. I know it; I have seen it.

Well, every gentleman can reconcile it to himself in his own way. That is with him. His constituents, because they receive the benefits and advantages of it, may look over it, but if

they shall be chary in trusting him again, when they see he can trample on their rights, as he has trampled on the rights of others, their distrust will be manifested, and the consequences will be visited on his own head, and not on mine.

I can sign no constitution that denies to my constituents those equal and political rights that other freemen have. I can sign nothing which degrades and stigmatizes my constituents as unworthy to be partners with the freemen of Kentucky in a government of freemen. I cannot ask them to take this constitution. I cannot tell them it is just. I shall be bound in my conscience, and before God, to tell them it is unjust—that the liberties and equal rights of freemen have been trampled upon. And why and wherefore? It has been avowed. There is just as much danger to this government if it is ruled by acres, by millions of acres, where there are no men, or but few, as there would be if it were ruled by the voice of freemen who buy those acres. I have always understood it was intelligence and virtue embodied in just, upright and correct laws, which constituted the basis of good government and not acres of land. Still we pay one tenth of the taxes of this commonwealth, and we have one-thirty-eighth part of political power in the senate, and one-twentieth in the house. Has that political power ever been found injurious to the state of Kentucky? Has the city of Louisville, or the county of Jefferson ever failed in aught which leads to the prosperity of the state, to its glory, to equal laws and equal rights? Where a stigma is placed on our representation in the halls of legislation, or in the halls here, we may be ardent in our support of our rights, and we may speak out as freemen should speak out when they feel there is a principle asserted which leads to the stifling of the voice of freemen. But they will teach us some other language, and it will be a long reign of servitude and oppression, which will stifle our voice, or induce us to lessen our opposition to oppression, wrong, and injustice when we see it, or when we apprehend it. There is no danger in giving the city of Louisville, and every city that shall arise in the Commonwealth of Kentucky, whether they arise on the borders of the Ohio, or like the great manufacturing cities that have grown up in England, shall rise in the interior, there is no danger in giving them equal rights and equal privileges.

Mr. C. A. WICKLIFFE. If the gentleman will give way I will move that the convention take a recess till half past two o'clock.

The motion was modified so as to read "three o'clock," and it was agreed to.

#### EVENING SESSION.

The PRESIDENT. When I rose I was excited at what I considered an infamous insinuation upon the living and upon the dead, and forgot to name another gallant citizen of Louisville, who fell on the bloody field of Buena Vista. Young Dozier lies on yonder hill. The gentleman might have read his name, and spared his sneer. Dozier was the gallant son of my first and best teacher—the man who taught me to think, the son of James I. Dozier, of Louisville. Louisville lost other citizens in Mexico; but enough of this.

I have endeavored to place my views upon the question we are now considering, fairly before the convention. The principle, as laid down in the old constitution, is that representation shall be equal and uniform in this commonwealth. The principle of extending the right of suffrage to all citizens of the commonwealth, who have attained the mature age of twenty-one years, is there laid down. That was the great platform on which our ancestors based the government—that the right of suffrage, and of representation based on the right of suffrage, should be equal and uniform. It is true, the rule thus prescribed, when carried out, does not arrive at mathematical certainty. When divided into counties for convenience in regard to local government—for convenience in holding courts, and the dispensing of justice, those divisions must necessarily be unequal in extent of territory, unequal in point of fertility, and of course some of the divisions naturally become populated faster than others. Different counties never have been, and never will be, precisely equal in point of numbers, so that that equal and exact justice, in accordance with this principle, can never be obtained—that is, mathematical equality in regard to numbers. But the principle is recognized in the old constitution, and the legislature was directed to carry out these principles as nearly as practicable.

I believe that I was in the legislature when three apportionments were made, and have had occasion to look back to two that have been subsequently made. None of them arrive at certainty, and I found both political parties desirous, in the distribution of representatives among the counties, to get it as favorable as they thought they were warranted in doing, in accordance with the principle laid down in the constitution. And I sometimes thought that the constitution was stretched a little, for the purpose of arriving at such conclusions; particularly when Louisville was denied a senator. And I could name other instances, but I will forbear. The clause directing the legislature to apportion the representation, either did not in itself contain the correct principle, or it was so perverted that justice was not obtained, equality of representation was not obtained, nor was it brought as near to equality as it might have been. For instance, I recollect that in one apportionment the county of Bourbon, with a less number of inhabitants than the county of Scott, was allowed to have two representatives, while Scott had but one. This was done on the principle of arranging residuums; beginning at the north-eastern part of the state, by which they were consumed before coming to Scott county; for in which ever quarter you begin to divide your residuums, you arrive at a different conclusion; commence at different points, and you always have different results. There were inextricable difficulties in the way of arriving at that equality which the constitution contemplated, or at least there were very great difficulties, and it so turned out that a large proportion of the delegation allotted to a county, differed in their political sentiments from a majority of the people of such county, and the gap continued to widen. I believe the last apportionment was about the most unequal that ever was made, and

since it has got a proclivity in that way, there is no telling where it will stop.

I was anxious that in this constitution, after acknowledging the principle of universal suffrage, on the part of all male citizens over twenty-one years of age; and the principle that representation should be distributed to every county and town in proportion to numbers, as nearly as might be, some certain rule should be adopted that would give the representation to the largest masses; and thus arrive as near to certainty as possible, and take from the legislature, as far as practicable, the discretion they possess in regard to controlling residuums. If I shall feel any interest in what shall be done in the forming of this constitution, when I come to that section I will endeavor to aid in fixing upon a certain criterion, and one which will take away legislative discretion, as far as practicable, so that the greatest number shall have the representation. I know that divided into cities, towns, and counties, as we are, an exact mathematical equality of representation according to numbers, is impossible to be obtained.

The gentleman from the county of Ohio says, that mathematical certainty could not be obtained, and that there would necessarily be inequalities of representation, if such divisions are carried out, and that it would be no departure from the principle to cut off the cities, and limit them, so that they can never have more than a certain number of representatives. Now, sir, that is a direct violation of the principle; and it is not a violation arising from the difficulty of coming to a direct conclusion, but it is a wilful violation, made before hand, purposely and intentionally; and therefore, sir, in the view I take of it, wholly and altogether inexcusable, not arising from necessity, but from an intention to violate the great principle of equal representation. It is either a principle, or it is not; it is one that we should follow as nearly as practicable, or that we should abandon altogether. If we abandon it altogether, I should prefer giving to each of the one hundred counties in this commonwealth one member. If we abandon it altogether, I would prefer that we divide out the thirty eight senators, among the several counties, cities and towns, and give that representation to them absolutely, and let it go on in perpetuity. If the system proposed by the gentleman be carried out, it would resemble the borough system of unequal and unjust representation, as it has existed in England, and which has been for a long period of time, the subject of great contention in parliament, between the "ins" and the "outs;" for it is manifest that the cities will increase with more rapidity than the population of the country.

The gentleman from Madison says that the belt of counties, or that range lying along the Ohio river, will increase in population more rapidly than the whole balance of the state; and that that increase of population will be dangerous to the political ascendancy of the balance of the state, in reference to a particular description of property; and therefore it must be guarded against in this constitution. That is his argument.

The honorable chairman of the committee, by the amendment he offers, proposes to limit the

cities to a certain representation—provided—now the proviso has nothing to do with the subject matter, nor does it grow out of it—provided every body in this commonwealth shall have the right to go out of the commonwealth and bring in negroes for his own use. The gentleman is not contented with apportioning the representation as indicated in his amendment, and abandoning the principle of equal and uniform representation; but he wants us to engraft upon it a provision permitting free trade in negroes. Well, sir, if there are any portions of the people in this commonwealth, particularly those in the border counties of the state—as the gentleman from Madison maintains—that are opposed, or likely to be opposed, to the existence of the institution of slavery, it will fall with a ten-fold force of revulsion upon those who shall not only be deprived of the right of suffrage, but shall also have this privilege endorsed upon it, as a sweetening of the dose, to make it go down.

The gentleman from Daviess thinks that there is not only a necessity for restraining Louisville, but all other cities that may ever grow up in the commonwealth of Kentucky, so that they shall have—no matter what their population may be—no matter what their situation may be—no more than a certain proportion of representation in the two houses of the general assembly. It is very likely there may grow up a great city at Maysville. Maysville is increasing rapidly in population, manufactures and commerce. The county in which Maysville is situated, has increased very greatly within the last eight years. It is very likely that Newport and Covington will grow to be important cities, and that the counties in which they are situated, will grow to forty, fifty, sixty, nay, a hundred thousand within a very short period; and that Louisville, from her fifty thousand may grow to one hundred and fifty or two hundred thousand; that Henderson, if the contemplated railroad should be made, may likewise grow up to be a great city; that Paducah, which has already a flourishing commerce, may grow to be a great city; and if the railroad from the Mobile to the mouth of the Ohio should ever be completed, and Louisville be connected with the southern tier of counties, a great city must grow up at some point. And Lexington will become a great interior manufacturing city when she has railroads running to the river, that will give her the benefit of cheap fuel. And, sir, it is no idle expectation, when we look at the immense manufacturing cities that have grown up in England. And there will be other portions of Kentucky in which great cities will grow up. There are now in the little island of Great Britain, more than twenty cities that exceed fifty thousand inhabitants, and which would have, under our system of laws, eight or ten thousand voters each. Well, if we were to have but ten cities in Kentucky in the course of the next fifty years, that shall have eight or ten thousand voters, why the ratio that the gentleman allows to them would not give a representative to each. The gentleman must see that this is carrying the thing to extremes.

Thirty years ago next March, I went to Louisville, and at that time there was scarcely four

thousand inhabitants in Louisville, and now there is more than fifty thousand. Thirty years had not rolled around, when from four thousand, the population became over fifty thousand. Maysville has grown within a less period of time with an equal rapidity, from the time she took the impulse. Covington and Newport, though stigmatised as the suburbs of Cincinnati, and the outpouring of her filth, are growing with equal rapidity, and a great many of the most useful manufactures are carried on this side of the river. And if gentlemen will reflect on the increase of population that has taken place, and that will take place in all human probability, if this government remains united, if the foundation on which all the states have based it, remains undisturbed, if the security of property, the security of life, the security of the fruits of industry, and the equal enjoyment of political rights continue, we must increase for the next thirty years, with a rapidity greatly beyond that with which we have increased within the last thirty years. The gentleman may say that is an argument against us. It shows that you who live on the margin of the Ohio river will have the power, and that we must guard against the increase of that power, and we will guard against it now.

Gentlemen should recollect that the foundation of a government that is not laid in justice, that is not laid in equal rights and privileges to all, is laid in sand. It will be as unstable before the intelligence, before the unbending spirit of liberty in this land, as the waters of the ocean; as unstable as the government that has been erected in France; as unstable as I believe destiny has designed all tyrannical governments to be. Lay the foundation of this government in justice, lay them in equal rights and equal privileges, and you may defy every thing that is calculated to overthrow government; because the basis is firm, the principle is right, and there will arise from among the people advocates to sustain it, firm in purpose, with strong arms, as they require who make themselves the champions of liberty.

Ours is a peculiar government; its pillars rise from the masses. It is the intelligence, it is the virtue of the masses, that sustain it. We owe not the strength of this government to aristocracy, either of fortune, birth, or talents. We have done away with the aristocracy of birth; only a remnant exists in the practice of individuals. The aristocracy of wealth melts down—either the indulgences or the vices of the sons of aristocracy reduce them to the level of the masses; whilst the industry, energies, and ability of the masses are constantly elevating them, as the pillars to sustain a free and equal government. Nature gave no aristocracy of talents, unless she gave it to those who are inured to hardship and difficulty, enduing them with a knowledge of their rights, and the spirit to maintain them.

Sir, if we would make this government perpetual, we must base its principles in justice—we must give to all citizens equal rights, and equal privileges. They who wish to lay a canker at the root of liberty, at the foundation of government, commence by trenching upon the rights of freemen, curtailing their privileges,

arming them with feelings of oppression, and a denial of right. There is no other principle on which you can base a free government, there is no other principle on which you can expect its existence; there is no other principle upon which it will draw the love, the admiration of all men. Shall we put it upon property? The idea is exploded. Shall we put it upon talent? Who is to select the talent? Shall we put it upon virtue, reputation? Nobody will put it upon talent, virtue, or reputation, but upon the people, in the selection of their officers. Kings have not opposed it, neither have their ministers, nor has the aristocracy by whom the throne is surrounded. A curious circumstance, sir, in the history of some of the governments of Europe, occurs upon the introduction of the feudal tenures. The Kings divided out all the lands among their feudal lords, and they among their dependents. The feudal lords were the brilliants that surrounded the throne, and stood between the monarch and his subjects. They lived among their tenants, and they became the more attached to them on that account, and claimed the sturdy independence which talents and power always claim; and the monarch granted liberty to cities, in order to create a counter balance to the power of the feudal lords, to hold them in check, they having obtained too much strength. And this freedom that disenthralled them from the iron grasp of despotism in the old world, took its first birth in cities, and it has been cherished in cities from that day to this, as much as it has been any where. The gentleman is mistaken if he supposes that the love of liberty is not as warm, and as great sacrifices would not be made for it in cities as elsewhere.

I think that five years ago the ratio was about seven or eight hundred. If the apportionment were made to day it would be 1522—it would be doubled. But we have been told we may have, or they will grant us as a favor—as if among equals any thing is granted—as if freemen owed any thing for freemen's rights—a certain extent of representation. They say they will grant us an equal representation in the lower branch of the legislature. Gentlemen liken the counties to the states of this Union. There is no similarity at all. The thirteen colonies that broke the iron rule of despotism, and declared the freedom of the United States were all equally sovereign, and when the constitution of the United States was formed, the Senate was constituted a representative body of sovereigns, and the principle of equality was fully and fairly acknowledged among sovereigns. That is placing the matter upon a right basis. The sovereign states would never have formed the Union, had it not been upon an acknowledgment of equal rights in the Senate of the United States, and it was acknowledged. We are all sovereign here, each free citizen of the age of twenty one years is equally so, as the thirteen old states were equally sovereign, when the constitution of the United States was formed. We are asked to go into this government upon terms of inequality. We are told that we who occupy cities, are less than freemen, are less than sovereign citizens of the commonwealth of Kentucky; that we are not entitled to equal rights. Do we not breathe the same air that gentlemen

of the mountains breathe? Were we not born under the same stars and stripes? Have not we the arm of freedom? Have not we the consciousness of our rights? Are we not as intelligent and virtuous? Is it not so declared by the constitution that our fathers made? Was it not one of the objects that led to the calling of this convention, that some of the citizens of the commonwealth, were deprived of their equal rights? This thing has been avowed, at least it is one of the doctrines that were preached, by all that portion of the one hundred delegates here, outside of the city of Louisville. Had it not been so we would never have cast our votes for a convention. We would never have let go the charter that made us equal.

One gentleman says that this thing of equality of rights, and equal representation according to number, is an abstraction. It is at least a very practicable abstraction. Here are the counties of Nelson and Larue, having 3048 voters, with a senator in the general assembly. The counties of Hardin and Meade with 3633 voters have a senator, and Spencer and Bullitt with 2248, have a senator.

These three districts have less than Jefferson and the city, and have three senators, whilst Louisville and Jefferson county has but one.

And yet gentlemen tell us it is an abstraction, to claim equality of representation. Now sir, votes go by majorities, but when we enter upon doubles and trebles, it is a palpable outrage upon the principle of equality. It is true, we submitted to it because we believed it was a misconception, and we expected, if ever we came before the people on the subject, they would do us justice. The people of this commonwealth will never violate the great principle, equality of rights, and equality of representation. But we are told this principle is not acknowledged, even in the representation of the house of representatives of the United States. That three fifths of the black population go into the account in distributing the representation, and that makes it unequal. It is true that three fifths of the black population are thrown in, in favor of the slave states, but otherwise the representation is just exactly according to the principle of equality, of political rights to all the free citizens of the nation. And whenever it comes to direct taxation, the slave states pay in dollars for that political advantage. It was a subject matter of compromise. Do the gentlemen propose any compromise with the cities? What equivalent are we to have, for having the voice of our constituents, the free citizens of cities, stifled in the legislative halls of the state? We pay one tenth of the taxes for the support of the government of the state, over and above what supports our municipal government. Each county and town supports a municipal government, and we support ours. But in the general charge and expenditure which falls alike on the whole state, we pay one-tenth, and we have but one-thirty eighth of the representation in the senate, and but one-twentieth of the representation in the house. We are content to pay according to our privileges; but as we increase in population, and in wealth, the disproportion of our privileges will be also increased. And thus we shall be taxed for the benefit and support of the balance



of the state, and we will not have a fair and equal voice in the legislation of the country, nor in the distribution of the money that is expended by the government. Do gentlemen think that we will esteem this a just government, that imposes upon us the contribution of taxes for the support of the state, without affording us an equal voice in the representation, so that we shall be less able to resist encroachments, that are made upon us.

I recollect being told by a senator from Clarke, that he knew a number of farms in that county, upon which were living twenty eight independent farmers, with their one hundred and fifty, and two hundred acres, furnishing twenty eight voters, and that it was afterwards reduced into one farm, the dwellings of the former tenants pulled down, the orchards cut down, and there was but one voter in the place of the twenty eight, who formerly occupied the same land. I am not very familiar with that part of the country, but I am told it is the case, that the farms continue to be enlarged, and combined in the hands of individuals, that the small farmers are purchased out, and that they go to the free states, and that oxen take the place of men. Well sir, as the population escapes, the political power escapes. I consider this a movement to retain the political power, after they have lost the population, after they have driven out the independent voters and replaced them with oxen. Let the gentleman mark the day, when there shall be on the northern border, within ten miles range from the Ohio river, twenty cities, with their 50, and 100,000 inhabitants and they shall outnumber the qualified voters, in the balance of this pastoral state; think you, they will not wrest from you the political rights you propose to take from them now. They will not be worthy the name of freemen, if they do not. The spirit that burned in the bosoms of the fathers of the revolution, that made them cast their all upon the die of the battles that won our liberty, that has been fostered in our fourth of July orations, and at our elections, that has been whispered by mothers to their infants, has not perished, and will not perish, in the land. The spirit of freedom and equal rights will rise above all oppression, and it will avenge itself—that is the word sir—where it is down-trodden in this land, it will rise up and avenge itself; may it not have cause to avenge itself in blood.

I have no doubt that I have detained this committee longer than I ought. No doubt this reflection has suggested itself to many members here; but they perhaps have not presented themselves so immediately and directly to the minds of gentlemen, as they present themselves to my mind. Perhaps they have not thought under the same pressure of circumstances, as I have. The man that does wrong or contemplates doing wrong to others, never feels the iron like him who suffers the wrong, or who is threatened with the wrong.

The city of Louisville is the only city now assailed, although there will be others in the same category, and I am very sorry I did not understand from the gentleman from Kenton whether he is with us, or against us, in this contest. I regret that the gentleman did not define his position; for I am prepared on this subject to de-

clare that he who is not with us is against us. He that does not battle for the principle of equal privileges and equal rights, has given up the ghost; is prepared to see the principle sacrificed. He that does not raise his voice against it, showing that he stands by the eternal principles on which liberty and equal rights are established, is prepared to yield them up.

I do not know that I can say anything further on this subject that will lead individuals to think and reflect upon what they are going to do. I know that the five or six thousand voters that are in the city of Louisville are not much regarded in this contest, and when you go before the people of Kentucky with your constitution, the balance of the state can afford to dispense with those votes. But reflect, that there are individuals who are hostile to the constitution that we are about making, and who desire and wish it shall fail, and reflect that in departing from the great principle of the equality of political rights, you will array numbers of enemies who will sympathise with us; that the very first inroads upon liberty are to be resisted, as the first inroads upon a man's honor; to be resisted at all hazards. If you submit to wrong in one instance, you must submit to it in all others; and those who practice wrong in one instance, if they practice it with impunity, will be encouraged to practice it again and again, until your rights are lost. Every one who resists oppression, in whatever shape or form it presents itself, resists it for the whole community. Every man who fights a battle against despotism fights it for all who love liberty, and who love equal rights; and if we fall, gentlemen may feel well assured we will not fall by our act; we will not seal the deed that deprives us of our equal rights. In this land of Kentucky we boast of our independence, our equality of rights; let them be asserted in your constitution, and before the world.

Mr. HARDIN. I am somewhat unfortunate in getting into difficulties. I little expected when I rose this morning to get into this one. I said, when I addressed the convention this morning, that when I listened to my friend from Henderson on Saturday, and had listened to my young friend from Louisville, partly on Saturday and partly to-day, I was very much struck with the force of his argument, and on Saturday I was a good deal carried away with it; and I kept thinking the matter over, until I came to the conclusion that a reasonable check ought to be put upon cities that might become overgrown.

When Sheridan concluded his speech against Warren Hastings, the ministers moved an adjournment, because they said it was impossible for the house to vote until the force of that speech had subsided. Even Pitt, while listening to that speech, was not master of himself. Well, sometimes the impassioned eloquence of the gentleman from Henderson carries one off in the same way. But I kept thinking about it, and thinking about it, and I concluded at last that some check should be put upon overgrown cities, and I framed a proposition on the subject, which was just about this: that the county of Jefferson should continue her representation according to her number—and I did not include

Louisville—but that the county should retain the number to which she was entitled. If she was entitled to two members she should have two. If by being united to some other county she was entitled to a senator, she should have a senator; and that Louisville alone should have a senator; but that neither Louisville, nor any other city, should ever have more than one senator, nor more than five members in the lower house. Now suppose the county of Jefferson has two members in the house of representatives, when this constitution goes into effect. And suppose that Louisville grows to such a size, as to entitle her to five. And suppose the city and the county together have two senators. Well then sir, Louisville alone will have one twentieth part of the representation in the lower house, and Louisville and Jefferson county will have one nineteenth of the representation in the senate. And yet the gentlemen says—in his own fine classical language—this is “*ter-in-icle*.” (Laughter.) I had thought it was called “tyrannical,” but we have been taught some new things lately.

Now here is the city of Louisville, having one twentieth part of the representation in the house of representatives, and the city together with the county of Jefferson, having one nineteenth part of the representation in the senate. Is there to be no check? And that is the amount of my proposition. I have not offered it yet, but I have intimated that I would do so at some future day. I do not know when it will come to my turn, but when it does I will offer it. And I was glad to find from the remarks of the gentleman from Ohio, that it agreed with his ideas that there must be some check. I will ask, is not the constitution of the United States a compromise? Is the apportionment of representation in both houses according to the population? No sir—not at all. The slaveholding states get a representation for three fifths of their negroes; and sir, the smaller states get an equal representation with the greater in the senate. These are the two conservative principles that have been adopted in the constitution of the United States; and when we follow the action and ideas of such men as made that constitution—Madison, and Washington, and their associates—we certainly will not be acting very “*ter-in-icle*.” When we can follow in Washington’s footsteps, I may say, as Lord Nelson said to his captains when going into the battle of the Nile, “if in the darkness of the night you should not be able to follow my orders, you will not be much wrong, if you fight with all your might wherever you can find an opportunity.” If we follow such men I think we shall not be far wrong.

I do say we should engraft into the constitution something like conservative principles. We know the gentleman from Madison spoke the truth, when he said the great body of the population that is collecting along the Ohio river, within the distance of ten or twenty miles from it, is opposed to the institution of slavery. It is a very worthy population it is true, but it is a population that has little or nothing in common with the mass of the great agricultural population in Kentucky, and a large portion of that population I know is hostile to the institution of slavery; and as a self-preservative principle, we

ought at least to put some wholesome and salutary check upon that population. I know the argument that representation must be according to numbers, is a strong one. I know it is a great republican principle, but there is a still greater republican principle than that sir. If you and I were upon the Ohio river upon a single plank, and only one of us could escape, you have the right to shove me off, or I have the right to shove you off; and this self-preservation principle, it seems to me, requires that we should adopt this conservative principle and reject this population principle of representation as to cities. Our fathers who made the constitution of the United States, told us this; the leading features of that constitution declare it, and I am not ashamed to follow their guidance.

Sir, the gentleman from Louisville, who spoke partly on Saturday and partly to-day—because it takes gentlemen from Louisville—particularly while on this subject—two days to make a speech—has led me into difficulty, which I seem to have labored under. He said—if I understood him correctly—that Louisville had furnished a regiment of men, in the war against Mexico. Well she did. I believe she got the principal part of the men in Louisville; some perhaps, in Oldham, and the surrounding counties; it was called the “Louisville legion.” But the gentleman intimated that Louisville had to do a great deal of fighting. I replied that we had to draft men to stay at home. It was no accommodation to Kentucky for Louisville to furnish a legion for the war. Thousands of the best men in Kentucky had to be rejected; though they were pressing forward day and night, asking to be admitted. Instead of being a matter to be thrown up to us, that Louisville had to do our fighting; she has been treated with partiality by the government, in having her regiment admitted into the service. She got the patronage of the government; the furnishing of the regiment—the colonel, lieutenant colonel, major, and all the other officers. Now all I intended to say was—for I said it over and over again—that the Louisville legion was as brave as any other; but at all events, they had done no fighting. I spoke in reference to that legion; and all I intended to add was, that as a part of the battalion marched to take possession of the “Black Fort” on the evening of the first day, they remained there that night, and next day marched back to the Walnut Springs, and remained two or three days. Taylor himself went back to the Walnut Springs the first night of the battle, and all the men, except those guarding the “Black Fort.” Now I did not attempt to say, nor did I intend to say, that Taylor distrusted the bravery of the officers, or of the men of the Louisville legion; but on the contrary, I said that the men were as gallant as any in the service; and I said at the same time, that the second Kentucky regiment—a regiment that was raised from the body of the state—had covered itself with glory. They did sir. They received, and justly received, the name of the “bloody regiment” on account of pouring out in torrents their own blood, as well as the blood of the enemy. A gentleman told me that he counted the dead bodies of eighty three of the enemy

on about three acres of ground where the Kentucky regiment fought, besides the wounded. I know the soldiers composing the Kentucky regiment did distinguish themselves. I know that Clay had a son killed; and I know that Dozier, an intimate friend and schoolmate of mine, had a son killed. But I did not say the Louisville legion had not the courage to fight; I only said they were not in the battle. Now the gentleman has been pleased to designate this as a piece of calumny or something of the kind. What I said on the subject no man could misunderstand; I made no insinuation or imputation of cowardice; but on the contrary, I declared that nothing of the kind was intended, yet the gentleman has been pleased to designate it as a base insinuation. All I can say is, that the man who can make such a remark would go at least as far as that imputed to me, if not further, in making base insinuations. There was nothing that fell from me, that merited or deserved such a remark. Louisville had the privilege of raising a regiment, and officering it, and the lieutenant colonel of the second regiment was taken from Louisville. And after she had this privilege granted to her, to the exclusion of other brave, magnanimous, gallant, daring young men of the country, what did she do next?

When Hardin, Bullitt and Nelson raised three companies, the preference as to which should go, had to be determined by lot; but Louisville had one given her without drawing. And what is more, the lieutenant colonel was taken from Louisville for the second regiment, a very deserving man it is true, a better choice could not have been made perhaps in Kentucky. But I mention these things to show that Louisville was favored. We know that there was animosity excited against Louisville on that account, throughout the whole state, from the mouth of Big Sandy to Mills' Point, and from Louisville to Cumberland Gap. There was a struggle as to who should go. All were anxious; and it is a feeling of which we have reason to be proud. And I do say that Louisville had more than her share. But, sir, I never imputed cowardice to any man or set of men, that was out in the last war; and I always contended that when the Indiana regiment fled, they only fell back to get a better position, and they had not discipline enough to rally. So that the gentleman's remarks of a personal kind were entirely uncalled for, and entirely unexpected by me. I was perfectly astonished when the gentleman broke out in a thundering tone of voice against me on account of what I had said. I recollect about thirty years ago, there was one Phil. Thompson who was practicing in the courts of Breckinridge county, and on one occasion when he commenced a speech in the court house, the first word he uttered was in a perfect scream, like the gentleman from Louisville. The crowd had been accustomed to witnessing fights, and they all rushed to the spot thinking there was a fight going on. When they found out it was Phil. Thompson speaking, "well I declare," said one, "I didn't expect to see him get crabbed so quick. He got mad too soon." So I may say of the gentleman, he got mad too soon.

The gentleman says that Louisville has done

a great deal towards supporting free schools. I suppose she has. I have no objection. Louisville draws \$1490 60 for common schools, and Louisville and Jefferson county together pay about \$43,000 revenue. The county of Nelson pays from \$8,000 to \$10,000 per year in taxes, and she has never had a free school, and what is more, she loves to educate her youth as much as Louisville. Yes, sir, I will venture to say that the catholic establishments in the county of Nelson have not, at this day, less than fifty free scholars, because they will teach any child whose parents are not able to pay for its tuition. I picked up a little Mexican boy, who had been brought to this country, and carried him to one of those establishments, and they are teaching him without any remuneration. I will venture to say that there are as good schools in the interior of Kentucky as in any city, Louisville not excepted. Though they have no free schools in my county, and I venture to say they never will have, our county is full of schools that are established by private enterprise.

The gentleman says Louisville has done a great deal for turnpike roads. I suppose she has, particularly if they come to Louisville, where they concentrate like a fan. Louisville once made ten miles of a road towards Bardstown, and she graded it at five degrees, and the company incorporated afterwards to make the road, completed some fifty miles more at a grade of two and a half degrees; but the old company finding that the first ten miles paid so much better than the remainder of the road could be expected to do, they did not permit the balance of the stockholders to come in, in the dividends arising from the profits of the first ten miles, and thus make it a joint company. Why it was, the gentleman, who is a large stockholder, can answer. To be sure, he does a great many disinterested acts according to his own boasting. But Louisville is helping to make a great railroad from here to Lexington, which is in future to be continued to Louisville. And why is she doing it? Because it will contribute to her aggrandizement. She does not do it from disinterested motives. The road when it gets to Lexington is to connect itself with a great road somewhere—the gentleman does not know exactly where—I suppose it is the road from Baltimore to Cumberland. Well I do not know much about the geography of that part of the country, but I supposed there were mountains in the way, like that which the gentleman from Henderson described the soldier as getting on top of the other day. I know it is proposed to extend that road to the Ohio river—I do not know exactly where it will strike, sometimes they talk of Pittsburg as the point to which it will be extended, but how it is to get to Lexington I have yet to learn. The gentleman's knowledge can point out.

I do not know that I shall trouble the committee with any more remarks, at least I will not add more than one or two. I rose merely for the purpose of disabusing myself from the charge, that I had insinuated cowardice against the Louisville legion. I never made such an insinuation against any man that ever went to Mexico. For, be it said, that I have been in favor both of the administration in conducting the war, and those who fought the battles. I

did remark, that the Louisville legion did not go into battle. I did remark that the 2d Kentucky regiment—I don't care where they came from—fought like heroes, and covered themselves with renown.

The gentleman says he is attached to Louisville. I suppose he is. He has every reason to be so. I have read somewhere, in Josephus I believe, if it is not there it ought to be, that Goliath was born in Askalon, and was not born in Gath—he went there, and then gave out in speeches there, he belonged to the race Anak. The gentleman was born in the county of Nelson, he was educated in Bardstown—and a good education it was—and he practiced law there, and got a good practice, and run for the legislature. But we all know—and we have the testimony of holy writ to the same effect—that “a prophet is not without honor, save in his own country.” He removed to Louisville, and he is now the Goliath of Gath. Are we to be dictated to, as were the Romans by Cæsar?

“Why, man, he doth bestride the narrow world  
Like a colossus; and we petty men  
Walk under his huge legs, and peep about,  
To find ourselves dishonorable graves.”

Is he to play the part of the great Colossus of Rhodes? Or, is he to play the part of the angel, who is to come down upon the last day, placing one foot upon the ocean, and one upon the land, and swearing that time shall be no more?—Is he to represent the arch angel, who shall proclaim the end of all things, to the living and the dead, and at the sound of whose trumpet the ocean shall give up its contents, and the grave its tenants?

Sir, you speak about representation. Do you represent your constituents? Louisville is a whig city. Did you not contrive, by whig votes, to get here, and then against the sentiments of your own constituents and your colleagues, to get into that chair? And that is what you call a fair representation, I suppose. Sir, I never regretted any thing more than I did, when I saw it stated in a communication of a letter writer, at the commencement of the session, that I had spoken ill of the gentleman. I have always entertained the best feelings for him, and never uttered such sentiments as that letter writer imputed to me. I have thought that the gentleman has been bearing down on me ever since—from what motive, God in his mercy only knows—and there was nothing that I ever did to warrant the manner in which he has attacked me. The gentleman ought to recollect that other people have rights in this house, as well as he; and if it has *happened* that he got here, and then that it *happened* he got into that chair, he ought to be satisfied. He got here from a whig constituency, and he got *there*, (pointing to the chair,) by a democratic caucus, of which he was chairman, though we know the state of Kentucky is whig by 10,000 majority; and with these two lucky happenings, I think he ought to be satisfied, without thundering through this house, with the voice and manner of Ajax, the giant hero of the Trojan war. Every time he gets up, he reminds me of Homer's description of Diomedes,

“Dine was the clang, and dreadful from afar,  
Of armed Tydides rushing to the war.”

I say again, that if there had come a clap of thunder to-day, as loud and rolling as ever did come, I could not have been more astonished than I was at the opening of the gentleman's speech—for God knows I never intended to say that the men who went into the service from Louisville were deficient in courage. I said that Louisville had received favors to the exclusion of other people of this state, who had stepped forward and volunteered for the service. I am aware that Louisville is very necessary to the region of the country where I live; but we have contributed to make Louisville what she is. Is there any thing about Louisville that is calculated to produce men of extraordinary talent? It is true they have to take two days to make a speech. It is the people of Kentucky that have made Louisville what she is—buying her imports, and selling to her the products of the state for exportation. Louisville depends upon the country, more than the country depends upon her. They can find an outlet for their products in many other places, though perhaps not so convenient.

As I said before, I only rose for the purpose of disabusing myself from the imputation of having spoken disparagingly of Louisville, or her citizens; of disabusing myself of the furious charge which the gentleman made upon me, and I would to the Lord God, that the gentleman up yonder, who reports our debates, could just take down the looks of men, when they speak, like old Hogarth, and not the looks only, but the manner and the tone of voice, and send them down to posterity. It would afford me a great deal of satisfaction, if I could come back and see how the gentleman looks when he is making one of his thundergustical speeches.

If I have ever uttered a word, that was disrespectful towards the gentleman, from the time I first saw him, when he was a boy, I hope I may die the death of a sinner.

Sir, I voted to keep the county of Jefferson and Louisville together, but I begin to sympathise a little with my friends from Jefferson county. I discover that they have a hard task-master. I intend at some future day, if I have time, to take a view of this negro question, for I see now, if ever we become a non-slaveholding state, and destroy the balance of power in congress, and give to the non-slaveholding states a majority of four in the senate, this union will be dissolved; and it is indispensably necessary that we should never place ourselves in danger of becoming a non-slaveholding state; because where are we to trade when that is done? Our trade, as remarked by the gentleman from Henderson, is with the tobacco growers, cotton planters, and the planters and manufacturers of sugar. I do say it is our interest and our bounden duty to take care of ourselves now, and then sir, the interests of the generation to come, and the generations that will succeed them, those who have feelings that bind them to the slaveholding states, will be secured. At some future day sir, perhaps I will advert to some sentiments that my friend from Bourbon has advanced. I desire to see some wholesome amendment to our naturalization laws; but for the present I will refrain from troubling the committee longer.

The PRESIDENT. I stand corrected by the

school master of the age, in regard to my pronunciation. I am very much indebted to him—and I have no doubt the whole state will be—it is a matter of so much importance.

My manner I know is ardent and I do not know whether I look as pleasant as the gentleman does at all times. I was not educated sir, in the same school of politeness that he was, I had not the same advantages, and he should look over my failings in that particular. I have some knowledge, however, of a sneer, and what a sneer is intended for. The gentleman says he did not intend to impeach, or impugn the valor of the soldiers, or the people of Louisville. He said with a sneer, that no citizen of Louisville was in the battle. I yield to him the palm in sneering; he is the peer of all the peers in this land. I have no rankling feeling against the gentleman, because he declared when I was elected president of the convention, that it would be fatal to the constitution we were about to make.

Mr. HARDIN. I never said it sir.

The PRESIDENT. Then the gentleman is belied, and I suppose that it is not the first time. It is true, I was born in the county of Nelson, and that I engaged in the practice of law there. It is true, that I ran twice for the legislature, and it is equally true, I was beaten on both these occasions, and by popular men. I am proud to say sir, that even in the county of Nelson, among the people whom he represents, they have as much confidence in my integrity as they have in his. As to my misrepresenting the people of Louisville; I intend to account to them. I have never yet found a difficulty. Five times have I been elected, when they differed with me in political sentiments; and they have never yet found fault with the manner in which I have represented them. On this occasion I appealed to them to stand by the balance of the state, in relation to the institution of slavery, and not to separate from it. When it was ascertained that there was a majority of democrats elected to this convention, whigs and democrats came to me, and insisted that I should be a candidate for president of this body. And before my God and my country, I solicited no man for his vote; but when the chair was tendered to me, I accepted it, in obedience to the wishes of those who voted for me, and because they insisted that I should do so. I never had an ambition to preside over any deliberative body; and I have rode down no man, but when a man sneers at my constituents, I resent it as I would a personal injury.

I acknowledge, I am not so polite as the gentleman. I have not the capacity of getting along as well; and although it takes the delegates from Louisville two days to make a speech, I believe that I have not troubled this house as much as the gentleman from Nelson has. I have but defended my constituents. I do not know that I have encroached upon the province of the gentleman. I never intended to insult him, and if God keeps my heart and mind in the right place, I trust I never shall.

Mr. HARDIN. I was satisfied from the first that it was the statement contained in the communication of the letter-writer that had offended him. I sent him word by two or three in-

dividuals that I had never uttered such a sentiment against him. The gentleman says he did not become president of this convention by accident, but that he was elected by the unsolicited votes of the delegates. I ask him if he did not attend an organization meeting on the Sunday night before the convention organized, and if he did not preside at that meeting.

The PRESIDENT. No sir, I did not preside, and there was no organization for the election of officers, and there was nothing said about it. The gentleman denies making the remark imputed to him by the letter-writer. I was informed by several creditable gentlemen that he did make the remark.

The committee then rose, reported progress, and obtained leave to sit again.

And then the convention adjourned.

TUESDAY, NOVEMBER 13, 1849.

Prayer by the Rev. GEO. W. BRUSH.

REPRESENTATION OF TOWNS AND CITIES.

Mr. MORRIS. Mr. President, I have a resolution which I desire to offer. It is as follows:

*Resolved*, That whenever a city or town shall be entitled to a separate representation in either house of the general assembly, and by her numbers shall be entitled to more than one representative, such city, or town, shall be divided by wards, which are contiguous, into representative districts, as nearly equal as may be, equal to the number of representatives to which such city, or town, may be entitled, and one representative shall be elected from each district. In like manner shall said city, or town, be divided into senatorial districts, when, by the apportionment, more than one senator shall be allotted to such city, or town, and a senator shall be elected from each senatorial district; but no ward or municipal division shall be divided by such division of senatorial or representative district.

I do not know whether this proposition comes properly before the house in this form and at this time; nor do I exactly know how I can legitimately reach the object which I have in view. The discussion which has arisen upon the amendments proposed by gentlemen on yesterday, has assumed a wide range. Proposition upon proposition has been presented, and such is the attitude of the question before the house, that I am wholly uncertain how I shall be able to introduce this compromise resolution. I thought the best way would be to offer it, this morning, in the shape of a resolution, and ask that it be printed and placed upon the table of each member, so that they may all consider it and understand the object which I have in view. I have been grieved to the heart to see the spirit of rancor and animosity which has sprung up between distinguished gentlemen during the discussion of this question—a spirit but little calculated to promote the great ends for which we have assembled, and very far from reflecting credit upon a body so august as this should be. I should not have been surprised to see the immediate

representatives of the city of Louisville—at which place the amendments and the arguments of gentlemen seem directly to strike—alarmed and agitated by a proposition which would seem to be aimed so directly at the interests of themselves and those whom they represent. I should not have been surprised to see those gentlemen representing counties bordering on the Ohio river, restless and excited at the amendment offered by the gentleman from this county, when backed and sustained by the peculiar arguments of the gentleman from Madison; but while I looked to see great interest and deep feeling manifested in regard to this, to them, vital question, I still hoped there would be no departure from those rules of etiquette and that sober deliberation which are so necessary to a just appreciation of every subject which we have to consider. It is as a mediator that I now step forward to pour oil upon the troubled waters, to entreat gentlemen to come back to sober reason and adopt a compromise, which, while it avoids the great dangers resulting from the overshadowing growth of an urban population, at the same time respects and preserves the great principle of equal representation.

Never before, sir, in my whole life, have I found it so difficult to come to a correct conclusion upon any subject which has presented itself. When I reflected upon the rapid growth of many of the large cities of this union—when I considered the irresistible influence which might possibly be exerted by a city population, concentrated upon a small space, absolutely a unit in interests, and reflected upon the pernicious influences which this mighty population and undivided interest might exert in all our affairs, and upon the rural population which is separated from them partially in interest—I must acknowledge that I was strongly urged to restrict their representation. But, sir, when I reflect, that in endeavoring to secure this rural interest against an assault which has not yet been made, we shall be compelled to violate the great fundamental principle that population shall be the basis of representation—when by this act we virtually disfranchise a large number of free white male citizens of this commonwealth, who participate equally with ourselves in all the burdens of government—when we trample under foot and destroy what has always been considered heretofore one of the first privileges of an American citizen—I am strongly, nay, irresistibly impelled to assert this broad principle of right.

The great danger to be apprehended from a city population, arises from the probability that its whole representative force will be concentrated for its own benefit, even should it destroy the interest of others; that there will be a unity of interest and action among the representatives of a population covering so small a space.

The amendment which I now offer, proposes to divide this interest and place it upon the same footing with that of the rural population, to divide the city against itself, as the country is constantly divided against itself. It proposes that when a city shall be entitled to more than one representative or senator, it shall be divided into wards or districts, corresponding with the number of representatives to which it may be

entitled, and that each separate ward or district shall select its own representative. This plan has been pursued by the State of New York and the State of Louisiana—probably by Maryland—though in regard to the last mentioned state I am not sure that I am correct. And, perhaps, we will find the country representation of no section of these states more completely divided against itself than the representatives of the two great cities, New York and New Orleans. In cities, like the country, you will find in certain districts certain principles will prevail, while in others, immediately adjoining, principles and sentiments entirely antagonistic, exactly the reverse of their nearest neighbors, will be cherished and entertained. Such has been the experience of all those cities which have adopted this plan. If we look to the two great cities which I have cited as examples, you will find that in times of high party excitement, in the terrible rencounters between the whigs and democrats, no portion of the country where the representation is more equally divided—none where the interests would appear so adverse as in these same cities. Such, sir, I verily believe, would be the case in the cities of Kentucky, were they now entitled to a separate representation, and were those representatives elected by wards instead of the general ticket. Such would be the condition of representation from the city of Louisville, which seems to be the great bug-bear in the eyes of some gentlemen. I believe, sir, it can be demonstrated by any gentleman acquainted with the people of Louisville, and the peculiar views entertained in the different divisions of that city, that were it now in the situation in which I now seek to place it—were it divided into wards and districts, and each ward entitled to a representative of its own—say that it were entitled to four representatives—that there would be two whigs and two democrats, in all probability, elected from that city, though there is a large preponderance of whigs in the corporate limits. Such, too, strange as it may seem, is the case with respect to questions of a local character. Such, I am told, would probably be the result of an election were the great question of emancipation—that question which, during the past summer, shook this state to its very centre—the test question in an election. Such, sir, is the inevitable consequence springing from the very nature of man.

It would seem, then, that by the plan I propose, we would be relieved of the great danger to be apprehended from a concentration of the city representatives. We know that in all questions of a general character, it is almost impossible that this concentration should exist; but fears seem to be entertained, that upon local questions—questions of internal improvement for example—a unity of interest might render the city representation a unit. But if this were the case, we should incur no risk—be run into no danger. You will find, by examining the twenty second and twenty third sections of the report of the legislative committee, that it is proposed to place a constitutional limitation upon the power of the legislature to contract debts. So that there can never be a state debt contracted unless it be first submitted to a direct



vote of the people. There, then, can be no fears entertained upon this score, if those sections be adopted, as I believe they will be.

I regret sir, that the subject of emancipation—a question which seems to draw into its mighty vortex, and like a great maelstrom, swallow up every thing which presents itself to the consideration of this convention, has been tacked on to this proposition. The two questions are entirely distinct, and cannot be legitimately connected. I regret that gentlemen, in order to promote certain objects, should find it necessary, constantly to excite the prejudices of members of this house, upon almost every subject which is presented, by raising the cry of emancipation. This constant recurrence to a question so exciting, is calculated to do great mischief in the deliberations of this house, and to exercise a most pernicious influence upon the minds of the people. Sir, if emancipation can be in any way connected with this question, it seems to me that the adoption of the amendment offered by the gentleman from this city, would tend greatly to promote the objects of that party, and operate most seriously upon the interests of those, who, like me, are in favor of slavery. A proposition is sought to be engrafted into our constitution, which will cut off a large number of citizens of this commonwealth, from equal privileges with another portion. It is sought by this amendment, offered by the gentleman from Franklin, virtually to disfranchise a large number of our people, to break through that great principle for which our fathers contended, that representation shall be based upon population and taxation. You say to a large population, inhabiting the cities, that you shall be subject to military duty, you shall pay taxes, you shall contribute your equal share in all the burdens of the government, but you shall not enjoy the rights of representation in proportion to the taxes you pay, the burdens you bear, and the amount of your population—and for what is this great privilege denied? To better secure the slaveholding interest in this state. Sir, I am a slaveholder. I feel a deep interest in the security of this property, but I most solemnly protest against such a security as this act would furnish. What would be the consequence of such a proceeding? Would we not array at once this large party of freemen, whose rights have been trampled upon, in order to secure this property, directly against us? Would they not at once attach themselves to the emancipation party, which stands united, and ready to seize upon every opportunity to promote their philanthropic ends, as they term them? This certainly would be the consequence. Gentlemen seem to think it probable that this urban population will overshadow the balance of the state in our legislative halls. If their apprehensions be well founded, what will become of the slave interest when this population is arrayed against it. They tell us that by restricting their representation no injurious acts of our legislature can be brought to bear against this class of property. True. But they should consider what a miserable barrier is here furnished against an overwhelming and angry people. They may not reach it through this legislature—but they will rise above the legislature itself; they will strike at the constitution, through which they have been

deprived of their rights. The report of the committee to which was submitted the amending clause of the constitution, is now upon our tables—and that report provides, that a convention may hereafter be called to amend this constitution by a majority of the people. That report, I am inclined to believe will be adopted—and we thus see how necessary it is to the preservation of this property, that as little prejudice as may be, be arrayed against it. The slaveholding population in this country is a very small minority, and this property is held and secured by the high sense of justice and right, which I hope will always animate the bosoms of Kentuckians. When the question was discussed before these people, during the past summer—I allude to the non-slaveholding majority—they said, it is not just, it is not right, that we should deprive you of your property, and a pro-slavery delegation now fills these halls in accordance with that sentiment. Would it be right in us, after we have been treated with such magnanimity, to seek to infringe upon the rights of this generous people. We heard on yesterday, the remarks of the gentleman from Campbell; they fell grating on my ear. If we perpetrate this act of injustice, such will be the sentiments proclaimed all over this country—they will not be confined to the cities, they will be echoed through the hills and the hollows, until slavery will find no place in Kentucky upon which to rest its foot. Let us be just. Rely upon it, no institution ever prospered which had to be sustained by acts of injustice.

Mr. President, I did not rise to make a speech, I rose simply to offer this resolution. It is one which I hope will tend to quiet the angry feelings of this house—one upon which we can all safely compromise.

Mr. DIXON. I have listened with a great deal of pleasure to the remarks of my friend from Christian, and fully endorse all that he has said. I like the resolution he has offered, because in this contingency it will soothe and quiet the stormy feelings in this body. I was not astonished that there should be excitement upon this question. I was not astonished that you, Mr. President, were excited upon this question. It was a question well calculated to excite the mind, for it was nothing more nor less than an attempt to disfranchise a large portion of your constituency. You were right; I honor you from my heart; it was just to those whom you represent. I should have been excited. I was excited; and I confess I am not perfectly calm even now; for I never can be calm when I see citizens, even the most abject citizens disfranchised who have not been guilty of crime. I will never give my sanction to such a principle. I will call the attention of this convention to a single point, for I discover we have lost sight of it in our extraordinary excitement. It is the main question which the gentleman has sprung, to-wit, the influence which the city of Louisville or any other city is to exert on the legislation of the state. Has any gentleman made the inquiry as to what will be the strength of Louisville upon the basis of the strength of population which they may agree upon? Can Louisville exercise the influence which is attributed to her? Can she place herself, by giving her a fair and equal representation in the legislature of the state upon

the basis of numbers, can she by any probable population over and above the population of the balance of the state, exercise the influence which gentlemen seem to attribute to her, and seem to be alarmed that she may exercise? Have gentlemen inquired what will be the strength of Louisville when she comes on the legislative arena, and places herself here with others? What will be her strength in the senate, and what will be the strength of the rest of Kentucky? For I understand that the city of Louisville is to make war on the balance of the state, and the balance of the state is to stand up against Louisville. This was the argument of my friend from Madison, and of others, that the city of Louisville was to combine and turn her power against the balance of the people of Kentucky. This is the proposition which I understand the gentleman from Madison to have used, and others who have followed have also asserted the same thing. What will be the strength of Louisville on a basis of numbers? I have made a little calculation to which I desire to call the attention of this convention, to show that there is no reality at all in this strength of the city of Louisville. If it does not now exist it can never exist. She comes here as a criminal with a prejudice against her as against one not entitled to a fair trial, and towards whom public opinion has sent forth its fiat to deprive her of the great rights which the balance of the people of Kentucky enjoy. She stands as a criminal, arraigned, and the voice of judgment has gone forth against her, and it is to strike from her the right which belongs to even the meanest citizen of Kentucky. She wages a most unequal warfare with the balance of the state, as appears from the feeling arrayed against her. She has no feeling against the balance of the state, but they have united to crush her. I say this because I am a citizen of Kentucky, and because I feel that a blow aimed against the meanest citizen is aimed at the state.

It was well said, when the question was put to an ancient philosopher, as to what was the best form of government, that it was "that government which felt an insult offered to the poorest citizen as an outrage offered to the state," and I feel that an outrage upon the meanest citizen of Kentucky is an insult offered to the state. These are my feelings in relation to questions of this sort, and therefore, I speak in defence of the people of Louisville, and those all along the border of the Ohio, and the people of the whole state who are to be down trodden by this strange and extraordinary principle, which has been thus asserted. But I ask again, what will be the power of Louisville? If I understand, the whole of this principle is based on the idea that she will be so powerful, as to control the balance of the state. That is the argument. We are to disfranchise her now, because she may be strong enough to control the balance of the state. Not that she has done any thing to expose her to our displeasure or excite our ire, but she will some time or other control the legislation of the country. This is the whole sum and substance of the proposition. Let us see to what it leads, and whether it is true or not. I am not in favor of having any one section control the balance of the state. I am for the rights

of all, and for having no portion of the state control the rights of the balance.

As I remarked on Saturday, those who have no right to vote may turn against the slaveholder, when you have proscribed them, when you have disfranchised this people who have acted most forbearingly, and stood by and aided and sustained you against those who would have taken your rights from you. They will be against you for it would be treating them cruelly, unkindly, and most unjustly.

But what is this power? It is understood that the senate will consist of thirty-eight members, I believe. Now, on that supposition, take the population of Louisville at fifty thousand, which is the number the honorable president stated yesterday as existing there, and estimate the population of the state at one million. Here then will be fifty thousand against a million, or the reverse, and that fifty thousand is to rise up and exercise an influence that is to be destructive to the rights of the million. Is not that the way in which the question presents itself here? Fifty thousand are to overawe nine hundred and fifty thousand. It is nonsense to talk about it. Let us go a little further. Suppose the population of the state to be a million, and that of Louisville to be fifty thousand, and that there are to be thirty-eight senators. If you give Louisville her fair proportion, what number of representatives is she entitled to, and what number is the state, independent of her, entitled to? Here is the question, and let us see how it results. The state would have thirty-six and one tenth senators, and Louisville would have one senator and nine tenths. The position then in the senate is as one and nine tenths to thirty-six and one tenth. Does any gentleman feel alarmed at this? Are thirty-six and one tenth to be swallowed up by one and nine tenths? Do Kentuckians talk about being alarmed at one against thirty-six? Let us go a little further, for I have looked into this matter a little closely. My estimate may not be exactly right, but this is the basis, and it will result pretty much as I have made it. Increase the population of the state to twelve hundred thousand, and that of Louisville to seventy-five thousand, and then see how it will stand. If Louisville should rise up, she would have to rise against what? Eleven hundred and twenty-five thousand. That is the mighty influence which she is to exert. Let us go a little further. What will be the comparative number of senators to which the state and the city will be entitled? The state will have thirty-five senators and nine twelfths, and Louisville two and three twelfths. Here is the odds against the state. Are gentlemen alarmed at that? What a mighty influence! Two against thirty-five. Surely the people of Kentucky are in great danger; surely they should be alarmed. I am astonished that gentlemen are not more alarmed.

Let us go a little further. Suppose the population of the state to be increased to fifteen hundred thousand, and that of Louisville to one hundred thousand. Here will be one against fourteen. Is there any thing to be alarmed at in that? Go on, and see what will be the number of senators which Louisville will have, compared with the balance of the state. The city will

be entitled to two and five-tenths out of thirty-eight. Surely gentlemen cannot be in earnest when they argue this question in this way.

I put it in another point of view. Increase the state to two millions, and the population of Louisville to two hundred thousand—a number which she will not have within the next hundred years, perhaps, though I wish she might, for I glory in the prosperity of our cities—but suppose she does, then how does it stand? There will be two hundred thousand against eighteen hundred thousand in the state, and in the senate, three and eight-tenths against thirty-four and two-tenths. That is the sum and substance of the mighty array which the city is to make against the whole force of Kentucky, which amounts to nothing in the world—a mere man of straw, which men have conjured up in their imaginations, by which they may destroy the great fundamental rights of the balance of the state.

I rose to make a statement of these facts, and to say that I think gentlemen have indulged a mistaken idea. As to the combination of those cities, it is impossible that they will combine. Louisville will not combine with Covington or Newport. If Louisville wants a road for her special benefit, the other would be against her rather than combine with her, and Louisville would be opposed to them, in the same circumstances. Then, I hold that this war upon the urban population is wrong; it ought not to have been indulged—and I declare in my place, that if the right of suffrage is to be violated and invaded, if the great principle in the constitution which I delight to sustain is to be stricken down, I only regret that I might not have the glorious privilege of standing on this floor, alone, and of recording my vote against it. I hope the resolution will be adopted. I think it should be thrown into some form of an amendment, and brought before the committee in that form, and I hope this excitement will be at once quieted and settled.

Mr. WILLIAMS. I did not arrive in time to hear the resolution read, but from the remarks of the gentleman in its support, I learn it contains a proposition for which I am prepared to give my vote. I do not believe there is any antagonistic principle between the interests of the manufacturer, the merchant, and the agriculturist. I believe that so far as these interests, in this state, can be affected by the measures of the government, or so far as they can affect those measures, they go hand in hand; and I have no such apprehensions in reference to undue influences that may be brought to bear, by the manufacturing and commercial interests, on the agricultural, as to be willing, when a proper basis of representation is established by this convention, to say that any portion of the citizens of the state shall be deprived of a representation in the legislative halls, because they happen to be engaged in the pursuits of commerce, or the business of manufactures. A strong reason must be presented to my mind—a proper basis of representation being established—for making an exception against a particular portion of the community, whether in a city or out of it. Has such a reason been assigned on the present occasion? So far as I have observed the progress of the discussion on the question involved in the

motion before the convention, all admit, it seems to me, that there is no danger for the present; and the effort, on the part of gentlemen who advocate the proposition that cities ought to be restricted in the number of their representatives, is to meet an apprehended danger, that may arise hereafter. Is there a just ground for such apprehension? For myself, I feel sure that the growth of our cities and the agricultural portions of the state, will be *pari passu*; the population of both, the strength and power of both, will increase with equal pace. The one cannot go beyond the other. Their interests are so fully identified, that the prosperity and advancement of the one always secures the prosperity and advancement of the other. In time to come, where, then, is the danger? No fears should be felt on this subject, and I feel none; and until reasons are assigned not based upon a mere apprehension, I cannot vote to sustain such a restriction upon cities as gentlemen propose.

But it seems to me there has been a confounding of principles in the discussion of the whole question. Have we agreed what shall be the basis of representation? The report of the committee adopts qualified voters as the basis. I do not understand the convention as yet to have adopted that principle. Let the basis be however what it may, qualified voters or not, gentlemen should have an eye to that, in debating this question, and not to the right of suffrage. The basis of representation and the right of suffrage are distinct principles, and in fixing the number of representatives so as to approximate, as near as possible, to equal representation, we must look to the basis of representation alone, and should not confound it with the principles involved in the right of suffrage. Now, I believe the true basis of representation is population; population in its true sense. All should be represented who have rights to be protected. New York has adopted this basis in her new constitution. She has not taken as her basis, that which the report of the committee proposes to take, and which to all appearances, is to be received here by common consent. The whole of her inhabitants form the basis of her representation, free negroes and aliens excepted. I would myself prefer this to that of the report; but in allotting the number of representatives, or in apportioning them among the cities and counties, I am for adhering to the basis when adopted, be it what it may, and I will look to it to guide me in the apportionment, and not to the right of suffrage. The right of suffrage and the basis of representation, I repeat, are two distinct matters, and the one ought not to be confounded with the other, and cannot properly be in any just measure of apportionment.

As to the right of suffrage, of which we have heard so much, whilst I would make population the basis of representation, giving to every member of the community, the man and the woman, and the boy twelve years old, and the youth of eighteen, who is old enough to fight the battles of his country; to all, except our slaves and free negroes—and I except these because they are a different race from us, and in government have no identity of interest with us—the right to be represented. I would be governed by very different principles in determining who

shall have the right to select the representative, or, in other words, upon whom the right of suffrage shall be conferred. I would restrict the right of suffrage as our present constitution has restricted it. I would not give it to the female because she does not want it, and would not exercise it. I would not give it to the boy nor the youth who is not of mature years. He is presumed to be, by non-age, not of maturity of intellect sufficient to qualify him for the exercise of the high functions of a voter. I would not give it to the criminal, the felon, because by the perpetration of crime he has shown that his hand is against the government, and should have no part in the direction of its affairs. He is morally disqualified. I would not give it to the idiot nor the lunatic, because he is intellectually disqualified. These are restrictions I would make upon the right of suffrage. They are moral and intellectual in their nature, and have reference to the mental and moral qualifications of men to choose their representatives. Upon none but upon those thus qualified ought the right to be conferred, and I would no sooner confer it upon those not thus qualified, than I would confer the same right upon a bullock raised in the county of Bourbon or Clarke.—Representation ought to be based upon the entire population, upon all who have rights to protect. The right to vote is a franchise, and should be given to none but those who are qualified by virtue and intelligence. Property has nothing to do with either, and under the light of our institutions, can never form an element of either.

But to return. I will support the principle of this resolution when presented by the delegate from Christian, as an amendment to the report of the committee. I will do it because the interest of the merchant, manufacturer and agriculturist are so far identical, as that they can never be separated in this community; and cities cannot, and will never exercise an undue or improper influence upon the legislation of the country except when the state is divided into great parties, and party influences and partizan feelings become predominant, and this power to do evil will be wholly neutralized by the adoption of the district system which I understand to be proposed by the resolution now under consideration. In other states this has been done; and the power of party in large cities is broken down by the district system. It is so in the cities of New York, Philadelphia and New Orleans. Adopt it here and the same results will follow.

Mr. GARFIELDE. I was pleased to hear the resolution and remarks of the gentleman from Christian. I have, with many others on this floor, felt that this question involves a great and fundamental principle, and that it was my duty as a freeman to enter my solemn protest, with others, against sectional restriction of the elective franchise, or in other words, limiting the representation of certain districts.

I am from the country, and the local interests of my constituents might be advanced by restricting the cities. But the question involves a great principle, one which lies at the very base of self government, and upon which the fair temple of human liberty rests. But the doctrine

here advocated, if once engrafted upon the fundamental law of the state, is without limit. I ask gentlemen, where is the limit to this course of procedure? If the convention assembled here have a right to restrict a city population in its representation, have they not, at the same time, and for the same reasons, a right to limit the representation of any other section of the state?

Again, we have been taught in this convention that one great object of human government was to protect the minority against the encroachments of the majority. Learned politicians on this floor, whose heads are sprinkled over with the frosts of many winters, and who have grown old in their country's service, have taught us that the minority have rights which the majority ought to protect. For this purpose government was instituted. Yet upon this floor, in the face of these noble and magnanimous sentiments, we hear gentlemen say it is our right and privilege to restrict and trample upon the rights of the minority. Being a young politician, and unacquainted with the subtleties of political abstractions, I hoped to see those two antagonistic principles harmonized, if possible. But my teaching has been very different. Numerous gentlemen in this body have manifested their sympathy for the inhabitants of the New England States, who are suffering so much misery from tyranny and degradation. But sir, the first lesson I learned upon the bleak and frost bound hills of New England was, *equal rights to all, exclusive privileges to none*. I was there taught that representation and taxation go hand in hand, that no man should be called upon to support a government which he had no hand in making. I was there taught that the proud privilege of bearing the name of *American citizen*, gave him the right to be heard, by himself or representative, in the legislative hall.

But a thought or two in regard to the sentiments that have been advanced upon this floor. Why are we called upon to restrict the cities in their representation? Why are we called upon to do violence to the first principle of a popular government? To what shrine must we bow, and upon what altar must we burn incense to entitle us to orthodoxy? We are told by one gentleman that certain sentiments are being instilled into the minds of the people on the northern borders of Kentucky which are exceedingly deleterious to the state, and unless those people are restricted in their votes upon a question of great importance, the interests of the slaveholder will be jeopardized. Reduce that principle to its original essence, trace it out in its various bearings, and in what will it result? Simply this: that the elective franchise, in this state, is based upon a set of opinions entertained by the majority, the opposite of which being entertained by an individual, amounts to disqualification.

Thus would you stifle the free voice of Kentucky's noble sons by the tyranny of opinionism. Thus would you base the rights and liberties of the people upon the caprice of a vacillating majority.

Again: what is the other idea which has been presented here? It is that locality shall determine a man's right to representation. That this right shall be held inviolate so long as he resides

in one section of the state, but removal to the interdicted locality shall operate as a disability. Sir, I ask who delegated the power to this convention to restrict me or any one else as to my place of habitation? Who has the right to say that persons congregating at a given point shall be restricted in their representation? I trust that this question will be answered to the satisfaction of this house.

The secret springs of action on this question were developed on Saturday last. It is the morbid sensibility of members on the slave question, which has driven them to this issue. Sir, what is the history of this convention since it assembled here? We ask for the incorporation of the principle of the law of 1833 into the constitution. We are told that it conflicts with the interest of the slaveholder—that it is the first step towards emancipation, that therefore it must be sacrificed. The ballot system of voting is called for. Again, we are informed that it will prove injurious to the slave interest. The specific mode of amending the constitution, which the spirit of the nineteenth century evidently calls for, is suggested. Still the cry is that slave property is endangered by it. Driven in at all points, we ask that representation shall be equal and uniform throughout the commonwealth. Even at this point they meet us and say that we must yield. They tell us that the dearest right of a Kentucky freeman must yield to the slave, that the time has arrived when one section of the state must be deprived of representation, must be disfranchised, to protect the interests of another. Where is this matter to stop? How far shall the ideal interests of one section of the state control the absolute rights of the other? Are 110,000 non-slaveholding voters to be disfranchised for fear they will emancipate the slaves.

I stand here the warm advocate of the rights of the people. The property of individuals, of whatever kind should be inviolate, and I will go as far as any other man for the rights of the property. No man or set of men have the right to take from me the property which I held by a law of nature, anterior to the organization of society. But there is a right to preserve, for which I would sacrifice my property. That right is involved in the question before us. Rather than see this inalienable right trampled upon, I am willing for those rights, based upon municipal law, to be abolished. In a word, if the slavery of the black is to be based upon the degradation and slavery of the white, then sir, I am prepared to see the institution abolished. No institution is consistent with the genius of our form of government, which requires the best rights and dearest interests of the people to be trampled upon in order to its protection, and the doctrine advocated here is, that we must disfranchise a portion of the people of the state for the purpose of protecting the interests of the slaveholder. Sir, such principles are antagonistic to human liberty.

But I conceive gentlemen have taken an incorrect view of this subject. The people of northern Kentucky are as conservative upon the question of slavery as any other section of the state. Look at the northern counties and cities and tell me what indications of radicalism the

late elections have shown. How many immediate or gradual emancipationists are returned here. Not one so far as my knowledge extends. I came not from the region of the shuttle and spindle on the one hand, nor do I represent the blue grass country on the other, but I come as the representative of the free constituency of Fleming, and I feel called upon by that constituency to maintain the rights of the people at large. In the discharge of that duty I am satisfied that I shall receive the countenance and support of those who sent me here. I stand then, sir, in framing this constitution, not as the advocate of local interests, but of great and fundamental principles.

I therefore felt it my duty to enter this my solemn protest against the violation of this great principle of a free government.

Mr. CLARKE. This resolution came up rather unexpectedly to me this morning. In a few remarks which I had the honor to submit on the introduction of this section, which is under consideration, in committee of the whole, I stated that population was the true basis of representation. I still entertain that opinion, my mind has undergone no change in that particular.—The gentleman from Fleming, just up, states that the principle that representation and taxation should go hand in hand, was the first political lesson he was taught; and yet he says he is in favor of population as the basis of representation. I should like to have him make the two positions harmonize; I cannot do it. I understand them as two distinct principles—Taxation as a basis was considered by our committee. Taxation is making property the basis; population is taking the people for the basis; and yet that gentleman tells the convention and the country that he is in favor of both principles. It is for him to reconcile the two, not me, I think they are antagonistical.

Before I proceed, I beg leave in a most respectful manner, to reply to some remarks of the gentleman from Louisville, (Mr. Preston,) in his speech of yesterday, which was a courteous, polite, and exceedingly sensible speech, and one, with the sentiments of which, I in the main agree. But in that speech he took occasion to say there was a wild reckless spirit pervading the democracy of the country.

Mr. PRESTON. Does the gentleman refer to me?

Mr. CLARKE. Particularly to you.

Mr. PRESTON. Then you are particularly mistaken. I observed that the spirit manifested by the gentleman from Madison, (Mr. Turner,) in arraying class against class, and interest against interest, was worse than the worst demagogue spirit which I had seen manifested even when the democracy opposed the home manufactures of the country. I think that was the idea I intended to convey. I represent here whigs and democrats, and certainly can assure the gentleman, and I know he would not intentionally misrepresent me, I never can be, on this floor, so ungrateful for past favors from the democratic party, as to cast upon it any reflection.

Mr. CLARKE. I am very glad to hear the explanation of the gentleman, and I supposed at the time that he would make no remark

disrespectful to any party in the state, unless he was carried away by the excitement about us. I thought it was the result of the excitement of the moment. His explanation is entirely satisfactory. I stand here representing whigs and democrats myself. I obtained in my county a large number of whig votes at the polls. I told them, and I repeat it here, that I did not think a constitution to be formed to exist for fifty years should be made on party grounds or party principles, and that if I came here I would not represent a party, but the people. And I take occasion to return to those whigs who gave me their votes my sincere thanks, and to say that their kindness shall not be forgotten on this floor.

But there was one thing that my friend from Louisville did say. He said that I offered an amendment here which proposed that Louisville should have two senators, and that the citizens of the state should have the right to import slaves under certain restrictions. He said that I offered it as a sort of compromise, and if it prevailed my portion would be the lion's share and his would be the lamb's.

Mr. PRESTON. That remark was not made with reference to you, but in reply to the gentleman from Madison. I said it would force me into a partnership with that gentleman which I was unwilling to go into.

Mr. CLARKE. I want to say that I have proposed no partnership. I have brought my proposition in here and offered it without any partnership. I intend to show that if it does contain the elements of compromise, I shall not be obnoxious to the charge of having done wrong in offering it, and thus following in the footsteps of illustrious individuals who have gone before me, who not only in this house and in the legislative halls of this state, but in the halls of congress, have offered compromises, and have received the blessings of the Union for having done.

I say I am willing to yield something, if gentlemen will yield something; but if they think proper to spurn the proposition, they must bear the consequences. I only speak for myself. The gentleman from Louisville supposes he has convicted me of inconsistency. He stated that my amendment was in violation of the thirty-fourth section of the report which I had the honor to submit, under the instructions of the committee on the legislative department. How is it in violation of that section? What does the report say in the thirty-fourth section?

"No law, enacted by the general assembly, shall embrace more than one object, and that shall be expressed in the title."

Very well, does not the report say there are other things which the legislature shall not do? In the next section we find,

"No law shall be revised, or amended by reference to its title; but, in such case, the act revised, or section amended, shall be re-enacted and published at length."

In section thirty-third we find that,

"No act of the general assembly shall authorize any debt to be contracted on behalf of the commonwealth, except for the purposes mentioned in the thirty-second section of this article."

There are various inhibitions upon legislative

action contained in that report. There are but few things which this convention may not do—many things which the legislature will be restrained in doing. I am not guilty of inconsistency, then, when I propose, as I do in my amendment, that citizens may import slaves under certain restrictions and restraints.

I repeat, that I believe the principle of representation based on population, is the true principle. What sort of a principle is that, and where does it originate? It has its origin in the construction of municipal rules and regulations, without which there is no power that does authorize the exercise of the right of suffrage. It is the creature of municipal organization and regulations, but it is a right, and it lies at the foundation of republican institutions. But are there not other rights, and rights which are superior to those existing only by municipal regulations? There are rights that existed before any municipal regulations ever did exist. And what are they? The right to enjoy life, liberty, and I say, a natural right is the right to accumulate and enjoy property.

I am aware that some elementary writers differ as to whether property and the enjoyment of it, is a natural right. I think it is a natural right. Go upon the frozen summit of your rocky mountains, and find the savage who knows nothing of civilization, and who, but for the buffalo robe which covers him, would be exposed to the peltings of the pitiless storm. This robe is property, and I ask if his very existence does not depend upon its retention and enjoyment. When we take into consideration the constitution of man and his condition, he cannot exist without the enjoyment of property. When the starving savage stretches forth his hand and takes from the vine a cluster of grapes, it is property, without which he could not subsist. It is a natural right. This is the same natural right that I would have, if you and I were cast away upon the ocean upon a plank which could not sustain us both. I have the right in this case, to preserve myself and throw you overboard, as my friend from Nelson illustrated it the other day. So with respect to property. If you attempt to take it from me, I have the natural right to slay before I permit you to do it.

Then while it is insisted there are rights which must be sacred to the citizens under this constitution, and while I concede it is a right which ought not to be violated, and allow representation to be based and predicated on population, I maintain there are other rights. I maintain we have the right to import slaves into this state, they being property, and we have the right to purchase where we can the cheapest, and sell where we can get the highest price. If we can buy slaves cheaper in Virginia, and the demand for labor will justify the purchase, I want this right secured in the constitution to the citizens of the state. It is a right to enjoy property, and I want that right secured to me now.

I intend to come to the point. I am asked to do what? I am requested to assist in making such a change in the present constitution of the State as will secure to Louisville and other cities in the State, additional representation in the Senate. If the right of the citizen to im-



port slaves for his own use is not secured at the same time that the increase, (in behalf of cities,) of senators is secured, what guarantee, I ask, will I have, that this right will be allowed to exist? It is a part of the history of Louisville, that her representation in the State legislature, for the last nineteen or twenty years, have upheld and supported the act of 1833, prohibiting the importation of slaves; yet I am asked to increase her power by a change in the present constitution, to leave unprotected the right for which my constituents contend, and thus strengthen the power in her hands which is to be wielded to our destruction! Suppose, Mr. President, by this change in the constitution we do increase the city strength in the senate, and suppose the right to import slaves is to be left to legislative discretion. If the honorable President of this convention, and the honorable gentleman from Madison, (though occupying extremes on the question now before the convention,) if they should be returned to the Senate, they would strike hands as brothers in reinstating upon your statute books the odious act of 1833. When I return to my constituents—those to whom I look for all I shall ever seek to be, what can I say to them? What will be the sad and alarming story that I must relate? First, that we have made a change in the constitution never demanded by or discussed before the people, which change increases an influence in the legislature directly hostile to their slave interest which is left unprotected by any constitutional provision; may they not well say that the relation which exists between master and slave is not so well secured by the new as the old constitution? Will they not say to me, sir, you went into that convention and by your vote you have changed the old constitution and increased a power dangerous to our rights; by constitutional provision you have strengthened the arm of those opposed to us, and left us unprotected. May they not well say all this, yea, more?

It was said by the honorable president of this convention, if this principle of representation, based upon population, did not prevail he would not sign this constitution. I will not go so far as that. I despise the term conservative in the manner in which it is used; but I am more conservative than that. Might I not put a question in respect to the president like the one asked by Daniel Webster, when about to be read out of the whig church—"In the name of God where shall I go?" Now, if you should not succeed in this matter, where will you go? Will you be bettered by going back to the old constitution, for that is the very thing of which you complain.

Now, I take this ground: if we shall confer upon or restore the power to the people to come to the polls and vote for all their officers, from a governor down to a constable,—if we shall secure that right in this constitution,—if we shall secure to the people of this state the right to be exempt from an improper contracting of debts and expenditure of money, and if we secure the limitation of the terms of the legislature to two years, I shall think we have gained much, though we do not gain the favorite project which we have in view. I have understood that all those were favorite pro-

jects of the president. Now, suppose we do not carry this question, will the spirit of conservatism lead to taking the old constitution? Because you fail in one instance merely, will you throw away all the rest? I trust when the president made his speech he was laboring under excitement, and I hope we may all come together, and though we may be disappointed in one thing, there may be other redeeming qualities in the constitution which will bring the president to us, and that he will go for it. If we cannot make the new constitution as perfect as many of us may desire, yet if we improve upon the old one let us agree upon the new. I trust we may all ultimately agree here.

But when I go back to my people, and talk to them about the changes we have made, my course will be to tell them what I approve and what I disapprove. I intend to vote for the constitution. If you will only let the people elect their officers, I have little fear, if, at the same time, you restrain the legislature in its action. But I am prepared to say, that unless this great natural right of the people in my portion of the state is secured, I never will strengthen the arm raised to strike that right down. Never. I should be recreant to the trust they have confided to me. I should sacrifice my right to their confidence, if I were to stand on this floor and strengthen the legislative department of this government by a constitutional provision, when I left my own people exposed to that strengthened arm.

I only speak for myself; but I would dislike very much to strengthen the power of those counties along the Ohio river, by a constitutional provision, while they are opposed to the further importation of slaves, and go back to my people, and in the very next session of the legislature, see my friend from Louisville and my friend from Madison, in one or the other branch, shaking hands and uniting in renewing the act of 1833. I could not stand at home were I to do this, nor will I do it. Both are great principles, and if one must be yielded in part, the other must be yielded in part. I came here with a determination to labor for the principle that my people might import slaves for their own use, and in saying they shall be for their own use, I have compromised something to accommodate the views and feelings of persons here. Whilst I do that, and whilst others would place a restriction on the growth of city population, I have said they should be entitled to two senators.

Reference has been made to the constitution of New York, and it is said that the great principle which is contended for here, is not violated in that constitution. If I recollect the provisions of that constitution, and I have it here, there will be found in article third, section third, these words:

"The state shall be divided into thirty-two districts, to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to thirty-two inclusive.

"District number one (1) shall consist of the counties of Suffolk, Richmond, and Queens.

"District number two (2) shall consist of the county of Kings.

"Districts number three, (3,) number four, (4,) number five, (5,) and number six, (6,) shall consist of the city and county of New York."

Only four senators in the great city of New York. If I recollect aright, by the constitution of Maryland, Baltimore is entitled to but one senator. Baltimore, when compared with Maryland, has a larger population than Louisville will have in one hundred years compared with the population of Kentucky. The framers of our own constitution restricted the number of senators to not more than one in a county. I will read from the present constitution of the state of Kentucky, in the twelfth section, article second:

"The same number of senatorial districts shall, from time to time, be established by the legislature, as there may then be senators allotted to the state; which shall be so formed as to contain, as near as may be, an equal number of free male inhabitants in each, above the age of twenty-one years, and so that no county shall be divided, or form more than one district; and where two or more counties compose a district, they shall be adjoining."

That section of our constitution has been settled by legislative enactments, from time to time, and in the apportionment of representation Louisville was entitled to no representative, apart from the county of Jefferson. That has been the course of our ancestors, and they may have been influenced by the same reasons which operated in forming the constitution of New York or Maryland. There are other constitutions to which I might refer, but I will not at present. Then, if there be a violation of a principle here, we have the example of New York and Maryland, and of our own state, for this violation, and I apprehend there were reasons for it. Still, I repeat, I believe it is a violation of a great principle. But when you attempt to establish a great principle, which is to be fraught with disastrous consequences to another great principle and right; in the name of heaven do secure in that constitution this principle and right, so that you cannot press us down. That is all we ask. Many of the best lawyers in the state, (and with them I concurred,) believed that the act of 1833 was in direct and flagrant violation of the constitution. The power conferred upon the legislature, was to pass laws to prevent the importation of slaves as merchandise. Under this power they passed the act of 1833, and in this, in my judgment, violated the spirit of the constitution and the intentions of those who framed it. Fail to secure the right inviolate to import slaves, in the constitution you are now making, and at whose mercy are we placed; we shall get the lamb's share, and my friend from Louisville, who spoke yesterday, will get the lion's share. I took occasion the other day to say that I was in favor of perpetual slavery. I made that statement with a full knowledge of its length and breadth, and height and depth. The institution of slavery has existed in this union for more than two hundred years.

Slaves were brought here from Africa, not as kidnapped freemen, torn from a land of liberty and sold in bondage—they were found the slaves of barbarian petty kings, enduring all the cru-

elty of savagism of which humanity is capable. And in this condition they were purchased and brought to America—to this land of civilization and plenty. All except one I believe of the original thirteen states, were slave states, and wherever slave labor is profitable, they retain the institution. The number of slaves in the present slave states, since the first importation, has increased to about four millions. I have seen no plan of emancipation or colonization by which this immense population with its perpetual increase, can be colonized, as freemen in Africa or elsewhere. Mr. President, I do not believe, if you could command every dollar in the universal world, together with the British debt, all, all, would be adequate to the accomplishment of such an undertaking, consistent with the constitution and laws of this nation. Its impracticability and impossibility, I think, susceptible of mathematical demonstration.

We, sir, are united to the slave states of this union by the strongest and most indissoluble ties which can bind sovereign states together—unity of feeling, unity of sentiment, unity of interest, and a deep and abiding sense of the necessity of such an union of the slave states to enable each one to expect and receive the support of the whole in defending its peculiar institutions against the invasions of the foul and damning spirit of abolitionism. All plead that we should remain as one. Sir, I love the slave states of this union—a glorious old slave state gave me birth—and I still look to that old Dominion, from whence most of us sprang, as the home of virtue, patriotism, genius and chivalry. I still remember, and look back upon the haunts of my boyhood, her hills, her valleys, her chrystal streams, with pride and pleasure; and I trust that Kentucky will never depart from the lofty example of that glorious old mother, in her devotion to the safety of the slave states.—Our markets for most of the surplus produce of the country is to be found in our sister slave states. They reward our labors with money.—We hand our money over to the spinning jennies of the north, whose owners perpetually complain of slavery and slave owners, because, I suppose, that the labor of these slaves fill their coffers with the precious metals. This must be the cause of complaint, for I am sure we never disturb the institutions of the north.

Emancipation has been the continual cry. It has been said by some of the wisest men in the union, (and I think with much truth,) that emancipation and colonization would depopulate many of the slave states; for such is the climate in many, that the white man could not make agricultural pursuits sufficiently profitable by his own labor to induce him to remain there. No one among us, I apprehend, would be in favor of turning them loose among us as freemen; for of all abominations that ever cursed a country, a free negro population is the very worst. Hence, Mr. President, if we had the means to buy and colonize them, it would be wretched policy, in my judgment, to do so. You make the condition of the African infinitely worse by the removal of the influences and restraints of a superior race from around him, by which he has been civilized, and in many instances christianized, and allow him to degen-

erate into that state of savage barbarism which attended all emancipation projects both in France and England; and you depopulate the fair fields of some of the fairest and brightest sisters of this union.

It would be bad policy to free them among us. None I hope can desire that. Therefore, I regard the perpetuation of slavery in some or most of the present slave states, as a fact, fixed and certain; and if any state shall falter and forget her obligation and her duty to her sisters, I trust in God Kentucky will never be that State.

I am thoroughly convinced and satisfied that the institution of slavery, as it exists in Kentucky, elevates the morals and the chivalry of the white race, and enhances the happiness of both races. The great disproportion in the free states over crime in the slave states, attests the first, and the blood of an hundred battle fields will vouchsafe the latter. The gentleman from Campbell has been pleased to say that the institution of slavery was a curse and in violation of the laws of God and the laws of man. I have no answer to make to that argument, save one. I will just ask him to go to the hundred court houses in this state, and listen to the echoes from the voices of one hundred and forty thousand freemen at the polls in August last. Yes sir, freemen blessed with cultivated morals and intelligence, and imbued with the highest and holiest principles of patriotism. They, sir, have replied to his argument. They have answered the question whether they or the gentleman with the few thousand with whom he acted, shall erect the standard of morals in this commonwealth. It is strange that that gentleman, and those with whom he acts, should think themselves the only persons in the state competent to determine what is morals, what is christian, what is humane, what is patriotic.

If you increase your power by voting as you and as other gentlemen desire, what is to be the result? Why, the very next session you will plant down upon us the infamous act of 1833; you will have said to the southern part of the state, where slave labor is in demand, you must come to the middle or northern portion of the state to procure your slaves. You shall not be allowed to go to other states where perhaps you might buy better slaves for a less price, but you shall buy your slaves from us at such prices as we in the enjoyment of this monopoly in slave dealing shall think proper to ask, or you may go without. I desire to show this house and the country what would be the result of such a course. What will the southern members of the legislature, who come here as your tributaries, say and do? What ought they to do? Make speeches continually against your act of 1833, force you to defend it and thus preach abolitionism; this would stimulate Ohio abolitionists and others to make incursions into your part of the state, endanger the tenure by which you hold your slaves, and reduce them in value. The southern part of the state is secure in the enjoyment of their slave property, and hence they could with perfect impunity retaliate upon you for the injustice of the act of 1833, by which you attempt to monopolize the whole slave traffic of the state, and they ought to do it and doubtless will do it, if they be true to them-

selves. Is it not better then to secure to us our rights by constitutional provision, when we are willing to secure yours to you? Is it not just, I ask, that it should be done? Acquire the power you now seek and leave us exposed; place the principles of the law of 1833 upon your statute books, as you doubtless will do in the exercise of your increased power, and my judgment for it, it can never remain there in peace if the south of the state shall remain true to herself. They will wipe it from the statute book, or keep up an agitation of abolitionism that will bring down the prices of your slaves as low as they could be obtained from other states.

There is another view of this subject. The five great cities of the north and east are now connected with the town of Cumberland, at the foot of the Alleghany mountains on the east. There is now a railroad being constructed, which will extend to Wheeling, or Pittsburg. There is a railroad from Lexington to your own city, that will be extended, in less than ten years, to Nashville, Tennessee, and there intersect the Chatahoochee railroad. From this great line, branches will spring out in every direction. The future power and wealth of the state in part will be found in the mountains when the bosoms of those mountains shall be opened up by the energies of the people of Kentucky, and their immense wealth shall be thrown into the lap of the north, the east, the west, and the south.—There will then be the means of bringing into market these sources of wealth, and there will be an increased demand for labor. If the act of 1833 is fastened upon us, when we come to require one hundred and fifty, two hundred, or three hundred thousand additional laborers to bring out the hidden treasures of your state, where will you get them? You will get them from abolition Ohio—in part abolition—and from other free states; and what description of people will you bring in here to supply that demand for labor which we would supply with blacks? The very worst that can be found in the cities and towns of those states; and they will not fail to come imbued with the spirit of fanaticism and abolitionism, and with the conviction that slavery is against the laws of God and man. And in less than ten years after this increased demand for labor shall arise, if our rights are not secured as here proposed, this population will come to the polls and separate the slaves from their owners. My object is, that the people of this state shall be permitted when they want laborers to go to the other states and buy and bring them in here. They are better laborers, more reliable, and I would rather have them than the great portion of those who will come into the state if the demand for labor shall increase.

Mr. President, I am not alarmed from my propriety or purpose by the cry that I am favoring native americanism. I am doing no such thing. I yield to no man in my opposition to that other fanaticism. I have no fears of the brave and patriotic Irish, Dutch, Poles and Hungarians who have fled from a land of tyranny and oppression to this land of liberty; my fears are in another quarter. I fear native-born citizens of the United States, who have been raised

in the cradle of dislike for and hostility to our institutions, and who would immigrate here, (not as the foreigner,) to support them, but to make war upon and destroy them.

Sir, why not allow the citizens of the state, when they are competent to elect their judges, and all their officers, from the highest to the lowest, and when we have acknowledged their competency fully and fairly to transact their own business—in the name of God why not in this constitution secure to them also the right to exercise their own judgment upon the question, whether they want more laborers, and whether they should buy them or not!

The act of 1833, though passed seventeen years ago, was at the time a concession to the very spirit against which we have been warring throughout the last summer, and for the past two years. Yes sir, that act has been claimed as a concession to the spirit of abolitionism and emancipationism. And I never want to see it re-enacted again. Go to the halls of congress and see what it has done there. A Giddings, a Slade, a Root, a Hudson, or a Hale, never stood up in his place there and attacked the institution of slavery, that he did not declare that even Kentucky herself, one of the first slave states in the Union, was tired of it, and believed it to be an injury. When the gentlemen from the south call for their authority for this assertion, what was their reply! Look to the Kentucky act of 1833! Yes sir, when southern men there were standing in one solid phalanx, battling for southern rights, against the encroachments of the abolitionists of the north, that act of 1833, that Kentucky act, was hurled in their teeth by these abolitionists. The passage of that act was a concession to the northern abolitionists, and one step towards the embrace of northern fanaticism. To leave it open so that it may be passed again would be another concession to that detestable spirit, that intends, if it can, to override the whole of the people of the south. Yes sir, encourage them, and at the darkest hour of midnight, when the husband is slumbering in the embraces of his family, the torch will be placed in the one hand and the tomahawk in the other, of the slave population, and if any of the whites are permitted to escape it will be by the light of the conflagration of their own homes. It was a concession sir, to this fell spirit.

There are those on this floor, who, when this mighty and dangerous and exciting question has agitated the councils of the Union, have seen the thirty bright stars that constitute our glorious political constellation, tremble in their orbits, ready at a moment, madly and wildly to shoot from their spheres. They have stood upon broad platform of the constitution, sir, and almost felt that this glorious fabric of human liberty, consecrated by the best blood of our fathers, and dedicated to the eternal principles of freedom, was reeling, tottering and tumbling to the dust. And why was all this? The power of the abolitionists had been strengthened or rather encouraged, and flattered by this concession of the act of 1833. The strongest argument against southern men I ever heard from the lips of an abolitionist was based upon that act. Go to the halls of congress and you will see the whigs from the slave states with very

few exceptions, and the democrats, when this great question comes up, shake hands as a band of brothers, and there standing in undivided ranks battling for southern rights. Place in this constitution a power under which the legislature can re-enact the law of 1833, and by which the citizen shall be deprived of the liberty and privilege of importing slaves for his own use, and you concede to them, and allow the increasing demand for laborers to be supplied, not with blacks, but with whites, and the state after a while will become abolitionized and emancipationized. And when that spirit takes possession of the ballot box, I ask you then in whose hands will you fall. You go into the kind embraces of that region of country that has been making war upon you from the foundation of our government to the present time.

I for one have no higher earthly hope than that proud, chivalrous old Kentucky will now and forever strengthen the cords that bind the slave states of this union in one glorious sisterhood.

Mr. President, I know that my remarks have been desultory. I arose to address the house under the impulse of the moment, and have spoken longer than I intended. I will make but a few more remarks and I have done.

Abolitionism in its present sense was scarcely known in this country until about the year 1790. A sect called Quakers brought the subject to the attention of Congress, by petition. The dark cloud of fanaticism presented but a speck upon our then bright political horizon. This spirit gradually increased until some twenty years or more since, a combination between the spirits of abolitionism in France and England, brought about the insurrection and massacre in the island of St. Domingo. This was followed up by the emancipation of the slaves in the West India Islands by Great Britain, and immediately upon the heel of these acts of a false and sickly philanthropy, our act of 1833 made its appearance upon our statute book. That little speck, sir, that was seen in the far off distance in 1790, has grown into a black and angry cloud, sending forth its thunders from the whole northern hemisphere. Sir, it threatens to deluge one half of this union in blood and tears. I ask, in the name of our common interests, I ask in the name of our sister states of the south, I ask in the name of those who are to come, and who, (if we are faithful,) will be entitled to all the privileges that we now enjoy, I ask in the name of all these high and pressing considerations, if it be not our duty, as the sworn representatives of the sovereignty of the state, to withhold, by constitutional provision, from the legislature, all means by which this threatening storm of the north shall be invited to the desolation of this now free and happy country. I trust in my God that such will be the result of our labors.

In conclusion, I beg leave to say, that if I shall have no guarantee that the legislature will be restricted by constitutional provision from an interference with our rights, by the passage of prohibitory laws, I cannot, consistently with the duty I owe to those I represent, increase the power of those who are in favor of the act of 1833, and I will not do it by my vote.

Mr. DAVIS. In relation to the leading feature of the resolution, and so far as that feature is common to both houses of the legislature—which proposes to establish single districts for the choice of both senators and representatives—I am in favor of it. But the latter branch of the proposition seems to forbid the principle that there is to be any restriction of the right of cities to representation in the senate according to numbers. I cannot give my assent to it. In relation to districting cities, I think it is in perfect conformity to the great principle of equal representation. If it were possible that the State of Kentucky could be laid out into a hundred geographical districts, each containing no more nor less than the ratio of representation, if the number of one hundred is to constitute the house of representatives, and would best secure the representation of the whole people, it would certainly be desirable. Well, sir, any regulation which approximates, in any degree, to that great popular principle which would be so desirable, and which would conduce so much to the general safety of the country, in my judgment, ought to receive the serious consideration and the approval of the convention. I will illustrate the position by this supposed case. Kentucky is divided, we will say, into two equal districts, so far as population is involved, and one half of the state is allowed to elect their representatives by general ticket, and the other is required to elect by single districts. Which half would rule? Every gentleman will have but one answer ready to the question. We saw it illustrated a few years ago, in the election of president of the United States, not exactly to that extent, but still to a degree that was controlling in its practical result. The great State of New York had thirty eight electors, all elected by general ticket; the consequence was, her whole strength was thrown to one candidate, which controlled and decided the election. The same mode of electing her representatives to congress would give her so much power as that she would generally hold the balance in that branch and decide all great questions. To prevent our cities from engrossing and concentrating by the same principle, a dangerous amount of power, I am in favor of districting them for the election of representatives.

It seems to me that gentlemen here have proceeded on a fallacy—my friend from Henderson among others—in computing the ratio of increase between the cities and the country. I think there will be a great disproportionate increase between the two in favor of the cities, and especially the cities located upon the Ohio river. Not only that, but the counties also located on that river from the convenience of navigation and other advantages which their position gives them, will necessarily experience an accelerated impulse in the increase of the population, greater than a natural increase would give them, and a disproportionate one over the rest of the state.

Mr. DIXON. The proposition I assumed was, that the cities would increase in the ratio of four hundred per cent. and the counties in the ratio of fifty per cent.

Mr. DAVIS. I beg pardon, then, for I had misunderstood the gentleman. I have a table of the increase of the population of Louisville at

various periods, when this population was enumerated under the law of congress. Louisville in 1810 had a population of 1,357; in 1820, of 4,012; in 1830, of 10,352; in 1840, of 21,125; and now, after the lapse of nine years of time, gentlemen say she has upwards 50,000 inhabitants. According to that rate of progress, in 1860, Louisville will have between 100 and 140 thousand people. Look at Covington, which is admitted to be the second city in size in the state. Independent of an intrinsic and peculiarly local principle of growth which Covington has, there is a cause at work much more potent in its operation in the proximate position of Cincinnati with her.

The great and continuous growth of the Queen of the West, in numbers, business and wealth, will necessarily build up Covington rapidly into a considerable city. In 1840, Covington had a population of 2,046, and now she has upwards of 10,000. What the city of New York has been to Brooklyn, will Cincinnati be to Covington. If, in 1860, Louisville numbers 125,000 people, Covington will probably have 75,000. The aggregate population of the two cities will be at least 200,000, and I have no doubt, at that time, one-fifth of the entire population of the state of Kentucky. Now the question is, are you going to give these cities an equal representation according to numbers, with the rest of the state, in both houses of your legislature, senate as well as the house of representatives? I deny that, as a practical question, equality is ever exactly, or to a mathematical certainty, obtained in government, or the division and adjustment of political power among the people. We lay down the principle that there shall be equality both of right and power in our system—it is a general principle, but no man dreams, or if he does he is a dreamer indeed, that we ever can exactly attain to it. All that we do in practice is to approximate to it, and in that attempt he is an unwise man who endeavors to make that approximation so near as to destroy, or seriously to jeopardize the safety of the community at large. Self protection and self preservation is a greater and paramount principle to be considered in connection with it. Sir, this principle of an equal distribution of political power does not exist in any system, general or subordinate, in the United States, because practically it is unattainable, and if it were otherwise, it would be greatly inconvenient and unsafe, if it were practicable to put into operation in its universal and complete perfection. It does not exist in the general government, or in a single state government in the United States.

What is the declaration of independence—what is this utopian principle that is so beautiful in theory, but when you attempt to put it exactly in practice always eludes your grasp?—That all persons are by nature equal, and that in the business of government all persons have a perfect right to an equal share of the power. Why sir, woman is excluded in every system that prevails in the civilized world—and the youth under twenty-one years of age are excluded in all the American systems. Not only these, but numerous classes of male adults are excluded, not only from office, but from the right to vote itself. You make qualifications of citizenship, of residence,

of periods of residence, and of age, all proper in themselves, and you apply all these restrictions upon the natural right and the beautiful theoretical principle that all persons are equal, and all share equally the power of government. Well, what are these restrictions, but to modify and to restrict, in some degree, the operation of the general principle of equality? And when you apply this principle to those who are candidates for office, why, you make a further extension of these restrictions, and you further impinge upon this natural right of equality. Your governor, under the present constitution, is to be forty years of age; under the proposition the committee on the executive department has reported, he is to be thirty-five; but it is not material which you require, as to him there is a qualification of age, an interdict of all under it from the office, and that beyond middle life. You subject senators to a qualification of age, and representatives also. You throw qualifications around every office of government, by which are excluded, from some, at least four-fifths of the aggregate population—from some, fully one-half of the adult male population, and from all, a very large amount of this adult male population. What a departure from, what a sacrifice of, this great principle of natural equality, in its application in the business and science of government! And why do you do this? Simply, because the good, the security, the self-preservation of the larger number requires it. The paramount principle, of the right and duty of the mass of the *men* of a country to protect themselves intervenes and modifies the other and subordinate right. You laid down the general principle of equality of power and right, as a great leading landmark, to blaze in beauty and splendor ahead of you, and it is your guide that directs you in fixing the barque of state in its course; but it is not the haven to which you are sailing. That port, the great end of all human government, is the security and the happiness of the greatest number; and so far as a safe anchorage on its deep and peaceful bosom requires the wise political mariner to depart from, and pass the guiding and cheering light house, "equality to all," he does it; and because this *beacon* light is not the *port* in which he is to rest, does not impair the truth or value of the great light by which alone he has been enabled to reach it.

In the formation of the constitution of the United States, there have been numerous and great departures from this principle of universal and perfect equality, and I suppose that instrument is as wisely and justly adapted to its ends, as any which this convention, or any other convention of this day could form. We have thirty states in this Union, and there is a perfect equality of representation in proportion to federal numbers, in all of these states, in the house of representatives; and there is an absolute equality of them as states, without regard to popular numbers, in the senate. And upon what principle, and for what reason, has this positive and absolute equality, without regard to numbers, been secured to each in the senate? It is because, in all governments, there are two great principles of action—the one of action, or aggression if you please, and the other of resis-

tance, of self-defence. And neither of these principles is to be lost sight of, by any wise body, in framing the fundamental law. Both these two principles are recognized, and operate in the organization of the house of representatives in congress, elected as it is upon the principle of numbers, but by states; for whilst numerical representation gives the full capacity for progress, action, and aggression, this representation, not of a body, one and indivisible, a totality and a unit, but of separate states, produces an antagonism and conflict of interest, by which representation in the house also performs the function of protection and self-defence. But this constitution is a mixed and complicated structure. It was formed in the house for the people of the United States, acting by states; whilst in the senate the state sovereignties and governments are represented, and provision made for their security. There were large states and small—Virginia and Delaware—New York and Rhode Island. The small states never would have signed the bond of this political partnership, unless it had, as it does, secure to them a power to protect themselves against the large states; and the latter knew this was the alone condition upon which the association could be formed. Delaware and Rhode Island have each two senators, and in that body as much power as the colossal New York and Virginia. What a vast departure from the principle of representation in proportion to numbers. It is said in this debate, that the case of the states and of the United States government are in no degree analagous to the counties and the cities of Kentucky. The subjects to which the principle is to be applied are different, but the principle is the same, and is equally applicable to both, and as necessary for its application in our constitution as well as in that of the United States. This principle is, that the safety and proper protection of the community at large is the paramount, predominating principle of our system, and all others must yield to it. That for the purposes of protection, defence, and self-preservation, the large states must surrender in the senate, to the small states, a large portion of their power; and the cities, for the same ends, in our senate, must surrender to the counties and the rural population of the state a portion of their power. Such is the nature of all human government—for all involve a surrender of right, concession, and compromise. Nor is this required, in either case, for action or aggression, but only for security and defence. If the smaller states of the union should combine in the senate, and pass bills through that body, destructive of the rights and interests of the large states, their capacity for self-defence in the house, by a representation there, based upon numbers, would be complete, and guard them from all wrong; whilst the same protection is assured to the small states, against the overwhelming strength, and all combinations of the great states, in the house, by their equality of power in the senate. Without this ability to protect and preserve themselves, in the senate, the small states would long since have been devoured by the larger ones, as the smaller creatures of the deep are by its great leviathans. The small states had wise men to represent them



in the convention, who were deeply read in the history, character, and nature of man. They knew that the possession of power, and particularly irresponsible power, corrupted his heart; and that he would be guilty of wrong and oppression, particularly when acting with a multitude; and these great men took measures timely and effective to protect their states, with a judgment and wisdom which stand vindicated by all subsequent experience. Will we profit by their example?

The same principle of defence of the weak and disunited against the strong, the united and the compact, has been adopted to some extent in many of the States in the formation of their constitutions.

Pennsylvania, in her last constitution, gave the city of Philadelphia, for the time, two senators, and limited the number permanently to four, and the maximum was even then less than numbers would have entitled her to claim. The city of Baltimore is restricted to one senator, although her population is about one fourth of the whole of Maryland. But there is in that state a much more extensive infraction of this principle of equality in her house of representatives, they being distributed among all her counties without regard to numbers, and the city of Baltimore being limited to two. Virginia, by her constitution is divided into two great senatorial districts, separated by the Blue Ridge. To the eastern is given nineteen members, and to the western but thirteen, and yet the western district contains the largest amount of voting population. In South Carolina there is also a like restriction—Charleston and the parishes of St. Philip and St. Michael having but two of thirty seven senators, whilst they have fifteen of seventy six representatives. Her voting population would give her about one fifth of the representation in both houses, and whilst she is allowed that proportion in the house of representatives she has less than an eighteenth of the senate. A similar provision exists in the constitution of Louisiana for New Orleans, except that it is applicable to both houses, though in a smaller degree to the house of representatives. She has thirty two senators, a maximum of one hundred and a minimum of seventy representatives. With more than one fifth of the aggregate population of the state, and this proportion growing rapidly from year to year, she is limited by the constitution to four senators and nine representatives.

In the adjustment of political power by all these, and also by other states, they have proceeded upon a truth of universal and permanent application, that the same numbers in a city, from concentrative intelligence and wealth, compactness of residence and rapid interchange of opinions, from the monopoly and power of the newspaper press, from the ramification and extent of business and social intercourse, from a superior facility in raising large sums of money and forming and executing party organization, from a greater unity and energy of interests, will, and personal exertions, are greatly more effective and powerful in all political movements than the same amount of rural population. They knew that, scattered, holding but little intercommunism with each other, unacquainted with partizan

tactics, without money or organization for elections, divided by various interests, and forming opinions and acting without concert and union, their safety, the good, the safety and the preservation of the whole community, required that for the mere purpose of self-defence, they should have in the senate at least a larger representation than the cities. That the constitution should give power of self-defence, commensurate with and equal to protect them against the irregular power of aggression which the cities always have had and always will have over the country. So that the proposition to restrict the cities in their representation in the senate is neither new, monstrous, or tyrannical. It is true that it infringes the captivating abstraction of the universal and perfect equality of all mankind in practical life; and the unalterable destiny, the various, but changeless, exigencies of human society requires this, and will exact it forever.

Some of the existing considerations which call upon the delegates from the interior to guard it against the growing power of the cities have been adverted to by other gentlemen, and have a great and increasing strength.

Kentucky has upwards of 200,000 slaves, worth \$80,000,000, or about one fourth of her aggregate wealth. What is it that most threatens this vast amount of property and has most disturbed the owners in its legal and peaceable enjoyment? During years by-gone, before the opposite margin of the Ohio was inhabited, the slaves of Kentucky, in the enjoyment of all the comforts of a laboring population, kindly treated by their owners, mutually attached and trusting, the slave was contented and happy, and the master was unannoyed and secure in the possession of services of this property. But the abolitionist came and seated himself in our neighborhood, and opened an intercourse with our slaves. He instilled in them discontent, disaffection and insubordination; and in all the border counties, the slaves now know no contentment, and the master has no assurance of his property in him. For many years, the great cause of the disturbance between the slave and the owner, in north Kentucky, has been the neighborhood of the free states beyond the Ohio; but the enemy has invaded our own shore, and is now in our midst. I speak not of emancipationists, but of abolitionists; those who abhor slavery and desire to see it terminated by almost any means whatever. These people are amongst us, and they have increased, are increasing, and ought to be diminished. But who make up the emancipation party, that party which seeks to abolish slavery without making compensation to the owner? What portion of them in the whole state are native Kentuckians? Probably three fourths were born in other lands, in the free states of the Union, or of Europe. I have conversed with many natives of the free states, both in and out of Kentucky on this subject, and I never met with one that was not deep and immovable in his feelings against slavery. I do not condemn them for the sentiment, I only state the fact; and it is possible if I had been raised and educated where they were, I might have shared it with them. All the foreigners whose opinions on this subject I have learned, are equally hostile to slavery and its continuance.

These classes of immigrants to Kentucky locate themselves principally on the Ohio and Mississippi rivers, in the cities, or within the narrow strip of country bordering on them, indicated by my friend from Madison (Mr. Turner.) A large proportion of the greatly increasing population of these cities and counties are those immigrants. They are the uncompromising enemies of the rights of the slave interest, and now whilst he has the power and may, will not that master protect himself, by restricting the power of those who are making incessant war upon him by restricting their representation in the senate? The foreign immigrants particularly crowd the cities. In New York, they and their immediate descendants are about half of the whole population; they are a full moiety in Cincinnati, and preponderate considerably in St. Louis. In Louisville, Covington, and Maysville, they are rapidly and greatly increasing. These people, reared in the midst of ignorance and despotism, unacquainted with our institutions and the principles upon which they are founded, opposed to one of our great property interests and the most of them speaking other languages, and having imbibed some wild notions of a superstitious religion, which is revolting to a large majority of our people, they ought not to share equally with the native born citizen political power. It is the poor of Europe generally who immigrate to America, and their vocation mostly is to labor. They are coming in such and vastly increasing numbers, as every year greatly to disturb the existing proportion between the demand and the supply of labor. They become formidable competitors of the native mechanic and laborer in the United States: and when they get into Kentucky, they find negroes to be their most numerous competitors. A slaveholder who has slaves enough for his service will not employ the German or the Irishman; but deprive him of his slaves and he is forced to employ them. The foreigner soon learns this, and consequently in addition to the repugnance of a strange race, and a kind of slavery with which in his own country he had no acquaintance, he acquires the stronger motive of self-interest to prompt him to become an emancipationist—an abolitionist. He generally is such, and in my section of the state he is so known, and is claimed and relied upon by the emancipation party. This position is the natural and inevitable one for him.

Now, I am not as great a friend of the institution of slavery as the gentleman from Simpson, and cannot vote for the amendment which he has indicated. But I am for giving to the owner of a slave an equal, and precisely the same guaranty, for that property, which he has for his land or his cattle. My position is, he ought to have it both by legal and constitutional provisions. The principle that property is not to be taken by the state from its owner, without full compensation, is, I think, just as applicable to slaves as any other description of property. It does not belong to us to pass upon or deprive the owner of slaves of his property, upon any notions or convictions of justice or policy, without a full equivalent; for he has exactly the same title to his slave that he has to any other property which belongs to him.

But time and its fruitful womb, will bring up many other points and occasions of conflict between the cities and the great agricultural districts. There will be competing interests, diversity of object and purpose, adversary opinions and principles. The cities will be the first to become degenerate and corrupt, and to propose to change or to assault popular constitutional institutions. The opponents of this proposition say the people of the cities are now, and ever will be, greatly in the minority, and cannot therefore, wrong or oppress the greater number of the people. Every section of the state is more or less always divided and distracted in itself. When it becomes the interest or passion of the cities to foment and increase these divisions, they could, successfully do it, by the facility with which they could make combinations, and form coalitions with contending factions. They would soon constitute, not only the balance, but, by unity of will, energy of purpose, vigor of action, resources of money and intelligence, there would be great danger of their becoming the positive and controlling power. To prevent this state of things at all, and on all occasions—to postpone it, if not effectually and forever to prevent—it is proposed to limit the representation of the cities in the senate, and to divide it by requiring elections to the house for them, to be made in single districts. We contemplate to make upon them no war, no aggression whatever. We ask no sword to be placed in our hands, to cleave down them or any of their interests; but we only ask a shield to protect us against them, whenever interest, or passion, or fanaticism, shall impel them to assault us. If they should never have such purposes, there will be no harm done, because their power of defence against us will be just as effective by their being fully represented, according to numbers, in the house, as if they were likewise so represented in the senate; and we will have the security and the tranquility of knowing, or at least believing, ourselves to be safe.

The PRESIDENT announced the arrival of the hour for taking up the special order.

Mr. STEVENSON moved that the order of the day—being the consideration, in committee of the whole, of the report of the committee on the legislative department—be dispensed with; and it was agreed to.

Mr. DAVIS. I have said about as much, and indeed more, than I intended to say; and I will not, therefore, detain the convention longer.

Mr. MITCHELL. I have been very much surprised in the progress of this debate, at the very many subjects altogether, as I conceive, unconnected with the question at issue, that are being made to play a prominent part in the discussion. It presents a panorama in which almost all the elements of active and passive being have been strangely and grotesquely grouped together. The debate has gone on accumulating in its progress like a rolling snowball. First, the fat cattle of the grass region are driven into the arena; then comes the marching legions of our valiant volunteers who went to Mexico; then we are delighted with the refreshing prospect of blue grass pastures. The scene shifts; luxuriant tobacco fields present themselves to our view, and

we are asked to regard the institution of slavery in this connection; and last sir, comes upon the stage, the dusty pilgrim from a foreign land, who is seeking to worship at the shrine of our liberty. I confess, I was astonished at the range which this debate has taken. The question, when it first presented itself, was to me, simply, one involving a principle which I had supposed was acknowledged throughout the length and breadth of this country. It was acknowledged at least by Kentucky, when she took the lead on the great question of extending the elective franchise, and placing it upon its true basis. And in what that true basis consists, is at last the only question now legitimately under consideration. I agree in the views of the gentleman from Simpson, that the agitation of the slave question should be prohibited, that some constitutional bulwark should be thrown around this description of property. I think it is right that legislative discretion upon this subject should be restricted, but I am not prepared to say that these two subjects are to be disposed of in connection. Whenever that question shall come up I shall be found voting, I have no doubt, with the gentleman from Simpson. I do not regard the two questions as so connected that you cannot look at the one without looking at the other. In the opening of this debate, I admired the stealthy and cat-like pace with which the gentleman from Franklin, who offered the amendment, traced his devious way through the difficulties which presented themselves to his mind, conceding as he did, numbers to be the true basis of representation, until he arrived at the point, and came to the conclusion, that because equality could not in every instance be attained, therefore convenience was to control. No gentleman who has addressed the convention upon this subject, has denied population to be the true basis of representation. The gentleman from Ohio, (Mr. McHenry,) exhibited a statistical table, by which he showed, and perhaps correctly, that in the political division of the state, it was impossible to produce perfect equality, and he argued that because that equality could not be produced, therefore we were authorized to depart from the principle, on which representation is based, as far as convenience might require. We cannot be moving forward to the accomplishment of our object, keeping that principle in view, if we permit convenience to control us. If we cannot attain it precisely, if we cannot arrive at mathematical equality, may we not approximate to it, and is it not our duty, so long as we acknowledge that the principle should obtain to approximate our action to it, as near as may be. If the principle be right in itself, are we pursuing that principle unless we do thus approximate to it.

A distinction has been attempted to be drawn between the senate and house of representatives. According to the existing constitution, according to the report of the committee, and according as I conceive to the principles of propriety, the members of the senate are just as much the representatives of the people as are the members of the lower house. What is the difference. One branch is elected for a longer period of time, and has a larger constituency, but both of them are elected by the people. They are both then the representatives of the people, and I do not

perceive how any distinction can be made upon this point. The senators are of greater age, and they hold their office for a longer period of time. If it was intended that the senate should act as a check upon the other branch of the legislature, that check is to be found in their more advanced age, in the greater length of their official term, and in the larger constituency whom they represent. Gentlemen have attempted to assimilate the senate of Kentucky to the senate of the United States, and have drawn an argument from the constitution of that body, justifying a departure from the great principle for which those who advocate the report, have contended. Why the United States government is a great confederation of states. The United States senators do not represent the people, but the states in their sovereign character. The house of representatives is the popular branch of the national legislature. Hence then, the little state of Rhode Island is entitled to as large a representation in the senate of the United States, as the great state of New York; because as sovereign states, they stand on a perfect equality. It will not be pretended, that the counties of this state sustain a similar relation to one another. How then can any argument be drawn from the constitution of the senate of the United States, to influence our action here? If population is not to be the basis of representation why something else must be. Is it to be wealth? If it is to be wealth, why those who possess that wealth, should have the exclusive privilege of wielding the political power which it bestows, and you create a political inequality altogether foreign to our institutions. Is it to be territory? If it is, why then the state should be divided into equal sections, without regard to population. If it is to be neither wealth, nor territory, nor a mixture of wealth, territory and population, what is it to be then! Will you place it upon the loose basis of convenience? Will you say that without regard to numbers, to wealth, or to territory, this body assuming that a certain arbitrary mode of action is convenient, may here lay down a rule for the government, not only of the generation in which we live, but of posterity? Why, no matter how disregarding of individual right the rules may have been which have heretofore governed in instances of this kind, these rules have been extended to the whole country. Individuals and classes have been disfranchised, but it yet remains for an American constitution to disfranchise *regions*. Where it has been determined that wealth should rule—why, wealth from one end to the other of the country is the great principle upon which representation is predicated. If it has been determined that population should govern—why then, from one end of the country to the other, has population been the basis. But is that the position assumed here? No: one rule is made to apply to one section of the country, and a different rule is made to apply to another.

It has been said here that there were certain restrictions placed on individuals by all governments, and an argument has been attempted to be adduced from this in favor of the restriction under consideration. For example, that twenty one years had been determined as the period of discretion, and that no one should exercise the elective franchise, until that period of life had

been attained. It is true, sir, but when the rule is once established it is made to apply to all the citizens of the country. Here is a rule designed to be framed which is partial in its application, or rather which has a double application. One for the country and one for the town—a rule for a population existing at one point, and another and a different rule for a population existing at another point. You might as well—if you say that he who lives in the city shall not have the same right as he who lives in the country—declare that the man who lives in a cottage shall not have the same rights as the man who lives in a palace. Perhaps *convenience* might require such a rule as that, but *principle* can never sanction it. What does it all result in, and from what does this movement originate? Would it not appear to be an effort on the part of those now in a majority, who labor under an apprehension that they may, at some future time, become the minority, to fasten down upon the country a rule which shall give them when they do become that minority, a power to control the majority? I cannot imagine that gentlemen will get up here, and gravely say that this region of country which lies along the Ohio river, could ever attain the ascendancy in the councils of the country, until it had attained a superiority in point of population. Would it not be to stultify the residue of the state? How is it until this majority is attained to control the councils of the country? It has been said that Paris controls France, that because its population is compressed together in a small space it acts with more unanimity and promptitude. Paris does, perhaps, control France, not from any peculiar privileges which have been given to it, but from the existence and exercise of a moral force, independent of legislation—the intelligence of the city and the ignorance of the country contribute much to this result. This is scarcely true of Kentucky. And if it be true that the denizens of cities from their intellect and their energy have the power to overrule those who dwell in the rural districts, it will be equally true, whether you give or withhold political power. If such be the fact, they will compass by the force of mind what your sense of justice does not vouchsafe to them. But I am not one of those who apprehend that such a state of things can ever come about. Intelligence is too generally diffused throughout the country. Besides Louisville is an inland town, situated, it is true, on a large and navigable stream, but what is the scope of its trade, what the limit of its commercial destiny? It is cut off by St. Louis, by Chicago, and by Cincinnati. It is, perhaps to some extent cut off by some of the southern cities; for aught I know by Nashville. With this scope only and with so many rivals continually springing up, has Louisville the prospect of ever attaining one fifth the size of Paris or London? Whilst I wish her all success, I am not prepared to believe that she is to become an overgrown monster, that shall swallow up the residue of the state. Besides there are evidences now that Louisville is not to be the only city of Kentucky. Covington is fast treading upon her heels, and she has now a population as great as had Louisville when I first knew it, and it is increasing in a ratio greater it is said than the increase of Louisville. It is reasonable to suppose from its proximity to Cincinnati, from its situation on the Ohio river, and from its having almost equal advantages with Louisville as it respects back country, that it will at an early day very nearly approximate to Louisville in point of size. The interest of these cities that are springing up on the Ohio, will not be identical, nor will the population be homogenous. How then is this city interest to array itself against the whole of the rest of the state? Each will have its own interest, and there will be, perhaps, as much antagonism among these cities as the diversity of interests in various parts of the state may present. These very antagonistical interests would defeat any effort to compass political power, and should overcome the apprehension which exists in the minds of gentlemen who would be led to depart from a great principle for the purpose of accomplishing what they regard as necessary for self defence. Suppose that the northern part of the country looking to the increasing population of the southern region, and to the fact that there is a vast area of territory there which is yet to be populated—and the period is approaching when the population of that region of country will be greater than that of the northern part of the state—I say, suppose that the northern part of Kentucky having the predominance in political power were to look to that region of country, and say we regard it as necessary to our interests, as in fact necessary for our self defence, that the power which as a majority we now have, should be secured to us when we become a minority, by putting restrictions on the southern region, which may overpower us, when the time rolls around and population has accumulated at that point? I ask you if it is not as inevitable as any thing in the course of human events, that such a result will occur, that the predominance of population will be in the south—that the pastoral must yield to the grain and tobacco growing region? And would it not be equally as just on the part of northern Kentucky to place restrictions around southern Kentucky, as for us to attempt now to restrict the citizens of Kentucky who reside in towns which have grown or may grow into importance? Is there any thing in the present constitution that warrants this thing, apart from the distortions that construction has produced in it? Was there in the cry for reform that went up throughout the length and breadth of this state one syllable uttered, declaring that Louisville was likely to attain such an influential magnitude as to overshadow the rest of the state, and that therefore the convention about to be called should devise some plan even if principle had to be sacrificed, to check the onward march of this city to overshadowing political influence. There was not a word, so far as I heard, on this subject—not a single cry from the stump, not a warning from the press. And when she comes up here and demands to be represented according to her numbers, upon principles of justice, and asks no more than is conceded to other portions of the state, because her population happens to dwell within smaller limits, and is compressed in a smaller space, forsooth we are told that an overshadowing influence is to rise up

there which will control the councils of the country? Now if numbers is the true basis of representation, if population congregates at that point, so as to create numerical ascendancy, it is but just and right that she should have a corresponding influence. If you say that it is not just and right, then you say that the few should rule the many, and that political power should be wielded by the minority. I have heard no argument to show that until the cities and towns did attain the majority or acquire a numerical superiority, they could control the councils of the country. Is there any delegate who comes from a rural district, on this floor, who is willing so far to stultify his constituents as to say that although inferiority of numbers may exist, they are to acquire by their superior intelligence, power that does not belong to their numbers.

From my position, and the position of my constituency, I have no individual, no personal interest, nor have they in this question. I have come here for the purpose of doing justice, as I conceive, and for the purpose of aiding in forming a constitution that shall proclaim correct principles. My constituents, although they border on the Ohio river, have none of the elements of that overshadowing power which has excited the apprehensions of gentlemen here. Nor does the county which I have the honor to represent, cherish in her bosom those elements of discord which it was supposed at some time or other would fearfully agitate this state, and be the means of wresting from the rural districts their rights—of overturning the institution of slavery, and of depriving the citizen of his property. I represent a county where more than three fourths of the people are pro-slavery, ultra pro-slavery men. They stop not where many gentlemen here stop—they bide not with the gentleman from Madison, who is disposed to fasten down the law of 1833 on the county, but they go for giving the fullest and the most unrestrained power compatible with humanity to the citizen on this subject. They go for constitutional provision against legislative discretion. They go for creating the strongest and highest constitutional bulwarks to protect this description of property, and they have sent me here to advocate these measures and principles, and I have in my poor and feeble way endeavored to do it. I look along the Ohio river and I do not see those who dwell on its banks, who are within that ten miles of territory, that has here been denounced as entertaining views and principles dangerous to the residue of the state. I say, that in casting my eye over that territory, I do not perceive the evidences of the existence of a spirit among its inhabitants which threatens the institution of slavery. I do not see that generally along the banks of the Ohio the citizens are less favorable to the preservation of this institution than are those who dwell in the interior. The returns to this convention show no such state of case.

And while I recollect, I will say to the convention that I felt gratified when the gentleman from Nelson, (Mr. Hardin,) explained his remarks in regard to the Louisville legion, and by that explanation removed all imputation which had seemed to be cast upon the prowess of those brave men who went out from Louisville.

There was a company in that legion who were from my own county, and a braver one never marched to the battle field. There was not a man in that company, of whom the Spartan mother, who gave the shield to her son when he went forth to battle and said to him, "return with it or upon it," might not have been proud.

I have, in a very desultory way, and indeed without intending to make a speech on this subject, given my views. I believed it necessary that I should do so from my proximity to Louisville, and from the position I occupy in regard to the slave question. I believed it proper that I should protest against the connection attempted to be established between emancipation and the advocacy of the correct principle of representation. Having done thus much in the remarks submitted by me, I have accomplished, by defining my own position and that of my constituency, all that I proposed to myself.

On motion of Mr. C. A. WICKLIFFE, the convention took a recess until 3 o'clock.

#### EVENING SESSION.

The PRESIDENT stated the question to be on the motion of the gentleman from Christian, to refer his resolution to the committee of the whole, and that it be printed.

Mr. GARRARD was satisfied that a majority of the convention were ready to vote on that motion, and therefore he moved the previous question.

The PRESIDENT said as no gentleman appeared desirous to discuss the subject further, if there were no objection he would put the question on the motion to refer.

The motion to print and refer was agreed to.

#### THE LEGISLATIVE DEPARTMENT.

The convention then resolved itself into committee of the whole, Mr. MERIWETHER in the chair, on the report of the committee on the legislative department.

Mr. C. A. WICKLIFFE expressed his approval of the resolution offered this morning by the gentleman from Christian, and suggested that it would be gratifying to him to have it offered as an amendment to the section under consideration, if such a motion were now in order.

Mr. CLARKE claimed that an amendment which he submitted yesterday was pending as an amendment to the amendment of the gentleman from Franklin, and hence that a further amendment was not in order.

A long conversation ensued on the question of priority.

The CHAIR decided that the amendment of the gentleman from Franklin had precedence, on the ground that the amendment of the gentleman from Simpson being to strike out the friends of the portion proposed to be stricken out had a right to perfect it before the vote could be taken upon striking out.

Mr. LINDSEY. Mr. Chairman: As remarked heretofore the proposition made by myself to strike out the words as now amended, "in either house of the general assembly," was not made for the purpose of levelling any feeling entertained by me against Louisville, for I have none but the best towards her. In her prosperity and advancement I feel as much pride and as lively an interest as I can entertain for the town in

which I reside. Towards Covington and Newport, and their growing strength and greatness, I look with pride, as they are situated in what constituted the old county of Campbell, within whose borders I was born and reared. With these feelings, that make me wish not only that Louisville shall be great, but that she may yet even outstrip her rival, the "Great Queen of the West," I could but regret to hear imputations such as the presiding officer has cast upon my proposition, its mover, and those who advocate it. He was pleased to say that if the committee adopt my proposition it would be taking from the city of Louisville a right, and be violating a principle that would prompt him to withhold his signature from any constitution we may adopt. This would certainly produce on my part much regret; such regret as can only be consoled by the fact that there will be enough of us left to give force and effect to our labors without his aid.

It was going far, very far, to say, as he did, that any one who would vote to strike out would misrepresent his own sentiments, violate a sacred principle, and need but the opportunity to violate any other high principle, if the temptation were presented in suitable form. To this I will make no other reply than must silently be given by every member to such an imputation. I will not again allude to such remarks. Recrimination will not prove me right, and I am sure, whether right or wrong, nothing is to be attained by mere empty declamation or wild denunciation.

Sir, I ask, if my proposition prevails, does it take from Louisville, (the only example we can use, as no other city or town has separate representation,) any privilege, right, or power she now enjoys? It does not, as it will leave the section precisely as it is in the present constitution. She will have full representation, based on population and numbers, in the lower branch of the legislature, and representation in the senate, as she has heretofore had, with the balance of Jefferson county. It is not then taking from her that which she has and now enjoys, but the effect is to be to withhold additional representative power in the senate, which her delegates demand for her as matter of right, as well as for all other cities and towns that may hereafter attain sufficient numerical strength in population.

Let us examine for a moment this demand of right—this command of our presiding officer, which we must obey at such heavy perils. I beg pardon sir, I did not mean again to allude to what has passed. This right is based on the proposition—the abstract proposition—that voting population alone shall constitute the basis of representation in both houses of the general assembly. This principle, like all elementary principles, reads beautifully to the ear. It is like its kindred one that all men are equal, and entitled to equal rights, personal, social, civil, and political—principles that are violated, if that is the word to be used, at every step we have advanced in framing this constitution.

Sir, one of the first lessons I learned in the science of government—a science which I do not pretend to know much about—was, that government itself is a concession of rights that men

possess in a state of nature, when they form themselves into political condition, to be governed and ruled. It is a mere compact or agreement into which we enter, in which every one that comes has equal voice and equal rights. This concession is made for the common weal.

It is true sir that there are principles to be applied that ought not to be lost sight of at every step we take, but they must have their arrangement in reference to other principles equally as potent and necessary to be preserved.

When we say, as we have said, that no citizen shall be judge of certain courts until he has first served an apprenticeship as a practicing lawyer, we entrench upon the principle that all shall have equal rights. When we make tests of qualification, as we have done, that exclude the largest numbers from receiving the office of clerk at the election of the people, we show again an exception to the rule—a violation of the principle of equality, if you please. When you provide that it shall require two thirds of your legislature to pass or repeal certain acts, you depart from the general principle that majorities shall govern. The speech of the honorable delegate from Bourbon, (Mr. Davis,) was replete with the exceptions that imperious necessity compels us to make on general principles at every step we take in making a constitution for the state. But I will not pursue the ground which he has so well and so ably occupied.

These departures sir, arise from the imperfections in all human affairs. They apply to governments as well as to individuals, and the great *desideratum* is not whether this or that is a departure from principle, general, abstract principle, but what is best under the given state of the case, to be provided for, and what will give the greatest equality, all interests weighed and considered, and do the least harm to general principle, admitted to be right, and the greatest amount of good to the greatest number.

Sir, in this view we are to apply the principle of representation, not to population or numbers only, but to population with reference to territory, as demarked and bounded by internal existing state arrangements into counties, cities and towns. The general municipal arrangement is into counties, on which the machinery of internal regulation is made to depend. Courts for the dispensing of justice, and for the punishment of wrongs are arranged with a view to this general rule. The separation of cities and towns into separate organizations for courts and police purposes is a departure from the general plan. It is right enough in itself, but it certainly gives to the people thus thrown together in large numbers within a small space, advantages which are not possessed by those distributed over counties. For example, the Louisville chancery court, established, or continued if you will, by the constitution we are making, will illustrate my idea. By that court an advantage is given to the citizens of Louisville, and all those who sue there, whether resident in the city or not, in the opportunities which it affords of obtaining decrees to establish their rights—decrees attainable in perhaps sixty days that could no where else, on the chancery side of any circuit court for a county, be accomplished in eighteen months or two years. Of this I make no complaint. It is right. It



is necessary; and consequently the exception works no wrong; at least not such a wrong as would subject it to the imputation of violating principle. So sir, in relation to the incorporation of monied institutions and companies for all other purposes. These exceptions sir, are made in giving exclusive privileges and in exemptions that are not sustainable except on the ground of convenience and necessity.

But sir, let us examine the proposition, that representation shall be based on population alone. Do gentlemen expect or intend to break up county, city, and town organizations, and make new divisions solely that representation may be varied as population shall diminish or increase? If so, they have but to convince me that they will not produce greater inconvenience to the people by increased expense and additional government machinery than any inequality of representation, when territorial arrangement is taken into account, and I am with them heart and soul; for I can see that equality can be obtained by this new way more perfectly than any other.

Would the delegates from Louisville and Jefferson county agree to risk the being divided for voting purposes, for representation with portions of people living in contiguous counties? I put it to honorable delegates, whether their people would take the inconvenience and expense of this new plan to attain equality in representation, or not rather do as I contend we should all do here and elsewhere, yield even much more than we desire to do.

I cannot conceive any other mode than that which I have just suggested by which the much lauded principle is to be preserved inviolate.

Mr. Chairman, it is too obvious to require further remark, that as much as we all desire equality in representation, and representation by population, we cannot, in reference to existing arrangements, attain that end. We must look to territorial arrangement as well as to population; and when we do this, we are also to look to the interests of the classes, agricultural, commercial, and manufacturing, and to counties large and small. All must be represented and fairly represented, if we can so have it; and we must look to the proper exercise of county influence in legislation, so as to preserve, as near as may be, the voice of these several municipalities, if I may so call them, and let not one, or a few, overshadow the rest. The regulation of these matters is perplexing, I admit; but yet, we must attempt, and should approach it with no view to perpetrate wrong on any point, looking only to the high object of fairness and equality, both as to numbers, and as to political power and influence.

I have taken upon myself, sir, to present, in tabular form, the effect of representation on the several larger counties in the state, after the rules reported in the next section of the report of the committee.

	Voters.	Rep.
1. Adair, - -	1,560	1
Bracken, - -	1,606	1
Bourbon, - -	1,914	1
Barren, - -	2,959	2
Breckinridge, -	1,757	1—9,796

2. Boone, - -	1,958	1
Bath, - -	1,886	1
Campbell, - -	2,162	1
Caldwell, - -	2,016	1
Christian, - -	2,248	1
Clarke, - -	1,691	1—11,981
3. Daviess, - -	2,112	1
Franklin, - -	2,024	1
Fayette, - -	2,649	2
Fleming, - -	2,316	1
Graves, - -	1,665	1—10,766
4. Greenup, - -	1,936	1
Garrard, - -	1,624	1
Hopkins, - -	1,886	1
Henderson, - -	1,589	1
Hardin, - -	2,419	1
Henry, - -	1,862	1—11,316
5. Harrison, - -	2,150	1
Kenton, - -	3,406	2
Logan, - -	2,179	1
Mulenburg, - -	1,625	1
Mercer, - -	2,093	1—11,453
6. Madison, - -	2,563	2
Marion, - -	1,762	1
Mason, - -	3,114	2
Nicholas, - -	1,792	1—9,231
7. Nelson, - -	2,035	1
Owen, - -	1,796	1
Ohio, - -	1,576	1
Pulaski, - -	2,392	1
Shelby, - -	2,321	1
Scott, - -	1,891	1—12,011.
8. Todd, - -	1,499	1
Warren, - -	2,215	1
Washington, - -	1,847	1—5,561
40 counties, - -	45	82,115

It will be seen that 40 counties will have a representation of 45 members in the lower branch of the legislature, with a voting population of 82,115 in the aggregate. Arranging them under the rule given, so that counties sending six representatives may show their aggregate voting strength, it will be seen the loss the counties having no city representation will sustain. The difference may be easily tested by subtracting the number of voters in Jefferson from the number in counties arranged to have the same representation Jefferson would get on any assumed ratio.

To illustrate it, assume the auditor's report of white males as the voters, and 1500 as the ratio. All counties having this number, and less than two thirds more, will get one representative. All having the ratio and two thirds over, will have two representatives. All the counties having two thirds the ratio, to have one representative, &c.

Now, the counties in the table first named, for six representatives have an aggregate voting population of 9,796  
Jefferson county would have six representatives on an aggregate voting population of 9,283  
513

The counties, five in number, lose 513 votes, while Jefferson only loses 283. The other counties can be examined in the same way and by the same rule, and it will be found that 40 counties, and those of the largest out of the 100 in the state, are compelled to yield up a large voting influence in order to yield to the counties having less than the ratio, something like a fair amount of influence and power in legislation. The use of residuums to consume representatives not apportioned, will make a slight change in the aggregate votes lost by the large counties, but still will leave great inequality. On these tables every one of the 45 members, represent 1824 voters, instead of 1500, the ratio assumed, and still leave a fraction, while the members from Jefferson would represent each 1531 voters. By an examination of the auditor's report, it will be seen, on the basis I have assumed, that there will be 33 counties having two thirds the ratio, and 26 less than two thirds. Suppose the 45 larger counties should say to the smaller ones, the principle of representation according to population, is the rule. Why then, should you ask us to let you into the legislature? Is it our fault you lack the number of voters? But, sir, these counties must be represented, and to effect it we must bend the rule. Is it not right and proper? Indeed, is it not approximating equality of representation in its true sense, when applied to population, territorial arrangement, and county organization, that it should be so? Yet, sir, while the delegates from all these counties are thus willing to yield, to some extent, their popular strength to give equality in legislation amongst the smaller counties, and the delegates from Louisville will stand by and vote it fair and right, when she is asked to abate a little the high claims she demands, and that too, not in the popular branch of the legislature, but the senate. The only reply is, in us there must be no yielding, for the pure, and only principle of representation, that of numbers, which we can apply to our people, works beautifully to our advantage and political strength, and will so work to the advantage of other cities and towns as they grow up. They know, sir, on any ratio of representation, while they vote together in their city in any aggregate number, they can have but small loss, and never, on the committee's rule of apportioning, more than a fraction less than two thirds the ratio. She may, as given in the example, in her population of 9,283, lose but 283 excess over the exact ratio, while my county of Franklin, for example, must lose 524; some other counties more, some others less. These losses, as I have remarked, in force of numbers, have to be made in order to approximate towards fairness amongst the smaller counties, and give them something like proper influence.

Cannot Louisville spare something from her force of numbers in arranging representation as an equivalent for the advantages she possesses in separate city organization. The extra courts given her, and the command of the great monied influences of the state, and the small loss she can ever sustain in the popular branch. Is there injustice in neutralizing the power her representative will have over the same number, coming from different counties covering large

territories, with scattered population, they coming under the control and influence of one *will*, and armed, as they must be, by the power that numbers give, having but one end to attain.

The honorable delegate from Louisville (Mr. Preston,) referred to the constitutions of Massachusetts, New York and Louisiana, to show that those states allowed to their cities senatorial representation, and proceeded on the principle that population alone should be the basis of representation.

By turning to the constitution of the first state named, we find the following article under the head of house of representatives.

"ARTICLE 1. There shall be in the legislature of this commonwealth, a representation of the people annually elected and founded on the principle of equality."

Here you see Mr. Chairman, the principle is *equality*. But let us see what that equality is.

"ARTICLE 2. And in order to provide for a representation of the citizens of this commonwealth, founded on the principles of equality, every corporate town containing one hundred and fifty rateable polls may elect one representative; every corporate town containing three hundred and seventy five rateable polls, may elect two representatives. Every corporate town containing six hundred rateable polls may elect three representatives, and proceeding in that manner, making two hundred and twenty five rateable polls the mean increasing number for every additional representative."

You see sir, what is regarded in Massachusetts as equality in representation. They provide against the power that large places possess over small ones by requiring for every additional representative, an increased number of polls over the basis fixed for one. It will be seen that the same constitution in providing for senators, directs that senatorial districts shall be arranged with reference to the proportion of public taxes paid by the district, "and no district shall be so large as to entitle it to more than six senators." This you see sir is another mode of attaining equality in representation not by numbers solely but in reference to a "due proportion of public taxes," and a limit to senatorial influence. Turn to the latest constitution of New York, and you there find that senatorial arrangement is not made exclusively on population. But the language is, the districts are to contain as near as may be an equal number of inhabitants, but this is to have reference to "convenient and contiguous territory" and "no assembly district is to be divided in the formation of a senate district."

And in arranging for assembly districts, the constitution is as follows:

"Each assembly district shall contain as near as may be an equal number of inhabitants excluding aliens and persons of color not taxed, and shall consist of *convenient* and *contiguous territory*; but no town shall be divided in the formation of assembly districts."

As a matter of course; if no town is to be divided in forming assembly districts, and no assembly district is to be divided in the formation of senatorial districts, the argument drawn from the example of New York is wholly destroyed. It only proves that in giving the city of New York senators, they have made an exception to

their rule as applicable to their towns. But my point established by these examples is that territory and municipal organization are regarded, and necessary to be regarded, in representation as well as population.

But sir, the delegate from my old county, (Campbell,) has been pleased to refer to the breaking out of the revolution, and places the whole action of our fathers in causing a separation from the mother country, on the ground that they were taxed without being represented.— This, he says, caused the Bostonians to “heave the tea overboard in their harbor.” Well I hope because I have had the rashness to advocate restriction to some extent on senatorial representation by cities and towns, that my old mother Newport, now represented by the gentleman, will not “heave” me overboard, for I can assure her as well as my friend, that I am not for taxation without representation. The effect of my motion, if carried, will not be to put any restriction on the taxing representation of Louisville, for let her population be what it may, the effect of my motion will not, in the least, lessen her representation in the lower branch of the general assembly; and consequently, as taxation originates in the house of representatives alone, taxation and representation go together in the fullest extent. There is, in my judgment, nothing in the argument of the gentleman from Campbell, nor any violation of the principle that taxation and representation should go together.

Mr. Chairman: For what purpose, let me ask, did the framers of our old constitution divide the law-making power into two departments? Was the senatorial branch framed with reference to taxation or immediate popular representation? My understanding is, no such design was intended. On the contrary, it was to be a check upon the popular branch. The very fact that counties were not to be divided for senatorial representation, shows they regarded the principle for which I contend, as necessary in the due regulation of the checks and balances of power in the government. The illustration of the principle and its operations upon the powers of the government of the United States, and the protection given the states by the regulation of the senate and house of representatives in congress, so graphically given by the gentleman from Bourbon, I commend to the calm consideration of delegates.

Mr. Chairman: The old constitution in providing for senatorial representation wisely looked to the fact that every senator representing several counties, or a city and county, would almost, in the very nature of things, represent divided or opposite interests so far as local matters were concerned, and would necessarily be less under the direct action of the popular will of one place having but one interest to subserve, and consequently every senator having the opposing interests to reconcile and protect would necessarily be less liable to go beyond the proper point in legislation. I look to the senate sir, as the great balance power of the state, as the check upon the hasty action of the more popular branch of the general assembly, and our fathers so regarded it in its creation.

What, sir, would be the condition of a sena-

tor from a city or town? He would represent but a single interest, and have the same impulses and feelings in common with the representatives from his city or town in the lower branch of the legislature. He, sir, would have no opposite interests to be reconciled—no imposing powers to impel him to a middle and safe ground on any proposition his immediate constituents might demand. For all practical purposes, he might as well be in the house of representatives as in the senate.

Mr. C. A. WICKLIFFE. Do I understand the gentleman to state that senatorial representation ought not to be on numbers, but on territory?

Mr. LINDSEY. I am asked by the honorable delegate from Nelson, if I would regulate senatorial districts exclusively by territory. My response is, I would not. But, sir, I ask him the question, if he would regulate it exclusively by population? Will he disregard territorial or county arrangement, either in fixing senatorial representation, or representation in the lower branch of the legislature? No one has advanced the proposition, sir, that county arrangement is to be abandoned. Then, sir, the principle is, in apportioning for representation in the lower branch, we are to look to population as it is in county arrangements, and concessions are to be made and given, arising out of the inequality of voters in the several counties, that all may have a share in general legislation, and sufficient local protection. In senatorial arrangement, I am for districting with reference to county arrangement, so that the people of no county shall be divided in voting for senators. These districts are required by the present constitution, to contain as near as may be, an equal voting population, but that no county shall be divided even to attain that equality. Sir, is there any more injustice that a city or town shall yield to the policy of the division suggested, because she has, from locality and pursuits, the means of commanding larger population, and may have to yield a little more in numbers to a safe rule, than some of the counties? The large counties, as I have endeavored to show, yield to cities and towns, by giving separate representation in the popular branch to its fullest extent, and with the loss of less in popular numbers than they lose in any rule of apportionment. I am for protecting the counties against the advantage thus had by cities and towns. But a much higher and more important principle is attained, of making senators what they should be and what they must be, to preserve the proper checks and balances in the legislative department of government.

Allusion has been made to the population now filling up our borders, and the power they will in time exert upon the existing domestic institutions of the state. This fact is not and cannot be overlooked; but I have not sir, in the views I have presented, looked to this interest alone. There are others, high and important, to be guarded. I am, sir, for guarding all the interests of our people, and by the regulation of representative power and influence, so to provide that the concentration of intelligence, of wealth, of commercial and manufacturing influence in cities and towns, shall not have an undue control over the interests of the counties and their agricultu-

ral interests,—that all our people, let their pursuits be what they may, and all their interests, may be duly guarded and preserved. In other words, that the several interests shall yield to each other in the distribution of power in the state, that no one of them shall have the strength, if they should ever have the will, to overpower or do violence to the others.

If I am wrong in my views, let me beg delegates to do me the justice to believe, that no jealousies against Louisville, Covington, or Newport, have prompted me to my course. All the interests of relationship and property I have, or nearly all, are in the first and the last place, and in the county I represent.

Mr. GARRARD. The gentleman from Franklin has thought proper to make out tables of statistics to be used here in debate, and I think it is my duty to correct some of the statements he has made. He first says the county of Jefferson has 9,231 voters, and has six representatives. The gentleman has made the number of voters less than they are in fact, by about 513. His second table denies the county of Christian a second member to which she is entitled, and which would give seven members instead of six, as the gentleman has it, with an average of 1,711 voters to one member. The third table denies to Fleming the second member, to which she is entitled by the sixth section of the report of the legislative committee, with an average of 1,538 voters to one member. The fourth table gives Hardin but one member, when she is entitled to two, with an average of 1,616 to a member. The fifth table is the only one in which there is a loss to the counties worthy of notice. The sixth table has fifty two voters less than the county of Jefferson, and is not therefore liable to the objection made by the gentleman. The seventh table has 12,011 voters. The gentleman from Franklin allows six members, when this list of counties is entitled to eight members, which makes an average of 1,501 voters to a member. The counties of Shelby and Pulaski have each one member in this table, while they are entitled to two each. I hope the gentleman will take this and work it out by the rule of three; for if he is as much wrong in his other statements as he is in these statistics, what he has said in reference to apportionment is entitled to little confidence.

The PRESIDENT. The gentleman has taken an extreme case. Where they have a small fraction, more than enough for one representative, that is contributed to the smaller counties, and however large the fraction may be, they will be entitled to but one until they have the full number to entitle them to two. That is not enough, says the gentleman. I will take into consideration the declaration that I made, and I beg every gentleman to take into consideration that if his county is deprived of a fair and equal representation, with what face can he meet the people of his county when he goes back?

The CHAIRMAN proceeded to put the question on the amendment.

Mr. C. A. WICKLIFFE said it would be well that the amendment should be properly understood; those therefore who were against giving senators to cities would vote to strike out, and those who were in favor of senatorial representation of cities would vote against the amendment.

Mr. MACHEN did not so understand it; but that they might have time for reflection, he moved that the committee rise and report progress.

The committee accordingly rose, reported progress, and obtained leave to sit again.

The convention then adjourned.

WEDNESDAY, NOVEMBER 14, 1849.

#### SENATORIAL DISTRICTS.

Mr. WOODSON. I beg, sir, to offer the following resolution, and I move that it be referred to the committee of the whole and printed:

*Resolved*, That there shall never be more than thirty-seven senators in Kentucky, and that the legislature shall only regard counties in the apportionment of senatorial representation. That the counties shall all lie contiguous, out of which a senatorial district is formed; and that, as near as may be, each district shall consist of an equal number of counties.

Mr. President: In presenting the resolution just read, I am actuated by a high sense of duty towards those immediately represented by me in this convention—as well as by a thorough conviction on my part that the mountain counties, in the midst of which I have the honor to live, are all to be strengthened in the councils of the state by its adoption—and notwithstanding the arguments that I may offer in its support, to some extent, may be characterized by selfishness, yet, in this peculiarly selfish age, I hope that I shall be pardoned by all who have used now, or at other times, or upon other occasions, equally culpable arguments; and if so, perhaps I shall not be punished for the want of guiltless agents to enforce the sentence.

I had thought, Mr. President, until the present discussion commenced, that representation in Kentucky, under all circumstances, according to numbers, would be conceded by all—that no one would be willing to make invidious distinctions in the political rights of the freemen of this commonwealth living in different portions of the state—I frankly confess that I was wholly mistaken; and I feel sure, sir, that numbers ought to have little, if any thing at all, to do with *senatorial representation at least*—how far interest and the ingenious arguments of gentlemen have had a tendency to bring my mind to this conclusion, I will not pretend to say, knowing,

“That if self the wavering balance shake,  
Its rarely right adjusted.”

One thing I do know, though, and that is, if numbers do not control us in allotting representation, that *territory* must. And I know equally well that my region of country is to have its political importance greatly enhanced by the adoption of the latter principle—to what extent the advantage we may thus acquire is to be at the expense of justice, and to the injury of numbers, I leave to others to determine. It is not meet that I should present the solution of the problem. I will have the candor to avow, how-

ever, that if the principles asserted in the resolution prevail, several of the senatorial districts of the state will not reach over two thousand voters, and will not contain exceeding two millions of property, whilst others will reach ten or twelve thousand voters and possess within them from thirty to fifty millions of taxable property. But I submit it to you, Mr. President, to the delegates upon this floor, and to the world, if the apparent injustice inflicted upon numbers and property, is not amply atoned for by the injustice that a different principle would inflict upon territory?

Do not understand me, though, sir, as intimating the bare idea that there would be the slightest justice in taking property into consideration in apportioning representation among freemen. Such a thought, so diametrically opposed to the spirit of equal liberty, and so little in keeping with the theory and genius of our institutions, has no favor with me. And I would be one of the last men who would willingly see the great principle of numbers disregarded in the distribution of political rights among the people. Yet, if this great, and, as I had hoped, sacred principle is to be invaded, (and I regard the proposition of the delegate from Franklin (Mr. Lindsey) as a direct invasion of it,) I desire to insure to those I represent all the good I can therefrom.

With this view, I have offered the resolution just read; and I shall not permit myself to doubt but that every delegate upon this floor, who disregards the standard of numbers, will give it a cordial support.

Gentlemen tell us that counties should be confederated in apportioning senatorial representation, in imitation of the constitution of the national government in the formation of the federal senate. We are told that the little state of Delaware has as much power in the senate of the United States as New York—and so she has. Upon the same principle let me ask, why shall not Harlan county, with her seven hundred free white citizens, have equal power in the senate of Kentucky with Jefferson, with her nine thousand citizens?

I desire gentlemen to look at these things in their true light; and if, upon due reflection, it shall be thought advisable to give one man in either county I represent as much political power as a dozen in Louisville, I shall be truly grateful, and shall return my most unfeigned thanks to the convention for so signal a favor. I move you, sir, as I do not wish to discuss the principles involved in the resolution, that it be printed and referred to the committee of the whole.

The motion to refer and print was agreed to.

#### LEGISLATIVE DEPARTMENT.

The convention resolved itself into committee of the whole, Mr. MERIWETHER in the chair, and resumed the consideration of the report of the committee on the legislative department.

The CHAIRMAN announced that the gentleman from Caldwell was entitled to the floor.

Mr. MACHEN. Sir, when I made the motion yesterday that the committee rise, report progress, and ask leave to sit again, it was not with the intention of addressing the house on the question as it has been presented to us. I do not design doing so now. I then thought it

better that we should adjourn and take time for reflection, and I now think that the house is as well prepared to vote on this question as it will be, if we discuss it to the end of the week. I shall, however, take occasion to present my views on the main proposition, at what I shall consider a suitable time.

Mr. C. A. WICKLIFFE. I ask a few moments of the committee, while I consider some of the arguments which have been presented by the advocates of the present motion, and which at first, I must confess, had upon my mind, considerable influence, until I examined, and traced them to their ultimate consequences. I am now free to acknowledge, that I came to this hall strongly impressed with the necessity, or rather the policy, if it could be done consistently with the preservation of the great principles upon which our government is based, of throwing around, what has been termed in this debate, the urban or city representation, something of security against the dangers of its concentrated and united action. I do not look upon such a necessity, arising from the institution of slavery in this country. I have regarded it as more necessary, in reference to some of our other domestic measures of legislation, unconnected with that interest. But sir, I have not brought my own mind to the conclusion, that I could adopt a practical plan, by which the evil, which has been contemplated, or imagined in argument, may be remedied without doing violence, as I have remarked, to the great principle upon which this government must stand, and must be maintained, that is, *equality of representation, according to population or numbers*! I have listened with intense anxiety, and I have read with care, the arguments so far as published upon this question, to see whether there did, or could, exist in our commonwealth, the necessity for exercising this restrictive power, under the plea of self preservation or self protection, against the possible danger of city representation. I confess that the proposition of the gentleman from Christian has furnished, to my mind, the only legitimate antidote for any supposed evil growing out of a consolidated representation of cities or masses, that is, election by districts, in both houses of the general assembly, according to numbers. This regulation of the right of equal representation, according to population, does no violence to the principle, and whilst it secures the enjoyment of the inestimable privilege of equality to all in the law making power, gives security to the commonwealth against the possible dangers of congregated communities. It is by the adoption of the conservative principle of the amendment of my friend from Christian, (Mr. Morris,) that our sister states have preserved the principle of equal representation to their cities, and, at the same time, protected the commonwealth against all possible danger of consolidated representation. I shall give that amendment my support, and extend to all portions of our commonwealth the same equality of political right.

What is the argument for the amendment by which cities are to be deprived of a separate and equal representation in the senate? It is an apprehension, that we shall have built up in our border counties, on the banks of the Ohio river, large, populous, and powerful cities, filled with

a population, whose interests and feelings will be hostile to the general interests and prosperity of the commonwealth. Sir, I am one of those who have never given to the only city (Louisville,) at which this amendment is aimed, in my imagination, that future magnitude, power and population, which some have assigned to her. She is destined to be limited by the population and business of our own state. She is surrounded by too many rival, commercial and manufacturing cities at present, to threaten by her numbers, any thing of danger to the interests of the commonwealth. Her increase in the last twenty years has been rapid, I admit. But the springing up of other towns around her, the establishment of other commercial points in her neighborhood, have as certainly fixed her limits of numbers and power within the control of all future legislative assemblies that may be convened under the new constitution, as any thing can be fixed, in reference to population, commerce and trade. I rose, Mr. Chairman, more for the purpose of considering some of the arguments which have been urged upon us, why we should adopt this measure, than to present arguments, in support of the principle of equal representation. The argument to prove that the amendment is in violation of one of the great principles upon which this government is based, has been fully exhausted, by gentlemen who have preceded me in this debate. Let us see if there is any thing in the reason assigned by gentlemen, who admit the justice of the principle, why we should depart from it in the formation of our constitution. I listened to my friend from Madison, and those who succeeded him on that side, and I think he has presented the whole argument in one single sentence, though it has been amplified by others. The argument sir, is in these words:

"But what is more important, increasing in the way I have described, they will, as soon as they attain a majority here, attempt to decide whether we shall keep a certain portion of our property or not. Now, I have not changed my opinion, as expressed some weeks since, that it is better not to bring more of this property here, for this was one of the objections I have long entertained to investing more capital in slave property. I believe it is against our interest to increase that property, because I have apprehended the danger I have alluded to, and because I believe that if we do not adopt some basis of representation that will secure the power of the commonwealth to the great agricultural interest, the institution will go down."

The argument is, that unless we do something by way of restraining a certain portion of the qualified voters of this commonwealth—a certain portion of the free men of this state—a majority may be returned to the halls of legislation, tinctured with the sentiments that are denounced here, and will endanger the security of the property of the citizens of the commonwealth; and hence, that we should guard against it, while we are forming our present organic law.

That argument might be worth more than I think it is, if it be the design of this convention to leave that description of property at the will and mercy, and whim, of a legislative majority in the general assembly. But I presume it is the intention of the gentleman—as it is mine—

that in the constitution about to be made, we shall give security to the property in slaves; that we shall so guard and protect that interest, and all other property, that no legislative majority of this country, shall have power or authority to touch, handle, or disturb it. The argument that there is danger to that description of property, when guarded by constitutional guaranty, presupposes or assumes that some future legislature, in disregard of constitutional restraints, and all right, will usurp power and take by violence the estate and property from our citizens. This would be revolution, against which all constitutions are but paper blockades.

The advocates of the amendment under consideration imagine they see danger to our slave property, if you do not deprive our fellow citizens who reside in cities and towns of their perfect equality with the rest of their fellow citizens who own that description of property and reside in the country. For myself, Mr. Chairman, I know there will be danger not only to that, but to any species of property, whenever you undertake to secure it by the proscription and disregard of the principle of equality in all political rights of the citizen, and especially in the law giving power of our government.

Mr. Chairman: If the object of the mover of the amendment, and its advocates, be as they avow, to give security to our slave property, by denying to the population of the cities, and border counties upon the Ohio river, equal participation in the law making department of our government, because of their peculiar hostile opinions to the existence of the right to that description of property, they do not go far enough—they stop short of the point to which it is necessary for them to advance. They but half do the business they design. They only propose to lessen the power of the emancipationists, located in a particular region, in the halls of legislation. Why not extend your reducing power to all portions of the state where these men now or may reside? If it be dangerous to our domestic institutions to permit the emancipationists of the cities, or of the Ohio river counties, to have their full voice and power heard and felt, and therefore they should be deprived of a modicum of their political strength, why not apply this stringent constitutional process alike to all emancipationists, as well those who reside in Madison and Franklin as those who reside in the cities of Louisville and Covington?

Gentlemen tell us they do not desire to deprive these men of the right of suffrage; they allow them to vote; but the vote of a citizen on the bank of the Ohio shall not be equal to the vote of a citizen who is blessed with a residence in the county of Franklin or of Scott. The object avowed is not total disfranchisement of the freeman. Power is more likely to effect its purpose of wrong when its approaches are gradual. Open wrong awakes the sense of danger, and the power of resistance is instantly invoked.

Of what value, Mr. Chairman, is the equal right of suffrage when you deny the citizen equal representation? You but mock him, and insult his pride by the offer of such a right.

Sir, whenever you proclaim by your organic law, to that class of men against whom you and



your amendment is aimed, I care not where they live, whether along the Ohio, or on the southern border of the state, upon the mountain or in the vale, whether they come from the north or the east, or whether they be native or of foreign birth, that their voice is not as fully and fairly and equally heard, as the voice of their neighbors and fellow citizens, you implant in the constitution an element of destruction and not of security. Freemen must be equal in our government.

A fundamental law, in order to be sustained, must be founded in principles of justice and equality. You cannot expect the people of any country to maintain a constitution, unless they love and cherish the principles upon which that constitution is based. They must see it characterized by equality and justice, and when these two principles are secured, and all political powers and privileges made equal, you may then rely upon the affections of the people for the support of that constitution. But if they see engrafted in it a feature or principle which their sense of justice does not approve, you may as well call on an honest man to do a dishonest deed, as to expect of a liberty-loving citizen that he will sustain a constitution that he does not approve.

But my honorable friend does not go far enough, if he desires to engraft this principle in the constitution for the purpose of securing this right of property in slaves. He imagines that all the danger lies in the border counties on the Ohio river, and in order to make certain, and to secure the right of property of which he speaks, he proposes that in all future apportionment of representation, there shall not be perfect equality, as far as is practicable under our government, so far as cities and towns are concerned. Sir, allow me to suggest to him a much more certain remedy for the evil he dreads, and one which will more certainly attain his object, if his object be to keep out of the halls of legislation the power of representative numbers that the emancipation population is enabled to give—one, sir, that would work much more equitably throughout the commonwealth—one which would operate equal and impartial justice, not only to every section of this commonwealth, but to every county of every section. It is this, sir—and we will see whether my friend will be willing to adopt it—that in all future enumerations, which are to be the basis of representation in the two houses of the general assembly, direct that no man who voted the emancipation ticket in any county in this commonwealth, or shall be in favor of emancipation, shall be considered a qualified voter, or constitute a portion of the population on which that apportionment shall be made. My friend does not go far enough, sir, to meet the evil which he apprehends. How many voters would be stricken from the list of this basis of representation in the county of Madison, represented by the gentleman. I do not know. I believe sir, there are one or two counties in which it would be necessary under this rule to strike off near one half of the voting population, for I believe the county of Fayette was nearly equally divided, so far as there was a test furnished at the last August election. My friend from Franklin elaborated this argument a little on

yesterday. He alluded particularly, he said, to this objection; but he said there were other great interests in the commonwealth besides this, connected with general legislation, that might be affected, if we did not guard and protect the people of the state against the influence of our cities, towns, and river population. He did not tell us what those interests were. My imagination at this time presents one, that I supposed crossed the mind of the honorable delegate at the time. Now let us test the principle the gentleman is contending for. True, it is a local question—a question that has long agitated the state of Kentucky in its legislation. It is the location of the seat of government permanently at this point. It has been, in times past, often agitated in the halls of the general assembly of this commonwealth. I know not how it has been within the past ten or fifteen years; but the large majority of voters that have been favorable to a change of location, have come from that section of the country which lies south of Green river. There is a majority of the representatives from that portion of the state who are favorable to a change of a location of the seat of government. That section of the state is most rapidly filling up and increasing, and the time may come, unless there is some check given to popular representation, when, perhaps, the question might receive consideration, and the result be different from what it has been in times past. The sentiment for a change or removal of the seat of government is rapidly increasing, as also the southern population.

Suppose the gentleman was to propose by way of securing the state against so great a calamity as the removal of the seat of government, the representation hereafter allotted to the counties south of Green river, shall not exceed the number to which they now are entitled, and no more. Thirty is all they are entitled to now, and all they shall have, no matter what may be the number of population. In the language of the gentleman, we could say, we take nothing from you, we withhold from you nothing that the present constitution gives you; but to secure this great state interest of ours, the permanent location of the seat of government at Frankfort, we will engraft in this constitution, that in all future apportionments this section of state shall have but thirty members, no matter what the population may be.

It appears to me, sir, that the representatives in this hall, from that section of the country, will not consider this a fair and equitable principle to be engrafted in the constitution. Yet it is precisely the same principle that you propose to adopt, only transferred from the cities now existing, or which may hereafter exist, to another region of country. The argument is, we take nothing from you, we give you the number of representatives to which you are at present entitled, and that number shall not be hereafter increased; we have got you now in our power, and we will maintain that ascendancy over you, in order that we may secure certain great local interests; and you have no right to complain. What is the difference between that proposition and the one now before the convention? The city of Louisville is the only city or town that is entitled to a separate representation, and accord-

ing to the gentleman's argument, she is only entitled now to representation in the lower branch. Says another gentleman, she is entitled to three members on this floor now—and we certainly do not do her injustice when we say that hereafter she shall be entitled to one senator and five representatives, and we say this because the population that we intend to restrict, resides in a mass, within the confines of a corporate city. Now sir, I ask, what principle of justice is there in this? They say to the freemen, if you reside within the limits of a city, you shall be shorn of a portion of your political rights in this commonwealth. Whether a freeman shall reside on the mountain or in the valley; whether he shall reside on a farm or within the confines of a city, he is equally a freeman of the commonwealth, and entitled to all the political rights and privileges of a freeman, so long as we continue to preserve the principles that were engrafted in our constitution of 1792 and 1798.

The equal political rights of our citizens, Mr. Chairman, cannot, must not depend upon what portion of the soil of this commonwealth they may reside.

It will never do to say to the citizen of our towns, you are taxed for the support of your government in proportion to your estate, as high as your fellow citizen who is separated from you by the corporate line between town and county, but you are not equal to him in political rights; your urban residence has deprived you of a portion of your equal share in your common government. All the burthens of citizenship shall be imposed upon you, but we will deny you a full voice in the councils of your state.

But sir, this provision is a direct attack upon a portion of country where there is a large voting population who are not themselves the owners of slaves. There is a tier of counties in the southeastern part of the commonwealth in which, I suppose, there are at least ten free white males to one slave. May it not be dangerous to the interests of the slaveholder, if we permit these counties, in the organization of the senate and house of representatives, to have their full and equal representation in the general assembly? May not some evil disposed persons hereafter, do what they have not been able to do heretofore? May they not excite that population by addressing its prejudices—by eloquent appeals from the stump convince them that the existence of this institution of slavery is oppressive—call on them to unite as one man against the slaveholder, for the purpose of destroying the tenure by which that property is held? Sir, lest they might have this influence hereafter, and avail themselves of it, in these border counties, it might be well, while the gentleman is guarding this property against the north west that he guard it also against the south east; and he should provide against any possible danger that might arise from this non-slaveholding population. You cannot have a perfect paper security until you limit the basis of representation to the slaveholders themselves. You must come to that, if you intend to secure this property, and you must do it by having only a representation of the slave holding interests.

Sir, we were admonished by the gentleman, and by others on this floor, that it was necessary

to apply this principle only to the border counties on the Ohio river, because independently of the population that comes from other states, hostile to the institution of slavery—independently of native born citizens—there is a description of foreign population that we must guard against, and to whom we must deny the privilege, not only of fair representation in the two houses of the general assembly; but some go further and deny to them the right of suffrage. One word sir, on that subject—for perhaps it is the only opportunity I shall have to express my opinions upon this Native American question. Some go so far in this crusade of political fanaticism as to declare that if they had the power now, they would stop European immigration into the United States; others would permit them to come in, but deny to them the privilege of citizenship until after a period of some fifteen or twenty years. In regard to the native american party, as it may be termed, in other portions of the United States, I have watched its progress, its commencement, its rise and its present elevation; and I believe its embodiment now, so far as the national councils are concerned, is in a single member from some district in a portion of the city or county of Philadelphia. It is a party that has sprung up of the mushroom tribe, and like all other parties which are based on injustice, in reference to principle, it can only exist temporarily. It cannot form the basis of a great national party or a great state party; it may serve sir, to change temporarily the representation of a district in congress or the police of a city, but it never can, until the spirit of justice shall be extirpated from the American bosom, become an American party; because according to my humble conception, it is founded on injustice to human rights, and human liberty. By our laws, by our constitution, by the sympathies of our people the oppressed and liberty loving of all nations have been and still are invited to our shores. They are tendered the blessings of a free government and citizenship.

The patriots and sages who formed the federal constitution, did not, thank God, even leave to the federal agents under that constitution, the power to close the door against immigration. They have a right to come. If they choose, there is no power left, either in the state government or in the federal government, to prohibit their immigration in to the United States; and if the increase of foreign immigration is an evil, if it is calculated to overturn or to endanger our own civil or political institutions, I tell gentlemen who are the advocates of native Americanism, here and elsewhere, if they wish to reach the evil they imagine, they should apply to a higher power than this convention—a power competent to change the constitution of the United States, and laws of congress upon the subject. European population have come, and come they will; and the question that presents itself to my mind is, when they are permitted to come, whether from Ireland, France, Germany, or Hungary, what is the sound policy of American statesmen in regard to the treatment they shall receive. The sooner, within a reasonable period, they shall be required to satisfy the public authorities that they are men of orderly habits, and of good deportment—who indeed

claim to be citizens of the United States—the sooner you can impress them with the high and noble idea that they are citizens of the United States, the greater security you have for their good conduct and devotion to the institutions of the country. A man who is treated in this way will feel that he possesses the rights and privileges of a freeman in his adopted country, and he will exercise these privileges in such a manner as to promote the interests of the country. He loves the country that has made him free and invested him with the immunities or citizenship, and he will fight for that country. Apply the principle which some gentlemen wish to adopt as part of the constitution and laws; what will be the result? Why sir, they will become almost what the gentleman says they are now. If you require a foreigner to remain here half a life time before he shall feel that he has an interest in the government, you tax him to maintain before he has part or lot in the political affairs of the country of his adoption, he will become the very offscouring of the state, and will be always prepared at the instance of the leaders of mobs, to commit disturbances and offences of all sorts against the peace of society. The freeman who owes no allegiance to government, who feels that he is not equal in political rights, is ever ready to lend his physical energies to those who seek to disturb the order of society, and the steady operations of the laws. Vest the same man with the privileges of citizenship, and he at once becomes the advocate of the principles of that government to whom he has sworn allegiance; that government which, in return therefor, has thrown around him and infused into him the paupery and spirit of a free and equal citizen.

But sir, there is a still greater objection to the principle advanced, and particularly to the insertion of it in our constitution. The constitution and laws of the United States permit foreigners to land on your shores; and as a matter of choice or necessity, they become citizens or inhabitants of some one of the states. They are met here by a constitutional provision, and told, that if you come to Kentucky and locate yourselves, you have to remain for a period of fifteen or twenty years, before you shall be permitted to exercise the political rights of freemen or citizens. What would be the effect of such state policy, sir, must be obvious to every reflecting, well-balanced mind. All the wealth and enterprise of future foreign immigration, much of which we now have and enjoy, in all the departments of science and labor, would stop short of the borders of your state. These men will avoid your state as a man would a pestilence, and we shall have none but those who care nothing for your institutions, who value not the rights of citizenship, and who are ready, at all times, to commit all sorts of crimes, and to practice every scheme of fraud and villainy, that can be devised. The true American policy is, so long as you permit them to come within the confines of the state, to make them citizens, and impress them, by that very act, with the importance of the new character they have acquired.

Sir, I appeal to the personal knowledge of any member of this delegation. Look about among your own constituents, and tell me what sort of

citizens these naturalized foreigners are. Sir, I will not say they make better citizens than our own, but I have seen them in the hour of danger and difficulty, and I have always found them on the side of liberty and free institutions. It was but the other day, in the very city to which this amendment looks so invidiously, that a regiment, or legion, alluded to the other day in debate, was formed in a single day, at the call of our common country. Two whole companies, constituting part of that legion, were formed, exclusively, from this foreign population. I never shall forget an incident going to illustrate the character of this foreign naturalized population, which occurred in 1812, in my own presence. A company was formed in the town where I resided, composed of one hundred men. One of them was an Irishman, the oldest man in the company—well known, no doubt, to my colleague. He was a naturalized citizen. At the margin of Lake Erie, we were ordered to dismount, and some were required to remain and take charge of the horses. None would volunteer to remain, and a draft was ordered, and among others, the Irishman was drafted to remain. When we were about to embark, the first man I saw jump into the boat was the Irishman, with his knapsack and rifle. He was ordered by the captain to go ashore, and attend to the duty for which he had been drafted. In his own peculiar, emphatic manner and language, he said to the captain: "Sir, I will not disobey any order you give me, but I did not volunteer under you, sir, to take care of horses, but to fight the British. I am now in your boat, and if I am to go out, you must take me out a dead man." He then threw himself down in the boat, and was suffered to remain. This was one of those despised foreigners, and it is but one evidence, among many, as far as my experience goes, of the attachment and devotion to the cause of their adopted country, that this description of our population always has furnished me. I ask gentlemen if they would, provided they had the power, under the federal constitution at this time, close the door against the immigration of a class of population of this description, who are seeking an asylum from oppression in every portion of the globe? Sir, would to God I had the power this day to speak and to say—and to execute the purpose—to Kossuth and his five thousand Hungarians—compelled, to avoid death upon an ignominious scaffold, to seek the protection of the Musselman, at the sacrifice of the faith of their fathers—I would welcome them to our shores. Nay, I would assure them of a welcome in the hearts of the people of Kentucky; and when they give evidence of their devotion to our institutions, of their moral character and deportment, according to the law as it now stands, I would clothe them with citizenship, and thereby make them better citizens, better men, attaching them more closely to the institutions they had sworn to support. I cannot, therefore, vote for this proposition, because of the additional element thrown into the argument that it is intended and designed to operate oppressively upon a portion of our citizens, both native and naturalized.

I rose merely for the purpose of shewing, at least, that the arguments which have been

thrown out by the mover of the proposition, have not presented to my mind a sufficient reason for the adoption of his amendment. The proposition, if I understand it is, as appears from the gentleman's argument, and from that of the gentleman from Madison also, a denial to the citizens of our cities incorporated and entitled to separate representation, senatorial representation according to numbers.

Mr. LINDSEY. If the gentleman will permit me. I have not contended for any proposition that would exclude Louisville entirely from a senatorial representation. I am for giving her, in conjunction with the county of Jefferson, a senatorial representation.

Mr. C. A. WICKLIFFE. I certainly understood the gentleman correctly; his proposition is, that Louisville and Jefferson county shall constitute one senatorial district. I was therefore correct, when I said that he was opposed to giving Louisville a separate senatorial representation according to her numbers.

I know sir, that the house is impatient to take the vote upon this question. I have perhaps occupied more time than I ought, in stating my objections to this amendment. I think that the evil which the gentleman apprehends, may be rendered entirely harmless, if he will apply the principle of election by districts. Take the city of New York. She is entitled to eighteen representatives in the general assembly of that state; by her constitution she is entitled to an equal senatorial representation according to her numbers, as compared with the balance of the state, and whenever an enumeration takes place she is to have her equal proportion. But how does the state guard against the consolidated mass of that city? It is by engrafting into the constitution such a provision as the gentleman from Christian proposes, that senators and representatives shall be elected by districts. A city divided against itself, weakens its own strength. And they will be likely to be divided in relation to all manner of internal policy. So it will be in this commonwealth.

The gentleman has referred to the state of Massachusetts. Look at her constitution; it had its existence in the year 1780, before the close of the revolutionary war. The gentleman seems to think that the term, incorporated town, in that constitution, is synonymous with incorporated city, and entitled in the same manner to representation. Towns is the name of political or representative divisions in that state, and the rule he read applies to all equally. One other argument that was presented by the gentleman, and by my friend from Ohio, with some force; it is an attempt to shew that by giving to a city this equal representation, or rather by denying to a city this equal representation, you only compensate counties and sections for the losses which they may sustain in the apportionment of representation among themselves. Is this true? It would be to some extent true, if the numbers included in fractions were unrepresented, but they are represented in power, because they aid some other county in the neighborhood to obtain a member. Not so in an incorporated city, for by the present constitution and the clause under consideration, fractions in cities are not transferred to counties. If there was always to be found in

a city the precise number necessary to give a certain number of representatives, so far immediate local representation would be preserved. But suppose that 1500 be the ratio, and that Louisville should have a sufficient number of qualified voters to give her three representatives, and 999 over; that 999 would not be represented, as it would be if the residuum was transferred to a county. Many counties have at every apportionment a residuum, it cannot be avoided, but where there is a residuum it must be contributed to a neighboring county, and then it is represented. There is nothing in this argument of either of the gentlemen, which justifies the proposed departure from the great, essential and just principle of equal representation based upon numbers.

Mr. KAVANAUGH. Mr. Chairman: It was my intention and wish to remain a silent but interested, deeply interested, listener to this debate. But we have a journal which is to record the votes given in the convention; and we have another record which is to send out to the country and to the world the reasons for those votes. Gentlemen advocating the proposition by which Louisville is to be restricted in the legislative councils of the state, have thus already sent their reasons abroad. The most imposing of which, and that chiefly relied on is, that to give Louisville, and the other cities which may hereafter spring up in the state, representation in the senate, according to the common basis, to be established in the constitution for the state at large, is giving "aid and comfort" to the emancipationist. This I understand to be the position of perhaps all those in favor of the restriction. The constituency I have the honor to represent is pro-slavery. I claim to be a pro-slavery man, and on that subject as well as every other intend to represent that constituency truly, faithfully, and according to the best of my humble ability. And knowing that upon the subject of slavery especially they justly feel deep interest, I am am apt—nay, sir, feel it my duty, to scan closely the ground I may occupy in any vote I shall give touching that subject. If I shall vote against that restriction, the speeches on the other side represent me as doing the work which will either presently or remotely contribute to the cause of emancipation. I hence desire briefly to inquire whether such will be the result. But before proceeding, I take occasion to remark that I am free from that local feeling which of necessity must influence some members of the convention. Representing as I do an agricultural county in the very centre of the state, and therefore can act on this subject as a citizen of the state without any peculiar or local interest whatever. The present constitution prescribes the qualifications necessary to entitle a citizen to the right of suffrage. It further proceeds to make the number of citizens thus qualified the basis of representation. The report of the committee now before the convention is based upon the same principle precisely, and recognizes it as the only basis of representation. The state, however, is cut up into counties of almost every size, shape, and population. Taking these counties as we find them, it is positively and absolutely impossible to devise any mode which will, with mathematical certainty, give on this

basis equal representation. Being unable to arrive at this perfection, the committee have gone into details and regulations, the sole and only object of which were to approximate as nearly as possible to the general rule they had assumed as the true and proper basis. This all admit on both sides. The difficulties of carrying out the general principle, in many cases absolutely insuperable, all vanish when you approach the city of Louisville. This is too obvious to require elaboration. But strange to tell, at the very point where your principle is of easy and practical application, you abandon it. I here pause a moment to appeal to the convention if this is not so. There sir, is no denying.—Abandoning the principle which all admit to be the true and sound one, some give one reason, some another; each however, reconciling the thing in his own way.

The gentleman from Franklin, for example, exhibits his tables of representation taken from the report of the committee to illustrate the inequalities that will exist in other parts of the state. Why did he not tell the convention that the committee had exerted all their ability to arrive at equality, and that they had approximated it as nearly as the nature of the case would admit. But no. He traverses the state and parades these imperfections which admit of no remedy, to show that when you come to a city where no barrier exists, you may wantonly violate it and disfranchise a part of the free citizens of Kentucky—native born as well as foreign—no distinction is made, for you strike strike at the city itself. If your blow is effectual the whole will feel the shock. The whole thing when simplified is this, that because our county organizations are such that some inequality from the necessity of the case must be borne in some sections—when you get to the city of Louisville, where no such necessity exists, you abandon your principle for no other reason than to make her feel inconvenience, because it was the misfortune of some other county in the state to experience for a time the impracticability of carrying out your system in complete perfection.

"Aid and comfort" to the emancipationist is the cry. That is to carry every point. It is to overslaugh everything in the convention. It has become familiar to the ear. I for one can hear it without trepidation. You are suspicious of a part of our population. They are non-slaveholders. Gentlemen talk as if the slaveholder held the power in Kentucky, and as if they represented them alone. I would remind them that it is by the voice of the non-slaveholder alone, that the institution exists for a single day. It was in the power of the non-slaveholders to have returned a convention more unanimously anti-slavery than this body is pro-slavery, for they are as six to one in the state.

In the canvass last summer the pro-slavery men had no time for special pleading. The guaranties thrown around slavery by the laws and constitution had all been torn away, and the institution lay at the feet and mercy of the non-slaveholder. To them we appealed as we were bound to do on the great principles of justice and truth. They decided in our favor. We therefore now know that nothing is to be

feared from the present non-slaveholding population of the state.

The object is to strike at the foreign population of the state. How the cool dispassionate deliberation which characterized our citizens last summer in their decision of the question of slavery! Have we any great interest which would be unsafe in their hands? If so, you have the power to disfranchise them. And you begin by lopping off a small branch only. You give them all the high privileges of citizens. You arm them with all the powers which you yourselves have on this question of slavery. And then goad and provoke them to topple the institution into the dust, by proclaiming your suspicions to the world, and that they are unworthy the high trusts you have reposed in them. If verily, and in truth they are not to be trusted lay the axe to the root of the tree and at once embrace the native American resolution of the gentleman from Bourbon, and place its principles in the constitution. I see no medium ground.

Mr. Chairman, it is in vain to talk or think of sustaining or strengthening slavery by some of the means which have so often been recommended. Such, for example, as silencing discussion and preventing agitation. Fix your constitution as you will, the people will still discuss and agitate according to their own good pleasure. You cannot prevent them by legal enactment; you may by fair argument. In that way the emancipationist was met last summer, and after full and fair trial during the whole canvass, he lost at least half his numbers. If you wish to keep the ascendancy, you have only so to meet him at all points and in all time.

But though you excite this population against you by the amendment, still nothing is gained by it. To suppose so, is a flimsy fallacy. Few words will prove it. Under the constitution, as you intend framing it, no power in the state can touch our slave property till another convention is called. But this foreign population is to have a voice in calling that convention and in electing its delegates. Where then will be the constitution by which you have violated a great principle to sustain slavery? At the mercy of the very people whom you have wronged in the violation of that principle.

Instead of strengthening the institution of slavery by the amendment, you are weakening it. You afford the emancipationist the argument that you are afraid to meet him in fair fight before the whole people, but that you are compelled to resort to unjust restrictions to keep him down. I am against his having this undue advantage. To show that no county in the state should have more than one senator, whatever its population might be, honorable delegates have, by analogy, referred to that provision in the constitution of the United States by which each state, whether great or small, is entitled to two senators, and two only. Nothing, however, is gained by this position. The little state of Delaware has as much sovereignty as the largest state in the union. Her senators represent that sovereignty. This entitles her to an equal number with New York or any other state in the union. Besides, the federal government was formed by the transfer of a part of the power

and sovereignty of the people of the several states to that organization. The powers not delegated were retained by the states. A line, therefore, had to be drawn between federal and state jurisdiction. Many interesting questions in the history of our country have arisen as to the true position of this line, and a conflict of powers between the federal and state governments. These conflicts were foreseen by the framers of the federal compact, and by the conventions of the several states called to ratify that instrument. When the rights of the states are encroached upon, or about to be encroached upon, the smaller states have as much at stake as the larger ones, and that without regard to numbers or population. Hence, an equal representation in the senate of the United States. If representation were given in both branches of the congress according to population, a combination of four or five of the larger states might easily overwhelm and swallow up the smaller ones. For that reason, among others, this negative power was given in one branch of congress to the smaller states, as a means of self preservation. There is, then, in point of fact, no analogy in the two cases. If there is, the smallest county in the state is as much entitled to a senator as the largest, and I should insist that the principle be carried out, and that my county is as much entitled to a senator as any other, and would claim it at the hands of the convention.

After this analogy has been so strenuously urged, I am not surprised that the resolution now on your tables should have been offered, proposing to apportion our senators according to the number of counties without regard to population. If the analogy is well founded, the principles of the resolution ought to carry.

We are also told that slave labor is yielding to free labor, and must yield to it; that this fact is now seen in the Ohio border counties of the state. In proof of the general proposition, the free states formerly holding slaves is cited in illustration. Why sir, the free states of the Union, all taken together, never, at any time, contained more than 40,000 slaves—a mere handful. Nothing is proven then by showing that this handful has disappeared in the north.

Taking the southern states in a body, the slave population has been steadily increasing. True, on the eastern shore of Maryland, and in the state of Delaware, a section geographically separated from the main body of the slave territory of the Union, the number of slaves has diminished. In no other section of the slave territory has this been the case.

The slave population of Virginia and North Carolina is perhaps not quite so great as at one time. They, however, furnished the new states with slaves which slightly diminished their numbers only, and is no evidence that slavery is disappearing.

Another position is, that Louisville, owing to her numerous population and its rapid increase, may, if allowed full representation, ultimately control the state.

Within the last decennial period, her population has more than doubled. I am glad that this is so. It is evidence that capital, industry, and enterprise are there. And a market is also there for all the agricultural productions of every part

of the state commercially connected with that city. My section of the state finds a market there for all her agricultural staples. Remove Louisville and we have no market. Cripple her growth and prosperity and you affect all that part of the state from which I have the honor to come. She is now going foremost in building a railroad from that place to this; I am glad of it. I wish she had the ability to build one from Cumberland Gap, running through my section of the state and intersecting the other road at some convenient point. We would then have a market at our very doors. I profess to know something experimentally of the interests of the farmers in my county, because I am one of them. I am not contending that by this restriction on Louisville, you will cripple her energies in a commercial point of view, but make these remarks to show that the interests of the rural and city districts are not antagonistical, as gentlemen have contended, but are one and the same, or rather that they support and sustain each other.

And that instead of entertaining feelings of jealousy towards that city, that it is the interest of every section of the state connected with her commercially, to cheer her onward in her progress of enterprise and prosperity.

I see no danger in her numbers. The cities of Cincinnati, Philadelphia, and New York, have equal representation in both branches of the legislatures of their respective states. No danger seems to have been apprehended there.

If the city of New York, having a population of four hundred thousand, does not override the rest of the state, and can be trusted with equal rights, I can apprehend no fears from Louisville.

The only fear I have, is that the predictions of gentlemen, of the great and rapid growth of Louisville, and the other towns on the Ohio, will not be realized. I would be gratified to see them multiply and increase fully up to the predictions of the most sanguine; and instead of discouraging and checking, I would encourage and cheer them on in their progress; and would be proud to see them, as places of my native state, going forward in strides more rapid than is now expected. I feel so, because I am sure it is the interest of the agricultural part of the country that it should be so. If, however, they have a population which cannot be trusted with all the high privileges of citizens—which I do not believe—come at once up to the Native American principle, and lay the axe at the root of the tree. To that, however, I am utterly opposed, and will vote against it in all its stages.

Mr. TRIPLETT. I have probably delayed too long already bringing to the notice of this house, the proposition that I intimated some day or two ago, that I should advocate. Evil has probably arisen from that delay, because I find in listening to the arguments of the different gentlemen who have spoken on this subject, that there appears to be rapidly growing up in this convention an opinion, in which I do not agree, that whenever a delegate votes for a gentleman's proposition, he necessarily adopts all the arguments and reasons the mover may think necessary to give for introducing it. I shall vote against the proposition of the gentleman from Franklin because it goes too far. And I do not



concentr in the reasons given for its support by my friend from Madison, because the ground he occupies is too broad. Turn your eye to the map of Kentucky hanging on the wall behind you, Mr. Chairman, and commencing at one end of the state and running to the other, along the margin of the Ohio river, and you have some twenty four counties, and a river belt of some six hundred miles. Take ten miles upon that belt and you have six thousand miles of territory. Now the influences arising from the expected increase of the spirit of emancipation, against which he desires to guard, are not only not inherent in the rural population in that district, but they are not more liable to exist there than in the rural population of the state elsewhere. Let it be where it may, the proposition which I gave notice I intended to introduce, and in advocating which, I shall undoubtedly come in conflict with some of the gentlemen who have preceded me, I will now read to the convention to show its length and breadth:

*"Provided, That the cities unincorporated, or which may hereafter be incorporated, in this commonwealth, and to which a senator or senators may be allotted, shall not together, under any future apportionment, be entitled to more than one fourth of the whole number of senators; and whenever, under any future apportionment, the whole number of senators to which said cities would be entitled, shall exceed one fourth of the whole number of senators for the whole state, the legislature shall apportion the one fourth of the whole number of senators among the cities entitled, according to some just and equitable mode of apportionment."*

And now, sir, comes the point to which so many have objected. *"And provided, That no city shall ever be entitled to more than two senators."* Now what has been laid down in this house as the great fundamental principle, and I will call upon the gentleman who has just sat down, and not only him, but on every other who has taken the opposite side of the question, to answer. Point me to the man in this house, or in the State of Kentucky, who denies, as a general proposition, the great fundamental principle that representation must be according to numbers. I acknowledge its truth in its full length and breadth, and no man here denies it. But upon the other hand, where is the man in this house, or elsewhere, who will deny that there is another principle, paramount to all others, in its operation upon states and governments, as well as upon individuals—the great principle of self preservation. Precisely where one of these principles ceases, and the other commences—or rather to speak more accurately, the point where they so come in contact that one must give way to the other—it is not very easy to ascertain. But we can strike tolerably near that point, and it is not necessary therefore for gentlemen to run to extremes on either proposition. Fundamental as is the first, the other is omnipotent. It is that by which individuals are authorized to take the life of a fellow creature, and states to go to extremes, when self preservation, and the existence of the state itself, or of some great institution, or some great essential principle is endangered. There is not a thinking man in this house but must see that the time

may come when these two principles will come in contact. It is inevitable, and it will take the cool deliberation, and sound, clear-headed judgment of a patriot and statesman to strike precisely the true ground we should occupy. It is with that view I offer this proposition, and I call on the elder and more experienced gentlemen here to assist in perfecting it, for it is not amidst the buzz and confusion (come from what quarter it may) that this calm reflection can be attained. Yet, gentlemen tell me that this proposition is intended to shackle Louisville. Is that a fair argument? I appeal to the few who have attacked this proposition with the threat that I or any man who voted with me, shall be denounced throughout this commonwealth—that we are endeavoring to shackle Louisville, and shall bring down upon us the denunciations of the press to stay their hand and think before they strike. Tell me not that we are to be frightened from our propriety by any arguments of that sort, or any anticipations of such an event. I am sensible, as is probably every man here, that it is not representation alone that gives power, and strength, and influence to cities. No, sir, there are other and almost as powerful causes operating upon us. What are they? Is not the power of the press of Louisville nearly equal to that of the three delegates on this floor? Their delegates act upon the opinions and influence the votes of other delegates by their arguments and impassioned eloquence; and they have few equals on this floor. The press speaks with language equally as strong, and goes not only to this hall, but throughout the state. Its power, too, operates strongly on the gentlemen here, and few there are who are not alive to its praise and sensitive to its attack. The spray from the pen of some of its correspondents has reached to the hem of my garments, and I am not sure it may not have disturbed my equanimity. The power of ridicule, strongly as some gentlemen possess it here, and which has already frightened from their propriety, I fear some of the members of this house, who originally favored my proposition, is not as strong as that power of ridicule possessed by some of the press of our cities, and which, too, operates as far as the English language is read. And is not this element of power possessed by the cities to be taken into consideration? I speak of it so far as it influences public opinion. And who would deny that legislation was influenced by public opinion? Every member comes up here imbued with the public sentiment prevailing in this country; and how was that sentiment formed? Previous to the meeting of the legislature; was it not as much by the newspaper press as any thing else?

This thing narrows itself down to a nutshell, at last; for although we may not be able to strike exactly the proper point itself, it is not so difficult a proposition to comprehend as some gentlemen seem to imagine. Our ancestors in 1799, who have been praised to the very skies by gentlemen on the other side, have incorporated in our constitution a principle, that up to this day no man denies. What is it?

*"Representation shall be equal and uniform in this commonwealth, and shall forever be reg-*

ulated and ascertained by the number of qualified voters therein."

Now turn to the opposite page, written by the same patriotic, wise, and noble men who made this constitution, and what do we find there? In apportioning the senators, that same constitution says, "that no county shall be divided, or form more than one district."

What becomes, now, of all your patriotic fervor, of all your admiration of your ancestors of 1799, when they incorporated this clause also, in the same constitution? If they are shackles upon you, as you say, I propose to strike them from your limbs, and let this young giant of Kentucky walk forth in all its full proportions and strength. I propose to go even further. I am willing to say that Louisville, as she is now, and as she will be with her future increase of natural, or rather native born population, shall be represented to the very fullest extent you dare ask. What, then, is the converse of this proposition? It is plainly this. That you may take Louisville, as she is, or as she will be fifty years hence, provided she goes on increasing, alone by the natural increase of her present population, whether that population is native or foreign; and supposing she increases in population twice as fast as the rural parts of the state, and sir, fifty years hence, you enjoy all the strength in both houses of the legislature that you would be entitled to, if my amendment was not adopted. But the increase of population against whose influence we intend to guard, is that which is the result of immigration from abroad, whether from foreign states, or from foreign lands exterior to the United States. Then the question comes up, whether we have a right to do so. Has brave and good old Kentucky, as she is now, the right to provide that in all future time, she shall bear at least some faint resemblance to what she is now—to the land in which we now live, and love so much, because *she is just what she is*? Or shall we now place her in a position in which Kentucky, as she now is, shall be ruled and governed by what Kentucky may become, when this flood of immigration from abroad shall pour in upon her, and become, in her cities, a majority of the population? I provide for that contingency also. It is not applicable to Louisville alone, but to every city that may grow up, either on the Ohio or elsewhere in the state. You are to have two senators each of you, but the representation in that branch of the legislature, from all of you combined, shall only be one-fourth of that of the whole state. Is this a wise provision? Bear in mind that I offered this proposition three days ago, and before this debate had sprung up and gone to the extent which it has. It was suggested on mature reflection, looking at, and with a view to, occupy and cover the whole ground. And does it not do so? Cities are to spring up, not only in the border counties, but in the interior—manufacturing cities. There is the length and breadth of the whole matter. Commerce, of itself, will never make a city large enough to become dangerous to the country, in any point of view whatever. Commerce is too transitory. It is the manufacturing establishments; the laborers which are here to-day and stay so long as they get wages, and who, when they can get

them no longer, go elsewhere. Or if they become rich in Kentucky, we know that in Kentucky they do not settle. When wages have made them so independent as to buy land, where do your manufacturers go? Do they buy land in Kentucky? No sir. Their hearts, their previously formed opinions, and sometimes their conscientious opinions on a peculiar subject, carry them out of Kentucky into a non-slaveholding state. Count them up—those whom you know to live by manufacturing—and answer me this simple question: Of all the operatives in the manufacturing establishments, who are now, or may be entitled to vote, is there more than one in five who is not at heart and in conscience an emancipationist? Such, at all events, has been my experience. Raised and educated where they were—nine out of ten of them—it is not at all astonishing that they should entertain opinions hostile to this institution. They do not know the relative position between master and slave in this state, and opinions have been ground into them on a false statement of facts, which make them conscientiously antagonistic, and, to some extent, imbued with strong antipathies to the slaveholders throughout the state. Am I right in these facts? Will the increased votes in these factories, as they grow up, continue to be of the same character? I believe they will, and so believing, I have done—what? I have only provided for the future protection of the interest of Kentucky, in her slaves.

It was a daring deed in the man who first introduced this question here, because he must have known then, that he would bring down upon himself not only the powers of ridicule and the sneers of those who stand opposed to him, but also of a very powerful opposition at home. He who has and does risk all this, at least deserves some credit for sincerity of opinion, because he may be loser, and can be by no possibility a gainer thereby. In mere popularity seeking, and in making votes for himself, he cannot be a gainer, and he must be a loser. Is the question of sufficient magnitude to make it a duty to assume this risk? That is a question for every man to ask of himself. Here, on the one hand is the strong fundamental principle, that not only now, but in all future time, representation shall be based on population; on the other hand is the present increase and the probable continued increase of those numbers, of a character that may become dangerous—and before it becomes so, I wish to arrest it. Just here let me ask, if gentlemen are correct in their positions, why they do not vote for my amendment? You say that there is not the slightest danger that all the cities combined ever will have more than one quarter of the senators of the state. Then vote for the proposition. Their influence will not become dangerous until it does amount to something like one quarter of that of the state, and right there I want to stop it. But it is said that we shall then come in contact with another principle equally as strong and powerful as this: that representation should be in proportion to taxation, or in still plainer terms, that men should not be taxed where they are not represented. Turn over to the last article of the constitution, and you will there find that all bills laying taxation must originate in the lower house.

Now I do not propose to limit the representation in the lower house, of any city throughout the state; and why? In order that we may not come in contact with more principles than are necessary. Whenever a man is taxed, he ought and must have the power of representation, and furthermore, his voice ought to be heard in the other branch in order that when the bill goes there it may be fairly debated and understood. And for this purpose, I give these cities a representation in the upper branch, and at the same time allow them their full ratio in the lower house. There is, therefore, full representation where taxation only can be originated—in the lower house, and therefore my amendment is not in violation of that great principle. Cast your eye rapidly over the map of the state, and look at the number of cities now approximating to the right of separate senatorial representation. Louisville is entitled to one, and nearly to two; Covington, Maysville, Lexington, and Newport, each nearly one. Well, the senate is to consist of thirty-eight members, and if we give to these cities to be divided among, nine, or at furthest, beyond which I will not consent to go, ten senators, out of that number, ought that not to satisfy them for the next fifty years at least?

We were told in loud and stentorian tones, that fell upon the ear like peals of thunder, by the President of this convention, that whenever the institution of slavery was in such a predicament, that a majority of the people of Kentucky were opposed to it, it would not be worth defending. That is the very thing against which I wish to provide. I do not fear that slavery ever will be driven to that position in Kentucky by Kentuckians, or the descendants of Kentuckians, as she now exists, but the time may come when the population that now pours into the factories of the state, will become a majority. I am the last man in the house to prevent the building up, or the increase, and the rapid increase, of factories in this state. I go for a manufacturing state. No man in this place favors more than I do, the increase of our cities. God send that Louisville may have a population of 500,000, and I could speak by the hour of the advantages which would result therefrom to the rural population of the state. But because I entertain these sentiments, is it less my duty to provide for the future protection, if not salvation of the rest of the state? Louisville is held up here as if she was attacked by this proposition. So far from that, I go for taking off the shackles now placed on her by the present constitution. You tell me that the young lion is caged, and I am willing to strike off the bars. But I want also, to place a chain around him so that when he attains the plenitude of his strength and power, the balance of the state may be protected against injury from its exercise. What is the reply? Why that this young lion will never attain that strength and power that will enable him to work this injury to the balance of the state, and that therefore, there is no need of this chain of safety. If that be true, then no evil can result from putting the chain upon him, as he never will feel it until his strength does become thus dangerous.

The influence of Louisville may never become dangerous, until its increase of numbers is such

as to outvote the rest of the state. And as this is at least possible, then it becomes the duty of the present race of native born Kentuckians, or of those now here to protect their native born children, and their children's children, against its results in the future. And when I say native born I mean all now in Kentucky. And in regard to the foreigners now resident in the state, whether naturalized or not, I declare that so far as I am acquainted with their opinions there is not one who does not agree with me in the opinion that the time may come when the large cities in this state, like those of Europe, will rule and govern, and sometimes with an iron rod, the rural districts around them. That is what I am looking forward to. I want now while we have the power to throw the necessary protection around our slave property, for unless this protection is provided now, in twenty or thirty years from this time, we may not be able to provide it.

I to some extent agree with the sentiment of the President. Whenever a majority of our population turns against slavery, it is in some danger, but whenever a majority of the votes in both halls of the legislature turns against it, it is gone. Put in your constitution whatever safeguards you may choose, and I will show you how they will be evaded. They need not violate the constitution, but they can drive every slave out of the state by a rule as inevitable in its effects as that two and two make four. You have not yet provided against special taxation, and whenever you do attempt it, you will find arrayed against you a most powerful interest. I will show you at once by what a simple process, if they had now a majority in the legislature, the emancipationists could drive out every negro in the state, and at the same time not interfere with the principles of the constitution. Let them tax every negro in the state fifty dollars as a specific tax. Why even now my spectacles are taxed fifty cents a year, and God knows I would not wear them if I could help it. Tax the negroes fifty dollars a head, and the slave owner would at once begin to calculate whether they were sufficiently profitable to him to allow him to keep them and to pay this tax. How many would keep them? But suppose they all did, and that some ten years afterwards the emancipationists found they had not driven the slaves out, they could at once double the tax and increase it to one hundred dollars a head. All know that this is a tax which the slave owner could not exist under. Now my amendment provides for this contingency to this extent: that while the city and manufacturing population will be fully represented in the lower house, and able to protect themselves, I want this other interest to be strong enough to protect itself in the upper house. I want one house still left to stand firm for Kentucky as Kentucky is now and as I want her descendants to be hereafter. Let that day come when the emancipationists shall triumph; and what will become of nine-tenths of the gentlemen in this hall. We will be in some foreign, some southern state perhaps, and when asked from whence we came, like the Swiss exile, we will say,

"We came from Kentucky, for she was Kentucky of yore,  
But degraded spot of earth, thou art Kentucky no more,"

and we left her. This would be the fate of one half if not two thirds of the representatives in this house, and their descendants. Like begets like, and the noble and free spirits here now have a right to expect that their children will possess the same spirit. You have a right to suppose that the high and chivalrous feelings of the slaveholding people will go down to our children, and that when this institution shall have been expelled through the means I have spoken of, they will depart from their beloved Kentucky. And I would therefore provide against the occurrence of such a contingency. "Coming events cast their shadows before."

Look at the speech of the gentleman from Kenton—I ask pardon of the gentleman from Kenton, (Mr. Stevenson,) I meant the gentleman from Campbell, (Mr. Root,)—for the centre of heaven is not further from the crater of the infernal world than the gentlemen are from each other on the subject of slavery—and you will see that this feeling is already becoming manifest. I allude to the gentleman whose speech in the house will be the *Root* of ten thousand evils. What will be the effect of his speech in and out of this state, declaring that slavery is a curse—a curse to the whiteman and a curse to the black? What also will be the effect of his declaration that if he believed the bible sanctioned slavery he would agree to tear the leaf from its place, and deny the authenticity of its high character! And this for the purpose of carrying a fanatical opinion into operation! The Christian religion is to be desecrated and made to fall before this immense fanaticism. There is a sample of the extent to which fanaticism drives even a mind tolerably well regulated. And when we see it in these halls, having that effect on a mind tolerably well regulated, what may we anticipate from future events. And I for one am determined to prepare for these coming events.

Look also to the gentleman from Fleming, (Mr. Garfield), and the arguments he has made use of here. When we first met here, we were as a band of brothers, I thought, harmonious on this one subject; but the very moment a question is started bringing out a man's innermost thoughts, we find difficulties springing into existence. We now perceive that there are at least two members on this floor who look upon slavery as a great moral, religious, and political evil. How many more there may be, we do not know. Now the gentleman from Fleming, when he uttered this opinion, told us that he was raised in the pure mountain air of the state of New Hampshire. I am glad he was raised there, at least I rejoice he was not born or raised in Kentucky. Where are your manufacturers and operatives to come from? Are they not also to come from the pure mountain air of New Hampshire, or from the non-slaveholding states of this Union, or from Europe, where the emancipation feelings are as deeply ground into them as in the non-slaveholding states. Nine out of ten are immigrants from the non-slaveholding states. I have no question about it, and I ask gentlemen therefore, to review their opinions. I am the last man to shackle Louisville, or any of the cities, and I only ask now that we may provide for a contingency, that it is evident to all must happen if they continue to increase in the

manner they have. I ask them then to review their opinions and see if they are doing strict justice to their present constituency? Who are those constituents? Are gentlemen who are now in your counties, voting for or against you, your constituents, or are your constituents those who may immigrate to this state fifteen or twenty years hence? Here are your constituents and the men to whose interests you ought now to look. Look to the interests of your constituents as they are now, and defend those interests as they are now, against those who may hereafter attempt to interfere with and destroy them. I am not done, but I must stop, because my voice and my strength are exhausted. If I find it necessary I will resume this subject, and finish it hereafter.

Mr. STEVENSON. The eloquence, the ability, and the violence of this debate, attest, in my humble judgment, the importance of the question, which is involved in it. I represent a portion of the state, which if the amendment of the gentleman from Franklin prevails, is to come under the ban of proscription; but while I am vitally interested as an individual, and still more as a representative of those whose rights are to be ostracised, I shall not discuss the question in any local or sectional view. I have been surprised at the amendment, and still more surprised at the arguments which have been adduced in support of it. I understand that the object of all government is to produce the greatest happiness to the greatest number, and that that government is best, which nearest approximates to this result. I have understood, and I had not supposed that there was a delegate on this floor, who denied what my eloquent friend from Daviess, (Mr. Triplett) has just announced, that population was to be the true and only basis of representation. He asked us in very eloquent and earnest terms, is there a man on this floor, who would dare to deny that proposition? I reply to him, there sits my friend from Franklin, who distinctly announced last night, that he denied it, and who boldly asserted that numbers alone ought not to be the basis of representation, but that it should rest on numbers and territory combined. He was asked the question, and he defined his position. I leave then the answer of the gentleman from Franklin as a full and complete one, to the gentleman from Daviess, both of them acting side by side, not it is true, on this particular amendment, but on a principle which is embraced in both these amendments. Sir, we have made poor progress in this mighty age of improvement, if after fifty odd years, we are to retrograde and by our action in this body practically deny the great principle, that population is the true and only proper basis of representation. I propose briefly to reply to my friend from Daviess, and attempt an answer to these several arguments of gentlemen who have preceded him. I shall attempt to show that while the friends of this amendment may, and honestly too, (for I impugn neither the motives, integrity, honor or honesty of any gentleman on this floor,) spurn the imputation of disregarding this great principle, yet that their action and profession are in direct conflict; and if I establish the fact that the adoption of this contradicts their professions, I shall ask and expect them to retrace

their steps and come back with us to fundamental principles. It is a fundamental principle, sir, that population is the only true basis of representation—a principle, the greatness of which all profess to admire, and to abide by too. The violent, the able and the ingenious attacks that have been made upon it, only show its impregnability to attack, in despite of the eloquence and ability of the distinguished gentleman from Bourbon—in despite of the subtle reasoning of the gentleman from Franklin—notwithstanding the gigantic efforts of my venerable friend from Nelson—the burning and fervid eloquence of my friend from Daviess—and the cool, dispassionate remarks of the gentleman from Lincoln—in despite of all this combined mass of talent, that mighty principle, untouched and uninjured, still rears its truthful head above the conflict, Teneriffe like, as quiet as the sky, but as mighty as the sea. Sir, it is a principle dear to freemen and only to be feared by tyrants. That principle is now sought to be overthrown.

I always listen with pleasure and interest to the distinguished gentleman from Bourbon, (Mr. Davis,) but he will pardon me for saying his argument was more specious than solid. He told us that there was no equality in government, and that though the declaration of American Independence, and all our state constitutions by their bill of rights, recognized men as free and equal, that there was no such thing as perfect equality. I admit it; but while there is no such thing as perfect equality, we certainly can approximate to it. If it is a principle worthy of being acquired, let us, in this age of progress, if we cannot attain it, approximate as near to the promised goal as we can. Do not let us go back; do not let us retrograde in this mighty march of science and intellect. If we cannot reach perfection, and there is nothing human perfect, do not let us stop and give up the contest, but press with vigor on. Why sir, the highest hopes of man, not only here, but hereafter, would be cut off, if such a rule should prevail. He cannot reach perfection but by reliance on a higher power; he can through the mercy and mediation of his saviour, with fervent and unshrinking faith in him, become a holier and better man. Does the exception proposed by the gentleman contradict the propriety of approximating to this equality? He asks why are not women represented? Their very nature forbids their participation in government. They become exceptions to the rule; the very exception proves it. And here I would ask, what rule is there to which exceptions are not to be found? Women are not the only exception to this rule of equality. It applies to lunatics, and to infants. They are founded still upon reason, upon justice, and upon the high principles which tend to the perfection of government. These lunatics and infants have not that maturity of intellect, necessary to attain and to take their part in the formation of the government provided for the liberty of man, and the protection of his property. I think then, that there is nothing in this exception, but that the exception itself only proves the rule. We were next referred to the federal government, both by the gentleman from Nelson, and the gentleman from Bourbon. We were emphatically asked to look at the organization of the

U. States senate for a contradiction of this rule of equality. I ask both of these distinguished gentlemen, if the distinction between the federal and the state government is not self-evident? I ask if their whole operation, their whole object and their whole character is not entirely distinct. If their structure does not, for obvious reasons, so far as representation is concerned, rest on a different basis? Some of these distinctions were ably and eloquently pointed out by my friend from Anderson, but he did not run out the parallel of dissimilarity? The federal government is not a perfect and plenary government for all purposes. It is a limited government with limited powers. It does not partake of the sovereignty or the characteristics of the state government. It was designed for specific purposes. All power not delegated to it was retained in the hands of the people. The federal government has not a right to interfere with the municipal regulations of the states. The gentleman from Nelson, spoke of this balance in the senate. Sir, the federal government is a union of sovereignties, whereas the government of Kentucky is a collection of individuals, each of whom is regarded as a sovereign. In the federal government we have a diversity of interests. It is charged with our foreign relations. It is clothed with power to settle differences between the states, as members of a common confederacy. It is composed of thirty distinct sovereignties—co-equal and independent; but in each of these states, exist jarring and local interests, diametrically opposed, and the framers of that mighty instrument, the constitution of the United States foresaw this, and therefore provided for it. How? By checks and balances. By giving to each of the several states equality of representation in the senate, and carrying out the principles of numbers in the lower house. This was necessary to reconcile opposite interests. But is there any such cause existing in Kentucky? We are an association of brothers, bound together for a common purpose—and that purpose is the formation of a government. This government has no jarring elements of discord—no opposing antagonistical interests. The people of this revered old commonwealth have no cause for any jealousy towards each other, whether in the north or south, the east or the west, but feeling ourselves Kentuckians in heart and feeling, and bound together by the cords of common interests and kindred affection, we have only to act for the general good. Is there, when you look then at the character of the two governments, any thing to be drawn in favor of the argument that proposes to violate the great principle of representation in the state government, on the basis of numbers, because in the senate of the United States, as one of the checks and balances that entered into the composition of the federal government, this principle was disregarded? Can the same reasons which led to the formation of the United States senate apply to the state of Kentucky? Unquestionably not.

My friend from Nelson knows that under the federal government the judges are appointed, and yet one of the objects for which he came to this house, as repeatedly announced to us by himself, was to secure the popular election of the judges. Why sir, the very fact that he came

here announcing that object, takes away the force of his argument, destroys his attempted analogy between the two governments, and shows that the state of Kentucky rests in its government upon wholly and totally different foundations from that of the federal government. My friend from Daviess concedes this principle, that numbers and numbers alone is the true basis of representation; and yet his amendment proposes to violate it. He attempts to justify himself, however, by another principle, which he says is equally sacred and undeniable, and that is the principle of self-preservation. He says that "these two principles must go together, *pari passu*." He is satisfied that self-preservation will justify a violation here of the principle of numbers. And he likens it to the case of two drowning men on a plank, where, for self-preservation, one has the right to throw the other off. Now let me ask my friend that if he was to avow that principle, and to justify himself by it in a court of law, whether the *onus* would not be on him to show that the necessity existed? Can he show that the necessity exists? Surely he would not contend that the variety of physical and mental formations among men, and the uncertain tests of their poor judgment, should alone decide upon so dire a necessity. For example, if he and I were in a skiff crossing the Ohio river, and the skiff should commence rocking, and I, a poor cowardly miserable creature, with weak nerves, should become alarmed at the first jostle, would I have the right to throw him out and drown him, and then come forward and justify myself on the ground that I thought myself in danger and self-preservation required it? Is the cowardly, the constitutionally timid man, when he sees danger rather in his imagination than in fact, and fears that he shall be attacked when there is no possible ground for such fear, is he to draw a weapon and kill an unoffending man, and then be allowed to justify himself on this principle, that he thought himself in danger? Is this the principle of self-preservation that the gentleman from Daviess speaks of? No, my friend is too good a lawyer to argue or contend for such a position. The man who commits murder and justifies under a plea of self-defence, must show the absolute existence of such necessity. So I say the *onus* is upon him to show that the citizens of the cities of this commonwealth, Kentuckians as they are, and looking as they do upon all the citizens of this broad commonwealth as brothers in interest and feeling, are so inimical as to wish to destroy the country before he will be justified in the violation of a principle which he admits to be right. Before his plea is a good one, he is bound not to assume, but clearly to show this convention the necessity for self-preservation that requires him or them to commit this outrage. I say it cannot be done; and I say further to my friend from Daviess, as well as to every other gentleman opposed to me, if he or they can show even an approximation to the result of utterly destroying this commonwealth, by carrying out this just, correct and equal principle, of representation, (that principle to the correctness of which he himself subscribes,) I would go with them. Sir, my friend from Henderson, yesterday morning made this matter as clear as

light. He conclusively showed by figures, which gentlemen have not even attempted to answer, that this supposed danger was a chimera of the imagination; and bold and true as he always is to principle, he was not to be frightened from the path of duty by any supposed evil or danger, but is found fighting gallantly by our side. What are the facts presented by him? We will suppose the population of Kentucky to be one million at this time, and that of Louisville fifty thousand, which is rather more than she has, but I want to give gentlemen the full advantage of figures, and I hope my friends from Franklin or Daviess, if they can answer these figures, will do so. Taking the constitution of the senate to be thirty eight members, and allowing the increase of Louisville to be four times greater than that which the state would have attained in the same time, and supposing, while the whole aggregate of the state had increased with her million only two hundred thousand, Louisville with her fifty thousand had increased to seventy five thousand, what would then be the ratio, and the proportion, if we act upon this equal principle of representation, according to numbers? Why the state itself would have thirty six and one tenth, whereas Louisville, with all her increase, would have but one and nine tenths. Go on with that calculation, and allow the state to increase from one million two hundred thousand to one million five hundred thousand, and the same relative ratio of four to one in favor of Louisville being observed, Louisville from seventy five thousand to one hundred thousand, what would then be the proportion of representation? Why the state at large would have thirty five and seven fifteenths. So go on still further, until you bring the aggregate population of the state to two millions and Louisville to two hundred thousand—and I suppose no gentleman here supposes that Louisville will ever exceed two hundred thousand—what would then be the proportion of representation? Why the state at large would have thirty four and four twentieths, while Louisville with her two hundred thousand would have thirty six and sixteen twentieths.

But I want to deal with this argument fairly. It is one which if wrong can be cyphered out, and if there is any error in it, let gentlemen point it out. I wish to make the strongest case against the cities that can be made out. Suppose Covington goes on in the same ratio, and that she herself, born but yesterday, and now proudly taking her strides onward among the cities of the state—God speed her—suppose, sir, she doubles her population, or quadruples it, if you please, and goes up from 10,000 to 50 or 100,000; if she reaches 100,000 she would have but two senators and a fraction. Add her two senators, if you please, to the three from Louisville with her 200,000, and you have but five senators. Let Maysville come in, and spring up from 3 or 4,000 to 50,000, and she has one senator and a fraction. Go down to Henderson and Paducah, and let them spring up through their railroads, that are to be extended there, to 50,000 each, and you give them one senator and a fraction each. But give them three senators between them, and one to Maysville, making four, and adding the number to which Louisville and Covington



ton would be entitled, and you would still be within the proposition of the gentleman from Daviess.

Mr. TRIPLETT. Add Lexington.

Mr. STEVENSON. Add Lexington, if you please, and I think perhaps the number would reach ten. Now, this is a most extravagant calculation for our cities; but what harm could ten senators do against twenty eight? The idea is idle and absurd. But I am to suppose gentlemen will deal with this argument fairly, and is it to be expected that Louisville and Covington are not to have antagonistic interests to Henderson and Paducah? If the sectional border-feeling is such as has been spoken of and portrayed here, and the north is to become antagonistic to the southern portion of Kentucky—and such has been declared by the advocates of the amendment—will not Henderson and Paducah go against that section of country in which Louisville, Covington, and Maysville, are located? Will they not have interests so wholly inimical as to become rival cities? Could they unite against the counties in which they are located? Could any combination be formed among them dangerous to the country? Would the cities in the south join their circumadjacent counties against the northern cities? Would not the cities be checks upon one another? Would not the rivalry of Louisville and Covington keep off any combination? But supposing every city to unite, how timid are certain gentlemen to suppose ten senators could have any influence against twenty eight! There is not the slightest fear of combinations—and there is no hope of any such increase in our cities as is here, for the sake of the argument, supposed! The argument utterly fails when we come to the figures. No danger is to be apprehended from any sectional feeling, and I have no fears of going before the country upon the exhibit and calculation made by the gentleman from Henderson, and to whose liberality I am indebted for this calculation! Gentlemen are contradicted by figures which are perfectly unanswerable. Their fears have run away with their judgments. The principle of self-preservation, that my friend from Daviess so eloquently argued, and on which he relied, will not suffer us or him to trample under foot the fundamental principle of all free government, that population is the true and only basis of representation! It is the foundation stone of our constitutional edifice. Let us never deface or impair it—no, never.

But my friend from Daviess says, that he thinks there is an inconsistency between the two clauses of the present constitution of Kentucky. He read the clause from 6th section, 2d article constitution of Kentucky:

"Representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of qualified electors therein."

He thought, sir, that the principle of representation upon numbers, so broadly and clearly set forth in the present constitution, was contradicted by this clause, if I understood him:

"SECTION 12. The same number of senatorial districts shall, from time to time, be established by the legislature, as there may then be senators

allotted to the state; which shall be so formed as to contain, as near as may be, an equal number of free male inhabitants in each, above the age of twenty one years, and so that no county shall be divided, or form more than one district; and where two or more counties compose a district, they shall be adjoining."

Now, if my friend had read another clause, I think he would have been perfectly satisfied that there was no apparent contradiction between those two clauses. It is the 5th section, 2d article of constitution, as follows:

"SECTION 5. Elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, or in the several election precincts into which the legislature may think proper, from time to time, to divide any or all of those counties; *Provided*, That when it shall appear to the legislature that any town hath a number of qualified voters equal to the ratio then fixed, such town shall be invested with the privilege of a separate representation; which shall be retained so long as such town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and thereafter, elections for the county in which such town is situated, shall not be held therein."

Now, where is the contradiction? Separate representation allowed to a city—that representation based upon numbers, and no inhibition or prohibition upon cities if they possessed the number of qualified voters required by ratio of representation. Mr. Chairman, it is impossible for me to detect any contradiction in these clauses, and taken in unison, they seem entirely to harmonize.

Mr. TRIPLETT. If the gentleman will allow me, the President of this convention, I imagine, will bear testimony that under the construction given to this clause by the legislature, the city of Louisville and the county of Jefferson have never been entitled to a separate representation in the senate. He contends that it is unjust, but be it so or not, it has been so decided by the legislature from the foundation of the constitution to the present time.

Mr. STEVENSON. I only desire to say to my friend, on that subject, that if errors and doubts of construction have prevailed formerly, it is our duty to leave no ground for doubt here. Let us act on principle, and fix the matter so plain that there can be no doubt about it. Do not let us act wrong, because doubts may have been entertained in the construction of the old constitution. There is nothing to justify a departure from the great principle, that numbers are the true basis of representation, and that it must be equal and uniform, in the old constitution. There is nothing to be drawn from it, from the idea that self-preservation requires it. This fallacy has been exposed. No analogy can either be drawn from the federal government, as has been attempted to be shown, to justify its violation. Gentlemen, then, must, like the delegate from Franklin, deny that numbers is the true basis; or, they must seek to justify this flagrant violation of a mighty principle, which they profess to admire and subscribe to, on the ground of a timid fear, and from an unworthy mistrust of the population upon the bank of

yonder beautiful river, that divides us from the state of Ohio. That division line seems as a little silver thread, scarcely perceptible, but however small and diminutive, when you cross it, you will find a people upon this side wholly and totally different from the other. It is, sir, a difference in heart, a difference in sentiment, a difference in feeling, a difference running through a long line of progeny, descended from a different people. And though they may live upon the bank of that river, in the vicinity of a people to whom they are opposed in sentiment, let me tell gentle men, who seem, upon this floor, to mistrust them, that they, by such distrust, do a fine and gallant people wrong,—ay, sir, a people as noble as they are generous, and generous as they are brave; and should that day ever come, (which God in his mercy avert,) when the sun of liberty is destined ever to set and go down in this happy and far-favored land of ours, the people of that border will be found at that sad and dreary hour, keeping their holy vigils around the altar of patriotism, watching with anguish and dismay, the last flickering ray that shall be emitted from that luminary.

I do not say this in simple compliment to the people upon the border line. I only speak the truth as I know it to exist. It has been said, that the people of that border are to be governed and to act solely by self-interest. Yet, if you look along that entire border, from the county of Greenup to the city of Louisville, where this slave population has been decreasing,—if you look to Campbell and to Kenton, where you find comparatively few if any slaves, and where comparatively they can have no great personal interest in this slave question, you will find that when the tocsin of emancipation gave alarm to the slaveholders of the interior and southern portions of Kentucky, that border shouldered their muskets and stood firm to their brethren, to their principles, and to the best interests of Kentucky. They have ever, on this question, stood true to themselves and true to their state; and I ask every delegate on this floor to pause and consider, before they ostracise and disgrace the defenders of their rights! I beseech and implore them to ponder well, before they strike so fratricidal a blow! How can it be justified? How will it be borne? How can we, who are pro-slavery men, go home to our people and explain this outrage upon their rights? Sir, this question was agitated upon the Ohio river, from the Virginia line to Louisville, and emancipation banners were flying, and a call from the pro-slavery party was made on their border friends. How was that call answered? By a return of pro-slavery delegates! And shall now a pro-slavery convention undertake to say to those gallant defenders of their rights, that, although you have given us the best practical proof of your fidelity, and the most convincing evidences of your patriotism, yet we cannot trust you,—you stood by us, it is true, fighting our battles, yet still we want faith in you! When I go back to my people, and they learn from me the history of this outrage, do you not know that the emancipationists and anti-convention men, would make it the trumpet-note of attack against the result of our labors? I ask gentlemen to consider in what position they will place delegates who

represent that border. I entreat this convention not to make the bulwark of our defence, a sword of assault in the hands of our foes.

And who, Mr. Chairman, are the people that it is supposed here by the advocates of this amendment, are to make this assault upon the rights and property of the citizens of their native state? Is it those foreign citizens, who by their industry, their frugality, and their scientific skill, are aiding in building up these cities within our borders? Is it, I ask, our own citizens who, by their energy, and their associated wealth, are opening railroads and turnpikes, and who, while building up the cities, are yet giving increased and accelerated impetus to the population of the country; and who by their enterprise are making the desert wastes of the hunter upon the Licking and the Kentucky rivers to yield to the axe of the emigrant, causing the rose to blossom, and flowers and fruits to spring up where now nothing is visible but an uninhabited forest? Are the enterprising and industrious men who are coming into Kentucky, and by their capital and labour are building up these cities; are they the men who are to make war upon your rights? If they are the mercenary, lawless fanatics that the fears of some of the gentlemen would indicate, may they not attempt higher usurpation, and attack our liberties? If they are dead to honesty and integrity of purpose—aliens to high and ennobling feelings—enemies to the spirit and genius of our government—what may they not dare attempt? Do gentlemen suppose that parchment barriers would check or stop such ruthless plunderers? But allow me, in the kindest spirit, to assure this convention, that gentlemen are led off by distempered fancies, and excited fears? They know nothing of our border, or the people who inhabit it, if they would detract from their patriotism, their talent, their enterprise, their integrity, or their worth! It is true, that within both the cities and counties of that border, we have foreigners; and it is equally true, that they are worthy and industrious citizens.

When this Mexican war broke out, and the first tap of the drum called to arms, and when the rallying cry for recruits resounded throughout this commonwealth, the city of Covington, small as she is, raised three volunteer companies, two of whom went from that city; troops too, as fearless and as gallant as ever trod a battle field or faced a foe! If there is a sceptic here who is disposed to doubt, let him but go to yonder cemetery hill, and when that monument shall be reared, with the melancholy list of noble young heroes, for whose early fall Kentucky has been called upon to mourn, and in memory of whose gallantry that towering memorial is to rise, he will find the names of a Powell, a Morgan, an Oliver, with a host of others who are now quietly sleeping in a foreign land! Sir, among the bravest who went from that city, was a young foreigner, profitably engaged in the selling of dry goods and laces in Covington, and with a mother and sister dependent in part on his exertions for a support. He enlisted, and was deaf to all persuasions which would have detained him at home. He said he owed allegiance to his adopted state, and that he desired an opportunity of repaying it. And

when the mighty shock of Buena Vista caused the stoutest heart to quail, they besought him to return, but he told them he had never seen an enemy before, and he could not turn his back on the first foe that he encountered. He fell, and however humble, no nobler, braver, and more patriotic name will adorn that monument than the name of Gilbert.

What is there in Kentucky to divide us? Have we not every incentive to harmony? Does it not, at this terrible moment, when the entire south are required to assert their rights against the unholy crusade of northern fanaticism, to nerve our arms and be ready for any emergency? Are we not every day, as my friend from Simpson said, taunted in the halls of our national legislature with the cry that we are retrograding, and that we are striking examples of the blighting influence of slave institutions? Shall it be in this constitution declared, that we do not desire to repel this slander, and are not anxious that our state should increase her power in the national councils? Are we not alive to the momentous issue which is now being carried on? And how can we expect to increase our population—develop our resources—or build up cities—if we say in our fundamental law to our own people and those disposed to immigrate here—live in the country, and you shall have the right of suffrage and equal and uniform representation according to numbers, however great—but settle in the town, and no matter how devoted you may be, or how ready to defend the best interests of Kentucky, no matter how enterprising or industrious, you shall never, no never, go beyond a certain limit! I want myself to see these cities built up, and I am one of those who believe that such an intimate and vital connection exists between the country and the town, that whatever operates to the prosperity of the one is indissolubly connected with the prosperity of the other. It is the impetus of cities that populate the country. I want to see railroads and canals stretched throughout this commonwealth; common schools built up, and the whole state peopled. Then I desire to see banished from among us that jealous, unworthy spirit of distrust towards each other, which shall kindle any illiberal sectional differences between our cities and the country. Let us be one in sentiment and action; let common sympathies, interest and confidence bind us together, and when we meet, at home or abroad, nothing should prevent us from embracing each other, in that fraternal spirit of state pride and social intercourse, that would make us proud that we were citizens of the same state. I want the chords of love and affection to be bound indissolubly around this entire state. I want Kentucky to stand as she stood in the days when that man (pointing to the portrait of Boone) first trod these plains. I would open the door to immigration—I would gladly welcome the honest and industrious foreigner to our growing state—I would hold out inducements to him to aid us in the development of the resources of the state. I have no fear of our adopted citizens. I feel that it is their love of liberty and admiration for our institutions that attracts them to us. That they are prompted by the same kindred feeling which prompted that liberty-loving foreigner whose

portrait hangs over yonder mantle piece, that patriotic Frenchman, (Lafayette,) who, though an ocean divided him from this continent, yet felt the glowing spark of liberty in his bosom, and in our darkest hour of need, hurried to our relief—that foreigner whose blood and treasure was poured out for our freedom—gallantly aiding the matchless efforts of that venerable man, (pointing to the portrait of Washington) who is emphatically the father of his country. Mr. Chairman, away with this illiberal restrictive policy! It is unworthy the model republic in this nineteenth century! I say let foreigners come. I say we have nothing to fear. Are we afraid to trust the building of our cities, or to trust our property or our rights to any portion of our brethren of this commonwealth? Mr. Chairman, we are making a constitution to guard and protect the property and the rights of the entire commonwealth. In the discharge of this holy and responsible trust, let us keep the chart and compass of freemen before us. In God's name, let not principle be trodden under foot by expediency. That expediency which looks to narrow, selfish and temporary interests—that expediency which is one thing to day and changes to-morrow—that expediency which would dethrone reason and allow sophistry to take its place—that expediency, sir, which, when principle is dethroned, may, through jealousy and distrust, lead us, before we are aware of it, upon the shores of ruin and self-destruction. I have myself the utmost confidence in this assembly, and I believe they will treat us and the cities we represent, as equals and co-equals. I have the utmost confidence that they will not ostracise us from an equal and just participation with them in all the affairs of government. They cannot cut us off, with that evidence of our devotion to the best interests of the state which the last August elections called forth, when as is made manifest in the presence here of the distinguished president of the convention and other delegates along the border, party and every thing else was disregarded, to prevent any interference with slave property. To do so would be to humiliate us, to degrade and stigmatize, and the pro-slavery victory of last summer would turn to ashes on our lips! I ask the convention to pause and consider, and act for us as they would act for themselves. I implore them not to yield to any groundless prejudices or chimerical fears, but to stand boldly upon the broad platform of right and equality! Do so, and all will be safe! Let us mete out even handed, exact justice. Let us never make invidious distinctions, and we shall leave here, having made a constitution, which, with prayers on our lips of *esto perpetua*, we shall submit to the people for their approval, and return, individually, to the bosoms of our families, with the conscious rectitude of having discharged our entire duty to our God, ourselves, and the entire state.

Mr. NUTTALL. I do not intend to vote for the amendment offered by the gentleman from Franklin, nor by giving that pledge do I wish to be understood as binding myself to support the views of gentlemen on the other side of the question. But I think that a constitutional limit ought to be introduced in the fundamental law, so as to prevent the large cities from draw-

ing into their vortex the general legislation of the country. I shall vote to give Louisville a senator in order to disconnect her in that respect from the county of Jefferson. I intend to act in relation to the apportionment bill according to the dictates of my own judgment. There has been but one proposition submitted to the house, which strikes me as being correct, and that is the one presented by the gentleman from Knox and Harlan. When the proper time shall arrive, I purpose to make a further amendment, which, connected together, I think will be more conducive to the ends of justice, and throw into every region of the state a proper political weight. I subscribe to the fullest extent to the cardinal principle that numbers should be the basis of representation. But when was ever representation under the old constitution according to numbers? I recollect having a seat on this floor, when the county of Hardin—and like causes will produce like effects throughout all time—was entitled to two representatives, and the county of Meade to one. Yet, from party considerations operating most powerfully in the house of representatives, the county of Hardin was not permitted to have two representatives, nor the county of Meade one; but Hardin and Meade together had three.

Now, if you do not provide against this sort of political manoeuvring, it will be practiced in all time to come. And what remedy do I propose? It is to give each county a separate representation, and then you cannot gerrymander, manoeuvre and contrive so as to gerrymander one party in and another out. One good senator is enough for the city of Louisville; one man who has capacity is sufficient to represent any county and city in Kentucky. This will give a further guaranty to the people of the county that when you choose but one man, that man will be selected who is best qualified to represent, and who is best acquainted with the wishes and interests of the people.

The county of Bourbon which has some 16,000 or 17,000 voters, has two representatives here, and in the house of representatives, and mine has only one. Look at the county of Nelson, with perhaps not so many voters, yet having two representatives, while my county has but one. Look at the county of Kenton with 21,000 voters, and only one representative. Daviess has only one where there are 22,000 voters, and in Warren with about the same number; they each have but one representative. You talk about equality of representation! Why, so long as there are parties in this country, and you give them the power contemplated in this constitution, they will gerrymander as certain as you have a seat on this floor.

My plan gives to all the counties except nine or ten, just exactly the political weight which they now have, and they can have no more; and it exalts the smaller counties and gives to them their own representatives on the floor who understand their interests, and who live and move among them. It is much better for the country to have it in this way. I do not oppose the plan of the gentleman from Franklin because foreigners might have too much or too little influence in the country. I am too dull of comprehension, and my vision is too obtuse to see

as far into a millstone as these gentlemen who have been pecking at it for the last three days. I am willing that large commercial cities shall grow up in this commonwealth, but I am not willing that six or eight cities shall combine and control, and crush the agricultural interests of the state. Sir, they control the commerce, the banks, and the capital of the country, and when they want prices high, they can effect it by combination. I do not say they will do it, but I would guard the rights and interest of the people. I do not appeal to selfishness, though I think there is a little on both sides. I may be operated upon by selfish considerations, but my county will gain nothing. It now has 1,800 or 1,900 voters; there they stand and there they live, and I have nothing to lose nor gain. But I address myself to gentlemen from small counties, whose political weight is not brought into consideration here: and I ask them to stand up for representation of each county in the state.

It is the boast of many of the representatives in South Carolina, that they can dine well all their constituents in a single day, and they boast also that their constituents are the best informed in the country. I know it is impossible—they can be as densely populated in the mountain regions as in the other parts of the state, but they have a pure atmosphere, and I am desirous that they shall be equally and justly represented.

My friend from Kenton says that numbers is, and ought to be the basis of representation. I say so too. I look at that basis just as a man contending for a great principle. I acknowledge it is as firm as the earth, as fixed as the heavens, and as immovable as the rock of Gibraltar. Nevertheless, when an exception to a rule arises, I shall go for it when it is on the basis of expediency and justice. Now if these cities have grown to so great an extent, I am glad of it, and I hope there may be five hundred more struggling for fame, but I am unwilling that when they shall have ten senators out of thirty eight, they shall be able to combine and draw the whole of the legislation of the state into the vortex of city legislation. Now if you give to each county in the state a representative, you cannot make an unfair apportionment law. You cannot unite Hardin and Meade in any future operations in politics, nor in any future convulsions of party, can leading whigs or democrats unite together two counties, and send three representatives, when being separate, one is entitled to two, and the other to one.

These rolling residiums, are mere foot-balls in the hands of skillful political tacticians, to roll and tumble about to suit particular occasions. I shall vote against the amendment of the gentleman from Franklin, and when the gentleman from Knox brings forward his proposition to divide this state into an equal number of senatorial districts, I shall go for it; and then I shall, if I can gather strength enough in this house, obtain a representative for each county in the state. And by that time, as I have not had an opportunity—or if I have had I have not embraced it—I will examine the relative political strength of each county of the state. As gentlemen are in the habit, and take pleasure in ar-

guing in figures, and sometimes in tropes, I shall, I repeat, take occasion to exhibit the relative political strength of the counties in the state, and shall show the perfect justice which this apportionment will give to each county.

I rose merely to indicate the course I shall pursue, as on former occasions I concurred with very few on this side of the question. Of one thing gentlemen may rest assured: let the result be what it may, I am not going to lose my temper. If you choose to vote down my proposition, I nevertheless shall go shoulder to shoulder with you in trying to make a good constitution.

Mr. CHRISMAN. I move that the committee rise, and I propose making a few remarks before the vote is taken on the question. I have been sitting here forty-five days, I believe, and we have made but little progress. Sir, I am tired of hearing these questions discussed. I came prepared to cast my vote on all subjects, and I am not so fickle as these speaking gentlemen would suppose. I cannot be changed by every speech made on this floor. I have my mind made up, and I suppose every gentleman has his mind made up on these questions. Now, my object is to get out of the committee of the whole. I do not believe we can get on in this way. We have tried it forty-five days, and what have we done? We have adopted the preamble and the first and second sections of the old constitution. I can make this motion without drawing down upon myself the charge of being a demagogue. My votes will demonstrate that I am not of that stripe. I am ready to do my duty, and I now call upon the non-speaking gentlemen to come to the rescue. Already public sentiment is rising against the instrument which we are forming, and unless we bring our labors speedily to a close, I doubt whether the result of our labors will be approved and adopted by the people of Kentucky. When we get out of committee of the whole, we can perfect the business of the convention. I do not want to gag any delegate. All I desire is, that we may place ourselves in such a position that we can proceed to business; but I see no way in which we can accomplish it, if we continue our present course. We have now a book of debates of some four or five hundred pages. If we continue this latitudinous debate, when can we ever get through? I hope we may go into convention, and then if bored to death with speeches, we can call the previous question. I am not afraid of the censure that delegates may be disposed to cast upon me for any step in this matter which my duty to the people may constrain me to take. Self-preservation will induce me to do it, for I have been bored forty-five days, and I do not feel disposed to be bored any longer. I move that the committee rise and report the bill to the house.

Mr. DAVIS. Is that motion in order, until we have voted on the pending amendments?

The CHAIRMAN. It has been the practice of the convention on previous occasions, and therefore I presume it is in order.

Mr. DAVIS. I never heard, sir, in any deliberative body, of a committee rising without first taking the question on every pending amendment. What, sir, will become of the amendment of the gentleman from Franklin?

It is clearly out of order to entertain such a motion, for the committee has first to dispose of the amendments pending, and then the amendments that may be offered, before the bill can be reported to the convention.

The CHAIRMAN. I will barely remark that this course has been pursued by the convention, and the present chairman does not feel at liberty to reverse what has been done before, although he thinks it is a practice of questionable propriety.

Mr. DAVIS. Sir, I never heard of such a practice in any deliberative body, and I again ask, what will become of the amendment of the gentleman from Franklin?

The CHAIRMAN. The amendments adopted will be reported to the convention with the bill.

Mr. McHENRY. In the case to which the chairman refers, the committee rose, reported progress, and asked leave to sit again, and leave was refused.

Mr. C. A. WICKLIFFE. I ask the gentleman to change his proposition. If he now makes the usual motion to rise and report progress, he can in convention, offer a resolution of instruction to the committee to proceed without debate to act upon amendments. But if we get the bill into the house without even reading many of its sections, we shall have great difficulty in the application of the previous question.

Mr. CHRISMAN. I will then simply make a motion to rise, and call upon all the non-speaking members of this convention, and upon those who want to do the business for which we have been sent here, to come up to the good work, and silence this eternal talking. I am tired of it.

Mr. TRIPLETT. If the committee now rise and we go into the convention on this bill, there are some amendments for which gentlemen are desirous to vote who wish to terminate debate, which there will not be an opportunity to offer. I could never offer my amendment which has been read here, if the gentleman adheres to his proposition, and it should be sustained by the house. I think the gentleman can attain his object by moving that the committee rise, and in convention offering a resolution to limit debate, and at a given time to report the bill.

The CHAIRMAN. The motion which the gentleman has made is, that the committee rise, and report progress.

The question was taken on the motion and it was agreed to.

The committee then rose and by its chairman reported progress, and asked leave to sit again.

The PRESIDENT. The question is on granting leave to sit again.

Mr. MACHEN. Before that question is taken I should like to make an inquiry, as I am not very familiar with the rules of parliamentary bodies. I wish to know whether, in convention, we can offer and take the yeas and nays upon propositions which have not been submitted in committee of the whole. An intimation has been given here, that we cannot, and I wish to be informed on that point.

The PRESIDENT. Any amendment, in the opinion of the chair can be offered in convention whether it has been offered in committee of the whole or not.

Mr. C. A. WICKLIFFE. The chair is perfectly correct, when the previous question is not called. I would again suggest that the usual course should be pursued, and in convention a resolution may be offered, instructing the committee of the whole to commence voting at such hour as may be deemed proper. Thus the debate may be ended. I beg the pardon of the gentleman from Wayne, for any time I may have consumed in the debate.

The PRESIDENT. If the convention refuse leave to sit again, the bill will be taken up in convention, section by section, and if the previous question should be moved and sustained, it will bring the convention to a vote on the amendments that may be pending, and then on the main question, which will be the particular section under consideration. The convention will then proceed with the succeeding sections in their order, and they will each be debateable, unless the convention should exercise its power of enforcing the previous question. Such is the course of proceeding under the rule which we have for our government.

Mr. TRIPLETT. The object of the gentleman who moved that the committee rise is to cut off debate, but by his course he would cut off amendments also, and that I believe he does not desire.

Mr. CHRISMAN. I am not a good parliamentarian. This is the first time I have been in a deliberative body. I do not wish to cut off liberal discussion, but sir, here I have sat for forty-five days, listening to debates, from the continuance of which I can see no possible good that can result. Sir, I will stand it no longer, if there is any relief for me. I am desirous to vote for the amendment of the gentleman from Daviess. I shall also vote to restrict Louisville; but I want to stop this unceasing talking.

The question was then taken on granting leave to sit again, and it was agreed to.

Mr. TURNER. I have sat here all day and now I desire to move an adjournment—a motion which I am not much accustomed to make, nor was I, as a member of the legislature. But before I do it I wish to say a few words. There has been frequent allusion made to a speech which I delivered here some short time since, which I think a proper self-respect and a due regard for my constituents, will not permit me to pass over, without attempting to make some reply. I do not intend to say anything ill-natured. I am an old man, and I shall say nothing inconsistent with my own self-respect, but I intend to reply let what will come. I now move an adjournment.

The motion was agreed to, and the convention adjourned.

THURSDAY, NOVEMBER 15, 1849.

Prayer by the Rev. STUART ROBINSON.

INSTRUCTIONS TO CLOSE DEBATE.

Mr. CHRISMAN. Mr. President, I offer the following resolution:

*Resolved*, That all debate in committee of the whole, on the report of the committee on the

legislative department, shall cease on the 16th instant, at 12 o'clock, M., and the committee shall then proceed to vote upon such amendments as are then pending, or may be thereafter offered: *Provided*, That the mover of any amendment may be allowed ten minutes, and any other delegate who may desire it, five minutes to explain or oppose the amendment, but in such limited debate, the speaker shall confine his remarks to the amendment under consideration.

My object in the proposition I made yesterday was to get to work. As I then stated, there was no delegate on this floor more willing to listen to a reasonable amount of discussion than myself, but forty-five days have been consumed in this body, and the non-speaking gentlemen have sat like a parcel of hawks when it was raining, and the harder it rained the more patient they sat. I regret that the junior gentleman from Nelson is not in his seat, but I desire to pay my respects to him this morning. Yesterday, he remarked that he begged the pardon of the gentleman from Wayne, for having consumed so much time in debate. I can say to the gentleman, that in one event I am willing to pardon him, and that is, if he will resume his position on the side of the question originally occupied by him. I understood him originally to be one of the warmest advocates for restricting this particular region of country on the Ohio river in her representation. I have trespassed upon the time of this house very little, but I have given considerable attention to the gentleman's speeches delivered on this floor; and when the gentleman on yesterday evening sneeringly asked my pardon for having occupied so much time, I did take it as unkind. I have noticed a disposition on the part of some delegates here to cut down every young man who attempts to bring forward any proposition. I recollect when the proposition of the gentleman from Lewis was offered the other day, the gentleman from Nelson (Mr. C. A. Wickliffe) rose in his place and rebuked him for it. Now, I intend to reply to such rebukes when directed to me, come from what quarter they may. I did not move the resolution with a view of making any capital at home. As I remarked yesterday, forty-five days have been consumed in debate. We have gotten out the material for a new constitution, and it lies on the ground, and all that is necessary is, for the non-speaking members to come right up to the good work and erect the building: if we sit here, with our fingers in our mouths, this speaking will continue to the first of next June. For one, when we have had debate to a reasonable extent, I am disposed to cut it off, and march up to the vote. If I am mistaken in the charge I have made against the gentleman from Nelson, or to his having occupied a position on both sides of this question, I am not mistaken when I say he has occupied each side of every leading question that has agitated this union for half a century. The first election I have any recollection of, the gentleman led the whig party as a candidate for the office of lieutenant governor. He stood forth as the standard bearer of the whig party. Shortly after that time, I believe he was found in the ranks of the democratic party. Again, in 1840, he was found in the ranks of the whig party



fighting under the banner of Tippecanoe and Tyler too. Following the gentleman through his political life, I find that when John Tyler was kicked out and stood between the two great parties, the gentleman came to his relief, and he was found fighting under the banner of that recreant. Again, a year or two since, when the race for an election of member of congress came off in his district, I find him with the democratic banner unfurled, fighting in advocacy of the claims of the democratic party. Sir, when gentlemen throw out such intimations, and when they endeavor to prejudice me at home, and sneer at what I say on this floor, I will expose their political aberrations to the country. Now I want the gentleman's constituents and this house to know that, on this particular question, he was foremost in declaring his hostility against that portion of the country from which you, Mr. President, come, and that now he is found battling on the side of Louisville.

The PRESIDENT. I will take this occasion to remark, if we are to confine our attention to the points in issue at present, we shall have an opportunity to attend to these remarks. I hope we shall confine ourselves to the matter in issue.

Mr. HARGIS. I shall feel compelled to oppose the gentleman's motion to stop all discussion on the 16th of this month, because I know several gentlemen on this floor who desire to express their sentiments on this subject, and whose constituents are anxious to learn them. While other delegates have spoken on this floor, I have said nothing, although the discussion has continued for nearly a week. I beg the indulgence of the house therefore for a few minutes, and I shall not trouble it again till the vote is taken.

I belong to a party that holds the opinion that representation should always be based on population. In that principle I was educated; I know no other; and I hope never to advocate any other. But is there nothing else to be considered in apportioning and giving equality and justice to this mode of representation? I have always believed that a system of legislation has existed as well under the United States government as the governments of the states, having for its object the protection of the few and the weak from the power of the great, and the mighty, and the strong. The framers of the constitution of the United States adopted that as its principle of action. Gentlemen here say that the organization of the government of the United States has no analogy to that of the states, and that the states are sovereignties. It is true they are sovereign, and that a part of their sovereignty is represented in the senate of the United States, each state having an equal voice and participation in the proceedings of that body. There Rhode Island and Delaware have an equal voice with New York. And for what reason? That the interests and welfare of the smaller states may be protected against the influence of the greater, more populous, and powerful states. When that arrangement was made in the convention which framed the constitution of the United States, it was also agreed that the general government should guarantee to each state a republican form of government. I maintain then that that arrangement, notwithstanding the assertions of some gentlemen to the contrary,

does bear an analogy to the government of the States.

Mr. BROWN. I rise to a question of order. I am not for restricting legitimate debate, but it is impossible for us to make any progress with the business before us, unless the debate be confined within reasonable limits to the question properly under consideration. The gentleman is now discussing the amendment of the gentleman from Franklin, which is pending in committee of the whole, when the question before the house is on the resolution of the gentleman from Wayne.

Mr. HARGIS. I know what is before the convention. And I see that a disposition, as has been truly said, exists here on the part of some gentlemen to bear down on certain delegates, whom they do not wish to hear speak. I have seen it. The convention has seen it. It seems to me we cannot say anything without being declared out of order. The oldest gentlemen present differ as to what is or what is not in order, and for myself, I confess I do not understand the rules, and what is in order I cannot tell.

Mr. BROWN. The gentleman has mistaken my purpose. I wish to bring the house to the consideration of the resolution of the gentleman from Wayne, which is properly before it. I have no disposition to restrict debate, when it is in order, but the gentleman is discussing the amendment of the gentleman from Franklin, when, in fact, the resolution offered by the gentleman from Wayne is the legitimate subject before us.

Mr. HARGIS. What amendment do you mean? I do not understand.

The PRESIDENT. I feel great reluctance to call any gentleman to order, and require a strict adherence to the matter under debate. Some time since I was overruled by the house when I called the gentleman now in possession of the floor to order, and leave was given him to proceed. I thought that was an admonition to the chair that each gentleman could proceed as he thought proper, and that if delegates choose to let him run riot, it was not a matter for the interference of the chair. The gentleman will proceed.

Mr. HARGIS. It is extremely embarrassing that many gentlemen get in this way in this house. It appears we cannot get along in harmony and proceed with our business as we should do. I have contended that there is a difference in representation where there is a vastly crowded population in the cities and large towns, than where it is scattered in the country. I believe the states generally have acted upon that principle, in the organization of their representation. The state of Maryland amended her constitution in 1838, and gave the city of Baltimore one senator. She has twenty-one counties, and each of them is represented by a senator. The large state of Pennsylvania gives her city of Philadelphia, as all other cities should have, four senators only. New Orleans, in the state of Louisiana, with a population of one hundred and fifty thousand souls—one-third of the population of the state, is entitled, under her new constitution, made in 1845, to four senators, and she is never to have more. Richmond, in the state of Virginia, has one senator and three representatives. Now, in all the older states that

have, of late years, amended their constitutions—as for instance, Maryland, Louisiana, Pennsylvania, and Virginia—they have inserted a provision, limiting their cities to a certain number of senators.

The great city of New York can never overbalance the state in the legislature; hence the reason why the framers of the constitution inserted no restriction in it on the subject. Ohio is a very large state, and no apprehension need be entertained that her cities will obtain an advantage over the remainder of the state. There would be some danger in not putting a restriction upon the cities of Baltimore and New Orleans, in reference to the number of senators to which they are entitled, because in those cities the population is rapidly increasing, and there is a possibility that the rest of Maryland and Louisiana may be put entirely in the power of these large cities. When large bodies of people are thrown into cities, the presumption is they can be better represented by a small delegation than a large district can. A man living in a city knows all the wants of the community, and he can, consequently, better represent five thousand souls, than he could a population of two thousand living in any other portion of the state. Louisville has about fifty thousand people, and fifty years hence she may have two hundred thousand, and if so, she will have the power to control the legislative department of the state. Therefore the necessity of our imposing a check, and restricting her to a certain number of senators. My plan, however, of doing so, is different from any other yet proposed. I would give that city four senators. Whatever the supposition may be, I do not think gentlemen here have any unkind feelings towards Louisville. The cities of Newport, Covington, and Lexington, also will become great cities, and have large populations, and they must, at some future day, be limited to a certain number of senators, or they may control the legislation of this state.

I think that the question of slavery has nothing to do with this subject. I do not know that it would make any great difference whether the proposed representation is given to Louisville, or not, so far as slavery is concerned. I am willing to give my opinion about it, let me belong to what party I may. I wish that my opinion may go forth, and that is, that when cities become very large, there should be a check imposed on their power of legislation.

Mr. C. A. WICKLIFFE. Mr. President: I was not in my seat at the commencement of the discussion upon this resolution, and I am indebted to the information of gentlemen, for my knowledge of the manner in which my name has been introduced by the delegate from Wayne, into this morning's discussion. I know not under what pretext that assault was made upon me, especially as that gentleman was a stranger to me personally, previous to the time that I first met him in this hall. So far as I know my own feelings, they have been any thing else than unkind towards him, and I have avoided in matter, manner, and intention, any thing which might give him the slightest cause of complaint.

Nothing could have surprised me more than the language applied to me. Had I said any

thing in matter or manner, or had I done any thing which he considered a cause of complaint on yesterday, and had he, either then or in private, asked an explanation, or suggested that I had done him injustice, or wounded his feelings, or his just pride on this floor, no man would have been more anxious and ready than myself, to have made that atonement which is due from one gentleman to another, when he supposes he has been injured.

I must, therefore, suppose that this has been somewhat a matter of premeditation, of nightly concoction; perhaps not entirely prompted by the gentleman's own sense of offended feelings. I must be permitted to say, on this occasion, and I think I may appeal to my fellow delegates on this floor, whether my habit, either in the house or out of it, has been that of discourtesy to my equals and associates in debate.

It is true, sir, that I have conceived myself, occasionally, somewhat the object of attack upon points not exactly connected with the subject of immediate consideration; and the propriety of repelling that attack, the time and mode, was a subject matter of my own consideration.

Little did I expect sir, that we were to have new recruits enlisted in this crusade, in reference to the political consistency of the humble individual before you. It is true, that I partake of the frailty of my fellow men. I pretend not to be infallible either in politics, in opinion, or in judgment, and he who asserts his claims to confidence, because of his own supposed infallibility and undeviating consistency, may sometimes learn a lesson by a review of his own life, to see how far his pretensions are sustained by a reference to his own history and political biography. If he shall feel incompetent to the task I would advise him to call to his aid some kind friend.

Mr. President, I have spent, by the kindness of my fellow citizens, with whom I was born and brought up, almost half a century in public life. I have seen parties rise and fall, and political dynasties pass almost into oblivion in this commonwealth, as well as in this Union. I have had in an humble degree, a portion and part in some of these exciting scenes, which have past.

I have had occasion, sir, to review my own actions and my own opinions. I have seen on my pathway errors, that experience and a more matured judgment have pointed out in my political course, and the part I have been called on to take in the party contests which have passed, yet I have had the consolation, which to me is worth more than the opinion of the man, of to day, to know that in no political act of my life, when called upon to discharge the duties of public agent, have I ever been governed by any other principle than a desire to promote the great interests of the commonwealth, as I understood and believed them to be at the time. No personal, no political advancement has ever swayed or governed that little quantum of judgment which my God gave me, when called upon to act with reference to the great interests entrusted to me by kind and confiding fellow citizens.

I understand the delegate was pleased to say that I had been on both sides of the present question before the house. I thought I an-

nounced yesterday—and if the gentleman had done me the honor to listen to me, he would have understood it, the first opinions entertained by me on this question. I said I had come here, I had entered this hall and before I had heard the debate, impressed with the opinion that something should be done in reference to consolidated constituencies, represented by consolidated numbers in the legislative department of the government, but that the debate which had taken place, had satisfied me that the mode proposed by ostracising and proscribing a portion of the freemen from a participation in the councils of the state, was not a just and correct mode of doing it. I said if it could not be done in some other mode, I had made up my mind to risk the possible evil with the country. I am willing to trust to that judgment and patriotism of my fellow citizens, which under the guidance of a kind providence had conducted them in safety through all former dangers, and I hope that the same spirit would guide us through the anticipated evils of such a state of things as this amendment presupposes.

But sir, the delegate from Wayne is not the first gentleman who has been pleased, within the halls of this house, to allude to what they have called my political inconsistencies. Possibly sir, in the opinion of that gentleman and those who think with him, and whose purposes he may be serving, I have in some respects greatly politically sinned. But sir, I would remind gentlemen “who live in glass houses, not to throw stones,” and he who has not changed his opinions, if he ever had any, upon some of the great leading questions of state or national policy and expediency, which have arisen within the last thirty years, may be authorised to sit in judgment upon me; but I deny that right to either of the gentlemen who have assumed to be my accusers. But those who have, like myself, upon conviction of the error of opinion, changed that opinion, should at least remember to exercise judgment in charity upon a fellow sinner. I know not whether the delegate from Wayne is obnoxious to the charge of ever having changed any political opinion which he may have entertained; for to me his course is unknown and uncared for. Upon our introduction at the commencement of the session, he made a favorable impression, and I regret he has given me cause to change the opinion I then formed.

Mr. President: I cannot so well meet this charge of political inconsistency, so improperly for a second time introduced into this hall, first by my colleague, and now by the delegate from Wayne, without a reference to some few of the prominent questions upon which I have been called to act. In doing so, I hope I shall be pardoned by this house for any thing of seeming egotism. It is necessary that I should speak of myself to do myself justice.

I was elected a member of congress from what was called the Louisville district, amidst the conflict for the presidency of the United States, then waged between those distinguished individuals, Clay, Crawford, Jackson, Adams, and Calhoun. In that contest, so long as the statesman from Kentucky was in the field, I was for him, as was at that time nine-tenths of the state of Kentucky, and I have no doubt the gentle-

man, if old enough to take part and cast his vote, voted for him in that contest. This election for the office of president, as neither candidate received a majority, devolved on the house of representatives, of which I was an humble member, one of the twelve delegates from this state. As such I was called upon to cast the sovereign voice of Kentucky, between Gen. Jackson and Mr. Adams. At that point, perhaps, commenced, in the estimation of some *who never change*, my political sins. Independent of my own judgment as to what was the voice of Kentucky, and particularly those who had sent me to proclaim their voice, I was furnished with official light by legislative resolution. The citizens of Kentucky were undivided in sentiment. The popular voice everywhere proclaimed that, as between Jackson and Adams, it was the duty, ay, the bounden duty of the delegates from Kentucky, to cast her vote against Adams and in favor of Jackson.

We were not left to conjecture this opinion and decide upon our duty by our own judgment; but your legislature was then in session, and I have the resolution they passed and the speeches made by the statesmen of that time, instructing me, and calling upon me as one of the delegates charged with that high trust, by considerations that it is not necessary for me to state, to cast the vote as I did give it. It was in accordance with my own judgment, and I gave it with pleasure, but that has cost me trouble—though no regret—no tears. When I returned home to my constituency to give an account of my stewardship in thus carrying out their will and the orders of the legislature, I found the very men—yes sir, men who charged me with political inconsistency—who had been instrumental in procuring this legislative mandate—whose speeches in the legislature I hold in my hand—upon the stump in my county and district, attempting to destroy the prospects of a young politician—to undermine the confidence of his constituency in him because he had acted honestly, and obeyed the dictates of the legislature, and the still higher commands of public sentiment upon him.

My constituency continued to return me to congress for ten years, and as you know, Mr. President, and you can do me the justice to say, longer than I desired to remain. There sprung up in my pathway, during a portion of my political pilgrimage in the national councils questions, about which at one time there seemed to be no division among the politicians or the population of this state. I allude to the necessity of the United States Bank. I looked upon the power of congress to charter an institution of that kind as a question which had received the settled opinions of the people, or as lawyers term it, it was *res adjudicata*. It was only then a question of public policy and necessity. I voted to re-charter that bank, because I labored under the belief of its necessity, inculcated by events which took place in the war of 1812, and the consequent evils growing out of it—a deranged and prostrated paper currency. I had looked to that institution as a great purifier and regulator of the state paper currency. I thought Gen. Jackson committed an error when he vetoed the bill to re-charter that bank. Was I alone in Kentucky in this opinion among those who had voted with me, and who with me contribu-

ted to the elevation to the presidency of that great man? I thought him wrong in some measures that succeeded the veto of the act to re-charter that institution, and this difference upon a question of policy respecting the currency, separated me from what was then called the Jackson party in Kentucky. And during the excitement of subsequent elections and contests in the commonwealth of Kentucky, this difference of opinion necessarily called down upon me the denunciation of the partizan presses of the day. I defended myself, and in this defence I have no doubt I dealt blows as hard as those I received, and probably as often undeserved.

Mr. President: Sixty winters have made the impress of their frosts upon my head, and men of but to-day, and others whose years have not improved their habits, or softened their feelings, take pleasure in perpetuating their names by connecting them with political sins imputed to me. Among their charges sir, I understand the delegate has referred to the fact that I joined the administration of Mr. John Tyler.

It is true sir, that without any knowledge on my part, and without the slightest expectation, with no personal desire or political ambition to gratify, sufficiently powerful to induce me to tear myself from the retirement of a quiet and happy home, upon the disruption of the cabinet of Mr. Tyler, with the particulars of which I have nothing to do—and I would scorn to introduce them into this house, and harrow up the feelings or perpetrate an outrage on the humblest individual in the community—unexpectedly, I received the appointment of Post Master General, accompanied by a private letter from that gentleman, with whom I had lived and been associated at Washington for many years upon terms of the utmost personal kindness, and which I suppose begat in his bosom a confidence in my integrity and capacity for the duties of one of the most laborious departments belonging to the federal government. He placed my acceptance of that commission on the ground of private friendship to him, and without reference to political considerations. At the sacrifice of much of individual comfort, and individual convenience, I had the temerity, without consulting the delegate from Wayne, or the other gentleman in this house who thinks with him, to accept that office, and to discharge the duties to the best of my humble capacity. What the judgment of public sentiment may be on my official acts, and official duties, I will leave to be decided by my country, whose province it is, content to meet its decision.

It is not my purpose, nor is it necessary that I should speak of the measures of that administration. When the member from Wayne himself shall pass from this stage of existence; when perhaps there will be left scarcely a grave stone to tell the passer by who lies beneath the sod of the valley which covers his remains; the results of that administration, the consequences which flow from its measures, guided by no selfish or sectional policy, looking alone to the great interest of our great and common country—an administration standing amid the crash and rush of both great political parties for a time, each seeking who could be most powerful to crush it, disgrace its head, and his humble associates—I

say, when he shall have passed from the memory of man, and the historian shall come to record some of the events which have stamped and given it character—aye sir, and I might almost say a new and independent destiny to our common country, and opened up to the world, broad and wide, her shores, her enterprise, and liberty to the oppressed of all the world—justice will be done to those whom it is the pleasure of others now seeking distinction, to denounce and condemn.

Sir, during my association with that administration, the question of the annexation of Texas was presented. I saw, or at least I thought I saw, that unless the United States acted, and acted promptly, and with united public sentiment and political energy, our western limits would be circumscribed by the little stream of the Sabine—that we should have an empire hostile to our institutions spreading along the most defenceless portion of our southern frontier, the southern slave-holding states. I thought I saw in the annexation of that country an almost absolute necessity, if we desired to preserve and promote the prosperity, and give quiet to the planter and cotton grower of that portion of the union. I did not act alone. I acted, it is true, in accordance with my own judgment, but I always like to have that judgment aided by the counsels of older heads. I consulted some of these from my own state. Their advice to me was, by all means, accomplish the annexation of Texas, we must have it, and we ought to have it. And I was told that now was the time to take it. I need not say who they were; there is one, at least, present will bear witness. Sir, my surprise was great I confess, when I looked across the mountains and saw the political conflict of the presidential race of 1844, to find the very men who had advised me to the measure of annexation, on the stump denouncing it as a measure wicked, unholy and unworthy of our people. Some of these men now arraign me by a charge of a change in my political sentiments. It was during my administration of the post office department, I became satisfied that the opinions I had entertained of the necessity of a bank of the United States as a government agent, were founded in error. In that department alone, I found myself able to collect, by dimes and half dimes, a revenue of between four and six millions of dollars, and safely to keep and disburse it without a United States bank. And the records of our country will not show in that department the loss of a single dollar by defalcation while I had the honor of managing its finances, save in the case of one postmaster, in the region of country near the locality of the gentleman from Wayne, I know not exactly where, whom I detected in having altered his post bills, and thus causing the loss of about forty dollars a year, for some years.

Mr. President: It will be remembered that during the years 1841 and 1842-3, the bank of the United States, which had originally charmed a large portion of my native state into its support—the supposed necessity of whose existence had led me to believe that a great error had been committed by Gen. Jackson, in the exercise of the veto power—exploded, when the stockholders entered its vaults and

opened its books, examined its papers and exposed its financial operations for a series of fifteen or twenty years; there was an exposure of political corruption and fraud, in the financial operations of that bank, which stunk in the nostrils of the nation; transactions which had been concealed from a committee of congress, sent to make an investigation into the condition of the bank; at the head of which was McDuffie and Col. Johnson, of our state. Yes, Mr. President, so concealed as to induce that committee to report that all which had been charged against the bank was untrue and false. I believed it. But when the books were opened to the stockholders, they found their pockets robbed, the country cheated, and themselves bankrupt. Yes sir, there were children, of a citizen of my own county, whose whole property was invested in that institution, some thirty or forty thousand dollars, robbed of every dollar of their estate. But that was only as a drop in the bucket, compared with other cases of loss. I became satisfied on looking into the transactions of the bank thus exposed, and on a review of my former opinions on that subject, and the opinions of that man, whose judgment was more matured, and different from mine, and stronger of course, and better informed, that he was governed by the highest sense of justice in vetoing the bill; that he was right and I was wrong. And I had the boldness, the temerity, folly perhaps, in the opinion of some, the feeling thus, not only to act upon a sense of right, but to acknowledge it. Who among us now advocates the charter of a United States Bank?

I am not governed nor influenced by the course of policy, which has governed and influenced others. Whenever I am satisfied that I am wrong on a political question, a question of policy, or one involving a principle, I take the consequences of acknowledging that error. It is more magnanimous, more consoling to my conscience than to persevere in error. And when the annexation of Texas was made the great leading question upon which the contest for the presidency of 1844 was made to turn, I had no choice but the choice which my judgment dictated, and that was, that the annexation of that country to the United States was demanded by the highest political and self-preserving principles in reference to our future destiny; and if my venerated father, then reposing in his grave, had been living, and a candidate for the presidency, and had opposed the annexation of Texas, I would have cast my little might in the scale against him. This contest brought me again into political union with the democratic party. My principles of government ever have been democratic, and I hope ever will be. They have not, nor will not be made to depend upon expediency, or the choice of a president. The charge of inconsistency, come from what quarter it may, will not change the honest purpose of my soul—a desire ever to do right. Mr. President, I am in one respect like king Lear in the play. "Tray Blanche and Sweetheart, all bark at me." Bark on I say, I shall not calm you by whistling.

I beg pardon of this convention for thus throwing too much of my own affairs and political history before it. I could not do less. I hope I shall have no occasion again to do it,

and I can assure the delegate who has been the immediate cause of thus compelling me to do what I most sincerely regret the necessity of doing, that I had no intention, purpose, nor design of casting censure upon him, or wounding his feelings. My own self-respect and a regard for the decorum of this body, forbid that I should, without cause, violate its sense of propriety.

Mr. CHRISMAN. The gentleman says he does not know under what circumstances I introduced his name. When I made the motion yesterday evening, I said I was anxious to get along with the business of the convention; that we were making very little progress, and that already from the hills and hollows of Kentucky there was arising a complaint against this body. Action was demanded. I heard it from every member that left this floor to visit his constituents on his return, that complaints were being made in the country, and that the people demanded that this body should move forward in the great work they were sent here to perform. The gentleman from Nelson yesterday, after I had indicated a disposition to proceed with our labors, arose and very sneeringly remarked that he begged pardon of the gentlemen from Wayne, for the time he had consumed in his speeches upon this floor. I understood that sneer and observation sir. It was a sort of left-handed "lick" at me. It was intended to show me up rather badly to the people I have the honor to represent on this floor.

Any proposition coming from me, the gentleman could sneeringly strike out of the way, disposing of me as he attempted to dispose of the honorable gentleman from Lewis, the other morning, when he offered his resolution to hold evening sessions. He says I was not prompted by a sense of offended feeling, intimating that some other gentleman had prompted me to make the attack upon him, as I understand it. Now sir, no gentleman prompted me. I was prompted by his own conduct. His sneer of yesterday prompted me to say what I did. I know what I said, and I knew he would obtain the information when he came into the house. I am sorry he was not here, but I felt certain the facts would be related to him, and sure enough the moment he arrived he was taken out of the hall, and every thing was communicated to him that I did say. I did charge that the gentleman had taken both sides of this question, and I repeat it here; but I was not aware that he confessed it yesterday. I am prepared to show that he has occupied two sides of this question. There are several gentlemen on this floor by whom I can prove that the gentleman was urging that Louisville and the district bordering on the Ohio river should be restricted in representation; but yesterday he rose in his place and joined the ranks of those who resisted the restriction, and made an able speech against the opinions he had thrown out for several days to some members of this body. I did say that if the rumor I had heard was incorrect, he at least had occupied both sides of every great question that had agitated the country. This morning he comes forward and acknowledges the corn; acknowledges that he has been every man's man; that he has occupied every side of this great question. He alludes to my political

course. Well, sir, it is true, I was caught in the coon skin frolick of 1840. I supported "Tippecanoe" and your own beloved "Tyler too." But when Tyler turned traitor and deserted his friends; when he showed himself a Judas, I followed not John Tyler; and he is the last man that walks the soil of this proud confederacy I would follow. The gentleman says he has no doubt that in the contest between Jackson and Crawford, and Clay, I was found voting for Clay. I was a very small boy at that time, and was not entitled to a vote. He thinks I am piqued because he detected a speculating postmaster in my town, who had swindled the government out of \$40. The postmaster in my town was my political and personal enemy, and in all the races I have run in my county he has been against me. He has exerted all the influence he could bring to bear not only to defeat me for the state legislature, but also for this convention.

Mr. C. A. WICKLIFFE. I did not allude to the post-master of Wayne. He is not the gentleman I referred to.

Mr. CHRISMAN. There is not a more high-minded and respectable gentleman in Kentucky than the post-master he removed, whilst he was the Post-master general of John Tyler. In justice to him I say it, notwithstanding he is my personal and political enemy. I would ask the gentleman, how it is he occupies a seat on this floor from the county of Nelson, where there is a whig majority of six or seven hundred?

Mr. C. A. WICKLIFFE. I will answer the question. The citizens of that county are honest, well thinking, generous people. They happened to think me an honest man, and trustworthy, although they differed with me on some questions of national policy, and that is the way I got my appointment.

Mr. CHRISMAN. Well, I did not know but there had been another political revolution. I am not posted up as he seems to intimate. I have not pestered myself about his political history, but I did suppose another political revolution had taken place, for I knew there was a whig majority in Nelson of some six or seven hundred, and I supposed he had to make some concessions to get here. But he says they wanted an honest, clever man, and hence they selected him.

When I came here, I had the kindest feelings for the gentleman from Nelson, and was prepared to vote for him cheerfully to preside over this body; but the left handed blow he gave me yesterday did not sit well upon me. The motion I made was not for the purpose of making political capital at home, nor any where else. I knew that I should be attacked from every quarter in this house, and that it would be said that it was done for effect.

Sir, I came here prepared to vote on all occasions, and I consider questions as they arise, and having duly weighed them, I make up my mind, and I am not as fickle as a woman of sixty, changing and undergoing revolutions every twenty four hours. If I were as fickle as the gentleman has shown himself to be, I would stand here and clamor for debate till the first of next January. I would call upon the house to give me light that I might be enabled to vote correctly upon all questions. I do not make up

my mind very hastily, and when it is made up, I do not very frequently have occasion to change it.

Mr. President, I have thought it proper, in justification of myself to submit these remarks, and I shall now leave them with the convention, which will doubtless give them all the consideration, to which they may be entitled. I now move the adoption of the resolution.

Mr. BOYD. I move to amend the resolution by striking out the sixteenth and inserting the nineteenth.

The amendment was agreed to.

Mr. A. K. MARSHALL moved the previous question, which was sustained.

And the question being taken on the resolution it was adopted.

#### APPORTIONMENT OF REPRESENTATION.

Mr. BOYD offered the following resolution:  
*Resolved*, That representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of qualified electors therein. The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation as aforesaid, the state shall be districted into twelve districts:

DISTRICT No. 1. To consist of the counties of Fulton, Hickman, Graves, Ballard, McCracken, Calloway, Marshall, and Livingston.

DISTRICT No. 2. To consist of the counties of Trigg, Christian, Caldwell, Crittenden, Union, Henderson, and Hopkins.

DISTRICT No. 3. To consist of the counties of Todd, Muhlenburg, Logan, Simpson, Allen, Warren, Butler, and Edmonson.

DISTRICT No. 4. To consist of the counties of Daviess, Ohio, Hancock, Breckinridge, Grayson, Hart, Larue, Hardin, and Meade.

DISTRICT No. 5. To consist of the counties of Monroe, Barren, Cumberland, Clinton, Adair, Green, Taylor, Wayne, and Russell.

DISTRICT No. 6. To consist of the counties of Jefferson, Bullitt, Nelson, Shelby, Spencer, Washington, and Marion.

DISTRICT No. 7. To consist of the counties of Oldham, Trimble, Henry, Franklin, Owen, Carroll, Gallatin, Grant, and Boone.

DISTRICT No. 8. To consist of the counties of Scott, Harrison, Pendleton, Kenton, Campbell, Nicholas, Mason, and Bracken.

DISTRICT No. 9. To consist of the counties of Fayette, Woodford, Bourbon, Clarke, Jessamine, Anderson, Mercer, Boyle, and Garrard.

DISTRICT No. 10. To consist of the counties of Lewis, Fleming, Bath, Montgomery, Morgan, Greenup, Carter, Lawrence, and Johnson.

DISTRICT No. 11. To consist of the counties of Estill, Owsley, Breathitt, Floyd, Pike, Perry, Letcher, Clay, and Harlan.

DISTRICT No. 12. To consist of the counties of Madison, Rockcastle, Lincoln, Laurel, Casey, Pulaski, Whitley, and Knox.

In the year and every fourth year thereafter, an enumeration of all the qualified electors of the state shall be made in such manner as shall be directed by law.

In the several years of making such enumeration, each district shall be entitled to representatives equal to the number of times the ratio



is contained in the whole number of qualified electors in said districts: *Provided*, That the remaining representatives, after making such apportionment, shall be given to those districts having the largest unrepresented fractions.

Representatives to which each district may be entitled, shall be apportioned among the several counties, cities, and towns, of the district, as near as may be, in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties, within the district, may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, and in the same district, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to the county having the largest residuum.

Mr. BOYD. I move to refer that resolution to the committee of the whole, and that it be printed. My object in submitting this resolution is to have it brought to the knowledge of the convention, as I shall offer it as a substitute for the sixth section of the report of the committee on the legislative department, when the proper time comes.

The motion to print and refer was agreed to.

The convention resolved itself into committee of the whole, on the report of the committee on the legislative department, Mr. MERIWETHER in the chair.

Mr. THOMPSON. The question before the committee is one of great interest, but was it one of those questions that were discussed before the people? What were the questions discussed, and what were the reforms demanded by the people when the delegates to this convention were elected? Was the disfranchisement of a portion of the free citizens of this commonwealth one of them? If it were, it was not heard of in my section of the country. The questions which were discussed in my county were a curtailment of the sessions of the legislature, so that the sessions shall be held every second or third year, instead of annually—the placing of the appointing power in the hands of the people, instead of in the hands of the executive—the limiting of the elections of officers of the commonwealth to one day—and the restricting of the power of the legislature in the passage of local acts, and in contracting state debts. On the question of slavery, too, my constituents have their views: they believe that that subject should remain as it is in the present constitution, and as it was in the constitution of 1792; or if change is necessary, that that change shall be as little as possible. I have heard no complaints that the present constitution does not protect the rights of slave-holders; no such reason was given for calling this convention. The prominent reason was, that the people might take into their own hands the election of their own officers; and the question now before the committee is one in which my constituents have no im-

mediate interest; they certainly did not expect that any portion of the freemen of this commonwealth were to be deprived of the right of equal suffrage in electing their representatives and of equal representation in the councils of the state. Was that question discussed before the constituents of any gentleman on this floor? If it was, it never reached my ears. And what is the reason given for such an infringement of the rights of a portion of the people of this commonwealth? Sir, I have heard no other reason alleged than that I understood to be given by the gentleman from Madison (Mr. Turner,) for restricting the representation in cities, that it is necessary for the protection of the institution of slavery.

And, sir, a portion of this commonwealth, extending from Greenup county to Hickman, ten miles out from the river, is to be denounced and disfranchised, I suppose, in order to protect the institution of slavery. Why, sir, you cannot place in the hands of the emancipationists a more powerful weapon, than by adopting this principle of proscribing a portion of our state. I would advise gentlemen to look a little at home before they travel so far. What was the poll of the emancipation vote in Madison county? It was six hundred and eighty eight votes. What was the emancipation vote taken in your county, Mr. Chairman? It was five hundred and fifteen. The party, headed by that man of distinguished talents, character and worth—the great Ajax of the emancipation party of this commonwealth. What was the ground taken by the delegates from Louisville? I can testify to their gallant bearing throughout the struggle, to secure the rights and the property of those very gentlemen who are now endeavoring to disfranchise them. How is it in the county of Kenton, one of the border counties on the Ohio? What pledge does Kenton send here, that she is fit to participate in the rights of representation? Her representative has told you, in a manner that does him honor as a man, and as a delegate. Proscribe the citizens of Louisville, send their delegates back, place them without the pale of the constitution, but by doing so, you secure to the emancipation party a more glorious triumph than if they had beaten you and the delegation from Louisville in the contest, and had elected the whole of their ticket. Gentlemen say that the population of Louisville will increase so wonderfully, that there is danger they will become—if I may use the term—a mammoth population. Do gentlemen suppose that the country is to stand still meanwhile? Most certainly not. The population of the country will increase *paripassu* with the population of the towns. Whom do we disfranchise by placing this restriction upon the cities? Are not the sons of all the different counties in the state, in the city of Louisville? Go there, and you will find the sons of old Nelson, the mother of counties south of Salt river. Do you not find there the sons of Bullitt, and of Shelby, and of Spencer, who have made that city the home of their adoption? Are you willing to deprive them of the rights that the people of other parts of the state enjoy, and that they would enjoy, if they lived in another part of the state? It is a very strange doctrine, that a man

may be a freeman in Frankfort, but if he thinks proper to remove to Louisville or Covington, his right of suffrage is to be abrogated. It is, I say, strange doctrine to me, to be preached in a free country.

It is an important question sir. Suppose gentlemen were to introduce a resolution here, confiscating the property of any freeman in this commonwealth, I have no doubt every delegate would be horror-stricken at the idea. Are not the political rights which freemen enjoy in this commonwealth dearer to them than the right of property? Nay, are they not dearer to them than the very air they breathe? Are you willing then, to deprive them of those inestimable political rights, the right of suffrage, and the right of representation? Why, sir, this it is that constitutes a freeman; this it is that constitutes the difference between the freemen of this glorious confederacy, and the subjects of the monarchies of Europe. A man may own property in Turkey or in Russia, but to be a freeman there is a vain and idle thought. I would be the last man on earth to violate vested rights, or to deprive the citizen of his property; and equally adverse would I be to deprive any freeman of this commonwealth of those high political privileges that all freemen value so highly.

It seems to be admitted by almost every gentleman, that the true basis of representation is population. But, say they, it becomes a matter of self-defence, to impose certain restrictions. As was justly remarked by the gentleman from Kenton yesterday, upon gentlemen who make this assertion rests the *onus probandi*. *Ei incumbit probatio, qui dicit non qui negat*. And I call upon those gentlemen who lay down this proposition for the proof. What proof have you that it is necessary to disfranchise these citizens, in order to secure your own safety? Have not the people of Louisville, and of Kenton county—who are now menaced with the loss of their political privileges—sent to this convention living evidences that they are true to their state? that they are prepared to protect all the great interests of the state? They have sir. But how have other states regulated this matter? Have they proposed to disfranchise any of their citizens? No sir. I refer you to their constitutions for the truth of my assertion. The fourth article, third section, of the constitution of Wisconsin, is as follows:

"The legislature shall provide, by law, for an enumeration of the inhabitants of the state, in the year one thousand eight hundred and fifty-five, and at the end of every ten years thereafter, and at the end of their first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and assembly, according to the number of inhabitants, excluding Indians not taxed, and soldiers and officers of the United States army and navy."

In the fourth article, thirty-first section, of the constitution of Iowa, I find this provision:

"The number of senators and representatives shall, at the first regular session of the general assembly after such enumeration, be fixed by law, and apportioned among the several coun-

ties according to the number of white inhabitants in each, &c.

In the constitution of Texas, the basis of representation is qualified electors.

In Arkansas, representation is regulated according to the number of free white male inhabitants.

In Michigan, the basis of representation is fixed according to the number of white inhabitants.

In Florida, the senatorial representation is based on population.

In Missouri, representation is apportioned according to the number of free white male inhabitants.

In Alabama, representation is regulated by the number of white inhabitants.

In Illinois, representation is based on the number of white inhabitants.

In Mississippi, it is placed upon the number of free white inhabitants.

In Indiana, representation is based on the number of white male inhabitants of the age of twenty-one years.

In Ohio, it is the same as in Indiana.

In Tennessee, representation is based on the number of qualified electors, giving to any county having two-thirds of the ratio, a representative.

In New York, representation is based on the number of inhabitants, excluding aliens and persons of color, not taxed. There the great city of New York has her full representation, and is under no invidious restriction.

As I conceive, the foregoing states of this union place the basis of representation upon population, or upon numbers of qualified electors, without any such restrictions as are sought to be placed in this constitution. It is true, there is restriction in Louisiana, Pennsylvania, and probably in Maryland; but if you look at the constitutions of the states adjacent to Kentucky, you will find the basis of representation is placed either on numbers of qualified electors or on population; and in fact I scarcely know of a gentleman who gainsays the proposition, that population should be the basis of representation. But, say they, it is necessary for our self-defence, that the right of suffrage, or of representation, should be denied to a portion of our fellow citizens. As I remarked before, where is the proof that any such necessity exists? I affirm sir, that it exists only in the imaginations of gentlemen.

Sir, there is not a truer people, there are none that are more devoted to the institutions of this country than the population of the border counties along the Ohio river, from Greenup to Hickman. None sir, stood up more manfully in the great fight that took place in August last, for I was an eye-witness to the struggle between the emancipationists and their opponents. What does your bill of rights say? Has a single delegate declared that he is in favor of changing any of those great principles that were laid down in the bill of rights in the constitution of 1792, and re-adopted in the constitution of 1799, and proposed by your committee to be re-adopted in the constitution we are about to make? "that all freemen are equal, and that no man shall be entitled to exclusive privileges, or to emolu-

'ments, except in consideration of public service rendered.' No gentleman is in favor of changing this great paramount principle. If then, all are equal, preserve that equality, do not proscribe a man because he happens to be in a particular locality. Let him be as free in Jefferson county as in any county on the border of the Ohio, as in Madison or Franklin counties. Then you will preserve this great principle; without this, it is a dead letter, and ought to be stricken from the constitution.

It has been said by other gentlemen, that this restriction is necessary in order to keep down foreign population. Sir, I hear sentiments uttered—but thank God they come from but few persons—which are in direct contradiction of one of the many grounds, alleged in the declaration of independence as reasons for making that declaration, and for throwing off the yoke of Great Britain. What were the reasons assigned by Thomas Jefferson, when he penned that memorable declaration? In the list of grievances alleged in that document against King George, the third is this:

"He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands."

This is one of the reasons, that they had for declaring their independence, and sir, the declarations and acts of some gentlemen at this day, coincide almost exactly with the acts of King George III at that day. They would deny to foreigners the right of suffrage for a period of twenty-one years. Was that the Jeffersonian doctrine? Was that the doctrine promulgated by Hancock, Jefferson, and others who signed the declaration? We have millions of acres of public land now uninhabited; our country extends from the Atlantic to the Pacific oceans. I say to foreigners, come on gentlemen, come on; our laws are strong enough to protect our citizens. Sir, what is your naturalization law? It is that no man shall become a citizen, unless he has behaved himself like a worthy man for five years. In the act of congress of 1802, passed in the administration of the great apostle of liberty, Thomas Jefferson, section first, third paragraph, reads as follows:

"That the court admitting such alien shall be satisfied that he has resided within the United States five years at least, and within the state or territory where such court is, at the time, held, one year at least; and it shall further appear to their satisfaction, that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same: *Provided*, that the oath of the applicant shall, in no case, be allowed to prove his residence."

If men who are unworthy are admitted to the privileges of citizenship, it is not the fault of the law, but it is the fault of the administrators of the law. Sir, suppose that Kossuth, Bem, and their co-patriots, that now find protection even in the land of Turkey, from the tyrant now seeking their blood, should come to this country; where is the man in America who would require them

to remain here twenty-one years before they should be permitted to become citizens? Those men who have staked their lives, who have staked their all for the freedom of their country. I would to God they would come to this land of freedom, and then let the Emperor of Russia or Austria demand them from this government. A shout would go up from Maine to Mexico against it that would nerve the arm of old Zack for any crisis. Sir, who builds your railroads? Who makes your canals? Who constructs your turnpikes? It is the poor laborers, the foreigners, who seek an asylum on your shores, from the hand of oppression. I sir, you know, am a native born Kentuckian; I hail from old Nelson, but old Bullitt is my beloved, my adopted home, and sir, I know there are men whose land of adoption Kentucky is, that feel as much for her welfare and interests as I do.

What was another ground set out in the declaration of independence, for separation from Great Britain? In the specification of the usurpations of King George, we find the following:

"He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation, till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them. He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the legislature—a right inestimable to them, and formidable to tyrants only."

We here see, Mr. Chairman, how the right of representation was held by such men as Hancock, Jefferson, and others, the signers of the declaration of independence.

Probably I have detained this committee longer than I should have done. There are certain great reforms that the people of Kentucky have sent us here to make—to limit the sessions of the legislature, to place the appointing power of every officer in the hands of the people, and I believe there are hardly three men on this floor who are opposed to these reforms. Let the subject of slavery remain as it is, with little or no alteration; because there was no complaint from slaveholders that their rights were not protected. Limit the time of holding your elections to one day. When we do this, I think we shall have done all the people sent us here to do. As for myself, I know that my people never sent me here to abridge the right of suffrage or of representation, and I should dislike very much that my name should go down to posterity upon the record as having voted to abridge the right of suffrage, or the right of representation, of any freeman of this commonwealth. The people will judge our judgment, and their judgment will be that of ages. They will judge of the actions of every delegate on this floor. Every gentleman knows the instructions he has received from his constituents; let him act according to those instructions. For myself, I was not instructed to abridge the right of suffrage of any man, or to deny to any freeman in this commonwealth the right of representation.

Mr. PROCTOR. As I shall vote to restrict, to some extent, the city of Louisville and all other cities which may grow up in this commonwealth, in the senatorial department of the government,

I claim the attention of the committee while I make a brief explanation of the reasons which will influence my vote. Representing, as I do, a county bordering on the Ohio river, I will take occasion to remark that I cannot believe the question of emancipation has anything to do with the question under consideration. Sir, I repudiate the remarks of the gentleman from Madison, (Mr. Turner,) so far as they may have been intended to apply to my constituents, for they are as much devoted to the institutions of the state as any portion of the people of the commonwealth. They have been and ever will be true and devoted friends of the south. But what has slavery and emancipation to do with the question under consideration? Here we have a plain and simple question in itself, which has no connection whatever with that of slavery; and they ought not here to be united.

Sir, a reason has been asked by the gentleman last up, why cities should hereafter be restricted in the Senate. I will endeavor to furnish him with one.

I represent a county, it is true, which pays but a small revenue into the treasury. The nett revenue paid by my county, after paying her portion of the general expenses of the government, is but some seven or eight hundred dollars per annum. Owing to our geographical position we are removed from the benefits arising from the works of internal improvement, which have been carried on and completed at the expense of the people of the state at large. In addition to the large appropriations for these purposes which have heretofore been made by our legislature, our state is also now indebted some four millions of dollars. This debt must be paid; the faith, the honor, the credit of the state require it. The entire population of Kentucky, without regard to location, or benefit to be derived from these works, must and will be taxed to pay these debts; and sir, my constituents and the constituents of other gentlemen upon the floor of this convention, who have derived no practical benefit from these works, will have to bear their portion of these burdens. In this sir, we have carried out in practice what gentlemen so much condemn in theory—taxation without representation.

But, Mr. Chairman, we have been told by gentlemen during this discussion, that he who would do a wrong in a small matter, would perpetrate a greater wrong if you would but give him the power; and, sir, it is to guard against this improper exercise of power that I will vote for the restrictions that I have indicated. We have seen what power members of the legislature have exercised in making appropriations of the public money for works of internal improvement, which have been local and partial in their beneficial influence; and as we have been warned that those who once perpetrate a wrong will repeat it, whenever an opportunity offers—acting upon the principle that “self-preservation is the first law of nature,” and that self-interest is the great lever that unfortunately too much controls public and private action, I shall, in defence of those whom I represent, cast my vote to restrict the overwhelming influence of any local or sectional interest in this commonwealth. The question has been asked why restrict the

rights of any portion of the freemen of this commonwealth? Sir, we have heard beautiful theories advanced upon this floor; but when you come to carry them into practical operation, you find that they will not work. If, sir, our government is to be based upon popular representation alone, without any checks and balances, why I ask do we have a senate at all? The great object is, that the senate is to operate as a check upon the hasty legislation of the country, and to act as a conservative barrier between popular legislative excitement and the rights of the people. Look, sir, at the formation of your federal constitution, and the relative position of the states of this Union. Take for example, sir, the great states of New York, Pennsylvania and Ohio—three powerful states—now having an aggregate representation of eighty one members upon the floor of congress. Give to those states a representation in the senate as potent as that in the lower branch of congress, and what measure could they not carry, and what influence could they not exert? Hence, sir, the wisdom of our fathers was signally displayed in forming that charter of our liberties, whose conservative influence is thrown around the different departments of the government, especially in giving to the senate a check upon the hasty legislation of the lower branch of congress. This is done by giving to the smallest state in the Union an equal influence with the largest. And, sir, I would ask gentlemen, when they vociferate so loudly in praise of the “dear people,” and their right of suffrage, why it is that they would have a senate at all? Why not give to the popular branch of the legislature all power to pass laws? The very fact, sir, that you have a senate, is a restriction upon the rights of the people. And, sir, when we come to apportion representation in the senate, some regard, in my humble judgment, should be paid to the great interest of different portions of the state, without regard alone to numbers.

For these reasons, Mr. Chairman, I will vote to restrict the local influence of the large cities, which may hereafter grow up in this commonwealth. And, sir, as this question of slavery and emancipation has been so frequently lugged into the discussions of various propositions brought before the convention, I will take this occasion again to remark that I cannot conceive that the question of emancipation has any thing to do with the subject matter before us. I thought, Mr. Chairman, when I first came to this convention, that we should have no discussions and have no divisions upon this all exciting question; but in this I have been sadly disappointed. I have deeply regretted to see a discussion growing up here upon the abstract question of slavery that can lead to no practical results, but which will tend to distract our deliberations. But, sir, as gentlemen have thought proper to allude to the institution of slavery, in a local and sectional point of view, I feel it due to those whom I represent here in my place, to rise and repel the charge that has been made against them, in common with the other river counties in the state, for, sir, they are as true and unflinching in their devotion to the slave interest in this country, as are they of any other section of the state. It is true, sir, that we have

only about two hundred or two hundred and fifty slaves in my county, and that we are a border county, and have but little interest in the matter so far as the value of our slaves is concerned, still, sir, we have an interest in common with our common country. The non slaveholders of the county of Lewis will be the last to desert the institution, and they will be among the first to repel an invasion or an assault made upon it, let it emanate from whatever source it may.

Mr. Chairman, though a large majority of my constituents are non-slaveholders—it was no difficult task on my part to convince them that they were as deeply interested in protecting and defending this institution, as is the slaveholder himself. I contend that it is the poor man, the native born laborer of Kentucky, who is most deeply interested in the perpetuity and preservation of the institution of slavery—for sir, once emancipate your slaves—permit the starving hordes of Europe to pour in upon us, as they unquestionably would—and the consequence would be, as was contended by the slaveholding emancipationist throughout the state of Kentucky—that the wages of labor would be reduced, while the value of land would be enhanced—consequently the native born Kentuckian, would either be compelled to drag out an existence of poverty and dependence, or to seek a home in the far west. Sir, in such an event the price of lands would advance, and the wages of labor would decrease—the poor man therefore, never could acquire the means that would enable him to purchase a home for himself and family—and a system of landlord and tenancy would grow up in Kentucky, (where there are already very extensive land holders), that would be dangerous to the liberties and rights of the poor, and God save my country from a system of this kind. I repeat, sir, I do hold that the poor man in Kentucky is more deeply interested in sustaining this institution than any other portion of the community; but if the argument is to prevail here that the slaveholder is alone to be consulted; if that doctrine is to be maintained by those professing to be pro-slavery men—then truly, is this property held by a slender thread; but I trust no such sentiment prevails here.

Mr. Chairman, gentlemen have thought proper during this discussion to allude to this question in a moral point of view, and they have told us that they believed that the finger of God was upon the institution. Sir, while I believe that divine providence is employed now as in the days of the "Jewish Theocracy," when the children of Israel were led by the pillar of cloud by day and the pillar of fire by night, in moulding and impressing the character and institutions of my country—I also believe as firmly as I believe in holy writ, that that same providence has destined the African race to slavery in these United States. But sir, be that as it may, it is an institution of our country—we must take it as it is. No plan has been or can be devised by which they can be sent from the borders of our land; and to talk about it is only to talk about an abstraction, which may lead to the most fatal results. Sir, if we once permit our feelings to become excited upon this great question, and if our common country should un-

fortunately give way to the madness of some factitious hour, to the phrenzy of some fanatic spirit—if upon some great question like this, they should in an evil hour permit our glorious union to sink, overwhelmed in some horrible struggle, of brother with brother, they will never gain their liberties until the sun shall slumber in the cloud, forgetful of the voice of the morning. Sir, let us then upon a question so momentous, and fraught with such mighty consequences, pause and reflect well, before we rashly act. I do hope that in the future discussion of the various propositions that may be presented to the consideration of this convention it will not be thought necessary to introduce the subject of slavery in the arena of debate. Sir, though I come from a county included in the remark of the gentleman from Madison, I stand here as firm and unflinching an advocate of the slave institutions of the state as any gentleman upon this floor. And if that great day should ever come when a dissolution of this Union shall take place, which I hope and trust in high heaven will never be, we upon the Ohio river, are to occupy the front of the battle ground, and let me tell you, sir, if come it must, we will prove ourselves true to the institutions of Kentucky.

But Mr. Chairman, in framing a constitution, that is to protect all the great interests in this state, I shall not be influenced by empty declamation upon this subject, let it emanate from whatever source it may; and sir, as I consider that this question of emancipation has nothing to do with the settlement of the question now under consideration, I shall disregard, so far as I am concerned, all that argument of gentlemen who have such an object in view. But sir, as we have the example of our federal constitution, and a number of the states, and as we have the still more potent example in the acts of our legislature, in the partial and corrupt manner in which they have appropriated and managed the funds of the state; and sir, as I look at the senate, as a conservative check upon the hasty and improvident legislation of the country, I shall vote against giving to local and sectional interests an undue influence in the senate of the state. Sir, we know the pernicious influence which this sectional legislation has had upon the country in days past; and as this power has been exercised to the detriment and injury of my constituents, I intend to exercise the power which I have, upon the floor of this convention, in protecting them, as far as I can, from its exercise in future. And sir, whenever gentlemen will come up and vote for a clause in the constitution, that the legislature never shall have the power to make an appropriation for any work of internal improvement, for which my constituents shall be taxed, without their consent, I will go with them for their proposition. My constituents have been taxed without their consent, they will be taxed to assist in paying the present state debt, which was created for the purposes of building your railroads and turnpikes, from which my constituents have derived no immediate advantage. And sir, this, to say the least about it, is nothing more nor less than taxation without representation. As our legislators, who come from those sections that are to be benefitted by these

works, have done a "little wrong, in small things," I fear that they will carry it out in big ones, if they have the opportunity. I shall therefore, in self-defence, vote for some restriction upon this senatorial representation of large cities which may in time grow up in our state.

Mr. BULLITT. I shall record my vote in favor of the principle for which I contended, in the remarks which I addressed to the convention a few days ago, that is a perfect equality of rights as regards city and country. I contend that the very first principle in this government, the basis upon which its whole superstructure rests, is perfect equality. What these words imply is, equality in regard to the exercise of sovereignty in the protection of civil rights, and in the enjoyment of life, liberty and property. While I would be wholly unwilling to entrust to cities any advantage, I would have them enjoy that equality, which the proposition of the gentleman from Christian would give them. If you suffer a city to send an undivided vote to the legislature, it will give her a decided advantage over an adjoining county.

My position is, that there is no constitutional power in this convention to impose a restriction, or to make any distinction between those living in town or country, upon rich or poor land, or wherever they may be. There are but two forms of government that can exist. One is a government of force, and the other is a government which rests upon affection. Now sir, if you will bring an intelligent Russian here, seeing everything moving on smoothly, the first inquiry that will suggest itself to his mind, is, where is the power of this government. He does not see an armed soldiery, which he considers to be absolutely necessary? Is it necessary only when the people are interested in the destruction of the government. Here every one is a sovereign. A violation of the laws of this land, is a violation of my rights. I have a portion of the sovereign power; every man around me has a portion of the sovereign power, therefore every man comes to the aid of the law; and the sovereign power existing in the people of a republic, is the only reason why we can carry on the government without a standing military force. The first clause of the constitution under which we are now acting provides:

"We, the representatives of the people of Kentucky, in convention assembled, to secure to all the citizens thereof, the enjoyment of the right of life, liberty and property, and of pursuing happiness, do ordain and establish this constitution for its government."

The word citizen is of Roman derivation. We get it from the civic law. The Roman citizen exercised a portion of the sovereignty of the state. When he went to one of the provinces he carried with him this sovereign power, or in other words the rights it secured to him. Cicero speaks of it as the most heinous crime that could be committed, to subject a Roman citizen to the torture. In the dark ages that succeeded the downfall of the Roman empire, when political power was divided between the Princes and the Barons, there was almost perpetual war kept up between them. The Princes found it necessary, in order to cripple the Barons, to rear up a middle class, and these consisted of the artisans

residing in the towns and villages. To these were given certain rights and privileges. They became freemen, having before been denominated villians or slaves. The word freeman or citizen was applied to them, denoting that they were inhabitants of a city, and not only denoting that they were inhabitants of a city, but that they were sovereigns of the city. When our constitution was formed, the same principle was adopted. Constrain the term in that sense, how do I apply it? We are sent here by the people of Kentucky to secure to all the citizens thereof the enjoyment of the right of life, liberty, and property. Now, sir, I will ask, would it not be a perfect absurdity to say that we are sent here to secure to all the sovereign people of this commonwealth the enjoyment of life, liberty, and property, and that we have the power to destroy the sovereignty upon which all this rests? Sir, when you destroy their sovereignty, can you secure to the sovereign people the enjoyment of life, liberty, and property? Certainly not. The basis of this government, as I remarked before, is equality—in all those rights which belongs to the citizen, perfect equality, as far as regards the sovereign power, an equality of right in the enjoyment of their property, and I carry it out and apply it to property of every description.

Now, sir, we are told by Blackstone, that the power of parliament is omnipotent. Is it to be contended here in our government that this convention is omnipotent? I am perfectly willing to contest the question wholly upon this ground; I say we are limited in our power—we have no right of destruction. If I appoint an agent to attend to my estate, does it imply that he has a right to destroy the estate? Certainly it does not. We have not the power of destruction. The whole object of government would be lost—the whole object of civil society would be lost, if this convention possessed such power. We are not the people, but the agents of the people, sent here to make an organic law, for the protection of life, liberty, and property. Now let us test this thing. Have we the right so far to destroy the sovereignty of this nation as to decree that we will hereafter live under an aristocracy, or to declare that one man shall be emperor of king or Kentucky? Every one will at once acknowledge that there would be absurdity in the proposition. Then, if you have not the right to destroy sovereignty entirely as it exists in the citizens of this commonwealth, have you the right to take away sovereignty from a single county or individual? Surely not. Carry the principle out. We are sent here to guaranty the rights of property. This convention has no right to take away one atom of property which I possess, and to apply it to the public use, without compensation. They have no power to decree any distinction in the enjoyment of property between slaves, horses, lands, and any other description of property. Because, sir, any action of this convention, which goes to the destruction of any of those rights to which I have alluded, is opposed to the object for which we are assembled. I deny the right of the people themselves, in their sovereign capacity, to do any act that would amount to the destruction of their sovereignty—much less does that



right belong to this convention. If then, sir, they have no right to take away my property without compensation—if this convention have no right to say that I shall not worship the Deity as I please—if it has no right to destroy the form of our government, they certainly have no right to destroy the sovereignty of any one in it. And the consequence is, they have no right to draw a distinction between the people residing in a city and those residing in the country. I am for an equality of rights on the part of city and country. To carry out this principle a little further. This convention have no right, if they have the power, to draw this distinction which I see the legislative report does on the subject of the apportionment of representation. We have all the right of representation, whether rich or poor, whether living in the country or a city, whether they are numerous or otherwise. How does it operate? Suppose the ratio to be 1,500, it gives to a county having but two thirds of the ratio, in many instances, a representative. If my county happened to have the full ratio of 1,500, and 999 over, it would have but one representative. And the residuum added to the qualified voters of a smaller adjoining county would give to that county two representatives.

Upon this principle of perfect equality, in our rights of property, and in our political rights, the same reason will apply in regard to the act of 1833, which has been modified, but which will be attempted to be engrafted in this constitution. There is a violation of right. Every man in this community having an equal right to purchase property and bring it from whatever place he pleases. Whilst I would leave that law as it now stands, I am utterly opposed to engrafting it in the constitution. I would leave it as it stands, because dire necessity may require that it exist. How far necessity may justify a departure from this general rule of equality, is a question that would be somewhat difficult to settle. If Louisville had sent the emancipation representatives here, and they had shown a disposition to carry out that law, I will not say what might have been my course. Because I should consider that an attempt at destruction. But as the present representatives come here representing fully and fairly the slave interests of the country, it has no application whatever, and therefore, I will not go into that question.

Mr. MACHEN. I will ask the indulgence of this committee for a few moments, for I am unwilling to give a silent vote upon this question. When in the committee that presented this report, I was of the impression that there ought to be restrictions placed upon the senatorial representation of those points that might become exceedingly populous. I felt too, that there were great principles at stake, but I had not sufficiently matured the subject. I had not investigated the ground on which my action would be based sufficiently according to my own judgment, to sustain myself in the position in which I would be placed. I therefore sir, when listening to the colloquial eloquence of the gentleman from Louisville, who was my coadjutor on the committee, was charmed away from my first view of the subject. I was led to adopt the ar-

guments he presented, and to feel that there was a force and power in those arguments, which would be irresistible in this house, and in the state of Kentucky. But the spell by which I was bound in the colloquial intercourse which I had with the gentleman, is now broken. I think I see light in a different direction, and I come back to my first love, and stand here now as the advocate—to use a hackneyed term—of some conservative restriction, not only upon the city of Louisville, but every other portion of the state that may, by this excess of numbers, be liable to do damage to the general interests of the state. I know sir, that if I were not the representative of a free and independent people, I should not have been enabled to stand up, after such denunciations as have fallen upon gentlemen who shall act as I do upon this floor. But sir, I thank God, I thank those that reared me up from childhood to maturity, that the spirit of independence was infused into me in infancy, as fully as in any man here or elsewhere; and that what my judgment dictates to me should be done, I have a determination to dare attempt to do. I care not what the power may be that resists the position I occupy, unless my judgment is convinced, I stand by that judgment.

I have been a good deal astonished since this discussion commenced, I must confess. I was astonished at my friend from Christian, when he came in with that glorious compromise of his. I was surprised to find that a change had come over the spirit of his dreams. What has been his position heretofore? I was sir, more firmly based in the position I occupy, by the eloquent language of the gentleman himself, only the day before he presented that compromise. He declared it was the last battle for our country's rights, that was to be fought. He seemed to doubt the firmness of my nerves, and endeavored to strengthen me in my position, so that no power in the house or out of it might shake me. But sir, the guardian angel watching over the gentleman, perhaps, whispered a lesson of wisdom in his ear, of which he had never before learned; and he came to this house on the following morning with a proposition which he blandly calls a compromise—compromise of what sir? Was it a compromise of the principle for which he contended, or was it a compromise of opinions, which he held the day before? Ah! sir, it was the dictum of an entire change of policy. A compromise by giving to those on one side of the question, all that they asked for, and leaving those who think that a different course should be pursued, without having a single crumb fall to them from their master's table. I stand by no such compromises. If I compromise at all, it is on terms of liberality; on such terms as will extend to me, a portion at least of that for which I fight; but I presumed the gentleman's reasons were satisfactory. They have not however convinced me. They have had no influence on my judgment so far; and though the gentleman has departed from me, I stand in the firm position where he left me. Though he may think proper to take shelter under the banner of the leaders of the opposite side, yet sir, I fight under the star spangled banner under which I started.

There has been sir, a great deal of extraneous matter introduced in this discussion. We are told that on the Ohio's broad and beautiful shores the spirit of patriotism and valor dwells in rich abundance, and that whenever the bugle note is sounded, and the first tap of the martial drum is heard, all her sons are found rushing to defend their country's glory. Sir, when the first note was sounded, my constituents were rushing in their majesty, to the rescue of their country. Yes sir, my own county raised a company at the first intimation of the proclamation of war with Mexico; but so far from the centre of attraction was she, that the company was entirely too late. As soon as we heard that there was a call to arms, our people came gallantly up—I do not include myself, I was not a volunteer—but the people of my county ranged themselves under the star spangled banner and asked of the government to be permitted to take a share in the toil and danger, the strife and hazard that were impending over the country. This was denied them at that time. Afterwards when the 4th regiment Kentucky volunteers was organized, she did send forth a gallant company; but they sir were too late to join in the conflict before the city of Mexico, and yet they revelled in her halls, and some of them sir now lie beneath her soil.

The subject of emancipation has been drawn also into this discussion. I sir most solemnly aver that until this discussion began upon this floor it never entered my head that slavery had any thing to do with the subject under consideration.

The gentleman from Bullitt talks most eloquently upon this proposition to disfranchise a portion of the people of Kentucky. Sir I am not sent here for the purpose of disfranchising a single man, woman or child, or to take away a single privilege from any man; but sir I am for preventing a combination of force from bringing destruction on the country by such combination. We give to every portion of Kentucky a full representation in the lower house, according to its numbers. I sir am not to be deterred from expressing the sentiments I entertain, by being told that the Autocrat of Russia is not less to be trusted than those who act as I intend to act. No sir, and I dare assert, that the source whence the denunciation emanated, has no more of the love of country burning on the altar of his heart, than I have; nor of correct principles either.

Now sir, it is contended, that if we limit the representation of cities in the senate, we are destroying the right of suffrage in Kentucky. What is the object of government? It is that the greatest amount of good may be disseminated to the greatest extent. Why is the senate created at all? Is it for the same purpose that the lower branch of the legislature exists? No sir, I take on myself to aver, that it has a different purpose in view. Representation should exist wherever taxation is exercised; and it is fully carried out in the lower house of our general assembly. It is so in the house of representatives of the United States, and it is right that it should be so; but is it so in the senate of Kentucky, or is it so in the senate of the United States? No sir, it is not so. How is the Senate of the United States organized? I need not an-

swer this question, for it would be an insult to the intelligence of this house, if I should attempt to answer it. Why was it that every little state that was organized in this union required, at the hands of the general government, that it should have an equal amount of representation in the United States Senate? It was sir, upon the same principle upon which I now intend to act. It was upon the principle of self-preservation. It was, that in the senate, there might be a wholesome check against the evil influences, if they should ever be directed to evil, which might be exercised in the lower house. Was it right or was it wrong? The history of this country, in past days, attests the wisdom of the policy. Had it not been for that principle, our government would have reeled and tottered like a drunken man, and prostrate might have lain. It is this inequality that secures this government of ours, as far as the two senatorial votes of each state have power.

The little State of Delaware having but three counties, and a population of about one hundred thousand, has an equal voice in the senate with the largest state of the union. Why is it so? It is that the community may be protected against combinations of large masses. But gentlemen say it is a departure from principle, that we are about to make here; no sir, it is no departure from principle. I ask you what city or town in the Commonwealth of Kentucky had the right to separate representation in the senate at the time this convention was called? The same mode of representation is acted on in every portion of the union. Virginia is divided into two grand senatorial districts; one east, the other west of the blue ridge; one represented by thirteen, and the other by nineteen senators; and these divisions are kept up irrespective of population; and it takes two thirds of the legislature of that state to change this constitutional provision once in ten years. I come next to Maryland, where the same doctrine, for which I contend, is carried out. The elder gentleman from Nelson, stated the other day, that there were but eleven counties in Maryland. I believe he is mistaken. I think there are twenty. How is their senatorial representation apportioned? It is divided into twenty one districts: each county sends one senator, and the city of Baltimore one, which completes her senate. I ask you how it is that Baltimore sends but one, when each county is entitled to one? It is on the principle of self-preservation.

The gentleman from Fleming (Mr. Garfield,) a few days since delivered an eloquent discourse on the sources from which his first principles of republican equality were gathered. He crossed the Alleghany mountains and sought in New England those lessons. He learned very strange lessons, or he learned those lessons very badly. What does the history of that country teach us? In Rhode Island they have one senator for each county and one for each city in the state. Connecticut has adopted a principle which I hope never to see engrafted in the constitution of Kentucky. She has no districting, but elects by the state at large, twelve senators. Did the gentleman gather lessons of wisdom from her course of policy, or from that of the State of Rhode Island? He certainly did not from the latter, for he is not carrying them out. How is it in

New Jersey? One senator from each county. How is it in Delaware? Three counties sending three representatives each, the seat of government being embraced in one of them. Is that not the doctrine of equality of representation according to numbers? Where is Pennsylvania. She elects by districts, and no city is entitled to elect more than four senators.—Where in the United States is there more of the spirit of republicanism than in the Keystone state? No where, sir, though I claim an equal amount for old Kentucky. And I would rather have been born in Kentucky, than in any other part of the union. But to pass on to North and South Carolina. North Carolina bases her senatorial representation, exclusively on property. South Carolina upon population and property. I am opposed to the first scheme entirely, and I do not like the other. It shows there is a departure in both these states, from the principle which was adopted in those others to which I adverted and from the general principle laid down here, that population shall be the basis of representation? How is it in Vermont? a state from which the gentleman from Fleming the other day drew his wisdom. She elects her representatives on the principle of taxation; and Massachusetts regards taxation as the basis of representation. I do not quote New England as authority for my course of policy. I am willing to stop on this side of that silver cord so eloquently described by the gentleman from Kenton yesterday. How is it in Tennessee? She is districted. Her constitution is similar to that of Kentucky, and it was made in an enlightened period; it does not date further back, I believe, than 1835. She bases her representation almost entirely on population; but in order to prevent city influence from towering above other influences, her constitution provides that no county shall be divided in order to give senatorial representation. She has cities growing up. She has the beautiful city of Rocks on the Cumberland, and her great emporium of the west on the Mississippi. She expects that the time will come, when those cities will add dignity, power and wealth, to that state; yet her constitution provides that no division shall take place for the purpose of senatorial representation. How is it in Louisiana. The very principle we contend for is engrafted in her constitution. She has thirty two senators, and no parish is allowed to have more than one eighth of the senatorial representation. At the time her constitution was adopted, the city of New Orleans, according to her population, was entitled to four senators, and she is prohibited from ever having more.

Now, I ask if it is not a fact, that these conflicting interests do exist? I harbor no animosity against cities; much less do I envy Louisville, or wish to deprive her of any rights which she ought to enjoy. I have had favors from the people of that city, in the time of pecuniary difficulty, which have given me a warm attachment to this city, and my feelings of gratitude are still warm for her. As an evidence, when I was called upon to cast my vote for some one to fill the honorable station of president of this convention, my eye and voice fell upon one of her distinguished delegates. But I feel that there are greater interests in this country, than those

that are circumscribed by the limits of any city. The battle of liberty has to be fought throughout this land yet, and if we give to any portion an overwhelming power, we at once enable them to tie our hands, and dictate to us the pathway which we shall pursue in future. I, for one, am not willing to be placed in that position. Mississippi districts for the election of senators. Her constitution contains the same provisions that are contained in the present constitution of Kentucky. She has the cities of Vicksburg and Jackson, and she looks forward, probably, to the time when those cities shall be filled with an industrious population, which will perhaps amount to one-half of the population of the state. Alabama districts for senatorial representation. I look to the lessons of wisdom that are taught me by these three last mentioned states. I believe they are based upon the immutable principle of wisdom and self-protection. Missouri has the same provision. Each one of them district, but allow no division of counties in their constitutions. Arkansas districts, but forbids the division of any county in forming senatorial districts. It is contended here, that city and country influences always work harmoniously together for the good of the whole. I ask you to cast your eye to the magnificent city of New York, and what lesson do you learn? Whenever there is an election for chief magistrate of this union approaching, what is the note that is sounded from one end of this union to the other? As goes the city of New York, so goes the state. It is a doctrine preached from hill to vale; and as goes the great state of New York, so goes the union. If the city governs the state, and the state governs the union, I ask is there not an influence at work, that ought to be arrested in its progress? Senatorial representation is apportioned for the purpose of preserving a proper balance in the legislature. It is based upon the principle, that representatives coming from sections, might be disposed to combine, and by combined influence run into unhealthy legislation. Why do you want a senate at all, having a representation already on the principle of equality, in the lower house? Because, coming from the larger districts of a state, it is presumed that experience and wisdom will be the characteristics of that body; and that sectional feelings and interests will be destroyed. But sir, give to the cities the demanded increase of senatorial representation, and what do you do? You place in the hall opposite to us, a half dozen men from one point, who come there with an identity of interest for a particular purpose—it may be for weal, it may be for woe. I know that city influence has operated heretofore, in some respects, at least, to the detriment of the commonwealth. In what manner it has operated, let your beautiful railroads, slackwater navigation, and turnpike roads, all concentrating in one city, as a focal point attest.

This policy has resulted in an enormous debt, from which the people will not be relieved for these many years to come. The people have been led, by this syren song of Louisville and the middle districts, into a mesh from which it is not easy to escape.

I ask if two senators cannot represent a city

or town as effectually as half a dozen? There are but two great interests in the city; they are those of the rich and the poor, and the elder gentleman from Louisville, who has argued this question, furnishes us an evidence of the influence that may be exerted upon the latter class. District the cities, and when their population justifies, give them two senators, and each interest will be represented. I go with the gentleman's beautiful compromise that far; but I will stop short of the point to which he tends. I go for equal rights and privileges, and to secure them I would put a check upon this power, which may become so overwhelming in this commonwealth as to destroy the balance, and swallow up all other interests. Tell me not that the concentration of heavy capital is not liable to produce injurious consequences. Yes sir, it does, it will do it. Combine numbers with wealth, and add talent also—of which the gentleman from Louisville justly boasts—and then you will see that the lines in legislation will begin to open, the roads will begin to diverge, the interests of the poor will be lost sight of. You need not tell me that city influence will always be exerted for the good of the people of the country.

If, as some gentlemen say, city influence is political purity itself, why is it that we find, upon examination of our penitentiary register, that about nine out of every ten convicts are from the cities. Sir, degradation and crime delight to revel in the city full. Have their votaries any just appreciation of the principles of free government? Compare city and country morality, according to the calends above referred to, and then tell me to which you would entrust your country's dearest treasure? Cities always have been, and still will be, infested with these thieving rascals. They have the rights of suffrage, without the feelings of Kentuckians. We cannot deny them the right of suffrage, but we can place such restriction on their representation as to render them harmless. Give to each city two senators, and they will have no reason to complain. Has Louisville a senator now? No, sir. Why? Because our forefathers deemed it right to protect the country against city influences. The gentleman says, that he was sent here to preserve an equality of legislative power to every portion of the state. Was he sent here to mete out to Louisville what she never heretofore had? As for myself, I had no instruction in regard to this matter. It was not expected that it would be brought forward. I am here to act as my judgment dictates, and I will take the responsibility of acting for myself; and I do not fear that I shall not be able to satisfy my constituents. I do not fear that I shall not receive from them, their approval of my course on this subject.

I want no distinction in this country, but I see abundant indications of a disposition to introduce invidious distinctions. And when these overtowering influences, of the agents of your cities are concentrated in your legislative halls, the weakness and divisions of the country will not be able to resist these influences. We shall be led like sheep to the shearer, and not be permitted to open our mouths. I want to guard against such influences, come from what quarter they may.

I have given some of the reasons that will operate with me, in giving my vote upon this question, but I want to refer for a moment, to some of the remarks of the distinguished gentleman from Henderson. He says we are casting an insult upon Louisville. What insult do we cast upon her? We propose to give to her citizens full representation in the lower branch, and two senators as soon as she has population to demand them. We propose to give her as much as she can claim for her population in the way of representation. Is it casting an insult upon her, to say, at a certain point thy proud step shall be stayed? How do we insult her? I deny that my action leads to any such result. He says we bring her here as a criminal—to be sacrificed, I suppose, upon the altar of our folly. I arraign her not as a criminal. She is filled up now with native born citizens, to a great extent. I know her action will be judicious, at least as far as her own interest is concerned. Where is the increase of her population to come from? From across that silvery cord, of which the gentleman from Kenton talked so eloquently yesterday. Yes sir, what is its object? It is to virtually destroy that bright and brilliant silvery cord, by which the great antagonistic interests of the country are now separated. Yes sir, for the purpose of placing the power of the south at the feet of the north, and those principles for which our fathers fought, bled, and died, are to be forever extinguished. Tell me not that we should introduce men from beyond the Ohio, to teach us lessons of government. Look at your national councils. Where is the spirit of conservatism, of which men delight to boast so much in this house? It is to be found only in the delegations from southern states, while in the north, the spirit of give us all power is practised upon. We are asked to surrender our dearest rights; and for what? That this very doctrine of equality of right may be carried out. Sir, surrender our dearest interests into their hands! I am not for doing it. I would leave the north to follow its own policy; but God defend me from that portion of her population that will come here. Why? if a northern man is a good citizen there, as a general rule, he comes not here. There is no inducement for him to come here, whilst the vast plains of the west remain unsettled. If the doctrine of the gentleman is carried out, what will it result in? It does not require the forecast of a prophet to tell that vast numbers of the more inferior portion of northern population will, as they thicken there, and are pressed out, find a home along the banks of the great dividing line between the north and the south. And sir, are the renegades from justice, the outpourings of northern jails and penitentiaries, and the vile abolitionists, to come in upon us, and demand an equal share in the law making power of our state, and above all sir, are we to be frightened into compliance with their demands before they come? Are we sir, to open wide the door and send out our messengers to bid them welcome in. Sir, let us provide for ourselves and we shall have done all that our constituents expect at our hands.

The gentleman from Henderson enters into a mathematical calculation to show that a dangerous preponderance is not likely to exist in our

cities on account of their growing population. He says, sir, that when the state has 1,200,000, Louisville will have 75,000. How does he arrive at it? In 1820 Louisville had 4,000 population, and the state about 400,000. In 1840 Louisville had 20,000, and the state 700,000. In 1849 Louisville has 50,000, and the state perhaps as much as 850,000 outside of Louisville. What has been the relative increase? Whilst Louisville has twelve and a half times the number she had in 1820, the state has a little over doubled her population. If we take the increase of the last nine years as an indication of her future advancement, the disproportion against the state will be much greater than even shown as above.

But the gentleman shows that a great period must elapse before Louisville can become potential in the councils of the state, through her senatorial representation. I dare believe, sir, that his mathematical skill is much at fault in this matter. She is now entitled to one senator, and perhaps by the time representation is apportioned, under the new constitution, she will have the numbers to give her two. Double her population in ten years more, and she will have three, and a large fraction upon which to ask a fourth. Go ten years further on, and she will have five senators at least, and about fifteen representatives in the lower house. One eighth of the power in the senate at least, and one seventh in the other branch. Bring twenty men from one point, with one common object in view, and I ask you, if it is not a power that will give tone and direction to our statute laws. If her interests coincide with the balance of the state, all will be well; but sir, if they should differ, it will be then too late to look back in regrets at the principle by which we are now governed in this matter. There are other great interests in this state that demand our vigilant watchfulness besides those of Louisville.

There is a tendency in all our institutions to centralization. When a young man far removed from the capital is ambitious of distinction, can he expect to find it there? No sir, he breaks up, and as true as the needle to the north, steers his way to the capital. 'Tis sir, because this has become the fountain from whence all honors flow. How, sir, are they dispensed? Not to the extremes, but to those who fawn at the foot of power. There is a central influence which is dangerous to the body politic. There is, so to speak, a hypertrophy of the heart of state. There is a power to draw in, but not to throw out to the extremities. It is fitly illustrated in my own person. Whilst the chest is overburdened, the extremities are without the necessary circulation to keep up a comfortable degree of warmth and vitality. The seeds of dissolution are sown in this frame; let us beware how we sow them by our action in this particular, in the body politic.

There is a concentration of the wealth of the state within the cities, and its tendency is to accumulate, and to produce a preponderating power and influence. I am for diffusing this influence, by securing to the country a suitable representation. I am for securing to the citizens of the country their just rights, and when this is done, the rights of all will be maintained. They have no interest in departing from correct prin-

ciples in legislation; but it is not so with cities; they are ever watchful and anxious to increase their own power, and to do this they lay the hard fisted yeomanry under contributions. They are called upon to bear the expense of all those improvements that are calculated to benefit the large cities. I am for sustaining the interests of every part of the state. I want no influence in the country that can destroy the city, and none in the city that can destroy the interests of the country. Let us go arm in arm, and hand in hand, consulting together for our mutual advantage, and we shall reach the pinnacle of that temple which the gentleman's imaginations have created. I deny that we are attempting to take away from any portion of the inhabitants of this state, the elective franchise, or any other privilege to which they are entitled. We are endeavoring only so to diffuse the powers of government, that they may act in a healthy manner upon the body politic. I have now Mr. Chairman exhausted my strength, and occupied more of the time of the house than ought to have been done. But sir I did not feel willing, after the aspersions that had been thrown out by gentlemen in the opposition, to cast my vote without saying as much as I have. My purposes sir are as pure as those of any gentleman upon this floor, and all insinuations to the contrary I hurl back upon those from whom they come, irrespective of position or distinction. I thank you sir and this house for the patience with which my remarks have been received.

Mr. NEWELL. I confess that my mind has been on the stretch for four or five days past in regard to the amendments that have been offered to the report of the committee. The subject of slavery, nativism, internal improvements, and I don't how many other subjects, have been discussed, all of which I thought entirely foreign to the subject, that this house was endeavoring to arrive at. It seems to me the whole ground could be covered by one of these inkstands. The matter before the house, as I understand it, is about this: shall representation be based upon the voting population. I think, sir, as far as I have been able to understand gentlemen, who have expressed their views, they all unanimously agree upon this point. There has not been a dissenting voice, I believe, except that of the gentleman over the way, who thought that the liberty of voting ought to be based upon a certain degree of intelligence. Now it appears to me this would be a difficult matter to determine, without a committee of investigation. The whole matter is, is this city representation of so great importance that we should deviate from a rule that we all say is just and right. That is the question. Sir, I would despair of our government, I would despair of Kentucky continuing what she has been, if we have to deviate from that rule. For what? For the purposes which gentlemen have urged from every corner of this house. It is a yielding up of the fundamental principle upon which republican government is based. What have gentlemen told you about city population? They have not said they were fearful of such a population at present, but the day will come when a population will assemble along that "silvery cord," as it is termed, that will be dangerous to the interests of the state. According

to the argument of gentlemen, every farming community is honest, but whenever you get into the city you find a population of rogues and rascals. Are we to denounce a portion of our countrymen by such epithets as these? They say that the population along the banks of the Ohio, become contaminated by intercourse with foreigners. Tell me not, that an enlightened delegation, like this convention, can be imposed upon by such statements as these. If it be right to curtail the representation of a city, it is equally right to curtail the representation of a county. I ask gentlemen where they will stop? Sir, there is but one course to pursue, and that is to grant equal rights to all, exclusive privileges to none, and if this principle be not carried out, I, for one, shall despair of our republican government.

The question was then taken on Mr. Lindsey's amendment, and it was rejected.

The committee then rose, reported progress, and obtained leave to sit again.

And then the convention adjourned.

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FRIDAY, NOVEMBER 16, 1849.

Prayer by the Rev. STUART ROBINSON.

LEGISLATIVE DEPARTMENT.

Mr. IRWIN offered the following resolution:  
*Resolved*, That no county, town, or city, now entitled to separate representation in the lower house shall ever be entitled to more than one senator.

Mr. President: I offer the resolution which I have just sent to the clerk's table, with a firm belief that it will be adopted by the house; and my object is, to have a direct vote upon it, that the house may know whether or not there is to be any restrictions on counties and towns that may be entitled to a separate senator.

The object of the Article presented by the legislative committee, and those who, for several days, have addressed the committee in favor of no restriction as to senators in the cities, has been, to prove that it would be unjust, and unequal—that it disfranchised one part of the state for the benefit of the other, and destroyed the equality which should exist in a free government, where all are acknowledged as equal—where numbers are acknowledged as the true basis of representation.

I undertake to demonstrate, in a few words, without the fear of successful opposition, "that without this restriction," you never can, after this first apportionment, increase the senatorial representation in Louisville, or any other city, without bringing that city into direct antagonism to the whole state.

The Article sets out by agreeing that there are to be one hundred representatives in the lower house, and thirty eight senators. This is the maximum, and no effort can reduce it. If, therefore, Louisville gets one senator, the whole balance of the state can get but thirty seven. Suppose, for the sake of argument, that the whole state shall increase in ten years fifty thousand

voters, and Louisville ten thousand voters (assuming the number of voters now to be in the state at one hundred and forty thousand,) the ratio would then be about five thousand seven hundred and ninety two. Accordingly, Louisville, would be entitled to two more senators, and the state at large reduced to thirty five. The state, then, in no contingency, could increase a single senator, but must lose, at each returning ratio, throughout all time to come. As long as one city, or two cities, could increase at the ratio I have just mentioned, they would increase, if time were long enough, until the state could not have a single senator, and every senator would be from the city. I do not say that a city ever can maintain a population sufficient to produce this result; indeed I know it cannot; but such would be the tendency of the principle. This brings us, by my first proposition, to one thousand eight hundred and sixty. If the assumption for my first increase in the first ten years be correct, in 1870 the voting population in the commonwealth will be two hundred and eighty five thousand nine hundred and fourteen. The ratio then would be seven thousand five hundred and twenty four, and the increase in the voting population of Louisville will have gained precisely seventeen thousand votes, which will again entitle her to two additional senators, and a surplus of one thousand eight hundred and fifty two voters; thereby reducing the state representation to thirty two. This process is bound to continue, no extraordinary circumstance intervening. If our happy country continues to progress, (as I most devoutly hope it will,) I ask gentlemen if they are prepared to incorporate a principle so disastrous to the representative principle, so absorbing in its character, and so destructive in its consequences? Again, you must see that this principle operates oppressively upon the whole state, because, although the whole state increases five times as fast as the city, yet the only consequence is, that it diminishes the senatorial representation in the state, because it is frittered away by thirty seven districts. Yet when it operates in a single concentrated point, it must, of necessity, absorb the whole. In other words, adopt any other principle than that contained in my resolution, and you immediately set up Louisville against the whole state, for she is compelled to gain, and the balance of the state must lose.

Some of those who address the house upon this subject, seem to think that this principle of self-preservation, on the part of the balance of the state, is a wanton infringement upon the equal rights of the free citizens of a particular part of the state. But I ask, ought a principle to be adopted that must, of necessity, disfranchise the balance of the state? No, sir. I must, from my understanding of the question, be for restricting the counties, cities and towns that may be now entitled to a separate representation in the lower house to one senator.

Sir, I am proud of the city of Louisville. I am proud of her commerce and her manufactures, yet when she asks me to incorporate a principle which is eventually to absorb the whole senatorial representation, she asks of me too much. Sir, I have no disposition to restrict Louisville, more than any other county, town,



or city. I associate with her talented members on this floor with great pleasure, and I feel, if I know my own heart, I wish to do her no injustice.

I will, sir, take one other position on this subject. Suppose to-morrow the state could increase one hundred and twenty thousand voters, and Louisville should have only ten thousand of those voters, she would have the benefit of this great increase, and the state must lose one senator; because, so long as the Louisville district shall keep ahead in population, she must, of necessity, have the senator, and the state must lose.

The honorable president has remarked, that if any principle or restriction should be incorporated in this constitution, he would not sign it; and if I did not think that it would be in bad taste, I might follow his example, and the consequences might be fatal.

Some gentlemen argue this question as to its bearing on the slave property of the country, but I do not feel at liberty to suppose that we ought to apprehend that any danger is to accrue to the interior from the increase of population on our Ohio border.

It is true, that the population on the Ohio river is perhaps alien to this interest. But relying for the perpetuity of the institution of slavery upon the public justice of the good citizens of the state, I know that no constitutional guaranty for this property that does not receive the sanction of the people, as just and right, can long remain as the organic law of the land.

It will be recollected, that upon this subject of slavery, a few days ago, I was anxious to incorporate the law of thirty three, but, sir, I shall not insist upon it, because I knew then, as well as now, that the most that could, or perhaps all that ought to be done, was to leave this question to the legislature; and I shall be perfectly satisfied thus to leave it.

The legislature emanating directly from the people, representing their interest, and knowing their wants, can more appropriately carry out the details and the policy of the state on this subject.

I am anxious that a direct vote may be had on my resolution that we may know whether or not any principle of restriction is to be incorporated.

It is known that the debate on this subject must cease on Monday the 19th instant, and previous to that time we should examine the sixth section, which apportions the representation in the state; it is the most important section in the article, and should be particularly and critically examined.

I am done sir. I wished to make the demonstration which I have presented to the house. I think it is clear, conclusive, and just, and I submit the proposition to the house.

Mr. TURNER. I wish to offer an amendment as a substitute for the resolution of the gentleman from Logan as follows:

1. *Resolved*, That as a general rule, representation should be based on numbers, but this like most general rules is liable to exceptions, and when the general welfare and public safety would be jeopardized by the full allowance of this principle, it should be departed from.

2. *Resolved*, That each county and city in the state, should, in the apportionment of representation, be allowed its full share, according to its present number of voters, but that we are under no obligation to grant an equality of political power, where the public safety forbids it, to those who may hereafter migrate to Kentucky.

3. *Resolved*, That no county or city should ever be entitled to more than one senator, but should have a full representation according to numbers in the house of representatives.

I desire to make some remarks sir, on my proposition. It will be seen that in principle it is the same as the resolution of the gentleman from Logan. But before I proceed with my remarks on the pending question, I desire to make some observations on what has been said here in relation to myself, and to a speech which I delivered some days ago. Sir, I think I may say with great confidence that I have never uttered one word or given expression to one sentiment of unkindness towards any gentleman on this floor. I have attempted to discuss principles—not so ably and so forcibly as some other gentlemen—but I have done it courteously, and I claim for myself the same courtesy and the same respect that I extend to others. I do not say that gentlemen have been intentionally discourteous, and that they have wilfully misrepresented me, but I have witnessed a practice growing up in the convention of imputing positions to gentlemen which they have never taken.

Sir, the younger gentleman from Louisville, (Mr. Preston) has charged me with having traduced the citizens of Louisville. He has erroneously done so. There is not a gentleman here who has kinder feelings for the citizens of Louisville than I have. Take the course I have pursued as an indication of my feelings towards Louisville. One of the first acts I did here was one of kindness towards Louisville and her citizens. In the discussion and controversy between the delegates from the city of Louisville and the county of Jefferson, I took part with the city of Louisville, because I thought what was asked by the county of Jefferson would lead to mischievous results, and I believed her grievances could be properly redressed in another manner.

Again, when the subject of the Louisville chancery court came up, I believed that it was right that there should be such a court at Louisville. She is a great commercial mart, and it is right that she should have a court of that character, and I rose in my place and said so.

With regard to Covington I entertain no unkind feelings. If I were disposed to cherish such feelings, she has a representative on this floor whose gentlemanly demeanor, propriety of conduct, and commanding talent, would at once disarm me. I certainly did allude to the fact that there are persons in Louisville and Covington who are in favor of emancipation. That is a fact that is well known; but I have not intimated, nor do I believe that the great body of their citizens are disposed to take away the rights of others. I believe they are in the main friendly to our institutions, but on one point I believe a part of them are mistaken. They have been misled sir, and though I differ from them in sentiment on that question, I would not wound

their feelings, or offer to them an insult. In the county from which I came sir, nine tenths of the emancipationists are my particular friends, though they voted against me at the polls. They exercised the right which the constitution guarantees to them, and I have no desire to deprive them of that right.

With respect to the senatorial representation of Louisville, I have thought that one senator was sufficient for that city; but I am willing to meet them half way. I am willing to give Louisville and the county of Jefferson, outside of the city, representation according to the ratio. I am willing to go the same extent in relation to Covington, Lexington, and other cities of the state, but I am unwilling to give any city more than one senator.

I know, sir, that some excitement has grown up here, and I might have passed over some things which have been said, if it were not that a remark of the gentleman from Louisville, (Mr. Preston,) in relation to myself, was repeated by the gentleman in reply to an inquiry by the gentleman from Simpson (Mr. Clarke.) The remark to which I allude was to the effect that the gentleman from Madison had exhibited the spirit of a demagogue. This, sir, is language which I regretted to hear, and I hope it will not be repeated. Although we may occasionally get involved in excitement, we should not lose sight of a proper self-respect, and I throw it back at the feet of the gentleman. If I am justly chargeable with any thing more particularly, it is with being too conservative to suit the times. Instead of striking too low, I may have struck too high to suit the sentiments of this honorable body, and the leveling spirit abroad in the country; and if I should be charged with being too conservative, I would offer no vindication of myself from such an imputation. My conservatism, sir, will not prove injurious to the commonwealth of Kentucky. I fear, sir, that we are doing and are about to do more than this great commonwealth expects us to do, in pulling down and subverting the constitution of 1793.

There was another remark of the gentleman from Louisville, (Mr. Preston,) which I cannot pass unnoticed. It was, that I have made an attack (in a speech delivered some weeks ago) on the institution of slavery. Sir, that was an extravagant statement. The gentleman's position now, I do consider dangerous to that institution. I shall not enter upon a defence of myself against the charge. It is sufficient for me to say, that my constituents are satisfied. I know their wishes and desires, and with my conduct they have expressed no dissatisfaction. But I take this occasion—not for my defence (I need none)—to say that gentlemen shall not, without a refutation, impute to me sentiments which I have never entertained or uttered. So far as regards the institution of slavery as it now exists, no gentleman in this convention will go further than I will according to the lights I possess. But I am against the importation of more slaves into the state. I think the importation of slaves will tend to render the property here of that kind more insecure. I believe to permit the importation of slaves will ultimately cause the destruction of that institution in Kentucky.

I believe that capital can be more profitably vested than in importing slaves; besides it is a traffic that is against the lights and feelings of the age in which we live.

That I may not be charged with having uttered that which I have not said, permit me to read a few extracts from my speech, delivered on the 10th October, to which gentlemen have so often referred:

"It will be perceived that in this resolution, a portion of the old constitution—the clause which gives the power to emancipate by making just and previous provision to the owners—is omitted. I am opposed to taking the property of an individual, which he has acquired under the sanction of the law and the constitution, at all, unless with his free will and consent. I do not believe that it is consistent with the principles of our government to do so. The very first principle of the government of the United States, and of the state of Kentucky, and, indeed, one of the grounds assigned in the declaration of independence, as a cause of separation from the mother country, was, that private property should be secured against the exactions of government."

Again sir: "I therefore have regarded this principle of the right of property, as asserted in the declaration of independence, in the constitution of the United States, and in that of Kentucky, and I look to it as lying at the very foundation of our government, and as a moral principle which ought not to be violated under any circumstances, or in any way or shape."

Again sir: "I believe that the slaves in Kentucky are in better condition now, than any in which you could place them—that they are in a better condition than the laboring population of any part of the globe—and I do not believe it will benefit them to send them to a foreign country, or to sell them to the south or any where else. But if you would benefit them, the question is, whether you would enslave the white men for the purpose—for you might as well do so as to impose upon them a tax of \$4,200,000 a year, in addition to the taxation now necessary to carry on the government and pay the interest on the public debt."

Again sir: "I wish to make the prohibition against free negroes as stringent and extended in its operation as is possible. I wish in this matter to go to the verge of our power under the federal constitution. I believe that if there is a curse alike to the white and the black race, it is in having free negroes where there are vicious white men."

Again sir: "It is the working portion of this commonwealth, those who have to work their way up from small beginnings in order to gain a position for themselves and their families, it is this class of the community who are interested in retaining the institution of slavery in this state; because the slaves keep out a pauper population; the emptying of the jails and the poor houses of Europe, the renegades from all parts of the earth, who come here and compete with the whole population in point of labor."

And again sir: "We all know that the institution of slavery is the best in the world for keeping society from becoming fixed and settled. Look at those who were originally overseers in

Virginia and Kentucky, at their first settlement. They have many of them become the proprietors of the very estates upon which they were at first employed as overseers. And their descendants now fill the halls of legislation and the courts of judicature of the country, whilst the descendants of the original proprietors have descended to a different level in the scale of society. Such revolutions in the condition of individuals do not take place half so often, where the institution of slavery does not exist, where it is not recognized. Go to New York and to Massachusetts, and you will find many estates that have descended in the same families while the poor laborer is the poor laborer still. It is true, there are exceptions, but not the same number of exceptions as under our institutions. So you will see, though I am against extending this institution or increasing it, it has a wholesome effect in some respects, while it has in other respects a highly injurious effect. I believe that they, who are raised up where the institution of slavery exists, with some exceptions, have been uniformly distinguished. Who has ever seen such a constellation of great men as the southern states have produced, since we have achieved our liberties? Look at the great men of Virginia, South Carolina, and of Kentucky, and where are the men who are worthy to be compared with them, in the free states of the north. We have had, it is true, an Adams or two, a Webster and a Wright, but they are few and far between. But you will find them in the great south. And sir, there is a nobleness of spirit, a feeling above littleness, a greatness of soul that grows up where the institution of slavery exists, that is scarcely to be found in any other country."

Mr. President, in these extracts is there anything found inconsistent with what I said on last Saturday? Is not every word of these extracts consistent with the resolution which I have offered this morning? What ground then is there for the imputations which have been made against me? Sir, either I do not understand what is requisite to secure the institution of slavery, or the gentleman does not understand it. If slavery is to be sustained, there must be no more slaves brought into Kentucky, nor many more of the renegade description of foreigners or yankees. I do not desire to exclude those from settling among us who are upright, honest, industrious, care taking-citizens. How, sir, did we procure the suffrages of the non-slaveholders, last summer. By convincing them that if the further importation of slaves was stopped, and the migration of foreign paupers was checked, the reward of labor of those who are dependent on their own industry, would be increased; and that if we inundated Kentucky with more slaves and the renegades from Europe, the price of labor would be reduced, and the native population would consequently be injured. The foreigners to whom I allude, when they come here, can live cheaper and work for less than the native Kentuckian can; and if their introduction be continued, and more slaves are brought in, the native laboring white men will have no chance to get along and improve their condition. The consequence will be, as the price of labor falls, the laboring white man

will see that slaves are an obstacle to his getting employment, and he will turn against the institution. Sir, this is no new doctrine with me. I have long thought it would be better not to bring in any more slaves. It was the policy of Kentucky seventeen or eighteen years ago. It was certainly overturned last winter, but it was done without being demanded by the people, or previously discussed in the canvass, or in the public press, and without being asked for or desired by a majority. In many instances numbers voted for the modification of the law of 1833, against the wishes of their constituents. Why, sir, in 1830, the Hon. James Love, who afterwards represented the district in which I reside in congress, introduced a bill into the state legislature, providing that every slave thereafter brought into Kentucky by purchase, should be free as soon as he came in; and you, Mr. President, and I, sir, voted for it.

The PRESIDENT. The gentleman is mistaken. I never gave such a vote with such an avowal.

Mr. TURNER. Sir, I know nothing about the avowal. But I will turn to the journal of that session, pages 236-7, and see who is right. Here is the bill and the vote on it, with your vote side by side with mine.

"A bill more effectually to prevent the importation of slaves into this state, as merchandise, was read, as amended, as follows, viz:

"Sec. 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That none shall be slaves, except such as shall be slaves within this commonwealth, on the first day of June next, and the descendants of the females of them and such slaves as shall thereafter be lawfully imported into this commonwealth, and the descendants of the females of them.

"Sec. 2. *Be it further enacted*. That from and after the said first day of June, it shall not be lawful for any person or persons, to import into this commonwealth, any slave or slaves, except emigrants to the state, bringing their slaves with them, for their own use, and not for merchandise, and citizens of this state, claiming slaves in another state, by devise, descent, or marriage; in all which cases, it shall be lawful for any such persons, to import such slaves for their own use, and not as merchandise.

"Sec. 3. All laws now in force prohibiting the importation of slaves into this commonwealth, shall be, and the same are hereby repealed, from and after the said first day of June: *Provided*, That the provisions of this bill shall not apply to persons transiently passing through the commonwealth, with slaves, on their way to any other state or country: *Provided*, That nothing in this act shall be construed as to prevent persons emigrating to this state, and settling permanently in it, from selling their slaves.

"The question was then taken on engrossing the said bill, for a third reading, which was decided in the negative, and so the said bill was rejected.

"The yeas and nays being required thereon, by Messrs. Love and Chambers, were as follows:

"YEAS—Mr. Speaker, Messrs. C. Allan, B. Allen, Barrett, Brown, Butler, Burns, Cassidy, Colglazer, Crutchfield, Curd, Fields, Fowler, Gaines, Grundy, Guthrie, Hayes, Henderson,

Hobbs, Huaton, Jackson, A. Johnson, E. L. Johnson, Love, McAfee, J. T. Morehead, Murray, Patrick, Phelps, Rodes, Rudd, Russell, Shanks, Smith, Speedsmith, Strother, Thomas, Tomlinson, Tompkins, Turner, A. S. White, D. White, Wortham and Yantis—44.

"NAYS—Messrs. Anderson, Baker, Barlow, Beall, Calhoun, Chambers, Chiles, Churchill, Colyer, Copelin, Dawson, Dickson, Dyer, Ewing, Gass, Girtou, Grigsby, Hall, Hardy, Harris, Haynes, Hedy, Helmi, Hickman, James, Lackey, Lewis, McNary, J. K. Marshall, Mize, P. Morehead, New, Norvell, Patterson, Pierce, Preston, Ray, Robb, Roberts, Sisk, Sprigg, Stewart, Stotts, Stout, True, Vallandigham, Ward, Whittington, G. W. Williams, S. Williams, W. J. Williams and Wilson—52."

Mr. TRIPLETT. Will the gentleman excuse me; I think it better, for obvious reasons, that we should go into committee of the whole on the report of the committee on the legislative department, where this discussion may be continued.

Mr. TURNER. If it will be the understanding that when we are in committee of the whole, I shall have the floor to continue my speech I have no objection. [Agreed, agreed.]

Mr. GRAY. I beg to suggest to the gentleman from Daviess, that a difficulty presents itself. The convention has now before it for its action a resolution and an amendment thereto, which will not be before the committee of the whole. I submit therefore whether it will not be necessary to dispose of this resolution in convention.

Mr. TRIPLETT. To obviate that objection I will move that the pending resolution and amendment be referred to the committee of the whole having charge of the report from the committee on the legislative department, and that the convention now resolve itself into committee of the whole thereon.

The motion was agreed to, and the convention resolved itself into committee of the whole, accordingly, Mr. MERIWETHER in the chair.

Mr. TURNER. I simply refer to the facts, and so far as respects the vote of the representatives from Jefferson and Louisville, I think, I cannot be mistaken. And if there has been any difference of opinion on the part of the honorable President or the Chairman, (Mr. Meriwether) and myself, till the present time, I did not know it. I bring this matter forward simply to show that gentlemen who have gone the same way with me, in relation to slavery for nineteen years, now come here and throw it in my face, that I occupy a portion of the ground which the emancipationists do, as the honorable President, and you Mr. Chairman, did some weeks since. When I take ground I will maintain it, and I am not to be scared by an old shirt hung up in a field as if I were a crow. In my canvass for a seat in the house of representatives the year that this vote was taken, I went to a meeting at a Baptist church, and was there on Saturday. There came up a question at that meeting, whether they should have what they called a decorum or constitution of the church. Some were for taking the bible as a whole for their sole guide, and others wanted the decorum or constitution, to aid in matters of church discipline. A large

majority were in favor of the decorum or constitution, but before a final vote was taken an old man who was a member went out from the meeting, and returned soon with a very wise look, and said he to the congregation, "I have just the information that will surprise and astound you. I have ascertained that the very decorum we are about adopting, was written by a pope of Rome three hundred years ago." The consequence of this information was that the decorum was rejected by a vote of four out of five, because the Pope of Rome had written it originally, not because one word of it was wrong in principle.

Now, because the emancipationists take the ground that you and I, Mr. Chairman, and the honorable president, have occupied for twenty years, must we run and leave it, and cry popery, popery—as our only reason for so doing?—The emancipationists in my part of the state are generally in favor of electing all the officers of government. Should we run from that ground because they believe it right? I have assumed it: if you, Mr. Chairman, and the honorable president are made of such materials, I am not, and my constituents are not.

There are some little matters of which I wish to speak, before I go on with the main debate. There were a few things said the other day by the honorable president of this convention, which I now wish to pay some attention to. In speaking of my position, he uses this language. My attention was called off at the time, and if I had not been afterwards informed of what had been said, I should not probably have read the speech. But there is this sentiment, and if there is one heart in this house, or in this great commonwealth, that responds to it, besides the honorable president's, I am deceived. Replying to what I had said in debate, the president said: "Thank God, emancipation has not drenched the fields of Louisville with blood."

I understand that the honorable president when he uttered that sentiment, thrust out his huge head at me, as if he wanted to send increased pangs to my heart. I have nothing more to say about that. If it was intended for me I envy not the heart that conceived, or the tongue that uttered it. It is true sir, it is true that misfortune happened in my county in the canvass and blood was shed—yes, blood dear to me—and it is likewise true that if you go to the great and glorious battle field of Buena Vista, you will find there was kindred blood poured out there, and in both instances to sustain and maintain the institutions of my country, and there is more of it still that will be offered up when there is a requisition for it in such a cause.

Here is another sentiment which I will read. The honorable president in the same speech said in speaking of the proposed restriction on city representation: "I have no more confidence in those men that have made up their minds to invade the rights of their fellow citizens, and stifle the voice of the people of Kentucky, than I have in the voice of the Autocrat of Russia, who thinks and acts for the whole."

Now this is quite courteous—is it not? It is true that it is rather stronger than I allow my overseer to use towards my slaves, unless the offence is great. I came not here to stifle the

voice of any of the people of Kentucky, and I deny that that remark will embrace me. But this was manifestly uttered here for some purpose or other. Was it to deter us from free debate and free action? I dislike to think that after being honored with a high seat in this convention, he would make such a declaration for that purpose. But the honorable president did not stop at this remark. He said we would go as far as the Autocrat of Russia, and would go further if the temptation were sufficient. We must be a wretched set of scamps if this be true—and it goes very far to show that those who sent us here are not very highly qualified for self-government. The president further declared: "I can sign no constitution which denies to my constituents those equal and political rights that other freemen have."

I do not think we shall put on them any restrictions which other freemen have not. This was spoken with reference to a future state of things. I regret he should say this. It might make an impression on the people, that if he did not sign the new constitution, they could not have the benefit of it. This would be terrible—awful! It is painful to separate from the gentleman on ordinary occasions, but when he talks about not signing the constitution, as Jack Downing would say, "it is almost too painful for human nature to bear." If he does not sign the constitution, the residue of the convention can, and if a majority of the people agree upon it, it will be valid without his name. But he has, to add to his cruelty, avowed that he will go before his constituents and oppose its adoption. Merciful Heavens! save us, and the fruits of our labor, from such overpowering opposition.

I will say a word or two about the general apportionment bill, as I understand we are to take a vote on it in one or two days. I have made out a list of twenty-six counties, which contain a voting population of twelve thousand three hundred and ten over and above the number of members they will be entitled to, under the report of the committee. These counties run through the heart of the state. In many cases, the residuums of these counties are taken off and applied at a distance of one hundred or one hundred and fifty miles, to counties with pursuits differing from those whence they are taken. I think the old constitution, in this respect, is the best. It gives the residuums to the adjacent counties. There is a great difference of interests in the agricultural portions of the state. Some of the residuums from a corn growing or grazing county are taken to a tobacco raising county. The counties in the south are mainly interested in raising pork and in distilling, or in growing tobacco, while those of the blue grass region raise stock—horses, mules, and cattle. Now, whenever a residuum is taken from any county, it should be taken to one having the same general interests. The old constitution attempts to guaranty this common identity of interests and sympathies. I know that in practice, there has been some injustice committed under its provisions; but so far as we can put a check on this we ought to do it. I do not want it in the power of any political party to pro-

scribe another; but it is in the power of one or two great interests to proscribe a third interest, under the report of the committee.

Now, so far as respects the senatorial representation, you will see by the resolutions, which are referred to the committee of the whole, that they assume the position that every senatorial district shall have a representation according to the present number of its population.—Those resolutions are offered in a spirit of concession and compromise. You will see they accord to every county in the state a full representation in the house of representatives according to numbers, now and hereafter. The senatorial restriction on the future power in relation to cities, is to apply also to the counties—for there are some counties that grow up very fast, particularly those in which there are railroads, or in which iron ore is found, as, for instance, in the county of Estill, where there is iron ore enough to last the United States for a thousand years. The mountains where this mineral is found in superabundance, are two or three hundred feet in height, and twenty miles in length. There is a large coal region near them. It is probable that the iron and coal interests in that county, and the adjacent counties, will be the means of introducing a large population. My proposition, it will be observed is, that no county or city shall have more than one senator each. There are other counties, besides the one I have named, where the population would rapidly increase. New England is now looking to the water power of Kentucky. It is exciting the attention of the capitalists of Lowell and Boston. This water power is found not only on the margin of Ohio, the Kentucky and Green rivers, but in other portions of the state. There will be individuals brought there to work as operators in the various branches of manufactures—iron, cotton, wool, &c. We are making a constitution for posterity, and not for ourselves alone. We are charged with a desire to proscribe some portion of the citizens of Kentucky. We have no such object in view. All we ask is, that the great law of nature, self-preservation, shall be observed, and that our institutions shall be preserved in the constitution which we shall make. Are we making a constitution for the outpourings of the jails, penitentiaries, and alms houses of Europe, and of our large cities in other states, or is the instrument for the great body of the yeomanry of Kentucky? It has been argued here as if we were going to proscribe a part of our own people. I deny it, but I say it is our duty to protect those who are here, and their posterity, in their lives, liberty, and property, and to see that our institutions are kept sacred from the contaminating touch of the tens of thousands of foreign paupers and immoral immigrants who are daily landing on our shores, and migrating to Kentucky from the large cities in other states.

I intend to allude to one or two of the arguments of the younger gentleman from Nelson, who, in the early part of the session, in remarking upon a speech I had made, said, if I understood him aright, that my arguments were made to suit the other side of Mason and Dixon's line. That, however, is a matter of opinion. Now, I thought when he made his speech a day or two

ago, that he went further beyond this line, than I had ever done. How far did the gentleman go? Why, he went all the way to Europe, and like Macbeth, collected around him, and seemed about to introduce into Kentucky all sorts of people or spirits—black, and white, and red—green, spotted and striped, grey and grisly, and blue. But when he marched on his motly crew to the confines of the state, apprehending that we would not receive them, he went back and brought in Kossuth and his band of proscribed patriots to march at their head, and in their high names to render his renegades welcome to Kentucky. I would divorce that illustrious patriot and his companions from such a crew, as that he was bringing to Kentucky. Those brave Hungarians who have fallen on the field, fell in behalf of the last rights of man; as noble patriots, they have poured out their blood for the liberties of their country. If Kossuth and his compatriots were to come to Kentucky, I would open my heart, and say, "welcome." As God Almighty is my judge, I would, if they come to Kentucky, and I will divide with them the last dime, and the last crumb of bread I have. I will treat them as brethren. But I do protest against these gallant people being classed with and spoken of, in connection with the rogues and cut-throats of other countries, and against their migrating to Kentucky in any such company. I protest against it in the name of high heaven, and the character and great interests of the commonwealth of Kentucky. Sir, ten years ago I had a seat in the house of representatives, and at that time the gentleman from Nelson was the governor of this state. He had his excellent lady and his charming family residing here, and he and they went hand in hand with me against the importation of more slaves into this commonwealth. His lovely daughters came to the house day after day, and cheered us on, and finally, from being in a minority, we got a majority of five, and prevented the repeal of the law of 1833. I should have thought, looking to the fact of our having pursued the same course together, that he would not have talked of my arguments being made to suit the other side of Mason and Dixon's line.

Mr. C. A. WICKLIFFE. I regret very much that the gentleman has thought proper to introduce the name of my family.

Mr. TURNER. I did it in all kindness, sir.

Mr. C. A. WICKLIFFE. I have no doubt of that. My remark with reference to the subject of the gentleman's speech, was made respecting that portion of it in which he alluded to the treatment of slaves in the slave states, and gave such a graphic description of it as I have often seen in the newspapers of the day. It was not with reference to the principles of the law of '33. That law, as now modified, meets my approbation, as I understand it. When a member of the legislature I believe I voted against its repeal. It was not that he advocated the principle of the law of 1833, but it was that graphic description in which he portrayed to our imaginations, and in which he called on us to know how we would like to see our wives and daughters chained and dragged from our bosoms and our firesides.

Mr. TURNER. In 1831 I used the same ar-

gument, because I thought it necessary to reach a man's feelings, as well as his judgment—not that slaves are chained in Kentucky, or treated amiss in the south—a sentiment I never uttered—but I objected to their being chained and brought here. I supposed it was not a sight desirable to any. If it is to the gentleman he can say so, I will give way. As the gentleman is silent, I take it we agree. I do not believe there is a country where slaves are as well treated as in Kentucky. I think they are in a better condition in Kentucky than the poorer laboring class of any state of the Union. When remarks are thrown out about my position, I will try to throw them back, perhaps not as gently as the gentleman from Mason says the lover strikes his mistress with a boquet.

I think we ought to make a constitution for the people of Kentucky; for those who are here now and their descendants, to protect them in their rights. If we had been asked last summer, will you make a constitution to sustain the people of Kentucky against the great and overwhelming tide of pauper emmigration, or for those paupers, what would we have said? We would have said we will make a constitution for you—we will look to you first, and if we can give these other people as much political rights with safety as you have, we will do it. If we cannot, we will not do it.

Did you ever look into this matter of an organized city with its government? It is a government within a government. Is there not something that requires that such a population as fill up cities, should not have as much political legislative power as those who live in the country? We have nothing of a mayor or other officers of that sort; we have no city courts, no government within a government. Under the old constitution, you granted out the whole legislative power of the government to the cities over their citizens, and then the cities make laws for themselves, if not inconsistent with the constitution or statutes of the state government. The city has its mayor, aldermen, marshals, &c., and after having ninety-nine hundredths of the power which the legislature possesses, they have equal power in the legislature itself. Is this right? Suppose the gentleman from Fleming comes and asks that a little portion of his county shall have power to enact laws for itself, and after this is granted, should ask for equal power in the legislative government with the residue of the state. Would it be right and proper she should have it? Are they to be made so great, and then come back and have equal power in general legislation with all the agricultural portion of the state? We first give them power to legislate for themselves, and then they ask for full power to come and legislate for us. I think this is not right. It is asking too much.

It has been objected that we brought in here the constitution of the United States, and of other states, and we were then asked if we would adopt their provisions in our constitution. We brought these in, to show that numbers was not practically the basis of representation in the federal or state governments. Look at the District of Columbia. She has no representation in congress. I suppose those who framed the constitution of the United States understood



the rights of man as well as we do. Why is it that the great states of Maryland, Georgia, and Louisiana have said their cities shall not have more than half the legislative power to which their numbers would entitle them. It is because they have delegated to them a large portion of the legislative power of the country for their benefit, and they ought not to govern other people. But we accord to them full representation in the house, and one senator to every county and city to protect their local rights.

Instead of our wishing to proscribe cities, they wish to proscribe us. They first ask us to give them full power, without our having any partnership in their local governments, and then they come back and kindly ask us, as you have given us this, why not in your great generosity let us govern you also?

I have the same opinion in regard to this that my friend Mr. Mize from Estill had on a different occasion. When he and I were members of the legislature, he was a democrat and I a whig; he professed a great regard for me, and said, as he called on me almost every morning, "I like you better than any man I ever saw. I said to him, there is a United States senator to be made now, and your vote will elect me. Said he, "Turner that is carrying the joke a little too far." It is carrying my love for the cities a little too far to ask me to give them power to govern themselves and then have a general partnership power to govern me besides.

What are we to ask ourselves when we go back to our constituents, or what will our constituents ask us? They will ask, did you make a constitution for us, or for the paupers of Europe. Will you say you thought numbers was the basis of representation? Again, they will ask what numbers, Kentuckians, or Germans, or the renegades from New York or Boston? I thought the states of New York and Massachusetts made laws for their people, and the countries of Europe for theirs. Why we are carrying this further than they did in France in 1792, when they proclaimed universal liberty, equality, and fraternity to all the world. It is saying come one come all you outcasts of Europe and of the great cities, and as you are so much better skilled in government than we are, we will give up the government of Kentucky to you, and let you control.

Why, we see what has been done in Ohio. I am not for making a constitution for whigs or democrats. Here is a foreign interest in the state—Wilnot proviso politicians, free soilers—and they elect a few representatives to your legislature. The two great political parties of the state are pretty equally divided, and these few individuals who belong to neither one nor the other party, can, if they choose, give one of them the ascendancy. Well, this free soil power throws itself between the two great political parties of the commonwealth, and offers a *carte blanche* to be filled up by the one who will give them the most in power or station. Now, I will ask, if we came here to make a constitution to have such a state of things? Did we come here to sell our rights? No. In the resolutions which I have offered, I said nothing about Louisville, Covington, Lexington, or any particular city or county. It is to carry out the general

principle of protecting the rights, interests, and institutions of Kentucky, that freemen of this commonwealth are to hold the power of governing. We are not willing to invite men here to destroy our institutions and drive us out of the country. Can any man doubt that if these foreigners are invited to our country without stint they will take possession of your shores first, and afterwards find their way into the heart of the country, and finally they will, if not restricted, have the balance of power in the state, and the institution of slavery will be abolished? These men will be opposed to it because they do not understand it. And yet they have lived in slavery and starvation under a government of their own in Europe. Our negroes are a fine, hearty set of fellows. It would do your heart good to see them on a Sunday, neatly clad, returning from church, talking and laughing with their wives and children, and all appearing as happy as possible. Now, I wish to keep them in that happy condition, and I do not want those ignorant and degraded foreigners to come in amongst us and disturb our peace and quiet, and drive the poor negroes out of the state. I have sympathy for those poor creatures, many of whom have nursed us when we were young, and our children since. I desire to see them well treated and taken care of. There was a gentleman of my acquaintance in Madison county, who last summer, having attended a political meeting, on returning home, found that his negroes had been told they would all be free in August. They were in a hurly burly way in consequence, and very unsettled. The gentleman called them all before him, and told them that by the next Sunday morning week they must have their clothes fixed up, as he was going to send them to Liberia. They were much astonished and alarmed, and the negro who was at the head of them, stepped forward when the period came, and imploringly exclaimed, "for God's sake, master, let me stay—don't send us to Hellberia;" and all of them promised to be the most obedient servants in the world if permitted to remain. The fact is, we do not want foreigners in such crowds in Kentucky—we want plenty of elbow room. We do not wish that character of population that there is in the city of New York. There are many men there worth half a million of dollars, whilst there are 100,000 persons who have neither bread to eat nor clothes to wear.

I will illustrate my views between our own people and foreigners, by telling you a little anecdote. My friend, Jesse Jones, who was known to some gentlemen here, was courting a young woman named Sally Newland, a member of the Baptist church, and he wanted to join that church. But before he could be admitted, it was required that he should possess the proper religious qualifications, and subscribe to the rules of the church, one of which was, that he must declare he loved all the brethren and sisters. When this question was put to him, "do you love all the brethren and sisters?" he promptly replied, "yes! I love them all, and sister Sally Newland in particular!" Now, sir, I have a kind heart for all the citizens of our sister states and of other nations, and I like them all; but I like the citizens of Kentucky, in particular. I

came here to protect her citizens and her institutions against all foreign immigration that may come in here.

Now, I am only bringing forward a proposition to protect the state at large, what, in principle, one of the honorable delegates from Louisville (Mr. Rudd,) has brought forward to protect the property-holding citizens of Louisville. They want to protect themselves against themselves in Louisville, but are not willing to protect those who live out of the city. He brought in a resolution to have a constitutional provision, that in voting a tax on the city, none but tax payers should have the right of suffrage. Now, it is obvious that this is aimed at the ignorant, pauper population that is flooding Louisville. The same delegate, and his colleagues, are using their influence here to secure to these ignorant, degraded paupers—these people who may not vote to tax their neighbors—may come in and vote so as to control and tax the farmers, who have but little profit left, after they have paid the expense of maintaining their families. He has objected to these men voting in Louisville, but when we object to their drawing the traces too tight in our part of the state, and to their coming in here and voting upon our rights, they say, you are accustomed to a rough course of life—you are hardy and tough, and you can bear it; but we are tender people in the cities, and must be protected against our own operatives. God save us from such one-sided institutions. Well, it is for us to vote whether this shall be the case or not.

Now, these very men are brought in here to vote upon our rights and interests, but not in accordance with the policy of the gentleman from Louisville to vote on their rights and their interests. I think we should provide for ourselves—for our own protection and safety. The first law of nature is self-preservation.

I have detained the committee longer than I ought to have done. I have no feelings to gratify. I wished to put myself properly before the country. I brought here the slave bill of 1830, and the ayes and noes on it, to show the gentleman from Louisville that he should not have reproved me for occupying, in part, the same ground which he and I have occupied together in reference to the question of slavery for nineteen years. I told my constituents that I did not expect to get any thing more embodied in the new constitution than the power to re-enact the statute of 1833. I highly regard the gentleman from Simpson and others—they no doubt represent the feelings of their constituents, and I claim to represent nothing more than the feelings of my own constituents, and with a majority of whom I agree in every respect.

Mr. APPERSON. But for the resolution which was adopted yesterday, that the debate on the legislative report should close on Monday next, I should not, upon the fifth section of the report, have submitted any views of my own whatever. But inasmuch as I have some views to submit to the convention upon apportionment of representation, and inasmuch as I may not have an opportunity hereafter, or at any rate as only ten minutes will be allowed to each delegate after twelve o'clock on Monday, to give his views on the report, I have risen for the pur-

pose of making known mine. The discussion has taken a very wide range, some of which I have not considered as legitimate. But I understand that the resolutions of the gentleman from Madison, on his motion, are now brought before the committee along with the report of the committee on the legislative department. Then it becomes legitimate to make allusion to slavery. I did not so consider it in the discussion of the fifth section of the report now under consideration. We have heard very much on the subject of slavery, much more than I anticipated when I came here. I presumed there was little difficulty in the convention as to the mode in which that question should be settled. Although we had a great excitement last summer, and it was a question which swallowed up all others, I have for the first time to learn that there has been one emancipationist elected to the convention. So far as I had formed any opinion of public sentiment on that question, not only at home, but abroad, I had supposed that the provision as it stood in the old constitution, would be exactly the provision that would stand in the new. I was apprised that there were delegates elected, who were in favor of incorporating the act of 1833 into the constitution; but so far as my knowledge extended, and so far as the newspapers gave me information, that number I knew was small.

The act of 1833 always had my support, and most probably always would have had it, as a legislative enactment, but I am utterly opposed to incorporating it into the constitution. That law is a matter of expediency, and I conceive that the people, through the law making power, had the necessary power to pass such an act, and at a subsequent period to repeal it. The section of country from which I came have been almost unanimous in favor of the law of 1833. Since 1833, the county of Montgomery has had a representation in both branches of the legislature, with few exceptions, in favor of that law, and the surrounding counties with perhaps the exception of Clarke, have also been in favor of it. I do not, however, think the repeal of that law has had so dreadful an effect as was anticipated. But few slaves have been introduced into Kentucky since its repeal; in northern Kentucky none. Although some were disposed to embark in the purchase of them, yet when they went abroad and ascertained their cost, they returned without them. I have thought that law could have but little effect; because I have known negro traders to visit the county in which I reside and there to buy slaves to take south. I was satisfied if they could buy slaves cheaper in other states they would not come to Kentucky. Hence I came to the conclusion that slaves were perhaps as high abroad as at home, and consequently but few would be imported into the state. However, were I a representative now, I should vote for the law of 1833 as a legislative enactment. But I do not believe a majority of the people of Kentucky are in favor of incorporating that act into the constitution. So far as the people whom I represent are concerned, I know they do not desire it. I have thought it was very unnecessary that there should have been so protracted a discussion on this subject, and I will therefore dismiss it.

We have heard this morning that there are two sorts of voters in Louisville. I would ask, if the voters in Louisville who voted for members of this convention, or who have the right to vote for members of the general assembly, have greater privileges than other voters of Kentucky? Is there a portion of the citizens who have a right to vote in Jefferson who would not have a right to vote in Fayette? Does not the same class of citizens vote in one as the other county? I take it, it is so. The qualifications are the same, and all must have them, or they are not entitled to vote.

We have been told, that in consequence of the immense growth of the cities, particularly Louisville and Covington, they would in a short time exercise a power and a very unhappy influence on the legislation of the state. We have been told that there has been a greater increase in Louisville than in the country, and that it will continue to surpass the increase in the counties generally, till it controls the legislation of the state.

Let us examine as to the truth of the charge. I deny it, so far as a portion of the counties is concerned. Suppose we consider one of the rural districts to consist of the counties of Greenup, Carter, Lawrence, Johnson, Floyd, Morgan, and Lewis, which lie contiguously, it will be seen that the voting population was as follows:

	1839	1848
Greenup, - - -	1047	1597
Carter, - - -	592	908
Lawrence, - - -	740	956
Johnson, - - -		570
Floyd, - - -	946	961
Morgan, - - -	695	1225
Lewis, - - -	949	1409
Total, - - -	4969	7626

Or take another district, to be composed of the following counties:

	1839	1848
Pike, - - -	537	807
Letcher, - - -		365
Perry, - - -	423	463
Breathitt, - - -	359	590
Clay, - - -	707	750
Owsley, - - -		566
Estill, - - -	1017	1011
Total, - - -	3043	4652

Let us turn our attention to these mountain counties, and see how it is. Let us examine these sparsely populated portions, and make a comparison between them and the county of Jefferson, including the great city of Louisville, which in 1839 had a voting population of 4770, and in 1848 of 6774; thus showing that in nine years, the increase in Jefferson county and the city of Louisville is a fraction less than forty-two per cent. Taking the apportionment of 1839 and 1848, how do we find it? I take 1848, because I wish to confine myself to the voters of 1848 and not of 1849, because we all know there is a manifest difference. There is a large male population who are not entitled to vote, as aliens and others in Louisville and scattered

through the county of Jefferson. In 1849 there was no list taken—in 1848 there was. Making the comparison on these data, I ascertain that the county of Jefferson increased in those years a little less than forty-two per cent.

The counties of Greenup, Carter, Lewis, Lawrence, Johnson, Floyd, Pike, Letcher, Perry, Breathitt, Clay, Owsley, Estill, and Morgan, as exhibited in the two tables, have increased in voters within a small fraction of fifty per cent., in the nine years past. Is not that a rural population? And when we are told that the city is to overshadow and overbalance the rest of the state—that our rural districts are to be swallowed up, we should make the inquiry, is it true? When we look at the figures we can tell, and I deny that it is true. I have no doubt you may take counties in other parts of the state, and you will find it pretty much the same. But go into the rich blue grass districts, and some of the counties have not passed twelve per cent. within nine years, while some of the mountain counties have passed fifty-five per cent.

Bourbon, Harrison, Scott, Fayette, Jessamine, Clarke, and Woodford, lying contiguous, and amongst the richest counties in the state, had a voting population as follows:

	1839	1848
Bourbon, - - -	1601	1773
Harrison, - - -	1696	2060
Scott, - - -	1518	1839
Fayette, - - -	2571	2584
Woodford, - - -	1153	1255
Jessamine, - - -	1198	1325
Clarke, - - -	1461	1719
Total, - - -	11,198	12,555

These counties have gone a little over twelve per cent., taken collectively, but Fayette has not reached one-fourth of one per cent.

I have made my calculations from the auditor's reports for 1839 and 1848, as to the number of voters, not deeming it necessary to go further back than 1839; and in 1848 the last list of voters was taken by the commissioners throughout the state. The printed table which we have shows the number of white males in each county in the present year; but as there are many who as aliens, and for other causes, are not legal voters, in all my calculations I adopt the list of voters of 1848, the last which has been taken. To show the fairness of my calculations, and that the counties were not selected for their great increase of population, and without regard to locality, it will be seen, they are in one block, reaching from Big Sandy to the rich counties, and lying between the Ohio and Kentucky rivers. It was necessary I should include the county of Clay, which lies south of the Kentucky, because a portion of the county of Owsley was taken from Clay, and without including the county of Clay it was impossible to compare the increase. If we look at Harlan, I think it will show an increase of more than fifty-five per cent., and it is most probable that Knox, Whitley, and other mountain counties have increased in the same ratio. Mason is one of the richest counties in the state, with a thriving city lying on the Ohio river, and yet she has only increased, in nine years, a little over seventeen per cent.

We see then, that the county of Jefferson, including the city of Louisville, is not likely to overbalance the rest of the state. The county, including the city, has not increased very rapidly in voting population, though there are many foreigners, not naturalized, in the vicinity of the city.

In the rich limestone regions of the state, sometimes termed the blue grass country—because of the extensive grazing—the rich are increasing rapidly in wealth; they extend their possessions, although at high prices, and the smaller farmers are constantly leaving those fine lands. This is the reason that there is so inconsiderable an increase of voters. And we may expect the same cause and the same result will continue.

The gentleman from Madison spoke of the farmers—in which class he seemed to include himself—as if they were hardly able to pay their taxes, and that this inability was produced by some controlling power exercised by the cities in the state. Now, if we will examine the auditor's report, we shall find that the county of Madison has more wealth, in proportion to population, than the county of Jefferson, including Louisville. If that be the situation of the population which he represents, then they appear to be richer than the city population. But let all these matters be as they may, I suppose that when we declare that "representation shall be equal and uniform," we mean what we say; we do not mean to insinuate that the representation shall be as our interests happen to be; that if we represent a city and its interests, that they shall have a preponderance of power, irrespective of population; or, if we represent a rural population, that they shall have privileges which the city population are not entitled to. I know that the people whom I represent are mainly agriculturalists, and of course belong to the rural class, and I have no doubt that I but fairly represent them in my feeble advocacy of the principle, that all voters, rich or poor, residing in the country or in the city, should stand on the same footing, and be heard in the legislative halls in proportion to their numbers.

I think the gentleman from Franklin made a mistake when he spoke of the apportionment, as reported in the sixth section of the report now under consideration; the forty counties instead of being entitled to forty-five, will, I understand, be entitled to fifty representatives. I examined his tables and the sixth section a little this morning, and when I come to make the calculation on the principles of that section, I find if we fix the ratio at 1416, (and I do this because this would be the ratio according to the number of voters in 1848,) and if that ratio be taken, the county of Jefferson will be entitled to five or six representatives, and the balance of the state is entitled to be represented in exactly the same ratio, and must have it; all residuums whether in Jefferson county, the city of Louisville or elsewhere, must be applied some where else. In doing this, we have been in the habit, sometimes, of passing by many counties, and taking residuums to those more distant, and in this manner the state has been laid off, or apportioned for representation, and which has caused on some occasions dissatisfaction on the part of the minority in the legislature.

I believe I can satisfy this convention, that in the disposition of the representation of the different counties of the state, it has been done fairly; at least so far as the last apportionment was concerned.

I find Bourbon, Logan, Nelson, Christian, Fleming, Madison, Fayette, and Hardin, under the last apportionment, have each two representatives; without drawing residuums they were only entitled to one each, that is, after giving them one member, the surplus of voters in each county is not equal to the ratio, and hence, to get a second member, each of these counties must draw a residuum. The following counties, under the last apportionment, had one member each, yet neither of them have the full ratio, to wit: Jessamine, Whitley, Boyle, Woodford, Casey, Russell, Meade, Grayson, Todd, and Livingston. They draw residuums from other portions of the state, and all of these counties are looked upon, and counted on as being on the whig side in politics. How is it on the other side? Let us see if it is not about equal. The county of Harrison has two representatives, but not enough voters for more than one, without drawing a residuum from other counties; and the following counties have each one representative, though the number of qualified voters in each is under the ratio, to-wit: Pendleton, Trimble, Oldham, Grant, Anderson, Spencer, Bullitt, Monroe, Hart, Larue, Taylor, Green, Union, Simpson, Trigg, and Crittenden, and the counties of Fulton and Hickman united, have a representative, but are under the ratio.

Here are eighteen representatives on the opposite side in politics, representing constituencies which are below the ratio; thus it seems the number on each side is exactly equal. This being the case, it seems to me there is no cause of complaint. I have a table now before me, which was not laid off with a view to representation, but since there have been propositions submitted for fixing a principle for the apportionment of representation, I have concluded to submit that table now, so that when the sixth section shall come up for consideration, gentlemen may understand it, and I flatter myself that if gentlemen will examine this table they will see that it is as fair in the division of the state, and in the apportionment of representation as can very well be made.

I know it is impossible to make representation exactly equal and uniform, and having exactly the same number of voters in each electoral district. But we must approximate as nearly to equality and uniformity as may be, and that is evidently the design of all of us.

The gentleman from Trigg has submitted a proposition to lay off the state into twelve representative districts. I can hardly see why the state should be thus laid off, particularly when we look at the inequality. The gentleman's proposition makes the first district to consist of eight counties, embracing Fulton, Hickman, Graves, Calloway, Ballard, McCracken, Marshall, and Livingston, with a voting population of 7171, according to the returns of 1848. Now look at the sixth district, embracing the counties of Jefferson, Bullitt, Nelson, Washington, Marion, Shelby, and Spencer, and in these counties we find we have a voting population of

17,184, being a little more than ten thousand difference. Is that all? Let us examine the ninth district. There are nine counties, embracing Fayette, Woodford, Bourbon, Clarke, Jessamine, Anderson, Mercer, Boyle, and Garrard, which have 14,566 voters. What is the object of this? If we are to lay off the state into districts, let them be as equal as may be, and let us not look this way or that, with regard to political preferences.

Look again at district number one. It may be exactly right that these counties should stand in representation as they are placed. For instance, Fulton and Hickman will have one representative, Graves one, Calloway one, Ballard and McCracken one, and Marshall and Livingston together one; but this is not the way they now stand, for Calloway and Marshall now vote together, and Livingston has a member to herself. I admit it may be right so to place the counties, but why make such a district? It looks amazingly strange as though it was designed for some purpose not apparent on its face. The formation of some of the other districts looks equally strange. Why not, instead of thus laying off the districts, lay them off as nearly equal as may be, and in as convenient form, having proper regard in every instance, to territory, form, population, association, and intercourse? I have now before me a table which very nearly divides the state into four equal parts, at least in population and form, and having a due consideration for the intercourse and association of the people. In laying off these counties, as I have done, into four districts, I have undertaken to do it impartially and fairly; and whatever may be the errors, an opportunity will be afforded to have them pointed out.

The first district is as follows, to wit:

Counties.	Voters.	Members.
Pike, - - -	807	
Floyd, - - -	961	1,768
Johnson, - - -	570	
Lawrence, - - -	956	1,526
Carter, - - -		908
Greenup, - - -		1,597
Lewis, - - -		1,436
Mason, - - -		2,845
Fleming, - - -		2,311
Bracken, - - -		1,486
Harrison, - - -		2,060
Nicholas, - - -		1,713
Bourbon, - - -		1,773
Bath, - - -		1,823
Montgomery, - - -		1,398
Clarke, - - -		1,719
Morgan, - - -		1,225
Estill, - - -		1,011
Madison, - - -		2,566
Rockcastle, - - -		802
Laurel, - - -	777	
Clay, - - -	750	1,527
Owsley, - - -	566	
Breathitt, - - -	590	1,156
Perry, - - -	463	
Letcher, - - -	365	
Harlan, - - -	661	1,489
Knox, - - -		1,091
Whitley, - - -		1,021
	36,451	26

This district has more counties than either of the others, but I aimed to make the population of each district nearly equal. The reason why I embraced Whitley in this district, is that she has always been connected with Knox, Harlan, Laurel, &c., in the same judicial district, and the intercourse and associations of her population is with the others named, and she will most probably, hereafter be placed in the same circuit court district, and it is the most convenient for the whole of one circuit to be in the same appellate district, and if the court of appeals should be required to sit in each district, the circuit should all be in the same district. The voting population in this district is 36,451, and the number of counties is twenty-nine, and number of members twenty-six.

The following table comprises the second district:

Counties.	Voters.	Members.
Pendleton, - - -	1,210	1
Campbell, - - -	1,447	1
Kenton, - - -	2,560	2
Boone, - - -	1,865	1
Carroll, - - -	923	
Gallatin, - - -	813	
	1,736	1
Trimble, - - -	994	1
Oldham, - - -	1,073	1
Owen, - - -	1,674	1
Scott, - - -	1,839	1
Fayette, - - -	2,584	2
Grant, - - -	1,098	1
Jessamine, - - -	1,325	1
Garrard, - - -	1,563	1
Lincoln, - - -	1,436	1
Boyle, - - -	1,136	1
Mercer, - - -	2,125	1
Anderson, - - -	1,086	1
Shelby, - - -	2,317	2
Spencer, - - -	1,383	1
Henry, - - -	1,849	1
Franklin, - - -	1,723	1
Woodford, - - -	1,255	1
	35,278	25

This district embraces twenty three counties, has a voting population of 35,278, and is entitled to twenty five members.

The third district is composed of

Counties.	Voters.	Members.
Pulaski, - - -	2,305	2
Casey, - - -	938	
Russell, - - -	919	
	1,857	1
Marion, - - -	1,768	1
Washington, - - -	1,770	1
Nelson, - - -	2,007	1
Bullitt, - - -	1,165	1
Jefferson, - - -	6,774	5
Hardin, - - -	2,384	2
Meade, - - -	1,022	1
Grayson, - - -	1,127	1
Monroe, - - -	1,230	1
Cumberland, - - -	971	
Clinton, - - -	807	
	1,777	1
Wayne, - - -	1,427	1
Adair, - - -	1,507	1

Barren, - - -	2,939	2
Hart, - - -	1,345	1
Larue, - - -	981	
Taylor, - - -	1,097	
	<u>2,078</u>	1
Green, - - -	1,305	1
	<u>35,789</u>	25

The population of this district is 35,789. Twenty one counties are embraced in it, and it will be entitled to twenty five members.

The fourth district is composed of		
Counties.	Voters.	Members.
Breckinridge, - - -	1,745	1
Hancock, - - -	560	1
Daviess, - - -	1,923	1
Ohio, - - -	1,510	1
Henderson, - - -	1,467	1
Union, - - -	1,264	1
Hopkins, - - -	1,813	1
Muhlenburg, - - -	1,539	1
Butler, - - -	875	
Edmonson, - - -	647—1,522	1
Warren, - - -	2,131	1
Allen, - - -	1,413	1
Logan, - - -	2,016	1
Simpson, - - -	924	1
Todd, - - -	1,383	1
Christian, - - -	2,138	2
Trigg, - - -	1,381	1
Caldwell, - - -	1,860	1
Calloway, - - -	1,206	1
Graves, - - -	1,576	1
Fulton, - - -	631	
Hickman, - - -	656	
	<u>1,287</u>	1
Ballard, - - -	728	
McCracken, - - -	742	
	<u>1,470</u>	1
Marshall, - - -	824	
Livingston, - - -	808	
	<u>1,632</u>	1
Crittenden, - - -	947	1
	<u>34,820</u>	24

This district has a population of 34,837; has twenty seven counties, and will be entitled to twenty four representatives.

Now I will enquire if gentlemen can lay off the state more equally for representation, having regard to the court of appeals and circuit court districts as they will most likely be, at the same time, and keeping the circuit district as near as may be in the same appellate district? Perhaps the circuit court district may have to be divided sometimes, as it is hardly to be expected it can remain undivided in every instance; but generally it can be done.

Gentlemen will see that though I carry residuums on some occasions, yet they are carried fairly, and never taken from a county in one district and carried to a county in another.

If Pike and Johnson join, then they will compose one representative district, and Floyd will have a member herself. If, however, Pike and Johnson do not join, then Pike and Floyd must compose one district, Johnson and Lawrence another, and Carter will get the member. Now

whether Floyd or Carter shall have a member, politically speaking, the result is the same, as the political majority in each county is on the same side. It will be seen that Lawrence in 1848 had forty eight voters more than Carter, and five less than Floyd. Why then not let her have the member? The answer is, because of her locality. If a member be given to her then what county will Johnson be attached to, if Pike be not contiguous? There is none but Morgan, which has two or three hundred more than Lawrence. Politically it would suit me for Lawrence to have the member, but viewing the whole ground aright she is not entitled to it. And why is it that Morgan, which lies broadside of Carter, should get a member? Because, although Carter needs to draw residuums of over 500, yet Morgan is the largest of the small counties in the same neighborhood, and north of Kentucky river, and can draw residuums from the counties near. Estill can do the same. So also the counties of Owsley and Breathitt, and thus the principle will go on. Let these several counties draw residuums from other counties, neighboring counties in the same district; for instance from Harrison, Nicholas, Bath, Bourbon, Clarke, &c., which will have considerable residuums to spare, and which Morgan, Carter, Estill, &c., are entitled to take. My object is to cast all residuums throughout the whole district, and thus to equalize the representation as near as I can, and always keeping the same principle in view. Having thus disposed of all the counties in one district, I go to another, carrying out the same principle throughout the whole state.

Further to illustrate my principle, I will take the counties of Calloway, Marshall and Livingston—the two former counties once composed one county, and since the division, have been united in sending a representative, whilst Livingston, which is separated from Marshall by the Tennessee river has heretofore had a member alone, but as she has a smaller number of votes than Calloway, I give the latter county a member and unite Marshall and Livingston for another. The same principle I have applied in giving a separate member to Rockcastle, which has but a little over eight hundred votes. She is larger than Laurel or Clay, and hence the latter two are united for one member, and Rockcastle alone for another. Crittenden, although having a small number of votes more than Livingston is given a separate member. The county of Hancock has always presented difficulties in apportioning representation, and in consequence of her contiguity to Daviess and Breckinridge, which have large residuums and the other adjacent counties not requiring those residuums, they are thrown together and given to Hancock.

In making out this table I had special reference to the circuit court districts and appellate districts as they will most likely be formed, and if the judicial or representative districts can be laid off more fairly, impartially, equally and uniformly than I have presented, then I hope to see it done.

In this way the whole people will be fairly represented, and almost to a positive certainty, the very same party that has a majority in one county which has a residuum will have that resi-



dum carried over to a county of the same politics, and thus all these residuums will be represented.

Mr. DAVIS. Will the gentleman please state how many counties under his arrangement, having less than the ratio, will be represented; and how many counties having less, will be divided between the two parties.

Mr. APPERSON. I do not know exactly, but all will be able to see it from the tables, which I flatter myself is made out most impartially. By a hasty glance, however, I find that the whigs will have members most likely without a full ratio, as follows: Fleming, Estill, Madison, Rockcastle, Whitley, Knox, Fayette, Jessamine, Boyle, Shelby, Woonford, Hardin, Meade, Grayson, Todd, Hancock and Montgomery—one in each, making eighteen representatives.

The democrats will have most probably one in each of the following counties, which are under the ratio, viz: Carter, Morgan, Breathitt, Pendleton, Campbell, Trimble, Oldham, Grant, Anderson, Spencer, Pulaski, Bullitt, Monroe, Hart, Green, Union, Allen, Simpson, Trigg, Calloway, Crittenden and Fulton, &c., making twenty two members.

If gentlemen will examine my tables, I think they will say that they could not have laid off these districts more compactly than they are laid off. In politics the first district would gain two to the party differing with me, and perhaps three. In my list I have stated what each one should have, and I think those who differ with me in politics will say that I have given to each what they are equitably entitled to. Larue has a member, though she lacks nearly five hundred of the full number. Boyle has one and lacks nearly three hundred. Grant lacks nearly four hundred and yet will have one. Fayette will lack about two hundred and fifty. Oldham will lack nearly four hundred. Trimble will lack more than four hundred and Pendleton a little less than two hundred, and they all get one.

Now I think there have been some matters brought in in regard to the election of senators, that should not be taken as arguments, so far as senators in the general assembly are concerned. I hear it said that every state has two senators in the senate of the United States; but it should be remembered that every state is a sovereignty, and the senators in congress represent sovereignties. It is not so with our counties, they are not sovereignties, but are parts of the one sovereignty. We have heard something said about the apportionment in Virginia, and it is said they have nineteen districts east and thirteen west of the Blue Ridge. That is but a poor criterion to govern us, for I understand that Virginia was originally represented, not by voters but by territory, each county large or small in territory or in population being entitled to two representatives, and each borough one. That plan of representation was borrowed from England. But when they formed their new constitution, did they give up this notion? Not entirely, but they adopt a mixed system. If you will ascertain the number of voters east and west of the Blue Ridge in Virginia, you will find that they were nearly equally divided; but there was a numerous and valuable negro population in the east,

which the convention determined should be represented. So far as Virginia is concerned, I do not think that her example should have the least influence on our action. The gentleman from Franklin the other day said that representation should be a mixed question with us, that we should look at the population and the territory, in apportioning representation.

I learn from the history of Kentucky that the late George Nicholas, one of the wisest and best of men, in a speech in the convention which formed the first constitution for Kentucky, in 1791, denounced the doctrine of representation of territory, and insisted that population exclusively be the basis of representation. We have heard the amusing story relating to the subject of a property qualification, as told by Doctor Franklin. A certain man living in a state where a given amount of property was required to entitle one to vote, owned a donkey of the prescribed value to entitle him to exercise the right of suffrage. It happened that the donkey died, and the man was disfranchised thereby. The Doctor enquired whether it was the man or the donkey that had previously voted.

I understand that it is not property nor territory, but white population on which representation should be based. If territory should be considered, then why not property, and thus the indigent and virtuous laborer might be cut off. I want representation to be governed by voting population as near as it can be done—it is true it cannot be done exactly, because the counties have not exactly the same amount of population.

If we start off with a determination to do even handed justice to all, if we intend that this representation shall be as near equal and uniform as we can make it, let us not say to a man residing in a city and engaged in commerce or manufactures you shall not have the same voice as the agriculturalist. The people represented by me are an agricultural people, who demand every privilege to which they are entitled. Does the agriculturalist require at our hands that in consequence of his calling he should have greater rights than others? I believe not. I thought the creed of the party with whom I act, maintain that we should foster manufactures and sustain them with agriculture, whilst the other party have most especially advocated commerce. I have been under the impression that we had all agreed there should be no difference between the merchant, the manufacturer, and the agriculturist, so far as political rights are concerned. They are all equally necessary in every community. Let me inquire how it is when you approach any large commercial town that the land of the agriculturalist is greatly enhanced in value? Is it not because he has a market near his door? If you remove that market from him, will his land be as valuable? Is he not benefitted as well as the merchant and manufacturer? It seems to me he is; and how we can, consistently with justice and fairness, make any distinction between the agriculturist, the man of commerce, and the manufacturer, in permitting one class to vote and another not, I cannot see.

Now, I have heard it said that the city of Louisville, in consequence of the representation which she has had, and must have in the legis-

lature, will hereafter control the action of the legislature to a very great extent. I am not sure she has not controlled it to some extent. But if you look at the lists of ayes and noes of the members from the northern counties, or from the Green river counties, you will find them about as united as those from Louisville. I know there are individuals in the cities and large towns who do undertake to interfere with legislation. I saw it last winter on the part of gentlemen connected with banks, who were here doing all they could to prevent those additional banking facilities from being afforded, which had been asked for. One gentleman in high office in bank, wrote to a member of the legislature, if you shall charter another bank, I will have the circulation in the bank with which I am connected curtailed to the extent of the capital of the new bank—such threats should be treated with merited contempt. Although this great bank influence was brought to bear upon the representatives from Louisville last winter, yet they believed that additional banking facilities were needed, disregarded all such threats and acted in accordance with their own judgments of propriety. I do not see how it is we can consistently make a distinction between voters in different sections; and if Jefferson county is entitled to five or six representatives, let her have them. And if there be a residuum, let it go somewhere else.

With regard to the proposition of the gentleman from Christian, it may be right, or not. I have thought but little about it; but with a view to make representation equal, it seems to me there is but one road to travel. At a proper time, I propose to offer the tables which I have read, as a substitute for the sixth section of the report now under consideration.

Mr. BOYD. I am not a talking man, and I do not therefore know whether it will be in my power to make clear to every gentleman's understanding the object I have in view in presenting this proposition. The great complaint I have heard against the present mode of apportioning the state, has been that residuums have been rolled out from the section of country where they occurred and settled down on some other. My object in presenting the plan which I did, was to prevent that, and I believe that under it every section, every twelfth of the state would have secured to it its share of representation. And if the gentleman would take the map of the state, he would find that the two first districts, the location of which he has complained, was on congenial grounds, run very near across the state, from the state line to the Ohio river. I am not wedded to my plan, and shall be willing to go for the one which is most convenient, just and proper. I had nothing more in view; and I declare to this committee that I did not examine as to the political bearing of a single county, when I undertook to lay off these districts. My object was to make them as compact as possible, and so that each particular section of the state would have its full weight in the legislature. I will not be so uncharitable to my friend from Montgomery as he was to me. In his plan for apportioning the appellate districts, if I recollect right, it seems to me he places Mt. Sterling just about the centre of a dis-

trict. I will not be so uncharitable as to charge the gentleman with figuring this out to suit himself, for I presume it is all right; but I desire to repel the charge he made that my plan was proposed with a view of affecting the strength of the political parties in this state. That was not my object at all. I have no objection to sustaining any plan that the gentleman or any other may offer, if he shall convince me that it is the better plan.

The PRESIDENT. I have not designed, and could not in my present state of health, if so disposed, make a speech. The gentleman from Madison has spoken of the act of '33, and my vote of a previous period. I was in the legislature when the act of '33 passed, as well as the preceding year. The question as to the importation of slaves had been agitated in the senate for several years, and in 1832 I believe was the first time they passed a law on the subject, and sent it to the house of representatives. It was there referred to the committee on the courts of justice, of which I then had the honor to be chairman. If I recollect right, this act to which he refers was reported to that committee in lieu of the senate's bill, and it failed in that house. It is to this effect:

"Sec. 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That none shall be slaves, except such as shall be slaves within this commonwealth on the first day of June next, and the descendants of the females of them, and such slaves as shall thereafter be lawfully imported into this commonwealth, and the descendants of the females of them.

"Sec. 2. *Be it further enacted*, That from and after the said first day of June, it shall not be lawful for any person, or persons, to import into this commonwealth any slave or slaves, except emigrants to the state bringing their slaves with them, for their own use, and not for merchandise; and citizens of this state claiming slaves in another state, by devise, descent, or marriage; in all which cases it shall be lawful for any such persons to import such slaves for their own use, and not as merchandise.

"Sec. 3. All laws now in force, prohibiting the importation of slaves into this commonwealth, shall be and the same are hereby repealed, from and after the said first day of June: *Provided*, That the provisions of this bill shall not apply to persons transiently passing through the commonwealth with slaves, on their way to any other state or country: *Provided*, That nothing in this act shall be so construed as to prevent persons emigrating to this state, and settling permanently in it, from selling their slaves."

There was prior to that time a good deal of agitation, with the object of putting an end to the slave trade from other states to this. Whether rightfully or wrongfully, I was in favor of a prohibition of that trade—the prejudices against which those who were in favor of destroying the institution itself, were using as a lever by which to agitate the public mind on that subject; and intending to vote for a law which would have the effect of executing itself, I voted for that act. It was, however, as the vote will show, rejected. The next year, the act of 1833 as it is called was passed, and under the same feelings which had induced me to vote for the

other bill, I voted for this act. The other act was rejected, on the suggestion that as the effect would be to set free all negroes who came into this state, it would be an inducement for those in other states, who desired to get rid of vicious and aged negroes, to bring them into this state, where, by the operation of our laws they would at once become free, and we obliged to provide for them. I, with others, yielded to that view, and the result was the passage of the law of 1833. For seven or eight years, after the passage of that act, the agitation of the subject was quieted, and we were at peace. Then commenced an agitation on the part of those who desired to introduce slaves, and that agitation, in my judgment, had quite as deleterious an effect on the interests of the slaveholder, as did the agitation which the law of 1833 had quieted. Now, I believe that no law should exist on the statute book that does not give peace and quiet to the community. A bare majority should not hold on the statute book a law that dissatisfies and renders discontented a large and highly respectable minority; and it is better for the peace of community that it should be withdrawn. I have said on a former occasion, that I am for leaving the present constitution on the subject of slavery, with a single exception, where we found it. I will not go over that ground or into this argument again. I came here, if pledged at all on any subject to my constituents, pledged to the course I have indicated on this slavery question.

The position of Louisville on this subject of representation is rather an unfortunate one. The gentleman from Madison, who is for putting the act of 1833 in the constitution, or rather the proposed act of 1832 in the constitution, votes to restrict Louisville because we are likely to go for emancipation. The gentleman from Simpson, and some others, will not vote to give Louisville her fair representation, because we stand upon the old constitution, and do not enter into his peculiar notions of the citizen's right of buying these negroes at will and pleasure. We are still more unfortunate. Louisville, more than any other point in Kentucky, aggregates a large proportion of those who flee from oppression in the old world, and seek an asylum and liberty in this; and the gentleman from Bourbon would restrict our representation, because they found it to be their interest to locate there, to a greater extent, than any other portion of the state, and he deeming them unworthy to have a voice in this government. Now, between those in favor of the act of 1833, and those in favor of a full and free trade in negroes for their own use, and those who desire to deny to these foreigners who are naturalized here under the laws of the United States the rights of citizenship—and all these interests we have but a—I will not say, fair chance. But we appeal to that sense of justice and right, which I trust characterizes this convention, not to deny us our legitimate and equal voice in the representation of the state. We have not the liberty the old thirteen states had when the federal compact was formed. It is not given to us to accept or reject this constitution. We cannot keep out of this commonwealth because we shall be denied equal rights and privileges. We are bound to be a part of the common-

wealth of Kentucky, and if we do not come in on equal terms we shall be obliged to come in on unequal terms.

The gentleman says we have our local governments. So has every town in this commonwealth, and so has every county, for it is the beauty of our system that we govern ourselves in our towns, cities and counties by the voice of a free people, equally represented in the legislative halls of the country. The same laws, the same provisions, are given to towns and counties as their situation demands; and the further additional legislation, if you will, to cities where a greater number of individuals congregate, and where it requires more vigilance in the officers, and more stringent rules to maintain the administration of the laws predominant, by applying them correctly, certainly, and efficiently, to those who offend. But it all flows from the policy, the justice, and the wisdom of the representatives of the people, in applying a set of laws to each section, county, town, or city, that its necessities require.

Gentlemen apprehend danger that the voice of the cities will control the voice of the country. I will not go into the arguments which gentlemen have offered; they have been met by others and met fully. I maintain that under our system of laws and government, the country has as little to fear from the freemen of the city controlling in the legislature, as the cities have to fear from the voice of the people of the country controlling in the legislature. If the cities are in a majority, and by their numbers are entitled to it—why if it was a government of force they would have it. If the country is in a majority and this was a government of force, they would have it. If it is a government of equal rights and equal laws, blessed with equal and fair representation, why the control will be with the majority wherever it is, and no where else can it be vested. When I was up on a former occasion, I examined this subject with care, and some think with boldness, and that I pushed my arguments further than I should have done. I will not go back upon it. If no man can apply conscientiously, anything I said, to his own bosom and heart in relation to this thing, then I will not apply it to him. It is true I thanked God that emancipation had shed no blood in Louisville or in the river counties, and I still thank God that was the case. It does not follow however, that I thanked God it shed blood elsewhere. That is as far from my feelings as any man in this convention, and if any man here felt more for the gentleman from Madison than I felt on that occasion, I do not know him. But when he is seeking here on account of emancipation to stifle the voice of my constituents, I thought he should look at home, and I used the bold language calculated to bring him to reflect on the subject. If any protection of the country from the emancipation feeling is desired, let gentlemen march up to it, and put a test article in the constitution, and allow no man to vote who is in favor of emancipation. That will secure the slaveholders, beyond the possibility of a doubt, from all that are here now in our state, and all who shall come hereafter, whether fleeing from oppression in a foreign land, or from Yankee-

dom, or from wherever it may choose them to come. It is a restriction, and gentlemen will not and they ought not put it into the constitution. Yet the effect of the proposition here is to deny the city and country are equals, and in truth to put such a proposition in the constitution. I ask the gentleman from Madison, why not put this test in the constitution and apply it to his constituents. There are, according to the best estimate, I have been able to make, some three thousand naturalized citizens in the commonwealth of Kentucky, who are entitled to vote. I have lived now near thirty years in Louisville, where more of these naturalized citizens are congregated than any where else, and during all of that time, we have never had one of them in the legislature of the state to my knowledge. Nor do I recollect that one has ever come from the country. They are sensible, industrious, frugal, economical people, and they do, more generally than any other people in this commonwealth, attend to the eleventh commandment—that is, to mind their own business and not interfere with that of others. There are occasionally among that class bad men, as there will be in all classes; and therefore if you apply a rule that is to exclude bad men, apply it to all classes. If congress was to repeal the naturalization laws, we are content, for we do not want anybody to vote who is not a citizen of the United States, and who has not resided the proper time among us. For myself, I am not willing that any man shall be a citizen of this commonwealth, and not be entitled to all of the privileges of citizenship. I do not want to see a class here who shall be less than citizens to raise up citizens and poison their minds against the government under which they live, for denying them the rights which they give to others. I do not desire to look forward to a period in this government when there shall be a large class of citizens who feel no interest in the operations of the institutions of the country. Let them, after they have remained a sufficient length of time, become citizens and take their places as such, and feel that they are freemen as we are. Gentlemen may entertain their own views on this subject, but surely we are not going to change the constitution of Kentucky because we have three thousand naturalized citizens among us. Surely they are not going to adopt a principle that is to deny to free born American citizens, and the descendants of those who bled in the battles that won our liberties, equality of representation with his fellow citizens. And yet in seeking to exclude the foreigner from this privilege, they will inevitably exclude also the native citizen. But I am admonished by the soreness of my breast to bring my remarks to a close.

The amendment proposed by Mr. CLARKE was then read.

Mr. TAYLOR. I desire to separate the white from the black in this matter, and I move to strike out so much of the proposition as refers to the importation of slaves.

Mr. A. K. MARSHALL. I should be very much gratified if the gentleman, instead of moving to strike out, had asked for a division of the question, so that the house might vote directly on each of the propositions of the gentleman

from Simpson. I make the suggestion because I am convinced that the votes of some gentlemen upon the latter part of the proposition will be governed, in some measure, by the decision of the convention upon the first branch.

Mr. CLARKE. It is my object, as well as that of others on this floor, to have a vote taken on this proposition by ayes and nays. I therefore request the gentleman who moved to strike out to withdraw his motion, until I make another. This is, that the committee rise and report the bill to the house, where I can call the ayes and nays. There he can renew the motion he has made, and I thank him for it, as I desire to have this question tested.

Mr. TAYLOR assented to the withdrawal of his motion to strike out.

Mr. TRIPLETT. Does the chair consider my proposition before the house, in such a shape as to get a vote upon it.

The CHAIR did not consider it as having been formally offered at all, but said that it was in order for the gentleman to do so now.

Mr. TRIPLETT. Then I offer it now.

There was some conversation as to whether the course suggested by Mr. Clarke would be strictly parliamentary, when

Mr. CLARKE withdrew his motion that the committee rise and report.

Mr. TAYLOR then renewed his motion to strike out the last clause of the proposition, as before indicated by him.

The question being then taken, the motion to strike out was rejected, a count being had, ayes 34, nays 35.

The question was then on the adoption of the amendment.

Mr. A. K. MARSHALL asked for a division of the question.

The CHAIR stated the question to be on striking out the section as reported by the committee, and inserting in lieu thereof the amendment of Mr. Clarke. A division being asked, the question would be first taken on striking out.

Mr. DAVIS. The original section is then open for any amendment that may be offered.

The CHAIR. Yes sir.

Mr. DAVIS. I then offer to amend the section as follows: "*Provided further*, That no county or city shall ever be entitled to more than one senator."

There was some conversation as to which question was prior in order, whether on the amendment of Mr. Triplett or that of Mr. Davis, when the latter gentleman withdrew his amendment.

The question was then on the amendment offered by Mr. Triplett.

Mr. LINDSEY suggested that the numbers should be left blank.

Mr. TRIPLETT assented to that suggestion, and his proposition was so amended.

It was then rejected, a count being had, ayes 34, nays 39.

Mr. MORRIS then renewed his amendment, to strike out all after the word "provided" in the seventh section, and to insert the following:

"*Resolved*, That whenever a city or town shall be entitled to a separate representation in either house of the general assembly, and by her numbers shall be entitled to more than one represen-

tative, such city, or town, shall be divided by wards, which are contiguous, into representative districts, as nearly equal as may be, equal to the number of representatives to which such city, or town, may be entitled, and one representative shall be elected from each district. In like manner shall said city, or town, be divided into senatorial districts, when, by the apportionment, more than one senator shall be allotted to such city, or town, and a senator shall be elected from each senatorial district; but no ward or municipal division, shall be divided by such division of senatorial or representative district."

Mr. C. A. WICKLIFFE. I rise to suggest to the mover of that proposition, a modification of it, and I do so, I must confess, with some degree of solicitude that he will assent to it. I do so to obviate an objection which has not been suggested in debate, but in conversation, striking at what, I know from the honorable mover of that proposition, was not one of the purposes he had in view to attain. And certainly, in expressing my determination to vote for it when first presented, I had no object or view such as has been understood. It is a fact well known to this house, that the city of Louisville now, so far as questions of national policy are concerned, stands whig with a majority of some six or seven hundred votes. The majority of this house is upon the side of the democratic division in the nation, and it has been urged that this proposition, if it succeeds, in applying to the city of Louisville, under its present numerical representation, or under that of the next census, will have the effect to destroy the political strength of that city, as it has been divided upon the questions to which I have alluded. It is said that if we divide the city into some three or four districts, the result may be the choice, in some of them, of representatives differing from what would be the sentiment of a majority of the city. I do not wish, favorable as I am to this amendment, and acting with that majority to which I have referred in this house, to be subjected to the charge, while I am endeavoring to support a proposition to modify the section that will prevent these difficulties we have been discussing, that I am governed or influenced by a desire to strike down the political majority in that city. That is not the position I occupy. I ask the mover of the proposition so to modify it, that when the representation of the city in the lower branch shall be four, it shall be divided into two election districts, giving to the people, as in Nelson county and elsewhere, the right to vote for two representatives. And when the number shall exceed four, then apply the principle of establishing another district. Again, as is well known, in the election of delegates from that city, national politics were not brought into the question, or at least the sentiment of the delegates returned here stand two to one, and it may be supposed, unless the proposition is amended as I suggest, that it was offered in furtherance of the desire of one of those delegates. So far as I am able to speak on the subject, I take it for granted that that gentleman was taken as much by surprise by that amendment, as any gentleman in this house.

The PRESIDENT. It is true that I knew nothing of the proposed amendment now offered. My desire is, so far as I am concerned, that the

representation of Louisville should stand precisely as it did before. I do not wish or desire myself, to make any change. I will state that according to the present division of the wards in Louisville, there would have to be three districts in order to give the democratic party a representative, if the people vote according to their present political sentiments. If the city should be entitled to two senators, their location in two districts would not change the political sentiments of the delegation. The wards now, are divided at fourth street, four above and four below, with a population in both, very nearly equal. If the population should increase in each in the same proportion, and each would probably preserve its present political sentiments. The two upper wards are democratic, and the two next whig, but stronger in proportion than the others. I am certainly willing that gentlemen should take any measure that they may deem safe for the interests of the state, as regards the arrangement of the representation of the city, but I should be placed in an awkward situation if this proposition was to pass. I did not come here from either party, and I wish not to lie under imputation of being actuated by any party motives. I had retired from politics because I would no longer struggle to represent those with whom I differed. I only consented to make this race, and stand here as a delegate, at the request of those who desired that Louisville should stand right on a question that was agitating the state.

Mr. MORRIS. It certainly could not be more foreign to the disposition of any gentleman on this floor, to introduce in the house a proposition which would array against each other, the two parties in this house, or in the state, than to myself. I occupy a peculiar position, one quite as peculiar as the gentleman who represents Louisville. I mean the democratic gentleman. I, like him, represent a whig constituency, and when I introduced that compromise amendment, for so I intended it, I had not the remotest idea that it would strike this house as a party move, nor even the slightest intimation of the fact that it did so, until yesterday, when I saw a short letter in the Louisville Journal, intimating that it would secure the election of a democratic member in that city. I did state, in the remarks I submitted on offering the proposition, that in all probability the city of Louisville would stand divided, and I stated that in order that the position which I assumed might be strengthened before this house, I thought if I could prove to this house, that if these great interests of Louisville, which were to overshadow the whole country, could be divided on great questions against itself, that it would strengthen the proposition I made. Certainly I never have been placed in a more embarrassing situation. If we were here to be driven to a strict party vote on any question, I really do not know on which side I should vote. I came here to represent neither of the great parties. I came here like some other gentlemen, to advocate certain propositions which I believe right, independent of all parties. As to the amendment of my friend from Nelson, I think it would be defeating the proposition itself, and be throwing embarrassments in the way of its passage. If my proposition was to secure the election of three whigs instead of one democrat, I should

have made it here. I think we stand here above all party. I made the proposition for the purpose of breaking that vast influence of Louisville that some gentlemen seem to fear. Perhaps after further deliberation, I may agree to accept the proposition of my friend from Nelson, but as I now feel some disinclination so to do, and should like to consult with my friends on the subject, I now move that the committee rise, and report progress, and ask leave to sit again.

Mr. IRWIN moved a recess, this was not concurred in, and then the committee rose and reported progress and had leave to sit again.

The convention then adjourned.

SATURDAY, NOVEMBER 17th, 1849.

Prayer by Rev STUART ROBERTSON.

EVENING SESSIONS.

Mr. BARLOW offered the following resolution:

*Resolved*, That on Monday next, and every day thereafter, the convention will take a recess and hold an evening session, to commence at 3 o'clock.

After a brief conversation on its propriety, the yeas and nays were called, and on being taken, were—yeas 57, nays 17.

So the resolution was agreed to.

LEGISLATIVE REPRESENTATION.

Mr. GARFIELDE offered the following resolution:

*Resolved*, That the house of representatives shall, at all times, consist of as many members as there may be counties in the state, and each county shall be entitled to a separate representative. The state shall be divided into senatorial districts, in each of which, one senator shall be elected by the qualified voters thereof: *Provided*, That each representative and each senator shall be entitled to one vote for every one hundred electors in his county or district.

As I am a young member in this body, I feel a delicacy in offering a resolution which runs counter to the report of any of its committees, but upon reading the report of the committee on the legislative department, I found that, like all the works of man, it was defective. I think it will be conceded that the resolution which I have offered, has at least three merits. First, that it deprives the legislature of the power of taking any action upon the question of apportioning the representatives. In the second place, it metes out justice to every county and citizen of the commonwealth; and lastly, it gives to every municipality its own separate and independent representative.

Wherein has the difficulty existed heretofore in apportioning the representation of this state? It has been in the fact that you were compelled to give the legislature a power which might be used for party purposes. This is a serious and crying evil. Here is a county with two thousand qualified voters—five hundred more than is suf-

ficient to entitle it to a representative. This surplus is transferred to a county, perhaps fifty miles distant, to supply its deficiency; to one also whose political sentiments and local interests may be directly opposite to the sentiments and interests of the residuum thus transferred.

Under such circumstances, are these five hundred voters represented at all? Do they exert any influence in the legislature, politically or otherwise? I apprehend not. So far as their power, influence or interests are concerned, they might as well be disfranchised.

This resolution, and this alone, lays down a basis by which the political sentiments, local interests, and wishes of every county in the state, and of every voter in the county may, and will be, fully represented. Where is the county which, unless it has its share, or more than its share of representation, is not complaining continually of the injustice done to it? Is there not a feeling of universal discontent throughout the body politic in relation to this question of apportionment? There is sir. The resolution which I have submitted, proposes a plan which will operate justly and equally upon all in this respect.

It proposes that each county shall send its own representative, who shall be entitled to one vote for every one hundred qualified electors in his county. Thus, if a county has two thousand voters, its representative in the legislature shall cast twenty votes for or against any bill which may come up for decision. If a county has two thousand five hundred voters, its representative shall cast twenty five votes. If it has one thousand, then ten will be his number of votes, and so on for any possible number which the county may contain. Does not this mete out equal justice to the whole community? Does it not do so more fully and perfectly than any system which has been presented to this convention? I think it does, sir. The entire body of the people will thus be fairly represented. It gives to every freeman a voice in the councils of the state. It does not make property or territory the basis of representation, but men, thinking, reasoning, intelligent men. And it gives every such man who is a citizen of the state the means of being heard, and the power of acting through his representative in the legislature. I ask gentlemen to point out wherein a system of this character can possibly work injustice to any portion of the community.

But, sir, let us notice the plan of apportionment now in operation. The county of Bourbon, with some nineteen hundred voters, sends two representatives to the legislature, while the county of Campbell, with two thousand four hundred, sends but one. The county of Casey, with about one thousand voters, sends one member; while the county of Hardin, with two thousand four hundred, sends two. Cases of this kind might be multiplied, but it is unnecessary. Where is the reason or justice of an apportionment of this kind?

But it is argued that the report of the legislative committee obviates this great difficulty by taking the power from the legislature to work these great political enormities. Let us notice, for a moment, the workings of the system proposed in that report. The county of Larue,



with one thousand voters, being two thirds of the ratio, gets one representative, while the county of Harrison, with two thousand two hundred voters, not having one ratio and two thirds, gets but one. Here, by a course of political reasoning, wholly unintelligible to me, it is supposed that the seven hundred surplus in Harrison, is taken to Larue to supply the deficiency there, and that by this means this seven hundred surplus is fairly represented by the member from Larue. To my mind, sir, this is nothing more nor less than a political sophism, based upon the supposed necessity of the case. This seven hundred surplus is not, in reality, represented at all, or if represented, it is by a member in the selection of whom they had no voice, and who feels no identity of interest with them.

Again, the report provides that a county having two thirds of the ratio shall be entitled to one representative, and that the ratio and two thirds over shall be required to give two. How will this work?

Thirteen counties can be selected which will have about 13,800 voters, and they will be entitled to thirteen representatives, while thirteen other counties with 26,500 voters will be entitled to but thirteen. Now sir, where shall the first thirteen counties supply their deficiency of 6,000 voters, and what shall the last thirteen do with their 7,000 surplus? Sir, in truth you create 6,000 imaginary men for the benefit of the small counties and you politically kill 7,000 in the large counties. You never can give to each county its exact representation in your legislative halls by this method of apportionment.

But there is another consideration in favor of the plan contained in my resolution. It gives to each county its independent representation. Each county sends its member whether it has its 500 or 2,500 voters, whether 750 or 3,000. Each county, to a certain extent, constitutes a separate and independent municipality. Take any two adjoining counties and notice what difference of feeling, what prejudices, likes and dislikes exist. There is an imaginary line dividing two counties. On one side the people congregate at one point to transact their business, to attend their courts, &c., on the other side of this line they go to another point for the same purposes. Each county has an identity of interest peculiar to itself, and desires to have its own representation in the councils of the state.

According to the report of the committee we shall, in many cases, have to throw two or three counties together in order to entitle them to a representative. By this act their identity is destroyed; besides the larger counties overrule and trample upon the rights of the smaller ones. The feelings, wishes, and interests of the county in which the member lives are attended to, to the neglect of the others attached to it. If a question arises wherein the interests of the two counties are antagonistic, the member's own county receives the preference. These things engender jealousy, ill-will, and hatred.

Again, other counties in the state will be entitled to two or more representatives. It frequently happens, where two are elected from the same county, that a person is elected who is the choice of neither party, by voters throwing one of their votes for him. Thus the interests and wishes of

the people are represented by a man who is not their choice by the occurrence of this circumstance, which is known to happen frequently. All these difficulties are obviated by the plan proposed in my resolution. The largest county in the state will have but one representative, whose power will be equal to the number of electors in his county, and the smallest county will have one member also.

There may be some objections urged against my proposition which it may be well to anticipate. It may be said that it will be difficult to carry this plan into operation in the legislature; that there may be a difficulty in taking the votes where members have an unequal number. There is, however, in reality no difficulty at all. I have consulted the secretary of this convention, who has discharged the duties of clerk of the house of representatives with great credit for several years, and find that his views of this matter coincide with mine. He assured me that the vote can be taken almost as speedily as it can be under the present plan. But suppose it should take five minutes longer, should that weigh in the scale against the rights of the people which are so much more equally secured? Under the present plan it takes about three weeks every four years for the legislature to apportion the state. This time being saved would amply compensate for the extra time consumed in voting.

The question may be asked, how will you decide a vote when the yeas and nays are not called? The answer is simple. In every such case each member has an equal vote. This works no injustice, for if any member is dissatisfied with the result, he can call for the yeas and nays. It may be suggested that this plan throws too much power into the hands of an individual where he represents the interests of twenty five hundred constituents, and consequently has twenty five votes in his hands. It gives him but his just proportion. There is no danger here unless we admit that representatives are susceptible of being easily corrupted; that they may be swayed from the path of duty by bribery and corruption. If this doctrine be affirmed, then we had better increase our representation largely, as the extra cost would not weigh in the scale against general security.

Again it may be argued that new counties will be formed, and by this means the legislature may be increased to too large a size. This plan of apportionment will act as a check upon the legislature to prevent them from forming new counties. No representative will dare to curtail the power of his county by cutting off a part of it except upon the most pressing necessity. Thus it will act as a cement to bind the various parts of a county together.

The present plan of apportionment has been a prolific source of evil in this respect. A county having two thousand voters could send but one member although it had five hundred spare voters. This made the people willing to have this five hundred stricken off and attached to other fractions to form a new county. The division of the county has not affected its political power.

Give this county a representative empowered to cast a vote for every one hundred voters in

his county and the difficulty is obviated. That county will not suffer itself to be divided. An adhesive principle is at once applied which will bind all the parts of the county together.

With these hasty remarks and imperfect views, I desire the resolution printed and referred to the committee of the whole, believing that committee will give it whatever consideration its merits deserve.

It was referred to the committee of the whole and ordered to be printed.

Mr. HARGIS offered the following resolution: *Provided*, That no city or town shall ever be entitled to more than two senators, until her population increase to 300,000, after which such city may have three senators, and no more: *Provided*, That in the house of representatives, representation shall always be in proportion to the number of qualified voters in such city or town.

In relation to the important question of representation, he believed it should be based on population, but still he contended that there is a difference between population, when crowded into cities, and when diffused over the country. The states which have amended their constitutions within the last eight or ten years, have nearly all restricted their cities. It may not have been done in the state of New York, as gentlemen have suggested, inasmuch as there is less danger of the undue influence of cities in large states, than in those which are smaller. But the state of Maryland has given the city of Baltimore no greater representation than each of the counties of the state. Virginia, and Pennsylvania have adopted the principle of restriction. The city of Philadelphia is limited to four senators, and the number is not to be increased. The state of Louisiana has limited the representation of the city of New Orleans to four, although according to her present population, she would be entitled to six. In short, if there is a rule well established in the United States, it is that cities should be restricted, and why should it not be enforced in Kentucky? Louisville, and the county of Jefferson have now here, five delegates, and if that city continues to increase, as she has increased, in fifty years she would be entitled to five or six senators. It has been contended that in this there is no danger to be apprehended, but that, if the restriction should be enforced, whenever the cities on the Ohio river become sufficiently powerful, they will arise and avenge their wrongs. Read the history of the oriental nations, and what do we learn? That cities grow up and become proud of their numbers, and that the more they have, the more they want. For himself, he had no objection if these cities should grow up and rival in population and power the ancient cities of Ninevah and Babylon, and that each city should be able to send out of her hundred gates, ten thousand fighting men in arms, but he would take care to impose such a restriction on this power and greatness as would prevent any disadvantage therefrom to the other portion of the state.

What had Louisville already received? She has a chancery court, with a salary for her chancellor of \$2,000. Her circuit judge receives more than the circuit judges in other portions of the state, and she receives a larger share of the school fund. He thought there was great dang-

er to be apprehended from the influence she might exercise arising from the consolidation of wealth and numbers; and the completion of railroads to terminate there, would serve to increase it.

Much had been said upon the question of slavery. The gentlemen who were here voting against any restriction on the city of Louisville were those who were in favor of the introduction of the law of 1833. To that law he stood as an opponent. He believed that slavery was sanctioned by the bible; but he did not believe that the question of slavery and the restriction of cities had any necessary connection.

He repeated the remark that the population of a city can be represented by a smaller number of representatives than the county whose inhabitants are spread over a larger surface. He then returned to the law of 1833, and said he believed it would never have been passed if there had been a fair vote taken on the subject throughout the state. He reiterated the statement, that the restrictions of cities and the question of slavery had no necessary connection, but he added, he would not say that the question in regard to foreigners had nothing to do with it, for they were coming over here in thousands, dropping amongst us like black birds or wild geese, who were here to day and gone to-morrow. He regretted to hear the Mexican war mentioned in this convention. Kentucky did her duty in that war, and it should have no influence here in promoting the interest of Louisville alone. He came here with no other view than to make a good constitution. He believed that every man here had a desire to promote the best interests of his country, but it was unreasonable to expect that they could all agree upon any one proposition. Our government was originally based on mutual concessions and compromise, and we must concede also. He expected to yield much of his opinions and prejudices, and he could in the end say that what had been done by the majority was right.

He had before said that large cities when they have much, want more. Louisville and Jefferson county have five delegates here, at this time, and he was willing to deal liberally with her; but some restriction on large cities where population is increased by immigration from foreign countries may be found to be necessary. He desired a representation based on a permanent and not on a floating population.

The restriction of cities might not be of much importance now, but one hundred years hence it might be of great importance. He expressed a great desire that his opinions should be published to the world, and he contemplated with great satisfaction, a harmonious termination of the labors of this convention. He spoke at very great length and very earnestly.

The PRESIDENT rose and asked whether the gentleman thought it necessary to consume the time of the convention by repeating his proposition and arguments twenty times over.

Mr. HARGIS said, he had expected to be called to order, and as he had nearly done he would sit down.

The resolution was rejected.

#### LEGISLATIVE DEPARTMENT.

The convention resolved itself into committee

of the whole, on the report of the committee on the legislative department, Mr. MERIWETHER in the chair.

The pending question was on the amendment of the gentleman from Christian, (Mr. Morris.)

Mr. DIXON offered the following as a substitute for the pending amendment:

"And provided, that whenever any town or city shall become entitled to two or more representatives in either branch of the legislature, the legislature shall have power to divide such town or city into as many election districts as there may be members to elect, in each of which districts an election shall be held, for the election of the number to which such district may be entitled."

Mr. DIXON. When my honorable friend from Christian submitted his resolution, I announced to the committee that I endorsed the principles contained in it. I still endorse the principle, as applicable to the state of the case which I understand the resolution was intended to meet. Nor is it my intention, in offering the amendment to the amendment proposed by my friend from Christian, to depart from the principle contained in his amendment, to which I have given my sanction. The principle of unity of representation in counties seems to have been recognized in the old constitution, and in the report of the committee, which is now under discussion. The principle is this—that a county entitled to two or more representatives, according to the population, should have the privilege of electing its representatives by the whole people of the county, and not by dividing the county, and giving to each portion, so divided, the right of electing a separate representative.

This principle, I apprehend, was founded in wisdom. It was intended to secure harmony among all of the free voters of the country. The state of Kentucky, for great and wise purposes, has been laid off, under the constitution of 1799, into counties and senatorial districts. It was laid off into counties for the purpose of convenience to all the people of the state. It was laid off into senatorial districts with the same object, and for the same purpose. The two great bodies composing the legislature were intended to act, to some extent, as checks upon each other; and population, so far as regarded each branch, was recognized by the framers of the constitution as the basis of representation in both. This basis, to-wit, of population, has been carried out by the report of the committee, and I think correctly. The state, as I before said, has been laid off into counties and districts; for the convenience of the people of the state, and at the same time, with a view to produce harmony and concentrate action among the people of each particular county, the wisdom and advantage of which will at once be perceived and acknowledged by all.

That unity of action, on the part of a county, was thought by the committee to be important, and so far as senatorial representation is concerned, it was thought to be equally important, and in each case population is adopted as the basis of representation. The gentlemen of the opposite side of the question thought that there would be an advantage in adopting a restrictive policy, in regard to cities, where population is

concentrated; because, otherwise their action might have an injurious tendency upon the interests of the people in the balance of the state. Sir, if the population of a city is to act against the balance of the state, and if, by so acting, any injury is to result to the great body of the farming community, I, for one, would place myself in opposition to it. Those who have maintained that this power would be exercised against the balance of the people, have not maintained that the power which now exists in cities can be exerted to the prejudice of any portion of the people of Kentucky. They do not assert, nor do they seem to believe, that the power of any city now in the commonwealth, though it may be concentrated, can operate to the prejudice of the balance of the people of Kentucky; not taking the position that the population of cities, as it now stands, can be dangerous, but assuming the fact to be—as it is within the range of possibility—that the time may come, when that power can grow to such strength and force that it may be used to the prejudice of other portions of Kentucky. Gentlemen on the opposite side of the question have proposed to lay restrictions upon the people of the cities in the exercise of the right of suffrage; not that they are to chain the lion as they now find him—for they now regard him as harmless—not to place manacles upon the population of the cities as they now exist—for they look upon them now as weak and impotent—but they would have the chains prepared for the lion, by the time he becomes strong and powerful, and when he will be in a condition to make the whole people tremble at his roar. The gentleman from Christian is not for chaining the beast in his infancy, but for keeping him weak by dividing his strength whilst he is still young, and preventing its concentrated exercise when he has grown to his full size. Gentlemen think that the commonwealth is not yet in danger, the body politic is not yet diseased. I see no necessity, then, for calling in a physician. Would he call in a surgeon to amputate a limb, whilst it is yet sound and healthy, and in mere anticipation that at some time or other it would become diseased, and that gangrene would follow? Why not wait until the proper time arrives, for placing this restriction? If it is to be applied at all, let it be applied when the necessity arrives. The proposition of the gentleman from Christian is, to apply it at once—to apply the remedy before the disease exists—to amputate the limb before gangrene has taken possession of it. I can see no necessity for it.

I have remarked that unity of representation in counties has been provided in all the constitutions of the various states, and for the wisest purposes. This unity of representation should be extended to towns and cities. I can see no good reason why it should not be. Whenever gentlemen can show a good reason why unity of representation should be denied to cities, then let it be done; but I say the time has not yet arrived, at least so far as any facts have been adduced to indicate it, and until it does arrive no such principle should be applied, because by applying it you depart from the great principle running through the report of the committee, and running through the old constitution, and

through the constitutions, I think, of all the states, that unity of representation in counties, and in towns and cities, ought not to be abrogated, unless for very good and sufficient reasons. Does the reason exist at this time for breaking in upon this harmonious action of the people in towns and cities? What is that reason, if any does exist? Is it that the power of Louisville, of Covington, of Maysville, or of any other town on the Ohio river that is to wield this tremendous influence, is such now as to make it necessary to break down this principle?

Let us look at the condition of things, because it is important that the question should be properly understood. What is the power of Louisville? She has three representatives—not five, as the gentleman from Breathitt has said. They are distinguished gentlemen, possessing great talents and influence, and every way worthy of the city which they represent, fully able to defend her rights and interests. But what is the amount of influence that can be exerted by those highly respectable delegates, over the great body of the people of Kentucky, or over the balance of the delegates to this convention? Can these three gentlemen place themselves in opposition to the power of the mighty people of Kentucky? Are we apprehensive that their power is or will become so great as to be irresistible? I acknowledge that their power is considerable, but I confess I am not at all alarmed at it, nor do I admit that it is greater than that of other gentlemen on this floor. Let them come here with any proposition they may think proper to bring, and let them unite all their forces upon it, if the proposition be objectionable to the balance of the delegates here, we can over-rule them, and put them down without scarcely an effort. Let them bring all their powers into the field, they cannot drive the remaining ninety-seven members from their position. Take the city of Covington. Let us see the power that she can wield against the balance of the state. She is represented by a gentleman who is able to sustain the interests of his constituents, a man of weight and influence I admit, but when united with the three gentlemen from Louisville what can they do against the remaining ninety-six delegates? Pass on to Maysville. She is not entitled to a representative, nor in fact is Covington, but I take both county and city together, and add one delegate for Lexington, and here are six arrayed against ninety-four. Is this so powerful an array? Can they exert so powerful an influence that we are now obliged to place restraints upon them, to prevent their oversteering the balance of Kentucky? I do not believe we have any cause to be alarmed. I say then to my friend from Christian that I do not think this is the time to apply the principle contained in his proposition.

But let us trace this matter a little further and see how this power is to be exerted. Is it to be exerted in relation to the finances of the state? In raising the taxes? In the building up a great system of internal improvements, or in the borrowing of money? These are important measures of state policy, alike interesting to the people of the country, and to towns and cities. How far can the cities of Kentucky control the state in carrying out all or any one of these measures. If their power is such as some gen-

tlemen imagine, they have but to will the accomplishment of any purpose and it is already done. Like the greatest general of the Romans, they have but to come, to see, and to conquer. Let us examine the extent of their power over the first of these important measures. And here permit me to remark that there is nothing upon which the people, not only in the country, but in towns and cities, are more sensitive than on the subject of raising the taxes—it concerns every citizen of the commonwealth—and so alive to the proper exercise of this great power are the people of every republic, that each man seems to stand as a sentinel, not only to guard his own, but the property and person of every other citizen, from unjust or oppressive taxation. According to our present constitution, all bills for raising the revenue are to originate with the lower house of the legislature—with the immediate representatives of the people—fresh from their bosoms—sympathising with them—acquainted with their wants, and ready to make any sacrifice to protect their rights. It is a fearful array this, which a city would have to break through, in the accomplishing of any purpose of injustice in the raising the taxes of the state. Their own people (as they certainly would be) resisting the people of all other parts of the state, and the members of the legislature, high on the watch tower of freedom, calmly surveying the advanced posts of the enemy, and ready to sound the tocsin of alarm on the first approach of danger. With such watchful sentinels—with such powerful protectors—what could the puny arm of a single city—nay, of all the cities combined—accomplish in the way of injustice or oppression in raising the taxes on the people of the commonwealth. They would be, when opposed to the balance of the state, as a pigmy opposed to a giant. The wrath of the people, once awakened, would sweep them away as chaff before the wings of the Storm-God careering in his might. There is no danger at this point upon this subject, the whole people of the state are bound together, as by magnetic cords, and where you touch the interest of one, it vibrates along these cords to the hearts of all. There can be no danger then at this point. Whenever a proposition to increase the revenue of the state is made, whether by the representation of city or country, it is responded to by the people from every part of the commonwealth. Their voice comes up to the halls of legislation from every city and hamlet—from every valley and hill top—proclaiming their assent or dissent to the measure, and woe be to the faithless representative who disregards the warning of that voice; they will never disregard it; and I again repeat, that I have no fear of danger at this point.

Is the danger greater in building up a great system of internal improvements for the improvement of the roads and rivers of the commonwealth?

Mr. Chairman: The sectional divisions of the state, as well as local and conflicting interests, forbid that there should be any concert, or unity of action, when a proposition is made to improve any one road or river. I remember that I was a member of the senate of Kentucky when the project for the making of the great southern railroad was brought before the

legislature. I remember that the north and the south and middle sections of the state, as well as all the cities, so far from harmonizing in support of the measure, found it impossible to agree as to the route it should take, or the town on the Ohio river at which it should terminate, and it fell under the ponderous blows of those who would have been its friends, could they have shared with the rest of the state its benefits. One portion of the people wanted the road to terminate at the lower extremity of the state; another was for extending it to the city of Louisville; and another to some other town on the Ohio river in the northern part of the state; and thus situated they could never have but one city on the river, or but one section of the state in favor of the measure. It was lost, as I before remarked, by these conflicting interests.

But, sir, how was the great system of internal improvements for the state spoken into existence? Not by the influence of any one city, nor by the influence of all the towns and cities of the state combined; but by the union of the interests of the different sections of the state, stimulated by sectional advantages and strengthened by the idea of general good to the whole people of the commonwealth. Through a beautiful and fertile country in the middle section of the state, comes winding the Kentucky river, inviting, as it passes along, the products of the farmer and the mineral wealth of the mountain, to take passage on its bosom to the great and beautiful Ohio, and from thence on its broad and capacious waters onward to every market in the world. Far above, in the northern part of the state, and termination at the city of Covington on the Ohio, might have been seen the Licking, meandering its way through a country little less rich than that on the banks of the Kentucky, and pouring its waters down from mountains stored with mineral of almost every description, and which had slept in their quiet bosoms through the long lapse of ages; whilst in the distant south, stretching gracefully through a level and fruitful country, inhabited on each side by thousands of the honest and hardy yeomanry of the state, comes the Green river, starting from the same range of mountains, and mingling its waters with those of the Ohio in the county of Henderson. These great natural outlets for the rich products of the farmer and the mineral wealth of the mountains, were, nevertheless, obstructed, during a large portion of the year, by shoals and rocks, which prevented navigation, and required the united wealth and energy of the whole people of the state to remove. It is true that the towns and cities along the banks of the Ohio were to share with the farmers in the country the benefits of navigation, and to secure the advantages which might result to all, from the removal of these obstructions.

But how was this great end to be attained? Could it be brought about simply by the exertions of one particular section of country? Could one county, or one range of counties, effect anything by their exertions? No, sir, it required the combined and united efforts of the people at large. All of these separate interests were joined together, and by means of a universal and united appeal to the liberality of the

state for her encouragement and support, they accomplished that which they so much desired. This co-operation resulted from the fact that it was deemed essential and important by the people of the state at large, that their resources, their rich and wavy fields of corn, tobacco, and hemp, and all the other products of the soil, should find a market upon the banks of the principal river, or some other great point, and this was utterly impossible, unless these obstructions were removed and a great system of internal improvements instituted. The people of all parts of the commonwealth united sir; but they did not unite for the purpose of building up a particular city. Nothing of the kind. They joined hand in hand to accomplish a great object, and that was to promote, by a general and united movement, the interests of the whole state. Neither the influence of one city or of all the cities combined, nor of one section of the state, could have brought about this result. It required the united and conjoined efforts of all the people of Kentucky to accomplish it. This was the view taken by the statesmen who advocated that great system. I was opposed to it—not to the improving the navigation of the rivers, or to the making of roads such as would have been of utility to the whole state—but to the tacking on to the system objects not of public advantage, but intended merely to secure to it the support of particular localities. For sir, I beheld it starting up like a giant with its hundred hands stretching its arms into every part of the state, and holding out golden promises to the wavering, the venal, and the corrupt. I did not think it projected in fairness, or carried out in principle. But this unfairness was not from city influence, it was from the force of a thousand causes which circumstances had united to bring about the result. Its blessings or its evils, whatever they may have been, were not from city influence more than from that of the country. I do not see, therefore, that the danger of city influence is to be feared in the improvement of the rivers and roads of the commonwealth.

But let us come to the last proposition, and that is, to the borrowing of money on the credit of the state. That Kentucky has involved herself in a large debt, but not beyond her capacity to pay, there can be no doubt; but that the influence of towns or cities, or any particular section of the state, was alone exerted to bring about this result, no one believes. All the interests and sections of the state united in pledging her credit; but it was to effect and accomplish objects in which all were deeply interested, and which are now dispensing their benefits to all, broadcast through the land. But sir, if any danger is to be apprehended from the exercise of this power, the determination of, I think, a majority of the members of this convention to restrain the legislature in the future exercise of it, by denying it to them without first referring it to the people, should forever put an end to even the fear of danger. Whether the principle here indicated be inserted in the new constitution or not, I am certain that the mere influence of the towns can never bring about an extravagant exercise of the power. I have shown before, in the address made by me some days since to the

committee, that the interests of the towns and country were dependent on each other, and that they should mutually aid and assist each other. This I still think, and I am confident that no great measure of state policy is ever likely to be adopted unless mutually advantageous to the people of the towns and country. Are the people indeed so utterly ignorant of their own interests as to be swayed from the path of duty by the mere influences of the towns? Have we not heard gentlemen here—when it was proposed to require qualifications from clerks, and the ineligibility of judges for fear of the corrupting exercise of their power upon the people—insist that the intelligence and purity of the people, their soundness of judgment, quickness of apprehension, and powers of discrimination forbids the conclusion that they could be deceived or imposed upon? If this be true, can that people then be overpowered and overreached by that influence which gentlemen seem to think must exist in the cities. But it is an influence which does not and cannot exist, as I have shown before in a calculation I have made on a fair and correct basis. I have shown that allowing the ratio of increase in the cities to be four hundred per cent. over the country, that when Louisville reached a population of 200,000 she would still have but three senators, while the state would have the balance. It therefore, must be utterly impossible for gentlemen, with these facts before them, to argue any body into the conclusion that this overpowering influence can ever exist.

But the gentlemen from Madison and Bourbon would lay these restrictions upon the people of the cities with a view of protecting certain interests in this commonwealth. If so, why not apply the principle to their own counties, and elsewhere, wherever the spirit of emancipation may display itself. The gentleman from Madison has insisted, in the first speech made by him on this question, and again repeated it in the one made by him yesterday, that numbers, in the towns and cities along the Ohio river, should not form the basis of representation.

Mr. TURNER. The gentleman will permit me to remark that I represented the proposition that property or territory should be the basis of representation.

Mr. DIXON. It would not be well, probably, for me to read the gentleman's speech on that subject.

Mr. TURNER. You had better read it.

Mr. DIXON. Then here it is: "I protest," says the gentleman, "against basing representation exclusively on population." Now will the gentleman from Madison inform me, if he will not base the principle of representation on numbers, on what will he base it? On what else can he base it, unless on territory or property? I understand there are three bases of representation, one is population, another is property, and a third is territory. If he does not mean to base it upon property or territory, will he be good enough to tell us upon what he will base it. Does he mean to assert, that he will have no basis at all? I would like to be informed upon this point.

But sir, let us return to the subject. The gentleman would protect the slaveholder by disfranchising thousands of those who do not own that description of property, and from the groundless

apprehension that this is the best mode of protecting the interest of the slaveholder. Sir, such a system of proscription would be not only unjust, but in violation of every principle of propriety. It cannot, and it surely will not be done. Such a principle in the constitution, and for such a purpose, would alarm all the people of the commonwealth; it would strike terror into the hearts and minds of men. It would arouse a spirit of indignation amongst the non-slaveholding portion of the people, that would sweep the whole institution to destruction. I know of no magic power by which it could be appeased. Sir, as well might you attempt with your puny hand to arrest the white-crested wave of the ocean, when rising and swelling to mountain height it sweeps resistless on before the storm compelling power, or to chain the lightnings when loosed from their home of slumber in the clouds, they dash on, destroying and blasting in their mad career. Remember sir, that they who own slaves are but a fraction of the whole people of the state; and that the fact that we constitute a majority here, is no authority to exercise our short-lived power to the destruction of the rights of others. I implore gentlemen to be more careful of what they do. Do not attempt, under the pretence of protecting the institution of slavery, to inflict upon it a stab from which its heart's blood must flow. Beware, beware—lest with the besom of destruction you sweep the whole institution away, and that you leave nothing to tell that it existed but the records that we are now publishing to the world.

Beware, I say, how you trample on the rights of the non-slaveholding portion of the community. I have the utmost confidence in that community, and I take leave to say, that were it not for their forbearance, their high sense of justice, and their noble and elevated attachment to principle, the institution would have been very greatly endangered. They know that you are entitled to the property that you have inherited and purchased, and they fully recognize the great principle, in our constitution, that no man's property shall be taken without full and fair compensation. This was a high, and a great principle asserted by the people of the whole state, in the August elections, and whether from the Ohio border, or any other part of the country, I believe there is not a single emancipationist returned here to proclaim the wishes of that portion of our people who believe in the propriety of emancipating the negroes without compensation. Is not this an evidence of the fidelity of the people on the banks of the river to the institutions of Kentucky, and the institution of slavery itself? I understand from the gentleman from Madison, that there were polled, in his county, at the last election 680 odd emancipation votes. Are not those people in his county obnoxious to the same restriction that he would impose on those who live on the banks of the Ohio. But the gentleman in his argument did not refer to that fact. He did not seem to think that they became obnoxious to that censure, but allowed the whole weight of it, that fell from his lips, to come with its withering influence solely upon those who reside on the banks of the Ohio. But it falls upon the whole state, if not so intended, yet with the random shot that destroys. I can



never assent to any such principle of proscription.

I go along with my friend from Christian, (Mr. Morris,) in the principle avowed in his proposition, and desire to apply it wherever the necessity for its application shall exist. I say if such a danger exists from Louisville, apply it at once; if not, why apply the principle at all. If there is no reason for it, no benefit will come out of it. There is no reason for breaking down the unity of representation for a proposition, which, when attained, will accomplish no good. The amendment I offer proposes to give full power to the legislature, when they deem it necessary as a safe-guard for the interest of the country, at any moment, to impose this restriction upon the city of Louisville, by dividing their representation. While I go with my friend as to the principle of his resolution, I wish that we could harmonize as to its details and its mode of application. I still trust we may, but I fear we will not. I stand here as the representative of my own county, on a great principle. I came not here to represent any party, but as the representative of both parties in my own county. I had no opposition to the place I hold here. I was supported by both parties. Those who differed from me on questions of national policy, were as ardent in my support, as the friends who had long entertained the same political sentiments that I do. I received their united vote, and was elected to carry out certain great principles, which no mere party consideration shall ever induce me to depart from.

Mr. MORRIS. I am sorry to find that my highly esteemed friend from Henderson and myself will have to part company here. I am sorry we are to be separated upon what I consider a high conservative principle. I am sorry that more mature reflection has induced him to scratch out his endorsement of the amendment which I proposed the other day.

Mr. DIXON. I hope the gentleman will not misunderstand me. I stated at the outset that I did not retract my endorsement of the principle, but that I differed with him as to its application.

Mr. MORRIS. That is right, it is only a difference between us as to the application of the principle, and not as to its correctness. I am satisfied that my friend misapprehended its application, as indicated in my resolution, and only intended to endorse the principle. My proposition is, that the legislature shall now be required to district those cities entitled to more than one representative. Put off this operation until the contingency, which gentlemen seem to apprehend, shall arise; the danger we are seeking to ward off will then have arrived, and it will be too late to apply the remedy. Apply the principle to every city, as it becomes entitled to more than one representative, and the difficulty we apprehend will be met before the danger arrives. Delay its application, and the whole conservative force of my amendment will have been destroyed. We are seeking to break the force of a united city representation; for that is the danger we apprehend. We say to the legislature, as my friend proposes, you shall have the power to district the cities, and thereby destroy their unity of representation, whenever the contingency arises. But when that contingency does arise, when this

city power shall have grown strong in our legislature, may it not be too late for the legislature to act? May it not be possible that this influence will be too powerful to overcome?

Perhaps it may be necessary, on account of the peculiar position which I occupy upon this question, and the remarks made by the junior gentleman from Nelson, on yesterday, with respect to himself, the honorable president of this body, and myself, and the party tendency which this amendment has been made to assume in the eyes of some people, for me to say that no conversation nor communication ever took place between the president and myself, with regard to the amendment which we now have under consideration. I am confident he knew nothing whatever of my intention to offer the amendment, until it was submitted to the house. It is true that I did exhibit it to some of my friends, irrespective of party, and consulted with them as to its propriety and strength. It is equally true, that the idea of its effect upon the two great parties never for one moment entered the head of one of us. We were consulting and deliberating upon a great principle of compromise, upon which I hoped the chafed and agitated spirit of the house might possibly unite. It is true that my friends concurred with me in the belief that it would probably promote harmony and union; that while it would secure the great principle, that representation should be based on population, it would at the same time, by dividing the cities against themselves, preserve the rural districts against the dangerous influence of a united city representation. I had not the remotest idea that sinister motives could be attributed to me, and nothing could give me more pain, than that the insinuation could be thrown out against me, that I, a democrat, representing a whig constituency, could, for the purpose of accomplishing the miserable party gain of one member in the legislature, coolly introduce into this body a measure solely calculated to promote the democratic cause, and with that object in view. I never dreamed of such a thing; such an idea never entered my brain. And yet, such "sinister" motives have been attributed to me by one of the leading journals of this state, and judging from the remarks made by my friend from Nelson, on yesterday, have found their way into this house.

Sir, there are men in this world—I will not say they are to be found in this body—who have been so long chained to the car of party, who have so long fed upon the crumbs which have been sparingly doled out from the party table, and fawned and flattered that a few more morsels might be offered—who have so long breathed the polluted atmosphere of the party brothel—who are so completely prostituted, both in mind and body, to the trickery and chicanery of party politics, that they can no more understand the operations of an honest and independent mind, or appreciate an independent course, than the fiends of hell can appreciate the enjoyments of heaven. When any great question is proposed to them, instead of considering the great principle which may be involved in it; instead of asking themselves, is it right? is it proper? is it for the good of the country at large?—the single and sole view which they take of the subject, the only question which they ask is, will it promote the

democratic or the whig cause? God forbid! that I should be classed with such men.

Sir, an enlightened and a patriotic constituency, a large majority of them differing from me in political sentiments, has honored me with a seat upon this floor. I came here pledged to represent them correctly. I came here fully possessed with the belief that a member of this convention should stand high above the petty manoeuvres of party politics. I came here to assist in making a constitution which will rise far above all party differences. I think there are gentlemen in this house, with whom I have been intimately associated, who will sustain me in the declaration, that I have all along been actuated by higher principles than mere party considerations.

Mr. DIXON. I have been intimately associated with the gentleman, and he has grown more and more upon my esteem and confidence every day, and if any man upon this floor or elsewhere, has placed himself entirely above all party influence, in his action here, I certainly think it is the gentleman from Christian. If it was necessary to endorse him, and I know it is not, it is but justice to him to say, that in all things he has acted on the most elevated principles, irrespective wholly of party, and with a sole eye to the good of his country.

Mr. MORRIS. I am extremely gratified at the high compliment the gentleman has paid me, and for his kind endorsement.

When I introduced the amendment which is now under consideration, it was done in a pure spirit of compromise—it was done with every feeling of kindness towards the population of Louisville, and her distinguished representatives upon this floor. The only fault I found with it, was, that it was an insufficient guaranty to the country population. I have not now the least idea of making a further concession; the feverish and excited state of mind among the members seemed to call for a compromise; the most distinguished gentlemen on this floor were almost ready to fight; a high state of excitement existed all over the house; it was impossible, under their existing state of mind in the house, that correct conclusions could be arrived at; it was necessary that something should be done; I faltered and found myself retracing a step which I had already determined upon; I modified my position, and by this course gave my friend from Caldwell an opportunity to give me the heavy blow which he fairly dealt me in the able speech which he delivered to the committee the other day; I brought forward this amendment; when it was read, many gentleman who had stood out against the broad principle of representation upon numbers, and who had determined to restrict Louisville and all city population, stepped forward and declared their willingness to support it; and it was not until the base insinuation was thrown out, that its principle object was to promote the democratic cause, that it began to lose favor.

I did not rise sir, for the purpose of discussing this amendment—my object was simply to relieve myself from a false position. The subject has been fairly eviscerated, and there is scarcely a foot of ground upon which to rest an argument which has not already been occupied

by some one of the able gentlemen who have discussed this question. I have stated to the committee that I cannot go with the gentleman from Henderson, for the amendment which he has just offered. It is weakening the force of the amendment which I offered, and my own is not strong enough for my taste. I cannot say that I apprehend no danger from the city representation—I think that its strength is derived, to a great extent, from sources even above population. It is stated, and a computation has been made by the gentleman from Henderson, and the gentleman from Montgomery, (who is great at figures), that the city population is not increasing to such an extent over the rural population, as to render the danger imminent at this time. I believe this to be true. I too have made a little estimate, and the result of my calculation is that the increase of the whole urban population in all the towns and cities, over all the rural population in every part of the state, is in the ratio of three to two. Now I do not think there is anything so terrible in this—but I would ask you, sir, and this committee, if there are not other causes which are brought to bear upon the legislative halls of the state, by the larger cities. Time was, sir, when Lexington and its junto controlled the whole destinies of Kentucky, because there was the concentration of the talent, the wealth, and the political influence of the state. The time may not be far distant when Louisville may occupy the same position. The city of Louisville is the concentration of the fashion, the intelligence, and the power of Kentucky—there the great men congregate to reap the rewards which belong to their talents—'tis there that banking accommodations are extended to the people—'tis there that the merchants from the various parts of the state do congregate, to supply themselves and their customers with merchandise—'tis there that individuals, of all classes, go to dispose of their surplus productions. There sir, last, but not least, is the mighty and controlling press of the state—the press which controls public opinion and popular action in this country, more completely than any man or particular set of men—the press which is almost above the people themselves. There sir, is the Louisville Journal, the Democratic Chronicle, and many other papers of different political hues. Where, sir, is the whig politician who is anxious to rise in the political world, who will dare to stand opposed to the Louisville Journal? He cannot be found. Let any whig in this state but incur the displeasure of that paper, and down he sinks like Lucifer, never to rise again. Let the same paper place its stamp of approval upon any individual and up goes his flag—he at once rises in the political scale—he walks into the legislature, congress, and the senate of the United States. This, sir, is an influence and a power greater than that which will spring from any excess of population. This is the power which has always operated so heavily upon our legislatures, and plays its part in this hall, at this time. It was this influence operated upon me, and caused me to hesitate whether, in order to check it, I should not break one of the great fundamental principles of our government. Go into the democratic ranks, and there you will find the demo-

cratic presses—there is the *Chronicle* and other papers, and though they have not grown so great as the *Journal*, yet it will be difficult to find an ambitious democrat who would willingly incur this democratic displeasure. It is this power which renders Louisville far more formidable than any increase of population, however rapid—it is this influence which controls our legislature, guides our senate, elects our governor, makes small men great, and controls public sentiment. This is a power which you cannot estimate by figures—you cannot reach the mind of man by figures—you cannot fathom the motive which induces him to take a particular stand—you cannot, by your mathematical calculations, tell why a gentleman turns whig to day and democrat to-morrow, nor why he votes one way on a proposition one time and another way at another. These are the unfathomed secrets of man's heart, but many of these secrets, could the truth but out, would be found depending on the press at Louisville.

In monarchical governments, the king is the fountain of all power—and I have read that there are many who flatter and bend the knee to this fountain of power—seeking that its waters may be poured upon their humble heads. In republican governments like ours, the fountain of all power is the people. The great controller of the people is the press; and you will find many men bowing and cringing at the footstool of this political press, praying that its waters be poured upon their heads.

These are some of the influences which Louisville can bring to bear in this state—whenever her interests may make it necessary—her population, her talent, her fashion, her commercial capital, her banking capital, her press—and shall there be no guard at all, backed against this power? Sir, I fear this conservative amendment of mine is too weak. I am willing to compromise upon it, but I can go no further. I cannot go with my friend from Henderson into the details, even though the principle be preserved. It is proper sir, that great principles be preserved though we incur danger in their preservation. I am willing to stand by this amendment, be it whig or be it democratic. If the democratic party is to be promoted by the support of great principles in this convention, let it be so. If whig principles are to be weakened by the same course, let it be so. I care not; I stand above party here, and whether it be whiggery or democracy that is promoted by the amendment upon your table, it is the same thing to me.

Mr. DIXON. I extremely regret that my honorable friend has found cause of offence in the *Louisville Journal*. I, of course, do not concur, nor can I be held responsible for the articles in that paper. It is a valuable and justly influential and popular public journal with the party to which I am proud to belong, and which I have acted for a quarter of a century. I regret that anything has appeared in it in regard to my friend's conduct in this matter, which he is constrained to regard as personally disrespectful to himself. I doubt if it was designed to impute to him any improper or dishonorable motive. Most assuredly none who know the gentleman as I know him would ever think of

imputing to him, in the course which he has pursued here, any other than motives the most honorable and patriotic. It is very true that we differ widely in political sentiment upon questions of national policy, but I have not regarded this as the arena for tournaments between gladiators espousing the cause of one or the other of the great national parties. So far as I know or believe, no such feeling has been manifested by the gentleman from Christian, (Mr. Morris.) I heartily concurred with him in the principle of his amendment when he presented it the other day. I yet concur in the principle. I propose, however, to modify his proposition so as to assert the principle and give to the legislature the power to apply it, whenever, in the wisdom of that branch of the government, it shall be deemed necessary or expedient.

I do not impute to him any desire to make the proposition which he offered subservient to party. I trust, and believe, that he, and all others on this floor, will, in making the new constitution, rise above party and party considerations, and look steadily and alone to the honor and glory of our great state. Such, I know, are the honest sentiments of my heart—such I believe to be the honest sentiments of my friend from Christian. I have not changed in my position towards the proposition now under consideration. I am for the principle, and the only difference between the honorable mover and myself, is, that we differ as to the mode of applying the principle and the time of its enforcement. If the legislature shall believe, at the first apportionment of representation under the new constitution, that the time has arrived when the good of the state demands that the legislative delegation from Louisville shall be disunited, I would cheerfully give the power to that legislature to disunite the delegation. I would not, however, disunite that representation, unless it is believed that the safety of the state demands such a course. I propose, by my amendment, to authorize the legislature to judge of that necessity. This is the position I occupy; and I trust my friend will consent to the modification, that we, who so fully concur in the principle contained in his amendment, may not be separated in declaring how that principle shall be applied.

Mr. RUDD. This question seems to have narrowed down to a point here. It is apprehended that Louisville will have too great an influence upon the agricultural section of the state, and to guard against that, gentlemen who came here advocating the pure republican principle of equal representation according to numbers, are ready at once to abandon it. It seems to be a desire, on the part of some, to punish Louisville for the failure of some favorite measure of their own. Others have expressed their desire to apply the restriction to all the counties bordering on the Ohio river; some twenty-four or five in number. It is a strange doctrine to be advocated here by men of clear heads and sound hearts. Even if it had the power, why should Louisville desire to oppress the rest of the state, or any portion of it? Is it not interested in the prosperity of the whole state? And yet the patriotism and the enterprise of Louisville, in the public im-

provements she has projected and carried out for the benefit of the state, and to enable the agricultural community to reach a sure and certain market, have actually been made a theme of reproach by gentlemen here, as if it was a great crime. Is it not the best, the most stable market in the western country? Why, then, should Louisville be restricted in her right to full and equal representation? Is she not a part and parcel of this commonwealth? or is she inhabited by a separate and distinct people? Why, if a stranger had heard the arguments of gentlemen, he would have supposed that the city belonged to a different people, one hardly speaking the same language with the rest of the state. Is not Louisville benefitted, too, as well as the rest of the commonwealth, by these public improvements? Certainly—it was not to be supposed that her citizens were to spend their money and construct improvements for the benefit of the state, without some apparent compensation for it. And instead of seeking to throw obstacles in the way, gentlemen should rather seek to aid her in these works. Who is to receive the benefit of them? Why, the whole state, the city of Louisville of course included. The state would not take stock in them, nor did the people of the country, generally, and the city of Louisville, consequently, was mainly forced to do it herself. And in this great work of opening to the vast products of the country a sure and stable market, we should go together as a band of brothers, for the benefit is mutual. Lands through which these improvements have run, have been increased thereby to double their former value. Louisville did not, of course, alone do this, but I say she aided most essentially in doing it.

Gentlemen have argued that the institution of slavery is to be endangered by the growth of Louisville, and the kind of population that is forming that growth. And this population has been described as the offscourings of the jails of Europe, as the renegades from the northern and eastern states, and as not desirable citizens of the great state of Kentucky. Where was our opposition to slavery in Louisville during the last canvass? Why, there was far more opposition to it in the very heart of the city, than among the emigrants from the centre counties of the state. It was these people that composed the very head and front of the emancipation party.

Gentlemen have drawn on their imagination in the fear they have expressed of the influence of Louisville being cast against the institution of slavery. And upon these fears gentlemen would deprive that city of her fair and equal representation, and violate a great fundamental republican principle. How is Louisville situated? She is vitally concerned in the interests and prosperity of the state; because if it prospers she prospers, if it is blighted she is blighted; and she will ever be the first to step forward in defence of the institutions and interests of the state. She is the great market for the whole of the commonwealth; as an evidence of which it may be stated, that 130,000 hogs were slaughtered in Louisville during the last year. It is the great commercial and manufacturing city of the state, and every one must see how vitally it

is interested in all the agricultural pursuits of the commonwealth. There is nothing then to be feared by those interests from the influence of Louisville. And so far from ever seeking to destroy or injure the agricultural interest which gentlemen seem apprehensive of, she will ever be the readiest, even if governed alone by self-interest, to foster and protect it.

As to the emancipationists, I will admit that we had at one time a strong party of them in our city. The act calling a convention had scarcely passed when the office holders and the men in power avowed emancipation principles, and by their exertions got the leading merchants, lawyers, and mechanics, the leading men of the butchering interests, and river men, (both of whom wield a powerful influence,) to unite with them. They held their meetings and debates, and within three weeks of the election seemed to be sweeping every thing before them. The pro-slavery men seemed afraid to move, until the President of this convention came forward and took ground against this strong array in opposition to the interests of the state. Meetings were held, and arguments used, appealing to the patriotism and the understanding of these men. The Germans were shown that they came amongst us of their own free will, knowing what our institutions were, and that they prospered under them, and that therefore it was not their interest to subvert any of those institutions. This appeal took like wild fire among them. They instantly saw its reason and justice, and despite the exertions and the money of the emancipationists, they rallied to the support of the interests of the country. The people were appealed to by arguments, their connection with the interests of the state was clearly pointed out, and their duty urged upon them to unite with the pro-slavery men of the rest of the state in sustaining the institution of slavery. They were appealed to in language of this import:

Do not let it be said that you stood back, or made common cause with the enemies of an institution of your country. They listened attentively to what was said to them, and in the course of twenty five or thirty days they came forward and acknowledged that the advice was good, right, and just, that they ought to support the pro-slavery candidates, that it was their interest to do it. In the upper ward, where the German population principally reside, and the emancipationists expected a large majority, we beat them one hundred and fifty four votes, I think. We talked to the Irish and other foreigners living in the lower wards, in a similar strain, and we defeated them, but in the fifth and seventh wards, where there was scarcely a foreigner, they were successful against us. As to the population, which had emigrated into the city from the rural districts, of which gentlemen have spoken, as being so moral, pure and immaculate, how did they vote? Why, against us, and perhaps for want of reflection; and no doubt, a great many who did so, would now be glad, if they could say they had not been on that side of the question. What reason, I ask, has the rest of the State of Kentucky to fear the growth of our city population? None. The gentleman from Madison, who denounced our population in the most unmeasured terms, calls upon me to

endorse his statement. He says that I introduced a resolution in this convention to prevent our citizens from running into excess in times of excitement, which went to show I have no confidence in the people. He is mistaken; but I say I have more confidence in the proper exercise of the elective franchise in the election of the judges and other officers than in any other mode of appointment. I will read the thirty first section of the report of the committee on the legislative department for the purpose of showing what confidence they have in the people. It is in the following language:

"The credit of this commonwealth shall never be given in aid of any person, association, municipality, or corporation, without the concurrence of two thirds of each house of the general assembly."

Why should the gentleman make this charge against us? The section I have read is almost identically the same as the resolution to which he has referred. But here they call in the aid of two thirds of each house to carry the law into effect. I, however, acted more on the republican principle, for I required only a majority.

I anticipate that after the great railroad from Louisville to Frankfort is completed, we shall have one to Nashville, to strike the head of navigation, but I do not want it till the people are prepared for it. The gentleman from Madison said we restricted the property holders. I do not want any reflections to be cast upon us, or the yankees and foreigners who reside among us, for I think we are as pure and upright as other people. The great question is, whether Louisville shall permit herself to be trampled down and disfranchised, without raising her voice against the injustice attempted to be done her. Shall it be said our people are not capable of representing themselves—that we are not worthy of being represented in the legislative halls in proportion to our numbers? I trust not; and yet those very men professing to be governed by republican principles have come here and declared that a man should not be qualified for a clerk, or be a lawyer to try a case of yours or mine, without first obtaining a certificate from a judge. But when it comes to the great principle of the elective franchise, I say give the vote according to population. The gentleman from Logan, in his proposition, comes forward and almost declares that Louisville is to swallow up the whole of the rural or agricultural part of the country. Now, he need not be afraid that Louisville will swallow them up, for the smaller cannot swallow the greater, the greater must swallow the lesser. I think, however, one of the gentleman from Logan, from his appearance and happy countenance, is with us. No, we will not swallow them up, but they can swallow us up, and trample upon us, if they please, and give us what representation they think proper. They have the power, but I believe they have souls above exercising it.

When the proposition of my friend from Christian was brought forward, the whole house was in a state of agitation and confusion, and it appeared to me that Louisville was not to be represented. Really I did not know but what there would be a motion made to cut her off entirely; but that was not done, and I thank the house for

it. When the gentleman from Christian brought forward his proposition as a compromise I knew nothing about it, and he asked me if I was willing to agree to it. He said to me, "you had better go for it, it will be a benefit to your city. If your city had a little larger population, I would say it was just and right." Now, when I found the house arrayed against Louisville, and trying to disfranchise her of her power and weight in the legislative halls, to which she is justly entitled, I told the gentleman I would support it on principle, but that I preferred the proposition offered by the gentleman from Nelson. If we should have but three representatives, I should prefer they would vote in a body; if four, to have two wards, and if five, districted in five wards. But, if it will settle this question and quiet the house, I will go for it as it stands. I came here to do justice to all parties, as far as my vote and voice are concerned. I came to make a constitution on equitable principles, and I hope that gentlemen who differ with me in opinion, in relation to my city being partially disfranchised, will reflect that we have promised these people, who have fought the battles of our country, that they should be dealt with justly, their persons held sacred, their property protected, and that their voices should be heard in the legislative halls. Now, with all the ingenuity of the gentleman from Madison, I should like him to place himself in my situation, and have him to go back and tell his constituents he could not vote to give them a full representation. Why? they would ask. Because you are a mixed population of foreigners, Germans, Irish, and others. We could not give you just representation—you had not virtue enough. Would they not be almost inclined to throw him over the fence, and tell him they had no further use for him? We do not claim for Louisville more of virtue than any other portion of the state. We claim an equality and nothing more. But if you fear the power of Louisville, put us in the same relation to the rest of the state that the counties stand in, so that we may have opposing influences within ourselves, by being divided into wards. I am willing to go for the proposition of the gentleman from Christian to district the city. I like to please those whom I represent, but I intend to do justice, let the opposition come from what source it may.

I was not pledged to any particular principles in forming the constitution, but I am to act as my judgment shall direct when matters come up. The emancipationists called a meeting of whigs and democrats after the whigs had brought out their ticket. They rejected the whig nominees and nominated a ticket of their own, and thus caused the defeat of the whig ticket. The democrats stuck together, and there were sent here two democrats and one whig emancipationist. It was difficult to find three men who were willing to run for this convention. But men were found, men who never gave an inch, who were not in favor of the act of 1833, or of incorporating its principles in the constitution. We accepted no terms, but insisted on standing by our own principles, unpledged. I do not blame the gentleman from Madison for his course, because he is pledged to carry out the principles of the act of 1833. We came here to make a constitution, not only for

ourselves, but posterity. Some gentlemen seem to think it is sufficient that we should have a representation only for the present population, and they say, we do you no wrong, we give you what you now have. This is the language of the emancipationists applied to a different subject. They said, we will not take your present slaves from you, but those only that may be hereafter born. So gentlemen here say, we will give you what you now have of representation, but we will grant no more in the constitution for posterity. That is a principle which cannot be sustained, and he who advocates it before the people, will be beaten, as was an individual in the fifth congressional district, who advocated the Wilmot proviso, as was said, merely to ascertain how the people stood in regard to it, and though he had a capital of about 800 votes in his favor, he was, notwithstanding, beaten about 1200. Why was it so? Because those who held slaves contended for the principle, though it was not a matter in which they had a direct pecuniary interest. They held that the people of the territories had a right to make a constitution for themselves, and to admit slavery or reject it. It was the principle of equal right for which they contended.

This question is pretty much the same. It is not to deprive us of property, but of the privilege of equal rights in the existence of the elective franchise. Property, what is it? It was mine and it is yours, but liberty is a very different thing. The principle we are contending for is representation according to population, and if we were to give it up, we would go home dishonored and disgraced. What could I say in answer to charges that might meet me from my constituents, if I did not resist this attempt to deprive us of equal rights? If I were to tell them that this republican convention had overruled us and deprived us of our just representation in the legislative halls, would they not say, we will go with you no more, we will go with the emancipationists. Thus you see you would arm the emancipationists, and they would carry the city, and might carry some of the adjacent counties. Do not arm then I beg you. Give us equal rights, we ask nothing more, nothing but equality. Let us have a constitution on the republican principle of representation according to the population, and we can go home satisfied, and ready to urge every man to endorse it.

The committee then rose, reported progress, and had leave to sit again.

The convention then adjourned.

MONDAY, NOVEMBER 19, 1849.

Prayer by the Rev. Mr. NORTON.

#### REPRESENTATION OF TOWNS AND CITIES.

Mr. IRWIN offered the following resolutions:

1. *Resolved*, That elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, or in the several election pre-

cincts into which the legislature may think proper to divide any or all of the counties: *Provided*, that when it shall appear to the legislature that any town or city hath a number of qualified voters equal to the ratio then fixed, such town or city shall be invested with the privilege of a separate representation; which shall be retained so long as such town or city shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law, and thereafter elections for the county in which such town or city is situated, shall not be held therein.

2. *Resolved*, That the same number of senatorial districts shall, from time to time, be established by the legislature as there may then be senators allotted to the state, which shall be so formed as to contain as near as may be an equal number of free white male inhabitants in each, above the age of twenty one years, so that no county, town, or city shall form more than one district, and when two or more counties compose a district, they shall be adjoining.

I would simply remark that this proposition contains the fifth and twelfth sections of the second article of the present constitution, except that it is so changed as to give to cities and towns a separate representation. I only desire to place it before the convention, and to move that it be referred to the committee of the whole, having in charge the report of the committee on the legislative department, with the intention of asking for a direct vote upon it.

The motion to refer was agreed to.

#### LEGISLATIVE DEPARTMENT.

The convention resolved itself into committee of the whole, Mr. MERIWETHER in the chair, and resumed the consideration of the report of the committee on the legislative department.

The CHAIRMAN stated the pending question to be on the amendment of the gentleman from Henderson, (Mr. Dixon) submitted as a substitute for the amendment of the gentleman from Christian (Mr. Morris.)

The PRESIDENT. I will suggest that we shall never be able to get along in committee of the whole with the business before us. It will be much better to consider this bill in convention. I simply make this suggestion. I shall make no motion; but I hope every gentleman will consider the suggestion I have made.

Mr. GHOLSON. I concur fully with the gentleman, and that has ever been my opinion. If we are to go on with the discussion of these questions in committee of the whole, and they are all to be reargued in convention, when are we to complete our business?

Mr. IRWIN. To test the sense of the convention, and ascertain whether that is its disposition, I move that the committee rise, and report the article back to the house with all the amendments that have been made and offered.

The CHAIRMAN. I apprehend it is out of order to report the pending amendments to the house.

Mr. C. A. WICKLIFFE. I should like the clerk to read the rule in relation to the transaction of business in committee of the whole. We have a rule which directs the manner in which we shall proceed in the consideration of articles.



If I recollect aright, the rule says they shall be referred to the committee of the whole, and there considered in a prescribed manner.

The secretary read the rule as follows:

"**RULE 54.** Upon a proposition being committed to a committee of the whole house, the same shall be first read through by the secretary, (unless otherwise ordered by a majority,) and then again read for amendment by clauses and sections, leaving the preamble, if any, to be last considered. After report, the proposition shall again be read, if desired by a majority, for amendment and debate, before a question be taken."

Mr. C. A. WICKLIFFE. That is the rule to which I referred.

The CHAIRMAN. The rule occurred to the chair, and the chair apprehends that to change that rule will require a vote of two-thirds.

The chair will put the question on the motion of the gentleman from Logan.

The motion was agreed to.

The committee then rose, and reported the bill and its amendments to the convention.

Mr. C. A. WICKLIFFE. It having been agreed to proceed with the consideration of this article in the convention, I ask the convention to adopt a resolution, such as that adopted in committee of the whole for the regulation of debate, by stopping all discussion, except ten and five minute speeches, at 12 o'clock this day. In the convention at present we have no rule to limit debate, except the previous question, and that will preclude all amendments also. I ask unanimous consent to the introduction of such a resolution as I have indicated. (Leave, leave.)

The secretary read the resolution as follows:

*Resolved*, That all debate in the convention, on the report of the committee on the legislative department, shall cease this day at 12 o'clock, m., and the convention shall then proceed to vote upon such amendments as may then be pending or may be thereafter offered: *Provided*, That the mover of any amendment may be allowed ten minutes, and any other delegate who may desire it five minutes, to explain or oppose the amendment, but in such limited debate the speaker shall confine his remarks to the amendment under consideration.

Mr. HARDIN. I move to amend the resolution by striking out "five" and inserting "ten," so that each member shall have the same right to speak ten minutes, as the mover of an amendment.

The amendment was agreed to and the resolution as amended was adopted.

Mr. JAMES. I have been indisposed for some days, and I am not well this morning, but before the discussion shall be closed, I desire to offer some remarks, and I desire to do it in committee of the whole, as more appropriate and convenient to me. I ask the convention again to resolve itself into committee of the whole.

Mr. IRWIN. I move that the gentleman be allowed to proceed.

Mr. JAMES. I feel obliged to the gentleman, but it would be more convenient to me to speak in committee of the whole.

Mr. BARLOW. I move that the convention again resolve itself into committee of the whole

on this article, for the special purpose of hearing the remarks of the gentleman from Hickman.

The motion was agreed to, and the committee again resolved itself into committee of the whole on the article on the Legislative Department. Mr. MERIWETHER in the Chair.

Mr. JAMES. In the remarks I am about to submit to the consideration of the committee upon this occasion, if I do not confine myself strictly to the question in issue, I shall but follow the example of several gentlemen who have preceded me.

I have had the honor of a seat in one or the other branch of the legislature when five apportionment bills have been passed, and I have always found the question of apportionment one of the most exciting questions that has ever been presented for the consideration of the legislature, and why? Because it affects, to some extent, the interests of every portion of the country. While some are struggling to acquire more strength, others are endeavoring to retain what they have; whilst the neutral portions, those which do not themselves expect to be affected by the decision of the question, generally take sides with one or the other of the parties interested, and hence the excitement which always attends its agitation. It is not to be wondered at, therefore, that when this convention is engaged in framing an organic law, to direct and settle the principles that shall govern the legislature in its future action in regard to this important question, there should be manifested some little excitement.

I came here with my opinions matured, in relation to the great leading questions that have been agitated throughout the commonwealth upon the subject of constitutional reform. I did expect, however, upon coming here, that we should have some discussion in respect to details; but when asked, upon leaving home, how long I supposed the convention would continue in session, I gave it as my opinion, unhesitatingly, that they would be enabled to close their labors within seven or eight weeks, but we are now entering upon the eighth week, and it is impossible to say when we shall be ready to adjourn. It is all very well for gentlemen who live near, and who are enabled to go home occasionally, about one third of whom have availed themselves of that privilege, but this I have no opportunity of doing.

I regret that crimination and recrimination have been indulged in upon this exciting subject, and none do I regret more than fell from the lips of the honorable president of this convention. He took part in this discussion on the 13th and the 16th instant, and indulged in a very wide range indeed; in the course of which, he took occasion to denounce, in very unqualified terms, those who felt it their duty to sustain the proposition that was then under consideration. He alluded to the subject of internal improvement, education, and the proposed negro law of 1830. I say proposed law, because it did not pass. He also alluded to the act of 1833. Well, sir, I have been in the legislature for a number of years, and if I do not know something about the history of these questions, it must be admitted that I ought to. My district composes the one hundredth part of the sovereignty of

the commonwealth, and I came here to exercise the right to which she is entitled. The question that was under consideration at the time the honorable president addressed the committee, was the proposition to restrict the cities in apportioning the representation in the senatorial branch of the legislature; and he then took occasion to denounce those who were disposed to favor it, as invading the rights of his constituents. If that proposition invades the rights of the citizens of Louisville, the convention of 1799 invaded them. Let me call the attention of the committee to the twelfth section of the second article of the constitution of Kentucky; it reads as follows:

"The same number of senatorial districts shall, from time to time, be established by the legislature, as there may be then senators allotted to the state; which shall be so formed as to contain, as near as may be, an equal number of free male inhabitants in each, above the age of twenty one years, and so that no county shall be divided, or form more than one district, and where two or more counties compose a district, they shall be adjoining."

Did not that restrict the county of Jefferson to one senator? Well, sir, whose names do you find appended to that constitution? First, the name of Alexander S. Bullitt, the delegate from the county of Jefferson, who presided over the convention that framed this constitution, and the father of the distinguished delegate now, in part, representing the same county on this floor. You find the name of Col. Richard Taylor, the father, I believe, of the President of the United States, an early pioneer of Kentucky, and a most worthy and honorable gentleman. I had the pleasure of serving with him in the legislature, as early as the year 1825.

The gentleman says we are here sworn to do justice. Well, that is the very thing we are about to determine; and the question presents itself to this committee—is it proper and right to restrict the representation of large masses, when congregated within a small space? I think it is, and the convention of 1799 thought so too. The gentleman says it is an invasion of the rights of his constituents. I cannot help that. In carrying out a great principle, though it is by no means my design to invade the rights of the gentleman's constituents—yet if they suffer what the gentleman may call an invasion of their rights, in consequence of the application of such principle, be it so. I am one who thinks the establishment of the principle necessary for the public good. It is a principle that is recognized in the federal constitution, and in the constitutions of many of the states. We have many illustrious precedents for this course. I am told that a great many cities will fall under this proscription, this invasion of rights. Suppose they do, that has nothing to do with the great principle—that is not to be regarded as a reason why the principle should not be applied. I am told that there are many towns along the Ohio river, that are destined to become great and populous cities, and that it will be an injustice towards them, to make them fall under this proscription. I design nothing prejudicial or injurious to them, sir. Covington, Henderson, and Paducah have been named as cities which

are, in time, to fall under this principle. Surely sir, I would do nothing calculated to prejudice either of them. The latter city I have, in times past, represented, first in one and then in the other branch of the state legislature. I rejoice in her prosperity—in her growth and her promise of greatness and wealth. I have many friends among her citizens—friends of long standing. I would not injure them. I believe, sir, they will cheerfully acquiesce in the adoption of this principle—though it may, in some degree, restrict them—if thereby the public good is to be promoted.

Columbus and Mills' Point have been also alluded to; they will be populous cities, no doubt. Thirty years ago my attention was turned to that section of the country, and I then believed the day was not far distant when a great city would spring up near the junction of the Ohio and Mississippi rivers. I have not yet lost the hope, but my expectation has been greatly postponed. I trust, however, a brighter day is dawning upon them. To the former place, especially, a promising future is now opening. The great enterprise of uniting the city of Mobile with the Ohio or Mississippi rivers, we have now a just reason to hope will be pressed forward energetically. Part of the road is already under contract, and the best spirit prevails throughout all the section immediately interested in its completion. Should Columbus be its terminus, as many hope and believe, it must become a great city, and its influence shed upon neighboring towns must greatly advance them. And I am sure these towns, if the bright picture we now paint for them shall be realized, will not clamor against the principle which we now propose to insert in the constitution.

The honorable President took occasion to tell us, in rather a loud, authoritative, and dictatorial tone, that if the rights of his constituents were thus invaded, he would not sign the constitution—that he would go home and denounce it. I was really very much alarmed when he said this. I know that gentleman claims long to have been the advocate of constitutional reform. I claim, however, to be his senior in that respect. I heard the gentleman from Nelson (Mr. Hardin,) say, the other day, he had advocated constitutional reform for five years. I take occasion to say I advocated it for thirty years. I have never given a vote, in or out of the legislature, that has not tended that way. I say, I was alarmed when I heard the gentleman declare that he would denounce the constitution, for I know his weight and influence in the country: but, after a moment's reflection, I consoled myself with the hope that the Sun would not be veiled in mourning—that it would rise in the east, and set in the west, as usual—that the seasons would roll on, as heretofore—that we should have spring and autumn, summer and winter yet; and that neither war, pestilence, nor famine would be visited upon those who felt it their duty to engraft this conservative principle—a principle that was recognized by the framers of the federal constitution, and by those who made the present constitution of Kentucky—in the constitution we are about to make. Look at the great state of New York; she has but two senators, while Texas and little

Delaware each have the same number. Had Washington, Jefferson, Franklin, and Madison denounced this principle, in its application to the federal government, and declared they would not sustain the constitution, what would have been our condition? It would have been disastrous, indeed. But I trust that no such evil will result, should our President carry out his determination. In discussing this question, he took occasion to use this language:

"Well, every gentleman can reconcile it to himself, in his own way. His constituents, because they receive the benefits and advantages of it, may look over it, but if they shall be chary in trusting him again, when they see he can trample on their rights, as he has trampled on the rights of others, their distrust will be manifested, and the consequences will be visited on his own head, and not on mine."

Now, this might be received in a two-fold point of view. First, as a caution, or warning; secondly, as a piece of advice. Well, I suppose that every school boy of ten years old in my district, is aware that the president is not responsible for my conduct on this floor, and I will take occasion to say, that I think my constituents have as much confidence in my integrity, and disposition to do right, as the constituents of the gentleman have in his.

It was a maxim of Lord Coke, I believe, that a man should not be permitted to adjudicate upon matters in which he was personally interested. When I am in need of the president's advice, I will call upon him for it. I am rather distrustful of advice that is given without being asked for. The principle laid down by Lord Coke, would apply in either case.

I regret exceedingly that those who are acting with me in discussing this important question, have alluded to the subject of emancipation. All such paltry considerations have nothing to do with my action. I came here as thorough a pro-slavery man as any in this convention. I was born and educated in this faith. I told my constituents—and my worthy friend from Graves heard me declare it—that I would not accept a seat in this convention with a view to the disturbance of the slavery question. It was stated by a writer in the News Letter, about that time, that there was a majority in the representative district in favor of emancipation. That was the reason why I made the declaration, and I added, that if they were inclined to elect a man, who would act in a manner so injurious to the interests of the country, as to favor the schemes of the emancipationists, they might select some other person, I would not answer their purposes. Well, what was the result? I was elected without opposition, and came here, not to disturb the question of slavery, with two exceptions; and they were to secure to the citizen the right to import slaves for his own use, and to prohibit the emancipation of slaves without a provision for their deportation when emancipated.

The president has told us, that he was an advocate of the proposed negro emancipation law of 1830. That law did not pass. I beg leave to refer for a moment to that enactment.

"A bill more effectually to prevent the importation of slaves into the state as merchandize.

"Sec. 1. *Be it enacted by the General Assembly*

*of the Commonwealth of Kentucky*, That none shall be slaves, except such as shall be slaves within this commonwealth on the first day of June next, and the descendants of the females of them, and such slaves as shall thereafter be lawfully imported into this commonwealth, and the descendants of the females of them.

"Sec. 2. *Be it further enacted*, That from and after the said first day of June, it shall not be lawful for any person, or persons, to import into this commonwealth any slave, or slaves, except emigrants to the state, bringing their slaves with them for their own use, and not for merchandise, and citizens of this state claiming slaves in another state, by devise, descent, or marriage; in all which cases, it shall be lawful for any such persons, to import such slaves for their own use, and not as merchandize.

"Sec. 3. All laws now in force, prohibiting the importation of slaves into this commonwealth, shall be, and the same are hereby repealed, from and after the said first day of June: *Provided*, That the provisions of this bill shall not apply to persons transiently passing through the commonwealth with slaves, on their way to any other state or country: *Provided*, That nothing in this act shall be so construed, as to prevent persons emigrating to this state, and settling permanently in it, from selling their slaves."

The yeas and nays being demanded upon the question of engrossing it for a third reading, the name of the president of this convention (Mr. James Guthrie) is found among those voting in favor of the bill.

Now what would have been the effect of this act, had it gone into operation? Would it not have emancipated all the slaves that had been purchased for a valuable consideration by our citizens and brought within the state? I ask the President, if in this act of his, he was not invading the rights of my constituents, when he voted for this bill? He was. And when I looked at the names recorded in this journal I thought I stood "solitary and alone," in opposing this atrocious measure. But when I looked around I found my worthy friend from Monroe, (Mr. Barlow,) who voted with me against that bill. It has been my good fortune often to act with him, and I have found him about right, on all important questions. I was gratified to find that he was a delegate to this convention.

I said the President was invading the rights of my constituents in that vote of his, and I will thank the president, with the chairman and this committee, to accompany me to the state line, for the purpose of illustrating my views upon this subject.

Suppose that one of my constituents has gone to Tennessee—(many of them came originally from that state—and very good citizens they are—they make good Kentuckians—I would be glad of a thousand more, and I have no doubt my friend over the way from Graves would gladly receive as many more,)—to buy a servant to assist in the labors of their farm. I want them to have the right to do so. And to attempt to prevent them doing so is a flagrant violation of their constitutional rights. Now suppose one of them is bringing his servant across the line, and our president meets him, with this act

in his hand, and says to him, you shall not bring your servant into this state, for if you do, I have assisted in passing a law which sets your negro free the moment he comes within the limits of Kentucky. This being heard by the negro, produces insubordination. My constituent, thus accosted, says, your law is a nullity; my right is secured to me by a higher power than your law, the constitution of your state; and here it is:

"The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated."

Upon this guaranty in the constitution, regardless of this law which you have aided in passing, I demand my right to enter as a citizen of your state, and to bring with me such chattels as are held and esteemed property by the constitution, whether that property be in slaves or not.

The statute proposed by the president contemplated the emancipation of the slave without compensation; but my constituent says to him, when thus standing upon the line, I shall disregard your statute. I claim protection for my property, not under or by virtue of your law, but under the constitution, and though you declare by virtue of your law that my slave ceases to be property and becomes free whenever he crosses the line, the constitution, which I hold to be the paramount law of the land, and which must be co-extensive with law, secures me in the possession and property of my slave until just compensation shall have been made for him; and he will say to the president, while thus attempting to enforce the power of his statute, I stand by the guaranties of the constitution of my state; you propose to disregard those guaranties, and to set at defiance the fundamental law of the land—your law cannot be enforced—it is an infraction of the constitution—a direct invasion of my rights as a citizen of the commonwealth.

I understand the president has said that at one time the friends of the proposed act of 1830 abandoned it, because it might result in bringing into this state a great number of worthless slaves, to be emancipated and supported at the public charge, the owners having no further use for them, and choosing this manner to get rid of them. I was in the legislature, but never heard that reason assigned for the abandonment of that law. I do not dispute the president's word however. There was a very distinguished gentleman from old Logan, Judge Ewing, who raised his voice—and it was heard throughout the commonwealth—advocating the rights of the proslavery party, and this commonwealth is more indebted to him than to any other man for defeating that nefarious act. I heard him with pleasure; the advocates of the law were panic-stricken. Well, says the president, I don't want you to bring in any more slaves, we have got plenty. He was living in the blue grass region, where they could hire white laborers, who, when sick, could be turned out of doors to shift for themselves. The people in his region, while they could get such labor, did not want more slaves; they could invest their money more profitably in

bank stocks, and other stocks, which pay enormous dividends—and in the erection of princely residences. Such persons needed no more slaves, and hence their representative, the president, was willing to proscribe my constituents; but I did not then tamely submit to the outrage, and I will—so long as my voice can be heard—be found opposing such an iniquitous measure.

Now I call upon the common sense, the plain and thinking men of this convention—for I will not ask alone the judgment of the lawyer, with his nice distinction—his subtleties and his technicalities—to look fairly at the illustration of the law of the president, which I have presented, and say if it does not present the operation of that law fairly and justly; and if it was not an infraction of the constitution and an invasion of the rights of my constituents? Was not the president's voice raised in support of this law? Did he not override the constitution in voting for this act? And in response to his denunciation of those who dared differ with him here, I will say "I have no more confidence in those men" that have heretofore attempted "to invade the rights of their fellow citizens, than I have in the voice of the Autocrat of Russia."

The proposed act of 1830, was a concession, not only to the emancipationists, but to the abolitionists; because it was abolition in its grossest shape. The friends of this measure, I will not say retreated, but they fell back upon the act of 1833. What did they propose by that act? They proposed again to pass an act that conflicted with the constitution. The constitution gives the legislature the right to prohibit the importation of slaves as merchandise, and of course, and by the universally accepted rule of construction, the legislature has not the right to prohibit their introduction, for any other purpose. There is a large and respectable minority in Kentucky, who believe it to be unconstitutional, notwithstanding the appellate court has recognized its constitutionality; and another reason why I have reason to suppose it unconstitutional, the act remained a dead letter upon your statute book; for sixteen long years, it had no operation, except that it served to expel from Kentucky some of her best citizens. This was its effect. Whenever a man who had some influence, was instructed by his constituents, to obtain the passage of an act, permitting them to bring in slaves for their own use, it was done, and hundreds of slaves were imported in this way. I will call the attention of the committee to the fourth section of this celebrated act of 1833, commonly known as the negro law. The attention of the country was not called to the design of this law, it having been transferred to the digest, under the head of "Attorneys." The fourth section reads thus: "It shall be the duty of the attorneys for the commonwealth, now in office, at the first court after the passage of this act, and every other attorney for the commonwealth, who may be hereafter commissioned, at the time of taking the oath of office, to take a solemn oath, that they will faithfully prosecute all offenders, against this act, within their knowledge, or of which they may be informed, and who may be found within their respective districts, and in each case of conviction, the prosecuting attorney shall be entitled

to a fee of twenty per cent. out of the amount collected, and the balance shall be paid into the public treasury, and set apart as a fund, to be under the direction of the governor, and such other or others as the legislature may appoint, for colonizing the free persons of color, on the coast of Africa." Now, sir, the country is to be taxed for sustaining courts of justice, whose time is to be devoted to the trial of such cases, and the commonwealth attorney, in addition to his regular salary, is to receive after being sworn to prosecute such cases, for fear he would not do it, twenty per cent. of the amount received as an additional inducement to prosecute.

I have said that many excellent citizens were driven out of the country, on account of the oppression of this act. Two of those cases are from my own county, and another was from the county of Livingston, now Crittenden county. The facts in the latter case, as I obtained them from a delegate, who is better informed upon the subject, are these:

"Richard Cruse in 1838 bought a family of negroes, seven in number—mother and six children. They had been hired out one year by a lady, removing from Tennessee to Illinois, and at the end of that year she came to him again, and Cruse bought them. He was maliciously indicted for it and had to leave the county. He did not even know at the time that such a law was on the statute books. He was worth about twenty or twenty five thousand dollars."

This old lady, I understand, was of the opinion that if she went to Illinois, with her servants, having an agreement with them that they would serve her, they would be bound to do so. She found she was mistaken, however, and hired them out in Livingston county. And let me state, that Mr. Cruse knew nothing about this statute of 1833, for it had lain on the statute book a dead letter for many years. Cruse designing to accumulate such property, struck a trade with the old lady, and gave her, I believe, \$300 each for her family of slaves, taking old and young together, making a total of \$2100. Some of Cruse's neighbors, who thought he had made a bargain to their detriment, informed against him, and he was therefore indicted. Finding he could not get relief, he abandoned his native state, and went to Missouri. What would have been the consequence if he had remained and defended the case? The fine was \$4200, double the value of the negroes he had bought. The attorney getting \$840 for his services, and the remainder of the fine, \$3360 going into the treasury, but not to pay the interest on the state debt, not to defray the expenses of your courts of justice, but to be set apart for colonizing free persons of color, for colonizing the slaves that might be extorted from the good people of the state, to send them to the coast of Liberia, where an attempt has been made for many years to build up a colony, and where there are now some three or four thousand blacks in a state of wretchedness and starvation. You cannot get an intelligent negro to go there. I told one of my negroes, who has a wife and child that are free, he might go if he would take them with him and stay there. He consented to go, but could not be prevailed on to

promise to stay. It was a splendid idea to give to the commonwealth's attorney \$840, and to expend the other in colonizing those blacks, in that unhealthy region; you might as well consign them to the grave at once as to send them there.

There is another view that I have not heard advanced—though I do not mean to take credit for having made any very great discovery. We are now engaged in forming a constitution, and I would like to call the attention of the convention to the tenth article of the miscellaneous provisions of the present constitution. If it does not inhibit imposition of the fine specified in the act of 1833, I call on the convention to say what it does mean, it reads, "That the general, great, and essential principles of liberty and free government may be recognised, and established. We declare &c." Now turn your attention to the fifteenth section of this bill of rights, and we find, "that excessive bail, shall not be required, nor excessive fines imposed, nor cruel punishment inflicted." And I believe the committee that has had this matter under consideration, have reported the same clause. What is its meaning? Its meaning is evident, excessive fines shall not be imposed. The framers of the constitution evidently intended to prohibit the legislature from passing any act by which excessive fines should be imposed. What is the object of a fine? Is it not to punish the individual for any injuries he may inflict on society, and to furnish a warning to those who are disposed to offend in like manner? But was it not intended by this provision, that the legislature should not have power to inflict a fine so exorbitant as to break a man up. Now what great sin was Cruse guilty of? He was merely endeavoring to better his condition, and to enable himself to extend his agricultural pursuits. He had committed no sin against his fellow citizens of Livingston county, nor against the commonwealth of Kentucky. If he had, it was not to the extent of \$4200, and in this view of the case, if that clause of the constitution has any meaning at all, it is a prohibition upon the legislature.

Well sir, one of the most worthy citizens of Hickman county, a man who owned land in Missouri and Tennessee, as well as in Kentucky, and I believe had negroes employed in cultivating his lands in those different states, brought three negroes to Hickman county. And I have heard him say, he did not think he was violating this law in doing so—he was indicted however in three cases, and the fines would have been \$1,800, and although he was able to pay it, he was indignant at such treatment, and left the country. I met him in New Orleans afterwards, and he enquired if the act had been modified. I told him it had not, and asked him if he would come again to Kentucky if it had been; he said he believed not, he was doing very well where he was. This was a most useful citizen; many young men owe their advancement to his assistance, and he was driven from this state by the operation of this law.

There was another case at Mills' Point. A very worthy citizen there, was in need of a few servants, and a man residing just over the line offered to sell him such as he wanted; he told

him he could not purchase, as it would be in violation of the act of 1833. The man afterwards moved over into Hickman county, and then sold him the negroes, and then moved back. This raised a suspicion that there had been some combination. He was indicted, and I believe a fine of \$1200 was imposed; however, the result was he left the county, and went to Tennessee. Now was not this an excessive fine, to extort from his earnings? I have regarded the population of Louisville, from the time this act was passed, as making concessions to the emancipationists. I had a conversation recently with citizens of Louisville, who told me, if the voting had been by ballot, the emancipation ticket would have been elected by 500 votes.

A case of this kind occurred whilst I was in the senate. A gentleman died in Tennessee leaving to two of his sons a negro; one of the sons resided in Fulton and the other in Tennessee. The one in Fulton, was able to buy his brother out; he wrote on to me asking me to get a law passed for the purpose of permitting him to bring the negro into the state. In the progress of the act I met with opposition from Jefferson county. I was somewhat astonished at this opposition, as it was a case of such evident justice, that the owner should have the privilege of bringing his negro into the state, being the owner of half of the negro, and there being no law to cover the case. This I thought was drawing a very nice distinction.

There are some two or three other topics, to which I will barely allude, for I fear that I am trespassing upon the indulgence of the committee. The subject of internal improvement and the subject of education. I concur with the president in the declaration which he here makes: "Upon the subject of internal improvement, which some men like to denounce, but which have in their effect more than doubled, or nearly doubled, the value of the whole of the real estate in the country, where did Louisville stand? She was in favor of them, and with her voice, and her aid and assistance, enabled them to be carried on." I know the great influence and power which the president of this convention exercised over the legislation of the country at that day; but, sir, whether it is for weal or for woe, I am disposed to adjourn the question for posterity to decide, for those who may have these debts to pay, with the interest that may have accumulated upon them. I raised my feeble voice against it; and I recollect on one occasion, in the senate, I stood with my friend from Henderson, in a lean minority of five, in opposition to the extravagant, wasteful system of internal improvement. The president says it has doubled the value of the property in the state. I deny the fact. It may have doubled the value of property in Louisville, but it has more than doubled, yes sir, it has trebled the taxes on the balance of the state, while the value of property has not been enhanced. What is the effect of the system? It is a system of injustice, calculated to build up the few at the expense of the many. What did the president of the board of internal improvement report to the legislature in 1847? That to the people navigating the Kentucky river, there was a saving of over \$170,000 per annum; yet they were not willing to

increase the tolls sufficiently to pay the interest on the cost of these improvements, though they were reaping more benefit than all the taxes they pay annually. When the surplus revenue of the general government was about to be distributed, \$850,000 were set apart and solemnly dedicated and pledged as a fund for common school education. The president of this convention, I believe, advocated that feature, and in this he had my hearty co-operation; but when we were short of means to carry out the system of internal improvements, and the state bonds could not be disposed of, money was borrowed from the banks, which so increased their circulation, that brokers were enabled to make a rush upon the banks, which mainly caused the suspension in 1839, and this education fund was invested in state bonds. Well, it is true that the interest on these bonds belonging to education must be raised by taxation, and it has induced the legislature to violate a sacred, republican democratic principle. What has been done? You have resorted to your odious and specific taxation, which is unequal and unjust. You tax carriages, buggies, watches, and even our grandmother's spectacles, all this to resuscitate the credit of the state. How has this money been expended? \$2,525,456 15 have been expended in turnpike roads. What has been the effect of this measure upon the country? There was a committee raised in 1847 to ascertain the amount that had been expended and the revenue that had been raised from that expenditure. Well, sir, these \$2,525,456 15 have only yielded a dividend of \$291,000, in the ten years previous to the date of the report. Now what is the interest of that sum for the same period of time? It is \$1,515,000, leaving a deficiency of \$1,224,000 to be supplied by taxation or otherwise. And the other improvements are in but little better condition. Take the whole amount that has been expended, viz: \$5,344,764 82, it does not yield two per cent. interest. I have alluded to this matter out of no unkind feeling to the president. He has thought proper to allude to it himself, and has claimed the credit of having carried these measures through the legislature. I know he took a prominent part, and I know a portion of the delegation from my section favored it, and for what reason? Because they had the promise of a small appropriation of \$5,000 for the improvement of Bayou de Chien, and other small appropriations which were to rest upon certain contingencies. The board of internal improvement decided that Bayou de Chien ought to have \$3,000; but not a dollar has yet been expended. The same bill that contained this conditional appropriation gave to the Louisville, Lexington and Ohio railroad company, \$200,000 unconditionally, which she received. There was an appropriation to this company besides of \$20,000 for building a bridge across Kentucky river, at the mouth of Benson. The state also endorsed for the company to the amount of \$150,000, and, after all this, the only manner in which she could get out of the contract, was by taxing her citizens and paying up.

Thus, Mr. Chairman, was the state almost hopelessly involved in debt, and thus was the fund set apart, and with all the forms of law and the solemnity of legislative action, dedica-



ted and set apart to the children of this commonwealth, squandered in unproductive works—and, sir, the president of this convention was one of the chief actors in that scene—he was among the foremost in concocting and executing this misapplication of the fund dedicated to the poor children of the commonwealth. He it was that invaded the rights of the orphan and the fatherless, and swept from them the means which the state had provided for their education.

I take the ground that it was improper, thus to squander the poor children's money—that it was an unwise, an injudicious act, thus in a conflict between the education of the children of the state and the improvement of roads and rivers, to choose the latter to the exclusion of the former. I also believe it was improper and unjust to impose upon posterity the enormous debt created by the president (Mr. Guthrie) and those who acted with him, for internal improvements. I was unwilling to create a large state debt, and leave it for those who come after us to bear the burden.

Take the amount that was expended on Licking river—\$372,520 70—and tell me how much this has benefitted the state? I am informed that so far as improvement is concerned, the money there expended might as well have been thrown in the river. The work has been abandoned in an unfinished state, and amounts to an obstruction.

This is the system of internal improvement, which the honorable president boasts of having been instrumental in adopting.

Although the constituents of the honorable president may have approved his course on all these questions, yet I have also the satisfaction of knowing that my constituents regard my course as worthy of their approbation, for they have continued me in the councils of the country for many years, as long perhaps as any man in the state, for which I take the present occasion to return them my sincere acknowledgments. I have never appealed to them on questions of national policy, although in that respect my opinions have harmonized with them.

I have felt it my duty to make these remarks, for I have hitherto taken no part in this discussion during the seven long weeks we have been in session. I have made a motion or two, and have said yea or nay when called upon to vote. That is all. My constituents are beginning to enquire what has become of me, and I desire that they shall know where I am. I am somewhat like a very intelligent gentleman, (the delegate from Mercer,) with whom I fell in company a few days since, and who has not as yet I believe addressed the convention. I enquired of him the reason for his silence. And sir, he gave me a very good reason. It is the very same reason by which I have been influenced myself. Why, said he, I came here with my opinions formed, in regard to the leading questions; there has been a good deal of discussion, and the country will hold the convention responsible for these proracted debates, and I thought I would not take the responsibility of participating in them. That was precisely my own view. When we come to put this constitution together section by section, I intended to aid in the accomplishment of the great work for

which we have assembled. I shall at all events, not detain the convention long with any speeches of mine. If I deserve anything for my course in legislating heretofore, it is not for making long speeches. I am not much for talking, but I am somewhat inclined to investigation; I am governed a great deal by facts. One fact, with me, outweighs whole volumes of arguments.

The honorable president has said that Louisville has done a great deal for education. I am not disposed to take from that city any credit she may have on that score. I believe she has done much for the support of schools. But we find by the report of the 2nd Auditor that the city of Louisville has received \$7,597, besides \$13,500 for the Blind School. Thus, it will be seen, that Louisville has received more than one half the sum expended—considerably more than double her share of the school fund. I never supposed that she had been slighted in regard to this school fund, or in any way. I remember when we were about fixing the salaries of the officers of government, the Louisville judges were allowed \$1,500 per annum, salary, while other judges were allowed but \$1,200. That was based upon the ground that living was very high in Louisville. I believe it is a maxim, that when the reason for a law ceases, the law itself should cease. I have an extract from the "Louisville Journal," of date September 25th, and I was very much gratified to find the price of living so much reduced there. Now, as this paper is very good authority in Kentucky, I would recommend the committee to amend their report in relation to salaries of judges, and make them equal and uniform throughout the commonwealth. But the extract:

"As to the cost of living, those who know anything about the matter, know that living is as cheap in Louisville as in Frankfort. Fuel and provisions are decidedly cheaper."

I am very glad to know that. I hope the "Journal" will not come down upon me, as a paper did the other day upon my friend from Daviess, (Mr. Triplett,) because he dared to oppose what was demanded for Louisville. He was spoken of in very disrespectful terms. I have no desire to war with an editor, because gentlemen of that profession wield their pens with great force and severity, and the paper is sent to places where a man has no opportunity to defend himself. They can bark at my heels if they choose, it shall never deter me from doing my duty.

This proposition, it is said, is intended to array city and country interests in opposition to each other. This is no part of my motive. I have no hostility to any city in the commonwealth. But the question is, is it right and proper that we should impose this restriction? The patriots who formed the constitution of 1799, thought it necessary to impose such restriction—many of the states have done the same. Louisiana has done so; although New Orleans contains one-third of the whole population of the state, and will, probably, soon contain one-half, yet she is restricted to four senators. Is that invading their rights? Did we hear the delegates from that city make the declaration that they would not sustain the constitution if it contained such a provision? Did they take

any such stand? And here follows another restriction: "That the seat of government shall, until the close of the year 1848, continue at New Orleans, and that the general assembly which shall meet after the first election of representatives, shall within the first month after the commencement of the session, designate and fix the seat of government at some place not less than sixty miles from the city of New Orleans, by the nearest travelling route, and if on the Mississippi river by the meanders of the same; and when so fixed, it shall not be removed without the consent of four-fifths of the members of both houses of the general assembly." And this restriction was, no doubt, imposed for wise purposes, and cheerfully acquiesced in by her patriotic citizens.

The honorable president says we are sworn to do justice. He says the foundations of government were laid in justice. This is what no one is inclined to dispute. We are all contending for the same principle. As the Irishman said when about to be tried for his life—a very honest fellow—but he did not understand the technicalities of the law; when the question was put to him "guilty or not guilty," he replied "that is what you are about to try." Now we want to examine the question. This is a great conservative principle. We give to all cities, their free representation in the popular branch of the legislature. It is very properly based on population in that department, either according to the ratio of voters, or according to the whole number of souls—and I am inclined to think, the latter is the best mode. But the president says we are invading the rights of Louisville. If she falls under the restriction, that is her misfortune. I came here to do justice, but where a question comes up in which city interests are arrayed against those of the country, I am always to be found on the side of the country. It is the country that sustains the city. The city is sustained by her trade. And what is it that sustains that trade? The rural population. Your wealth arises from your imports and your exports. The country furnishes your exports and consumes your imports. I am disposed to do injustice to no city, but self preservation is the first law of nature. But I shall not be influenced by any supposed power the emancipationists may gain by an increased representation, and I regret that the subject was introduced.

I will not cast any imputation upon cities. But if you want to find industry, contentment, virtue and morality, will you go to a city to find them? If you do, you will be mistaken. To sustain this position, I will call the attention of the committee to a few facts. It appears that in 1847, there were one hundred and sixty six convicts in our penitentiary, seventy nine of them were from the city of Louisville—almost one-half of them. And for the twelve years beginning in 1835 up to 1847, there have been sentenced from the various towns and cities in the commonwealth, eight hundred and eight convicts, and how do you think they are apportioned? The city of Louisville sent three hundred and fifty six, averaging a fraction over twenty nine per annum. In the whole of the balance of the state, the convictions were but forty six per an-

num—not averaging one for two counties. It is said that these convicts are not of the legitimate population of Louisville. This I believe is true. But it only sustains me in the position I took, that there is something to induce persons to commit crimes and felonies in cities. It seems to show that crime is stalking abroad there, at noonday. Look at the mobs that have committed violence in almost every city in the union. Not long since a mob took possession of a church in the city of Pittsburgh; the mayor was compelled to call out the military to stop it.

I wish it to be distinctly understood that I am making no invidious distinction to the prejudice of Louisville in particular. I merely mention these facts to show that a great deal of crime is perpetrated in cities, and for the proof of this, I have written testimony. Is it proper then, that this character of population should be trusted with the representation there is demanded for it?

Having labored under severe indisposition for several days, I must bring my remarks to a close. And here I wish to be distinctly understood, that in any allusion I have made to the honorable president of this convention, I have not been actuated by any ill will towards him, but as he has thought proper in some degree to impugn the motives of myself and others, because we are in favor of restricting over-grown cities, I have thought it necessary to make these remarks. I have the utmost respect for his authority in the chair; but when he chooses to come down on the floor, and give admonition and advice to delegates, and make threats, I regard him as no more than any other delegate, and hemust not expect exclusive privileges. I do not intend that the little reputation I may have gained during my political course, shall be destroyed by the denunciations of any man. It may be all the legacy I shall have to leave my children, and I intend that to go to them untarnished, if my feeble efforts can sustain it.

I return my sincere thanks to the committee for the kind attention they have given my desultory remarks.

And then, on motion of Mr. MITCHELL, the committee rose and reported the article and amendments to the house.

The first amendment of the committee, fixing the hours during which the polls should be opened, at from 6, a. m., to 7, p. m., was then read.

Mr. MACHEN understood the amendment not positively to require the polls to be opened and closed at those hours, and inquired if such was the intention of the mover.

Mr. WOODSON. I intended to leave it entirely at the discretion of the judges of the election. There may be instances where it may be required to open at an earlier hour in the morning than others, and others where a later hour of closing them might be deemed necessary. The only object was to prevent the polls from being kept open until too late an hour of night, and to prevent voters being then brought in improperly to control the election.

There was some conversation as to the propriety of amending the section, when

Mr. C. A. WICKLIFFE expressed his opinion that the subject could better be disposed of in a separate clause, which should have the effect to

require that in all elections the polls should not be opened before six, nor continued open after seven.

The section, as amended in committee, was then adopted.

The second amendment, being to strike out the words in the second line of the 5th section, "and equal," was concurred in.

The third amendment, being to the same section, to strike out the word "legislature" and insert in lieu thereof the words "general assembly," was concurred in.

The fourth amendment, being a verbal one to the section apportioning the representation of cities, was then concurred in.

Mr. IRWIN then offered his proposition, submitted this morning, as a substitute for the whole section.

The PRESIDENT decided that motions to amend and perfect the section, would have precedence over those to strike out.

Mr. MORRIS then proposed his proposition, (heretofore published,) as an additional clause of the section.

Mr. HARDIN. I desire to offer an amendment, which will not be in order until the vote is taken on that of the gentleman from Christian. I would ask that gentleman what he intends by it, not having heard the reasons assigned for it at the time it was first offered. Is it to establish in this part of the country, that principle known in New England as gerrymandering? Take for instance Nelson county, which is now entitled to two members. It gives 700 whig majority, but yet you can lay off the county in such a way that its representation will be equally divided. That was the principle established in New England by Eldridge Gerry, and from him has since been called gerrymandering. I understand that the gentleman's proposition is to lay off Louisville so that, although there is a whig majority there of 400 or 500 votes, yet that there will be one or two democratic members returned to the legislature. I do not know whether such was the intention of the gentleman, but such obviously will be its effect. Let the whole voice of the city or county be heard, whatever may be its representation, and not be divided. I am informed that the proposition was offered as a compromise. Now a compromise supposes a mutual yielding, but in this case it seems to me that the yielding is all on one side.

Mr. MORRIS. When I offered this amendment, I explained to the convention, the motives which influenced me, and I also stated the grounds upon which I considered it a compromise. I am sorry that my venerable friend was not in the house to hear me, but I have no disposition to go over the ground I then occupied, and with which I suppose the convention to be generally acquainted. I had no disposition to gerrymander Louisville, or any other city in the state. The great difficulty was, how we could give to Louisville, and the other cities, a proper representation according to numbers, and at the same time prevent that concentration of city influence, which seemed so much to be apprehended by gentlemen on this floor. I thought there was a great principle which was established in the old constitution, and which we are seeking

to establish in this—that representation and popular numbers should go hand in hand. But I still saw and felt that there were great dangers to be apprehended, of the power that might be exercised by the concentration in the legislative halls of the representation of the large cities that were springing up, and believing it to have been demonstrated by experience in other states, that by dividing the cities into districts, we would divide the representation of those cities against themselves, as the country representation in this state is divided against itself, I offered this proposition. I am aware that a democratic legislature by an unjust system of gerrymandering might send to the legislature from Louisville, two or three democrats instead of whigs, but yet we are obliged to trust something to the legislature. I have already, most emphatically, on the day before yesterday, expressed that I was not governed by party views, and I am sorry the gentleman was not here, to hear my vindication on this point.

Mr. IRWIN. The whole point here is this, the gentlemen from Louisville desire an equal senatorial representation with the rest of the state. Now, in the proposition I present, I say she shall have but one senator; and gentlemen who prefer "two" can move to strike out, and so insert, or if the gentleman from Louisville will move to strike out "one" and insert "equal" then the question on each of these propositions can be presented at once, and the convention come to a speedy determination.

The PRESIDENT stated the amendment of Mr. Morris to be first in order.

Mr. MORRIS. I withdraw my amendment, so that the vote can be taken on the proposition of the gentleman.

The question was then stated to be on Mr. IRWIN'S proposition which was then formally offered.

Mr. PRESTON. For myself, I intend to stand by the fifth section, simply because it declares that equal representation shall be allowed to the cities, in both houses of the general assembly. I prefer that the house should test the question by standing by the report of the committee.

Mr. IRWIN. I will amend the proposition so as to leave the number blank, and gentlemen can fill it as they desire.

Mr. MERRIWETHER. I apprehend the whole question to be, whether we shall or shall not place restrictions on cities. I beg leave to suggest to the convention that there is a restriction existing now, and which will exist, even if the section is passed, as reported by the committee, which will effectually protect the balance from all danger from the increase of Louisville. The present boundaries of that city, if as compactly settled as is possible, can never accommodate, at the furthest, more than 100,000 people, and those boundaries are restricted by law. The legislature will have it in their power, if deemed necessary to restrict her influence, by refusing to extend those limits; therefore let the section stand as it is.

Mr. CLARKE desired to offer his amendment proposed in committee.

The PRESIDENT ruled it out of order, while the present amendments were pending.

Mr. BROWN. I believe the friends of the

section have a right to amend, and perfect it, before action is had upon a substitute. I make the same motion made in committee by the gentleman from Franklin, (Mr. Lindsey,) to strike out the words "both houses of the general assembly." If this amendment prevails, it allows the city her full representation, based on numbers, in the house. So far as representation in the senate is concerned, that can be provided for afterwards.

Mr. C. A. WICKLIFFE asked for the yeas and nays on the amendment.

Mr. PRESTON. This amendment goes a little further than any I have seen yet. There have been many propositions, either from those friendly or hostile to the city, some to give one, and some two senators to Louisville. To all of these I am opposed. I am in favor of the section as it stands. But the gentleman goes further still, and proposes to cut us off from any senator at all, leaving it precisely as we were under the old constitution. The amendment to give the city any senatorial representation at all may not be adopted, and it is for that reason I think the amendment of the gentleman from Hardin, (Mr. Brown,) goes further than any yet offered. I appreciate the compromise offered by the gentleman from Christian, for it was offered when we needed aid, but I still have confidence in the justice of the convention. I believe it is not going to compound a debt of justice, or mete out to us by instalments, our rights. I believe it intends to pass the section as it stands, and to give us our full representation in the upper house. I never will believe this convention will compromise a principle of justice, until I see the act consummated. We want no compromise. We claim it as a right, which I believe the house will accord to us.

Mr. BROWN. The gentleman has not correctly represented the ground I occupy. My object is not to deprive the city of all representation in the senate; but to go for some restriction. I am willing to go for one senator to the cities, and as I said before, the effect of the amendment is not to cut them off from all representation in the senate. I intend at a proper time, if no other gentleman does, if this amendment is adopted, to offer another, which will secure to cities one senator. As to what is right and just, I intend to be governed by my convictions, and the dictates of my own judgment, regardless of all imputations which may be made against me.

Mr. W. JOHNSON. I shall vote to strike out, because I want some kind of restriction. Those who go with my friends from Louisville, will vote against striking out.

Mr. C. A. WICKLIFFE. I shall vote against striking out, and I mean to vote for the proposition of the gentleman from Christian, if he renews it; if not, I will renew it, or something like it, myself. I cannot understand why it is that gentlemen will give unlimited representation in one branch to the cities, and restrict it as to the other. When it is acknowledged that in both, representation is based on numbers, you are but doing half the business if you restrict it in one and not the other. To my mind, there is more reason for the restriction in the popular than in the upper branch; for it is the number of representatives that is to control. If the

amendment of the gentleman from Christian is not adopted, then I shall vote for some other restriction as to the representation of numbers from the city.

Mr. HARDIN. I have gone over the census of the United States, for the years 1820, 1830, and 1840, and over the list of voters as they have been returned. I find that when representation was to be apportioned, in 1843, Jefferson county, including the city of Louisville, returned 5398 voters. In 1847, when the next apportionment was made, she had 6799, and yet in 1848, when there was no apportionment to be made, the returns showed but 5076. This year, when it was known that some change was to be made, it run up to 9283. Now, what does all this prove? Why, that the commissioners, when any thing is to be done, include the itinerant men who are not residents of Louisville. Go back for twenty years, and it would be found that whenever there was an apportionment to be made, there was a remarkable increase, and whenever there was not, an equally remarkable falling off. The reason is, that the commissioners know what is to be done, and they will take in men who, in reality, are not qualified voters. The other cities present the same facts, but not to the same extent. It is a matter of importance, therefore, that we should put a limit upon the representation of these cities. I would propose that it should never exceed five in the house, nor more than one in the senate. Louisville, or any other city, would then have a very full representation in the legislature. Representation meant the power to present their wishes, wants, and grievances; and was not five in one house and one in the other enough for this purpose? There were counties—Bullitt and Spencer, for example—in regard to which it was a matter of great doubt whether the next apportionment would entitle them to a representative at all, and they will go to Louisville to swell her representation, when she would, as I have shown, be sufficiently represented without it. And I have shown, too, how the basis of representation in the cities is run up just before an apportionment is to be made. It is, as we know, a city of great influence in the state. There always was a town which stood as the metropolis of every state, and that town is the one to which our exports go, and our imports come; and from this and other causes, it has an immense influence upon the legislation of the country. It is the point to which all news is brought, and the newspapers themselves give it a great and undue influence. I shall vote for limiting Louisville to one senator and five representatives, and that is giving them much more than they would have under the present constitution. And it seems to me, so far from being an act of injustice, that every requirement of justice would be complied with.

Mr. GRAY. I shall vote against the motion of the gentleman from Hardin. Whether so intended or not, the effect, it seems to me, will be to deprive the cities of their fair representation in the senate. We see it in our old constitution, and in this report, laid down as a principle that representation should be equal and uniform throughout the state, and forever to be based on the number of qualified voters therein. If that

principle is a correct one, and should occupy a place in this constitution, then every portion of this commonwealth should be operated upon by it. Every gentleman here, I believe, except the gentleman from Franklin, has declared that representation should be on population, or the qualified voters, which is the same thing in principle. In New York, negroes not subject to taxation, and aliens, were excluded from the basis of representation, as they were also excluded from voting and participating in the government. In this state, also, slaves were not represented, and the basis was the number of qualified voters, and they act as the trustees of the community at large in selecting the men to represent them. If this is a correct principle—and all say that it is—what is the apology offered here for departing from it? I have heard none. When brought down to a nutshell, the whole apology amounts to this, that it will be entrusting too much power to a particular locality. The principle of self-preservation, I am aware, ought to be guarded in all republican governments, and it is proper that the majority should not be entrusted with the power to oppress and override the minority, but I ask, where is the proper place to guard against it? Here in the formation of the organic law, we have the right, for the protection of that minority, to impose restrictions on the majority. Is there any right more sacred than that of suffrage, or which the minority desire more strongly to be secured to them? But gentlemen say that they do not propose to deprive the cities of the right of suffrage but merely to restrict their representation. Does it not amount to the same thing in principle? It is to say to one hundred thousand voters, if you live in the city you shall vote for but one senator, but if you live in the country, you may vote for five or six. It amounts to the same thing according to my idea. And the only apology offered for this, is the desire to protect ourselves. I contend it will never have that effect. Place in this constitution all the rights that are dear to us as citizens, and which ought to be protected, and then take it away from the power of the majority of the legislature—for there the power is exercised—to infringe upon those rights. There is the place to put this restriction. Another apology offered for the violation of this great principle is, that it is done by other states. But are gentlemen willing to adopt other errors which those states have engrafted into their organic law? They are not. The gentleman from Caldwell, who offered this apology for the violation of this great principle, referred to the constitutions of many of the states for this purpose. In Virginia, east of the mountains, they have nineteen, and west of them never but thirteen senators. There is this principle violated there, and for what reason? Would the gentleman from Caldwell ever be willing that the Green river county should be placed under a similar restriction as compared to the rest of the state? This restriction was laid on western Virginia, because the eastern section, with its population and wealth, had the power to do it. But was it an exercise of power which gentlemen could justify upon principle before their constituency? I contend it is not. Another apology is, that it would not be depriving the cities of any rights

which they enjoyed under the old constitution. When that constitution was formed, was any community at that time thus restricted? No sir; our fathers at that time saw no city in the state that was entitled to a separate representation, and that there probably would not be until the people in their wisdom saw fit to change the constitution. I believe Louisville at that time contained only about five or six hundred inhabitants. In 1810, eleven years thereafter, she had only thirteen hundred. Therefore, no question of this sort was agitated by the framers of the present constitution. And the very principle they have there declared, of representation upon population, is in contradiction of such a proposition. My friend from Hickman knows that ever since Louisville has been entitled to a senatorial representation, the legislature have seen the injustice of her being deprived of it, and by way of compensation, they have given to Bullitt and Spencer, where they are not, from the number of their voters—some twenty-three or twenty-four hundred—entitled to a senator between them. They are counties adjacent to Louisville and Jefferson, where they do not get their fair and just proportion upon the principle laid down in the constitution. I hope the principle of representation according to population will govern, and it must always in this state, where the people are in favor of equal rights and privileges. And all the feelings of the people of the country, so far as I understand them, have been against any such propositions for restriction, as have been here proposed. Then, sir, I am opposed to striking out, and in favor of the section as it stands.

The question was then taken on the motion to strike out, and it was rejected—yeas 38, nays 50, as follows:

YEAS.—John L. Ballinger, Wm. K. Bowling, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, William Cowper, Garrett Davis, James Dudley, Milford Elliott, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, John Hargis, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, Thomas W. Lisle, Willis B. Machen, Richard L. Mayes, Nathan McClure, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, James W. Stone, Michael L. Stoner, John J. Thurman, Philip Triplett, Squire Turner, John Wheeler—38.

NAYS.—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Charles Chambers, Wm. Chenault, Benjamin Copelin, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, William Hendrix, Alfred M. Jackson, George W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, George W. Mansfield, Martin P. Marshall, Wm. C. Marshall, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Hugh Newell, Wm. Preston, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, John D. Taylor, William R. Thompson, John L. Waller, Andrew S.

White, Charles A. Wickliffe, Robt. N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—50.

Mr. BROWN then proposed to amend the 5th section by adding the words, "and no city or town shall ever have more than one senator."

Mr. McHENRY moved to amend the amendment by striking out the word town, and inserting county, and by adding the words, "nor more than five representatives."

A division was called for, so that the question could be taken separately on each proposition.

Mr. McHENRY. I will then offer but one, and move to strike out "town" and insert "county."

Mr. BROWN accepted that amendment.

Mr. McHENRY then moved to add, "nor more than five representatives."

Mr. TRIPLET. I would suggest to my friend from Ohio to permit us to vote, if it can be done, upon these amendments severally. There are several delegates who are for restricting the cities, and who believe it to be not only within the scope of, but demanded by considerations of justice. The delegates from Louisville have a right to act upon a standard of justice they may establish for themselves, but they have no right to attempt to erect one for the balance of the state, or to denounce the object which delegates wish to attain, as unjust or improper. Talk to me about a sense of justice. Do you not protect yourselves when it comes to the taxing power? Do you desire to permit vagrants and vagabonds to vote to tax the property of Louisville? All that I ask, is, that we of the rural districts should be permitted by the same standard of justice to protect ourselves, should our interests ever come in contact with those of Louisville or any of the other cities. I want—and I believe a majority of the delegates here are willing to go for it—the power to protect ourselves against high taxation, if ever that question should come before the legislature, as come it must. You tell me, and tell me truly, that to some extent, railroads, canals, and turnpikes, wherever they may lead, benefit the district through which they may run. But they are benefited to but a small extent, compared with the point at which they terminate, and this is generally Louisville. I am for a more equal division. All the tracks go into the lion's den, and few, very few, come out again. And it is necessary that there should be one conservative branch of the legislature where the property of the rural districts may be protected from excessive taxation for the benefit of these cities, or even of particular rural districts. This view has been well presented by my friend from Hickman, (Mr. James.) The Green river and Kentucky river improvements were, to some extent, beneficial to the people in their vicinity, but they were much more so to the cities, while to other portions of the state they realized nothing but taxation. And we desire that there should be one branch of the legislature which will guard us against this overwhelming influence of the cities when they shall attain their full strength, and the taxation which their desire for internal improvements for their benefit may entail upon us. It is for these reasons, together with others that I stated the other day, that I advocate these

restrictions upon their representation. It is with us a principle of self-preservation.

Mr. TAYLOR. If any apology be necessary for my addressing the convention now, it is to be found in the fact (and I will use no stronger term, and to some extent it is almost too strong,) that an unkind and ungenerous act is sought to be perpetrated upon the cities of this commonwealth, in one of which I have the pleasure to reside. It is an unjust and unkind attempt, upon the part of the delegates from the rural districts of the state, to array them in positive and deadly hostility to the cities in this commonwealth. It has been beautifully and aptly said, that "man made the town, but God made the country." But some gentlemen seem to argue upon the principle, that while God made the man who resides in the rural districts, the old gentleman who lives below, and who seems a saint when most he plays the devil, made all of us whose lot is cast in the cities of this commonwealth. And I will venture to say, that if a stranger had come into this convention during the pending of this question in respect to city representation, and had not known it was a body organized for the purpose of making a new organic law for the state, he would have thought that the presiding officer was a judge, and my friends around me a jury, and that an action of assumpsit had been brought against Louisville for money paid, laid out, and expended for her use. Time after time have the statistics been summed up and paraded here, and gentlemen have enquired what has Louisville got, rather than to what she is entitled. All admit, that population is the true, just, and proper basis of representation, and we are for its liberal application to the rural districts, and yet desire to withhold it from the cities. I ask gentlemen upon what just principles can they give full representation, according to numbers, to the former and deny it to the latter? And this question will be asked with much more significance by the people. If Louisville should have a population of one hundred thousand, why is it that she is to be entitled to but one senator? The people will certainly ask for a bill of particulars—for the reasons for this unjust treatment of their urban fellow citizens. Has it come to this, that the right to be fully and fairly represented in the legislature, depends upon the *venue* of the voter? So long as a citizen resides in the country, he is entitled to a fair and full representation in the legislature; but if operated upon by motives of convenience or interest, he moves into Louisville, or any other city entitled to separate representation, that moment he is stripped of a large portion of his political and social influence and power.

Is this right? Is there any good reason for this condition of things? It is true, we are told that Louisville is strongly represented in the penitentiary. So she may be—'tis her and our misfortune that such is the case. We are told, also, that she has her internal improvements—her railroads and turnpikes, all conferring upon her positive benefit, and imparting to her great influence. Be it so. Do these works confer no benefit upon the country through which they pass? They were constructed as much for the benefit of the whole state as for Louisville.



The interests of commerce required they should terminate at some point on the Ohio river, and because they terminate at Louisville, they are to be pleaded as a set-off to her claims to a proper and just representation in the legislative halls of the state. Is it not one of the objects of all constitutions to prevent partial legislation? Is there any thing to which the people had a stronger repugnance than to partial legislation? And yet it is proposed to embody in the organic law a principle which would deny to your fellow citizens—because they reside in a particular district—their proper political rights and influence. For my own part, I mean to vote for the principle that population is the true basis of representation, to the correctness of which every gentleman here almost has borne testimony. I care not how it works, it is just in itself; and I mean, so far as my action is concerned, to incorporate in this constitution no principle that is not just in itself. The judge who asks himself, when about to render a decision, what will be its popularity, by that very question he puts to himself, he has already soiled the judicial ermine with which the confidence of the people has invested him. And the man in this convention, I care not who he is, who asks himself whether an apportionment is to operate to the benefit of one party or the other, has already exhibited his unfitness for the discharge of the responsible duties his constituents have confided to him. In this great work in which we are now engaged, I thank God that we are all whigs and all democrats—(or ought to be.)

There is a beautiful allegory I once read, of a good and just man who pursuing a long journey, and every night he laid down with hope and confidence in his heart and prayer and thanksgiving upon his lips, he found himself in the morning surrounded with a tent to shelter and protect, the work and providence of a kind hearted and benevolent fairy. I mean to vote that population is the true and just basis of representation, and when I vote for the incorporation in this constitution of principles which by their inherent justice commend themselves to my confidence and support, I shall have the cheering assurance that it will be to us all indeed a fairy tent which will be over and around us whithersoever we may go, or wherever our lot may be cast. I do not stop to enquire what party influence any principle here proposed may have, or whether it will extend the influence of this or that section of the state, but is it just and right in itself? I mean to act upon the maxim so pertinently cited a few days ago by my venerable friend from Harrison, (Col. Newell,) "equal rights to all, exclusive privileges to none." When I see gentlemen, in reference to this demand for equal representation, guilty of special pleading, attempting to excite the prejudices of one portion of the community against another, I put at once upon it the seal of my condemnation, and I will go for no principle which requires to be strengthened by such appeals. I in part represent a city, one which has not set up for housekeeping as yet, but the time may come, and I hope it is not far distant, when she will so do. And when that time does come, I want her to have as many representatives, both in the senate and house, as her popu-

lation will entitle her to. I care not where a man lives, whether in the city or the country, if he is a citizen of this commonwealth, as such, he is entitled to equal, just, and fair representation in the legislative halls of the state. This thing of making fish of one and fowl of another may do in the legislature of the country, but not here, and I shall therefore vote against the restriction proposed in the amendment.

Mr. CHAMBERS. The county which I have the honor to represent, contains within its borders no city or large town, nor is it probable that it ever will have one entitled to a separate representation, yet I shall vote against all restrictive amendments to the fifth section, and for a fair and equal apportionment, applicable alike to town and country. These restrictions and distinctions are not only unjust towards the inhabitants of our larger towns and cities, but to my mind they are a violation of one of the first principles of our government, the political equality of freemen.

I can perceive no good reason why the same man, when he may chance to reside in a town or city, should possess less political weight and consequence than when he lives in the country, nor why the inhabitants of cities should be restricted beyond those of the country—they are all citizens of Kentucky, and, so far as I can see, entitled to equal representation. But I forbear to press my views further than to say I fully concur in the remarks made by the gentleman from Mason.

The convention then took a recess until 3 o'clock.

#### EVENING SESSION.

Mr. RUDD read the following amendment as one which he intended to offer when the proper time should arrive. He would submit it as a compromise for the settlement of the question which occupied the attention of the convention. There were fears expressed of the concentrated influence of the city of Louisville, but he apprehended they would be diminished and their cause removed by the adoption of his amendment, which was in these words:

"That whenever any city is entitled to four representatives, it shall be divided into two wards, or districts; and when it is entitled to five or more representatives, it shall be divided into single elective districts; and whenever it is entitled to two or more senators, it shall be laid off into senatorial districts."

Mr. HARGIS, after recapitulating the positions which different gentlemen had taken on this question, re-stated the population of the cities of Philadelphia, Baltimore, and New Orleans, and the several districts into which they are divided. He also again noticed the division of the state of Virginia, and pointed to these facts as examples for the convention.

After a few words from Mr. MERIWETHER, the vote was taken on the pending amendment, to add to the 5th section the words, "no city or county shall ever have more than one senator," which was rejected; yeas 31, nays 60.

YEAS—John L. Ballinger, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Garrett Davis, James Dudley, Milford Elliott, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, Andrew Hood, Thomas J. Hood,

Mark E. Huston, James W. Irwin, Thomas James, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, Richard L. Mayes, Nathan McClure, John H. McHenry, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, Michael L. Stoner, John J. Thurman, Squire Turner—31.

YAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Charles Chambers, William Chenault, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Ninian E. Gray, James P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, Alfred M. Jackson, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, George W. Mansfield, William C. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, William Preston, John T. Robinson, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, Philip Triplett, John L. Waller, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—60.

Mr. TRIPLETT offered the following amendment, to be added to the section:

That the cities now incorporated, or which may hereafter be incorporated in this commonwealth, and to which a senator or senators may be allotted, shall not, together, under any future apportionment, be entitled to more than one fourth of the whole number of senators; and when ever, under any future apportionment, the whole number of senators to which said cities would be entitled, shall exceed one fourth of the whole number of senators for the whole state, the legislature shall apportion the one fourth of the whole number of senators among the cities entitled, according to some just and equitable mode of apportionment; and provided that no city shall ever be entitled to more than two senators.

The amendment was rejected; yeas 41, nays 49, as follows:

YEAS—John L. Ballinger, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, William Cowper, Garrett Davis, James Dudley, Milford Elliott, Richard D. Gholson, Thos. J. Gough, Ben. Hardin, John Hargis, Andrew Hood, Thos. J. Hood, Mark E. Huston, J. W. Irwin, Alfred M. Jackson, Tho. James, Wm. Johnson, Thomas N. Lindsey, Tho. W. Lisle, Willis B. Machen, Richard L. Mayes, Nathan McClure, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, James W. Stone, Michael L. Stoner, Albert G. Talbott, John J. Thurman, Philip Triplett, Squire Turner, Jno. L. Waller—41.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, Charles Chambers, William Chenault, Benjamin Copelin, Edward Curd, Lucius Desha, Archibald Dixon, Chasteen T.

Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Ninian E. Grey, James P. Hamilton, Vincent S. Hay, William Hendrix, Geo. W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Geo. W. Mansfield, Alexander K. Marshall, William C. Marshall, David Meriwether, Wm. D. Mitchell, Thos. P. Moore, John D. Morris, Hugh Newell, William Preston, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, John D. Taylor, William R. Thompson, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—49.

Mr. JACKSON offered an amendment, but the President ruled it out of order, as being in substance an amendment which had been voted down.

Mr. RUDD offered the amendment to which he had just called the attention of the convention.

Mr. C. A. WICKLIFFE suggested to the gentleman from Louisville to strike out the words "the city of Louisville" and insert "any city."

Mr. RUDD assented, and so amended his amendment.

Mr. IRWIN remarked that if cities could be gerrymandered, he could not see why counties could not be gerrymandered also. He understood the object which gentlemen had in view was to avoid the concentrated influence of cities, but he suggested that counties also could have their concentrated influence.

Mr. C. A. WICKLIFFE asked the gentleman from Logan to be good enough to express his opinion as a representative on this floor, whether any county, with the limited number of one hundred representatives in the legislature, would be entitled to four representatives.

Mr. IRWIN replied that such a case might arise.

Mr. C. A. WICKLIFFE said when such a case should arise, he would vote for it.

Mr. GRAY. I cannot conceive that this amendment is in effect a compromise. I think with my friend from Logan, and can see no reason why a city should be divided in her representation any more than a county. Gentlemen have argued a great deal about the power of these cities, from the concentration of a large number of citizens or representatives in one body. In what respect are we to apprehend danger from the action of these numbers? Is it from any general principle on which the cities will oppose the state at large? I think not. If I understand the objection, it is that there may be some private interests or views peculiar to the cities that would influence them, and cause them to unite together in advocating a single principle in which they would oppose the interests of the agricultural portion of the state. I ask if dividing up the city and allowing her a single representative from each locality, will weaken the force that she will have in the legislature? If there are interests peculiar to the city as opposed to the balance of the state, they will vote in a solid phalanx. I cannot see that dividing the cities is to do any good, or that this is any compromise at all. It can do no good unless it is to divide up the influence of

the great political parties of the country, and on local questions they will unite. There is another objection to it. It provides for just what is provided for in the twelfth section.

Mr. BRADLEY offered the amendment of the gentleman from Christian, (Mr. Morris,) which has been heretofore published.

Mr. T. J. HOOD. When that resolution was first presented, it was attempted to make it palatable by calling it a compromise. I have not been able to see in it the idea of a compromise. A compromise is a mutual concession. What are the interests which are supposed to be arrayed against each other between the city and the country. They are the agricultural interest on the one part, and the commercial and manufacturing interests on the other. I see no concession on either part, nor the first feature of a compromise. I can well conceive how a conflict may spring up in the city in relation to municipal regulations, but when the interests of the whole city are opposed to those of the state, the city will be united. Suppose a work of internal improvement affecting the city is proposed, will the first ward oppose the second or third? Their interest is united in such a case, and no division will arise except with reference to local questions. If the city is to be divided, with a view to creating dissensions, why should not a county be divided for the same reason? On what principle is it that cities are to be divided and not counties? The object is said to be, to divide the concentrated power of cities in the legislature. Why not do it in the counties? I am opposed to the principle as applied to both.

Mr. RUDD. The gentleman asks, where has there been an example of a city being divided into wards or elective districts. We have examples throughout the United States. There is no city which has as many as four members, which is not divided into wards. New York has four senatorial districts. Philadelphia and New Orleans are likewise divided off in the same way. The object of my amendment is to approximate as nearly as possible to the present system of districting the counties. No county in Kentucky has more than two representatives. My amendment says, that when the city of Louisville is entitled to four, she shall be laid off into two districts; and when she has five, they shall be chosen in five separate wards. This will prevent their coming up here and speaking with one voice in your legislative halls. I think this is fair. We did not ask for more at first, than to have equality of rights, and perhaps this is equal and just.

Mr. PROCTOR. I shall be satisfied to leave this matter to the legislature, and thereby we shall relieve ourselves from the responsibility of incorporating such a provision in the constitution, and we shall not expose the constitution that we may make to the opposing interests that may, in consequence, be brought against it. I am willing that Louisville shall be districted when she knocks at the door of the legislature and asks for it.

Mr. CLARKE. I have been struck by the opinions expressed by gentlemen this evening. Some two or three days ago, this proposition offered by the gentleman from Christian, was

very popular, and now a vote has been taken, to which I submit, which shows that the sense of the house is to give Louisville a representation based on popular numbers. It has been well said by the elder gentleman from Louisville, (Mr. Rudd), that in every city in the United States, the rule proposed by him has been adopted, and there is not a single state, so far as I know, where they vote in a mass for senators or for representatives, where they are entitled to more than one. What the reason has been for this, I cannot tell, but it was argued the other day by the gentleman from Christian and the gentleman from Henderson, that as there were those who were afraid of the concentration of power from Louisville if she should send five or six members into the lower house, this was the best means of avoiding this concentration of power; and I confess that I see some reason in the suggestion. That it may have that effect permanently, I do not pretend to argue, but that it may by possibility prevent that concentration of influence and power which some gentlemen apprehend, there can be no good objection to the resolution offered by the gentleman from Christian or the one offered by the gentleman from Louisville. I hope that either the amendment or the substitute may be adopted.

Mr. MITCHELL. I was much astonished to hear gentlemen who are opposed to representation in Louisville according to numbers urging the impropriety of any such restriction, as has been proposed in these two amendments, and calling on members for some good reason why this restriction should be imposed. From what I have heard here, the unity of representation, the concentration of numbers within so small a space, was the great objection which was urged by those who were opposed to extending to Louisville a representation corresponding to her numbers.

The proposition now before us is to break the population up into separate political associations, and thus make their interests separate. It was said they would come up in solid phalanx, shield locked in shield. It was urged that there was an identity of purpose, and this would give them power. Now when it is proposed to break up this power into separate political associations, the very same gentlemen come here and seem to be opposed to it. You cannot convince me that one who represents ten thousand would have the same responsibilities and be governed by the same influences as one who represents fifteen hundred. Break them up then and you create separate political interests, you destroy that unity of representation which has constituted the great objection to giving Louisville what I conceive to be her due. I went for representation based on political numbers, for giving Louisville this representation, let the consequences be what they may. But I conceive she may be broken up in this way without doing her injustice. By dividing her into districts she will lose none of the strength to which she is entitled, and the objection which is urged is overcome. It has been said it would be better to leave the matter to the legislature. I would rather it should be passed as it is. I would not give it to a party in the legislature to district at one time and repeal at another, as

party purposes might require. I want some fixed rule, and as I believe the amendment proposed will effect this I shall go for it.

Mr. PRESTON. I wish to state my position in reference to this matter, before I cast my vote. The house seems inclined to give the city of Louisville the same representative privileges that the report indicates. I announced this morning that I did not feel inclined to compromise that matter, and I feel assured, if the house were to adopt the amendment proposed by my friend and colleague, a gentleman whom I know desirous to harmonize the conflicting views of delegates, I believe, without effecting any great or material good, it would work, in some respects, an important injury to us. It would prescribe one mode of voting in Louisville, and another in the counties. It would declare the principle that it was necessary to cut up into wards and representative districts cities, when it was unnecessary to divide the counties into separate districts, and the consequence would be a great deal of domestic dissatisfaction. If we go back to our constituents after having put this principle in the new constitution, they will say, you have achieved no good by adopting the district system. You send us back to meet this injurious imputation everywhere. You, Mr. President, will be spoken of as having been in favor of the district system in the city, when the same rule did not prevail in the counties. After having gone in a body for those representative rights and privileges to which the cities are justly entitled, we are now to go back to meet a great many objections, to hear a great deal of cavil, and to furnish our enemies, and those of constitutional reform, with this weapon to assail us. And if we go back to our city, having obtained the equal rights of representation, we are enabled to give an aid, strength, and support to this constitution, which no opposition can possibly overcome. It is for this reason I must respectfully ask the house to pass the fifth section of the report as it stands. I know the worthy desire that actuates my colleague to allay this difficulty, but I believe if we pass the substitute, it will not be a source of strength to us, and there is no necessity of sending us back to Louisville to meet the storm of opposition which may await us there, and about a thing which amounts to nothing in itself. I am therefore, unwilling to accept any compromise.

Mr. C. A. WICKLIFFE. It will be remembered that the other evening I made a suggestion to the gentleman from Christian to modify his proposition, so as to relieve it from the attack which has been made, that we restrict the cities as we do not the counties. So far as I was concerned in announcing my determination to vote against all restrictions, and going for representation according to numbers, I yielded the difficulties that had been presented to my mind against this representation in solid masses. But I beg to be understood, that while I have voted against every species of restriction heretofore, I have not been deaf to what has been thrown out as to the possible danger of that description of representation. I scorn the imputation that I desire, or that those who act with me desire to change the local representation either from whig to democrat or from democrat to whig. Those

who are familiar with the character of a city population, know that great changes are made by removing from one ward to another. The application for districting will come up as well from Covington as Louisville, and may operate differently there from what it may be supposed to do in Louisville. Now I could have hoped that those who are against concentration of power in small space, when the proposition to divide into districts was made, would have met it. I was prepared to do it. I will take either the original amendment or the substitute.

The PRESIDENT. If the convention will pardon me, I desire to make a statement. (Leave, leave.) I did desire that we should go on, in relation to the subject of representation, as we have gone heretofore. I consulted with both the gentlemen, and told the elder gentleman I would go with him in whatever course he might take. I would state that I prefer his amendment to that of the gentleman from Christian. If this is received there will be no division until her population entitles her to four representatives. If the population remains as it is, it will make no change probably in the present condition of parties, and as I did not come here to gain political advantages, I prefer that amendment; but if the convention deem it essential to district the city, I yield to that wish.

Mr. TURNER. I wish to make a statement to show my consistency. I have not urged the restriction of Louisville on the ground of her consolidated vote. I am utterly opposed to the proposition offered by my friend from Louisville. I do not believe that the people of Louisville want it, nor the people of the state at large.

Mr. DAVIS. I am in favor of districting cities, if it can be fairly and equitably done, without leaving too much to legislative discretion, and consequently to legislative power. And upon this principle the cities have a general politics as well as a local politics. My idea is this, that wherever there is a representation in any assembly, in either the general or state governments, that that representation ought to be single, as far as practicable, in congress, in the legislature, and in the election of a president in the college of electors. I cannot conceive any reason for districting a city that would not make the argument the stronger in favor of single than double districts. And for that reason would I be opposed to the proposition of my friend from Louisville, that the city of Louisville be divided into two districts. If, then, it be proper to district the city at all, in my judgment it ought to be divided into single districts, that each number of separate people entitled to a representative in the general assembly should be represented there by a man reflecting their own principles and their own wishes. But that object and end might be defeated by the double district system. I do not know what would be its present effect, or its probable effect within a short time, in the lower house. It might be that the proposition of the gentleman from Louisville would divide that city equally between the two parties. And suppose that would be the effect, what effect would it have on Covington? His double district would exclude Covington giving one party the advantage in both cases. I should be opposed to that, and to any arrangement now

with a view to parties in this body, or any other body. And, if there is any proposition to district Louisville, or any other city, by single districts, and legislative discretion is so controlled as to prevent much abuse, I will vote for the proposition, because I believe it to be right in principle. I think the proposition of the gentleman is not sufficiently guarded. Now, the wards of a city might be large and numerous; and, while I would prefer that different language should be used, that the cities should be divided into single districts by squares of contiguous territory, so as to throw the districts into as compact a form as possible, I would leave the matter to legislative discretion. It might be that the wards would be strung out into a long line. I want a general regulation for the convenience of voters and without reference to party advantage.

Mr. MORRIS. I am obliged to the gentleman from Bourbon for his suggestion. Nothing has given me more pain than the idea which has been thrown out, that I have been influenced by party consideration. I wish to place the matter so that the city cannot be gerrymandered, and I accept the proposition he has made, to substitute the word "squares" for "wards," and after the word "contiguous" to insert "so as to make the most compact form."

Mr. RUDD suggested that the city of Louisville should be laid off by wards, divided by the different cross streets, commencing at the river, and running south to the extreme limits of the city. This would place them in a compact form. He would like such a provision put into the constitution, as it would prevent all future trouble.

Mr. C. A. WICKLIFFE agreed with the gentleman from Louisville. He thought that gentleman's amendment contained the best description of localities, and when they were taken as electoral limits, all temptation to gerrymander was avoided. He called for the yeas and nays on the substitute.

The question was then taken, and it was decided in the affirmative—yeas 56, nays 34:

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Jas. S. Chrisman, B. L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benj. Copelin, Wm. Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Benjamin H. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, John Hargis, W. Hendrix, Andrew Hood, Thomas James, Wm. Johnson, Charles C. Kelley, James M. Lackey, Peter Lashbrook, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, Nathan McClure, David Merriweather, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, James W. Stone, Albert G. Talbott, John D. Taylor, J. Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—56.

NAYS—President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Francis M. Bristow, Thomas D. Brown, Charles

Chambers, William Chenault, Archibald Dixon, Chasteen T. Dunavan, Nathan Gaither, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Thomas J. Hood, Mark E. Huston, James W. Irwin, Geo. W. Johnston, Martin P. Marshall, William C. Marshall, Hugh Newell, William Preston, Johnson Price, Larkin J. Proctor, Ira Root, James Rudd, John W. Stevenson, Michael L. Stoner, William R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, Silas Woodson—34.

So the amendment of Mr. Morris was substituted for that of the gentleman from Louisville.

The question then recurred on the adoption of the amendment.

Mr. C. A. WICKLIFFE moved the previous question.

Pending this question the convention adjourned.

TUESDAY, NOVEMBER, 30, 1849.

Prayer by the Rev. Mr. LANCASTER.

BASIS OF REPRESENTATION.

Mr. CLARKE offered the following resolution:

Whereas, in the formation of a republican constitution, it is right and proper to establish some true and correct basis of representation. Wherefore,

*Resolved*, That all free white inhabitants who have been born in this commonwealth, and reside therein, or who shall have resided in the county, town, or city, in which they shall be enumerated, one year preceding the census or enumeration of the people, (aliens not naturalized excepted,) shall form the basis of representation.

I offer that resolution to test the sense of the convention whether population in the sense in which it is presented in that resolution, is the true basis of representation as many gentlemen have contended. There are many persons in this commonwealth who ought to be considered as well as the qualified voters.

Mr. C. A. WICKLIFFE. I do not understand the object of the mover of that resolution. If I understand it, we are to base representation upon the number of individuals, whether male or female, qualified voters or not qualified to vote.

Mr. CLARKE. I desire to change the word "or" to "and," so that it shall read, "and reside therein."

Mr. C. A. WICKLIFFE. I have a still stronger objection to it as it now stands; for I understand its purport to be to exclude naturalized citizens, in forming the basis of representation.

Mr. CLARKE. The gentleman certainly misunderstands me. I mean no such thing.

Mr. C. A. WICKLIFFE. I presume my friend does not intend to make the exclusion, but I think a proper construction would have the effect which I named.

Mr. CLARKE modified the resolution, so as to exclude aliens not naturalized.

Mr. C. A. WICKLIFFE. That makes a great difference? I do not desire to pursue the discussion, for I presume this convention have made

up their minds on the subject of the qualifications of voters, and are satisfied to leave that matter as it is at present, and to take the basis of our fathers—to-wit, the qualified voters of our country—as that on which we shall act.

Mr. HARDIN. I understand this is a government of the people. The people, I understand to be men, women, and children, who are white, and who are born citizens of the United States, or of foreigners who have been naturalized. That I understand to be the qualification when you take the gentleman's resolution as it stands. And he meant nothing but that before in the use of the word alien, meaning those who have not been naturalized. The basis then proposed is the whole free white population that are citizens of the U. States, and are residents of the county, or town, or city, in which they may have been resident one year. Upon the subject of the uniformity of that basis, I do not think the gentleman is correct. The basis of representation in the congress of the United States is exactly the basis laid down there, with the exception of the slaves in the slaveholding states. By way of compromise, they were allowed a representation of their slaves, upon the basis of three fifths. With that exception the representation is that precisely which is laid down in the gentleman's proposition. I have not examined the constitutions of the various states, in order to ascertain what is the basis that has been adopted. I believe it varies in some of the states; in some it is the free voting population, and in others, the free white population. I have no doubt my worthy friend from Bullitt, (Mr. Thompson,) in his remarks the other day, was correct in quoting the provisions in the different constitutions of the states, as to what forms the basis of representation. And that only goes to show that the federal government has the basis of white population. Now, I ask why in the nature of things it should not be so in all the states, and why should not women and children under twenty one years of age have a right to be represented by the law-making power? Are they not subject to the laws? Do they not pay taxes upon their property? Have they not rights at stake as well as men? Are not their persons subject to the laws just as much as if they were voters? To be sure it is so. A young man of eighteen fights like voters, and works on the roads, does militia duty, and many other acts, and I cannot see why young men, women, and children should not form the basis of representation, and have a voice in the government. And there is another reason. You go to your cities and large towns, and there is a floating population of unmarried men. Go to the least village in your state, (God forbid I should again mention Louisville,) and you find a disproportion of voters to the number of the population: some journeymen mechanics, some young unmarried men in stores, or young men studying law or medicine. And go to every town and take the number of people in the town, and then go into the country and take the same number, and you find the town furnishes more voters in proportion than the country. I think the basis of the gentleman is the correct one; it is based upon the same principle as the congress of the U. States, and I believe at least half of the states. I beg pardon if I should again

go to Louisville; there is a floating population there, if it is not treason against my worthy friend from Louisville to say so. They stop also at Covington, at Newport, and at Maysville awhile, and they are taken in among the list of voters. They are mechanics, working men, and peddlers, and have no permanent residence; and what is more they will give in their names to the commissioners when an apportionment is to be made. And hence if you go over all the towns in the state, and take Lexington, Maysville, Covington, and Paducah, you will see a disproportion of voters taken down the year the representation is to be apportioned. Louisville gave as many in 1843 as in 1848; not that there was as many people there, but she took in, in 1843, a moving, itinerant population. Lexington was in the same position. I want the country to have a chance. We have been taught by our fathers—what? That it should be a white population. They let the free negroes vote from 1792 to 1800, but we were taught certain principles of government which were excluded by the present constitution, and that constitution contains many things to which the people now object, and we are sent here to make a new one. We are not to consider that constitution as binding upon us either as precedents or in any other way. We came here to reconstruct and remodel it. What was in the constitution in 1792 was excluded in 1799, and what was in in 1799 will be excluded in 1849. The world is advancing; the world is improving. We appear to be standing still, but we move as the world moves, in all the arts and sciences. We do not see our advance, but we are advancing. The world is improving as well in the arts and sciences generally as in the science of government; and I say that men, women, and children have a right to be represented. I looked around me the other day, and found that I had twenty five grand children, and not one of them can be represented under this constitution, and yet more than half are just verging into manhood and womanhood, and some of them pay taxes on \$25,000. I am obliged to the gentleman for bringing in that resolution.

Mr. C. A. WICKLIFFE. This convention was called to re-model our form of government in those respects where experience had pointed to existing evils in the present constitution. I did not understand that it was called for the purpose of changing those great principles which seemed to have been sanctified by time, and acquiesced in by common consent, approved by all, and complained of by none. Under this opinion, I did not, when addressing my fellow citizens who sent me here, feel it my duty to say to them that I desired, or expected to change certain great principles secured to the country in the present constitution and bill of rights. I insisted that this should remain undisturbed as it was; that the right of representation, as therein guaranteed, should remain secure and inviolate; that liberty of conscience, and the freedom of the press should also remain secure, and guaranteed to the people and to posterity.

Now, if the basis of representation has been any where in Kentucky a cause of complaint, or has entered into the elements which led to the call of this convention, it has escaped my vision



and my hearing, and I understand now from my colleague that he has come into it since his warfare upon cities commenced. I have not looked at tables, or the census of this commonwealth, to see where this will strike heaviest, or benefit most, nor would I care.

He says that population is the basis of representation, and that it is the basis adopted by the federal government. Does not my colleague know, that when the thirteen sovereignties were forming this compact of states, that very point was the subject of dispute, and ultimately of compromise, and none more so than this very question of representation according to numbers, in the two houses of congress? The slave states, contended for the representation of persons whose lives they had under their charge and protection. The free states insisted on free population. A compromise was made, by which the whole population was to be enumerated, and three fifths of the slaves. We have no such contending interests of sovereignties in this state to allay, settle, adjust, and compromise.

The resolution is to change the basis of representation as it has existed for fifty years without complaint, so far as my recollection goes, from any quarter. The argument is, that the women and children shall be represented, and young men who bear arms. I am against giving to matter, property, or territory, or to persons, the right of representation, when they are placed in a condition where they cannot exercise it. I have no idea of giving to one man whose locality may place him in the neighborhood of men, women, and children, more political power than the man who lives where they are not so abundant. I am for placing on each man who acts, the responsibility of a citizen, the same equal privileges, though he may not be wealthy. The gentleman objects that there is a floating population—voters who have no responsibility. I am opposed to giving one of that class any more than his due political weight, on account of his being surrounded by men, women, or children. Let him have his own weight and no more.

Why this change at this late hour, when I believe the members of this convention, individually and collectively, are anxious to bring the labors assigned to us, to a close; when the country is impatient to see the end of these labors; when the bill on your table which we had under consideration for some days, fixed the basis of representation by the judgment and sanction of the chairman and the whole committee? Why introduce at this late hour into this hall, and into this constitution, this new element, which is not calculated, let me assure my colleague, to form a constitution in conformity with the wishes of the people? I believe my colleague desires, as much as I, or any man, to form a constitution which will be satisfactory to them. I will not follow out the argument, but unless I can see some better ground for changing the basis which I think my countrymen desire still to maintain, I will not, for the sake of stripping any city or any town of one fiftieth, or one twentieth part of the political weight which it enjoys, introduce into this constitution this new basis of representation.

Mr. KAVANAUGH desired leave to record

his vote on the question taken yesterday in his absence, which was granted.

Mr. HARDIN. I have always believed that representation should be according to numbers, that is, the free white population of this state who are citizens either by naturalization or by birth. Now I know many widows in this county, who have perhaps, a property of eight or ten thousand dollars and pay taxes, and they are subject to our laws, and though they cannot vote they ought to be represented. In the formation of the federal constitution, the negro population was a subject of compromise. The slave holding states for fear they would be swallowed up by the north, insisted that their slaves should be represented, and if there was any compromise about the white population, I have not seen the article which shows that on the journal. I do not believe it was a matter of compromise.

My colleague asks if we knew of this proposition when we came up here. No, he says, it was not mentioned in any way in the discussions of the caucus. I will ask, was it mentioned that Louisville should be gerrymandered as it was yesterday? No sir, you may say what you will, that was the first time that principle was ever introduced in Kentucky, either in the constitution of 1792 or of 1799, that you shall divide a town or city into precincts or wards to make it give a divided vote. This will be virtually making a division of a county. We are not to turn a deaf ear, nor shut our eyes to what is going on. Any man can see that the agricultural interests are to be led up and sacrificed at the altars of the towns and cities in the state. Yes sir, they are, and to give them a fair chance, I want the free white population to be the basis of representation. I know that the county which I represent can in no wise be affected. It was once an extensive county, but has been cut and cut till it has lost all form and shape that it ever had, and is reduced to the lowest point of representation. We never can get but one, and you never can take that one from us, and our county never can be gerrymandered, thank God. I speak that word without any disrespect to any one. The practice of thus dividing was first introduced by the celebrated Elbridge Gerry, and was carried into various states, but I never thought it right. The whigs were accused of it in the division made in this state in 1833. I believe it was called gerrymandering, but I think the division was as fair as could be made. I can see that we are to be sacrificed by a great and leading party. Our party is to be sacrificed this day or to-morrow. I know it, I can see it, but so long as I can raise my voice, sick or well, I will protest against it.

Mr. MITCHELL. I came here as the representative of the people of my county without regard to party politics, to act according to my conceptions of what is just. In the discharge of my duty I shall not regard the influence which my action may have on the political parties of this state. Regarding, as I do, political numbers as the true basis of representation, I should think sir, that if the resolution under consideration were to receive the countenance of this convention, its action would be a departure from principles that have in Kentucky been long and

well settled. Representation results from necessity. If the people could assemble together and directly perform all political acts necessary for governmental purposes, there would be no necessity for representation. But as in large states they cannot thus assemble, it is necessary that thousands should be represented by one man. Whom do we represent? Whose voice does the representative speak? Is it the voice of the whole population or that of those who, if assembled together primarily, would do the business of legislation? Has it ever been the case from the earliest history of man, that women and children have constituted any part of the assemblage for the purpose of political action? Such was not the case in Athens? When the Athenian democracy assembled for political purposes, the convention was composed of those who had arrived at full age, the men of the country, male adults, who alone were entitled to vote. And, sir, if we could thus assemble, such would be the individuals who would vote with us. But as primary legislation is altogether impracticable, it is necessary that its exercise should be delegated. Out of this necessity has grown representation, which is designed to reflect the intelligence of the country, to embody the will of those who are vested with political power. It is the concentration of the popular voice—that voice which speaks at the polls. It is the creature obeying the behests of its creator. It is the ascertained will of the freemen of the country expressed through their representative.

The resolution under consideration proposes that women and children who are born in the country, as well as men, shall constitute the basis of representation, excluding aliens; and yet the children of the country have no more right to the exercise of political power than the alien. The alien may acquire it but the female child never can; the male child, it is true, will also be entitled to it at a proper age, but until that time he is as devoid of political power as the alien. Why then exclude the alien? Nay, why exclude the free negro or any one else, if population without regard to political numbers is to be the basis? If the burden of taxation is to have any influence, the free negro may acquire property and be taxed. He may be compelled to contribute toward the support of the government, as well as the white man, as well as the child. The child has no more political right—has no more voice in the councils of the country, than the free negro. Why make this discrimination if population, in its broadest sense, is to be the basis of representation? I do not see how gentlemen can escape from this difficulty. The gentleman from Nelson, (Mr. Hardin), says that this is the principle on which representation is based in the congress of the U. States. Free negroes, aliens, and three fifths of the slaves are taken into the estimate. The constitution of the United States declares, that

"Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons."

Here all free persons are included, without regard to color, so that free negroes and aliens are actually included in the estimate made in the apportionment under the federal constitution. Then so far as that example goes, and indeed any other example within my knowledge, this resolution presents a novelty. It proposes to exclude aliens and all those from other states who have not a year's residence. Why make these exclusions, if population in its broadest sense, is to be the basis of representation? I should like to hear the philosophy of the thing, why population in its broadest sense should be the basis, and I should like to hear, then, the reasons why women and children who pay taxes should be represented, and aliens and free negroes who also pay taxes should not be represented.

If representation is to be based on the intelligence of the people you cannot place it on the basis of taxation. We exclude property because the idea of intelligence does not attach to it. We say that our government is supported upon the intelligence of the great mass of the people.

It is not the errand of woman's destiny to go forth and wrestle on the political arena. Her duty is to dispense the blessings that cluster around the domestic hearth. She constitutes the brightest link in the chain of man's association—that tie which makes

"A paradise on earth,  
Where hearts and hands combine."

To her, as the mother of mankind, is entrusted the task of fashioning the mind of childhood for future greatness—her teachings are seen on the battle-field, heard in the senate chamber. Her glory is like the Roman Cornelia's, whose jewels were her children. To man, from the beginning of time, has been assigned the task of cultivating the earth, defending the country and controlling its political destiny. It is proposed here to enlarge the basis of representation so as to embrace women and children, and yet give them no voice. How could an individual come up here and reflect the will of his constituents, when but a minor portion of that constituency has placed him in the position which he occupies? Does it not, to some extent, contravene the great principle of the right of instruction? If the whole people constitute the basis of representation, how is he to be instructed by a part and not a majority of the whole? The women and children will be his constituency, and how is he to reflect the will of that constituency when the larger portion of them are voiceless? I do not perceive any reasons for this proposed extension of the basis of representation.

It occurs to me that when Kentucky fixed her representation on political numbers, I mean on those who have the elective franchise, she placed it on the true principle: she was then in advance of all her sisters and shone out among them

"—Veluti inter ignes  
Luna minores."

Mr. CLARK. The younger gentleman from Nelson (Mr. C. A. Wickliffe) asks why it is, at this late hour, I have thought proper to introduce this resolution. If I were to concede the right to him to ask that question, I would answer and say it was introduced for the purpose of basing representation upon what I believe to

be the true basis. And, whether we have discussed another question, to some extent, involving the same principle, for several days, or not, is not a matter of any consequence when I, as the representative of a free and enlightened constituency, think proper to submit a resolution to the house. That gentleman, as well as the gentleman who has just taken his seat, (Mr. Mitchell,) has assumed that this was a question not discussed last summer before the people any where. The gentleman from Nelson says he came here a reform delegate—that he had pledged himself to the people to bring about certain reforms, and that this reform was never mentioned. He says this is changing a great principle, and the gentleman from Oldham agrees with him in that statement. Now I put it to the two gentlemen whether there has not been another change made within the last two sums in the old constitution, and one which was not discussed in the newspapers or by the delegates during the last canvass. I allude to the change made in the constitution yesterday upon the subject of city representation in the senate. When it is proposed to make a change that does not correspond with the views of certain gentlemen, it is very easy for them to get up and say, you are now proposing to make inroads on established rules and principles, which have been sanctioned by time and hallowed by experience in this country—you are attempting to do this without having informed the people when you came here that such was your intention. But when the same gentlemen think proper to make inroads on principles that have been sanctified by time and experience, then these arguments are of no weight whatever. The gentleman from Oldham declares this to be a departure from principle. What principle? He inquires how it is you intend to allow women and children to be represented, and at the same time he says money shall not be represented; that representation is based on the idea of patriotism, virtue and intelligence, and that intelligence cannot be expected except in adults, and according to the rule for which he is contending, those adults must be male adults. It has been well remarked by the elder gentleman from Nelson, that there was no controversy in the convention that framed the federal constitution as to the basis of representation in the sense indicated by some speakers here. There was a controversy in the convention as to whether population or property should be the basis of representation; but there never was, according to my recollection, and I have read with some care the Madison Papers and Elliott's Debates, a controversy as to whether population in a restricted sense, (such as here proposed) or in an unlimited sense, should form the true basis. I have yet to see where there ever was a controversy in the federal convention as to whether population, restricted or population unrestricted, should furnish the true basis of representation, whether population, as used, meant free white inhabitants, or those only who were qualified voters.

When you lay off your state into ten congressional districts for representation in congress, do you not take men, women, and children into the calculation? Have not women and children their rights? And although you deprive them of vo-

ting, should they not be represented when you tax them to the last dollar, as well as those who make the laws are taxed? I am perfectly satisfied, from the examination I have made, that in the towns and cities, and particularly the cities, there are more voters in proportion to the balance of the free white population, than can be found in the rural districts. There are those who apprehend, and I think justly, that there is danger to be expected from the cities, as far as the rights and interests of the rural districts are concerned, perhaps not now, but in after times. You then here insist upon a basis, which does what? A basis, which is a departure from the great principle of population as a basis. And your restricted basis of population gives to every city an advantage over the rural districts. Why select that basis? Why select qualified voters, when if you will take up the auditor's report, or the census for 1840, it will satisfy every mind that that basis gives an advantage to the cities over the rural districts. Why do that? If you make qualified voters the basis, it only goes half way. When you stop there, you give the cities an advantage over the country; but if you take the free white inhabitants of the state, if you give any advantage at all, you give it to the rural districts.

Now, why stop at this half way house? What is the fact? Go to the manufacturing establishments in the cities, you will find a number of men there, as well as upon your wharves and steamboats, who have no families at all. They cannot afford to keep families in the cities. They go there, and according to this half way principle, they go to the ballot box and elect their representatives, and control the rights of men, women, and children. I should like the gentleman from Oldham, when he returns to his constituents, to explain to them why he stopped at the half way house. Let him take the number of qualified voters in his county, and then the number of children between five and sixteen years old; then take the same classes in Jefferson county, and city of Louisville, and I will ask if there are not, in proportion to the voting population, more children between these ages, than in the county of Jefferson and city of Louisville. What is he doing? He is depriving his own county of a full representation on the great principle that population is the true basis of representation. With all your schools, charity establishments, and asylums in the city of Louisville, the fact does still exist, that there are more children, according to a given number of voters, in the rural districts than in the cities. Now, by way of illustration, I will take the counties of Christian, Trigg, Todd, and Logan. These are the heaviest slave counties in the southern part of the state. They give a voting population of 6,792. According to the Auditor's report for 1847, those four counties have within their limits, children between the ages of five and sixteen, to the number of 8,677. Take the voting population of the city of Louisville, and the county of Jefferson, which is 6,737, and there is but 55 difference between them; whereas, Louisville and the county of Jefferson, have but 7,406 children between those ages, thus showing, with an equal voting population, a difference in favor of those counties over the

city, of 1261 children between those ages. Take the counties of Simpson, Hart, Allen, and Barren, and there are 6,373 qualified voters. They have quite a heavy slave population. The number of children in them between five and sixteen years of age is 8,849. The voting population of those four counties is less than that of Jefferson and Louisville by 364, and there are 1443 children in favor of those four counties.

There are great principles that regulate population, and increase or diminish it, and every one of them is in favor of the rural districts, unless the philosophy of the schools be false. First, the morals of a community have much to do with the increase or diminution of population. I will be understood, and it is a fact, without intending any disrespect to the population of any city in this Union, that there is more immorality, and such immorality as to prevent the propagation of our own species, in the cities than in the rural districts. By a calculation made by a distinguished gentleman in the state of Ohio, when you estimate the population of New York and Boston, and compare the number of deaths among children between birth and the age of five years, with the same number of the rural population; it is as six to one. That is one great principle which governs the increase of population, and the superior morals will always secure an increase to the country over the city. There is another principle: go to your populous cities, and there you will see hundreds of half fed children, a spectacle you never witness in the rural districts; there, they may be poor, and in humble circumstances, yet they have always a sufficiency to sustain life, and are hearty and healthy. Exposure exists in the cities, to a greater extent, than in the country. Nor will it be denied that the pure and balmy air of the country is more conducive to health than the malventilated atmosphere of a crowded city. I maintain it can be demonstrated that the growth of the rural districts, with a given number of inhabitants to begin with, must always outstrip the cities, so far as their own production of population is concerned. If gentlemen will carry out the principle on which that increase of power has been conferred upon the cities, by the vote of yesterday, they will do much to dissipate the danger apprehended here. It is right and just, and is a principle agreed upon by the framers of the federal constitution. Not more than two years ago, the same principle was adopted by the convention which framed the constitution of New York. Gentlemen have drawn upon the example of other states, as precedents by which to govern their own action. In 1847 the convention which assembled in New York for the purpose of revising the constitution of that state, adopted the following article:

"An enumeration of the inhabitants of the state shall be taken under the direction of the legislature, in the year 1855, and at the end of every ten years thereafter; and the said districts shall be so altered by the legislature at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and persons of color not taxed; and shall remain unaltered."

The very principle laid down in my resolu-

tion is the very principle adopted in the constitution of New York. It is one of the very last conventions that have met for the purpose of framing a constitution. Now, I put it to the gentleman on this floor, when it is perfectly manifest and apparent, if you establish this as the true principle of representation, you will shield the rural districts from that overshadowing and impending danger which they apprehend from the recently increased power of the cities. If you do thus shield them, I ask my friend from Nelson, why he opposes it? Why not carry out the principle? And if it does give the rural districts any advantage, let it do it. And I protest against stopping at that very point, if there be danger to the rural districts, which will place them at the mercy of the cities.

I have said that throughout almost every report that has been made from the committees, qualified voters have been made the basis of representation; but there is nothing in the world more easy than to strike out the words "qualified voters," wherever they occur, and insert "white inhabitants." And the declaration of gentlemen that we are going back to undo all that we have done, is a mere scarecrow, for not more than half a yard of talk and work (I believe some gentlemen's speeches are measured by the yard) will be necessary to accomplish all. I hope the subject will be discussed by gentlemen better acquainted with it than I am, and I trust the reasons and advantages here suggested, will be so demonstrated, that there will scarcely be a dissenting voice to the adoption of the resolution. I shall ask for the ayes and noes.

Mr. MAYES. This is an interesting question, and one that I think merits the calm consideration of the members of this body. I shall not be actuated in my vote on this subject, by the question whether the adoption of the resolution of the gentleman from Simpson, will affect cities or the country. I inquire whether it is right or wrong. Is it just, or if adopted will it operate oppressively or unjustly on any portion of the state. I have thought, and I still think, that the cities have been very improperly drawn into the various discussions we have had in this convention. We are acting with a view to promote the general interests of the state, and local interests are not to be taken into the general action for the general weal. Yet we have seen the city of Louisville arrayed on almost every question, presented for the consideration of gentlemen, and now that we are on the question touching representation in some degree, we find that Louisville and other cities are brought up here in all their grandeur. That is no part of the question. If the resolution of the gentleman from Simpson be right, whether it affect the city or country materially, it becomes our duty to adopt it. If, on the other hand, to fix on the basis of qualified voters is more just, it becomes our duty to adopt that principle. That is the view that I take. It strikes me forcibly, and at present I give my assent unqualifiedly to the proposition of the gentleman from Simpson, that it is right and will redound to the general good. I do not restrict it to town or country particularly. This is not a new question. True, heretofore representation in Kentucky has been based on the number of qualified voters in the coun-

ties and towns. The proposition now is, to change the principle on which Kentucky has acted heretofore in reference to this subject.

Will it be right to change? We know that under the present system, if I am twenty one years of age, though I do not possess a cent's worth of property, and feel no interest whatever in the government in which I live, still I have the right to vote, and thereby determine and select the man who is to stand on this floor, and control the property of others who have no voice in it, and are not to be represented in the slightest degree. It seems to me there should be some provision for protection of that class of persons who own property in the state, who have a deep, abiding, and powerful interest in the government. Can we not ascertain the number of free white persons in Kentucky, when we apportion the representation? That can be learned with as much ease as we can ascertain the number of qualified voters. Then the widows, or unmarried ladies who own property, who have a stake in the government, will be counted, because they have an interest to be protected. The free white children should also be counted, for the same reason, for they have an interest which should be guarded and shielded by the law making power of the state.

I am glad this question has been presented. How it will be determined by the convention, I know not, but I have no doubt they will determine it, for the common good, without regard to city or country.

I rose to turn the attention of the convention to some of the constitutions which have provisions of this kind, that the delegates may see there are other states, or statesmen, who, in forming the organic law of their country, regarded this as an unjust provision as it now exists in this state. These it seems had reference to the general good, and I wish we might talk less about sectional interests, and more about the general good. I hope, however, no such motives have operated, as have been attributed to gentlemen. I do not believe there has been any reference to national politics on this floor, but gentlemen on both sides have been engaged in what they thought would redound to the best interests of Kentucky. I regret to see gentlemen referring to national politics when forming a constitution. I will read first from the constitution of Pennsylvania.

"Within three years after the first meeting of the general assembly, and within every subsequent term of seven years, an enumeration of the taxable inhabitants, shall be made in such manner as shall be directed by law. The number of representatives shall, at the several periods of making such enumeration, be fixed by the legislature, and apportioned among the city of Philadelphia and the several counties, according to the number of taxable inhabitants in each; and shall never be less than sixty, nor greater than one hundred. Each county shall have at least one representative, but no county hereafter erected, shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to one representative, agreeably to the ratio which shall then be established."

What principle operated on the convention of

Pennsylvania in forming their constitution? It was that which was well illustrated by the elder gentleman, as he is called, from Nelson, that although we may have no right to vote we have deep interests which should be protected by the country, and therefore in that sense we have a right to representation. The constitution of Mississippi is as follows:

"The legislature shall, at their first session, and at periods of not less than every four, nor more than every six years, until the year 1845, and thereafter at periods of not less than every four, nor more than every eight years, cause an enumeration to be made of all the free white inhabitants of the state."

That constitution goes on the same idea as that of the resolution of the gentleman from Simpson.

Now, look at the constitution of Illinois:

"The number of senators and representatives shall, at the first session of the general assembly, holden after the returns herein provided for are made, be fixed by the general assembly, and apportioned among the several counties or districts to be established by law, according to the number of white inhabitants."

These, with the exception of that of Pennsylvania, are the constitutions of new states; and in that state we see that the voting population is not the only criterion.

If gentlemen will be patient, I shall soon be done. I have not troubled the convention at great length; my name will not appear on the journal very frequently. It is necessary that we should express our views and interchange our sentiments.

The constitution of Missouri, says:

"The general assembly, at their first session, and in the years 1822 and 1824, respectively, and every fourth year thereafter, shall cause an enumeration of the inhabitants of this state to be made; and at the first session after such enumeration, shall apportion the number of representatives among the several counties, according to the number of free white male inhabitants therein."

The constitution speaks of free white male inhabitants, while the others based the representation on free white inhabitants as a proper criterion. In Pennsylvania taxable inhabitants are represented.

The gentleman from Oldham, says, why exclude aliens from being counted when you come to fix the ratio of representation? I should have supposed a gentleman of his intelligence would not have propounded such a question. Why not include them? The reason is obvious to every gentleman. Why not, he says, include free negroes? If he is disposed to include them, he can offer an amendment to that effect. I am not willing to give free negroes, nor foreigners not naturalized, the right of determining the manner in which I shall dispose of my property, nor the right to influence the law which may take away my life and liberty, because they have not a sufficient stake in the government. But those who are part and parcel of the people of the United States have a deep interest, and I am disposed to think they should have a part in the enactment of such laws as shall protect and secure that interest.

I thank the house for the indulgence they have given me, and will not trespass longer, nor shall I speak often in future, unless it may be with reference to some section which I desire to see modified in some slight degree.

Mr. W. JOHNSON. I am inclined to vote for this proposition—and in order to try whether the principle is a good one, allow me to state an extreme case. If it is good, I intend, as far as my vote is concerned, to carry it out. Suppose there are five hundred voters in one county, each of them having a family of ten persons, making five thousand persons in all; and suppose in another county you have five hundred voters who have no families, is it right that the five hundred voters without families shall have the same influence in the government as the five hundred voters with families? Is it right to say that four thousand five hundred beings shall count nothing? If the principle is good in itself, it is good every where.

Mr. NEWELL. To carry out the gentleman's principle thoroughly, he had better provide that the number of votes shall be regulated by the number of children.

Mr. MACHEN. In reference to the suggestion of the gentleman from Harrison, I ask if it would not be as well to include widows, and base representation on the number of widows and children? I have reflected some little on this subject, and believe the proposition is founded on a correct principle. It appears to me that the house should vote upon this proposition at once, and adopt it by a unanimous vote. I will refer you to an analogous principle that has already been acted upon in this house. It is that representation shall be based on federal numbers.

Mr. C. A. WICKLIFFE. Does the gentleman desire that representation be based on federal numbers, which includes three-fifths of the negroes?

Mr. MACHEN. No, sir; I do not mean that negroes are to be taken into the account at all. The constitution of Wisconsin has the same provision, and there are no negroes there. On what basis does the gentleman place representation? I believe that only a few days since this hall was made to resound with his eloquent voice in favor of basing representation upon population.

Mr. C. A. WICKLIFFE. I have never contended for any other basis than that of population, as recognized in the old constitution; that is, the voting population.

Mr. MACHEN. I do not know the exact phrase used by the gentleman. But I presume the house has intended that the white population should constitute the basis of representation. That is the doctrine that has been contended for, and although gentlemen may choose to narrow it down to the voting population, it seems to me, to confine it to that, would be departing from the principle upon which the government has been erected. Property is entirely unrepresented—the widow and orphans are deprived of that protection which representation would give them, yet they are held subject to the laws which you enact. We do not propose to give them the right to vote, but we propose that their voice shall be heard, to some extent, by computation of numbers. That I hold to be the correct principle.

Mr. TRIPLET. I have not yet heard this proposition placed precisely on a correct basis, according to my view. I have great disinclination to detain the committee with any remarks, and would not do so now, if I was not aware that there has been an effort made by the younger delegate from Nelson (Mr. Wickliffe)—though probably it was unintentional—to place those who shall vote for this proposition in a false position. First, he endeavors to connect us with those who desire to establish a property qualification; next he endeavors to connect us with those who want to make federal numbers the basis of representation. He shall not do either with me. There can be no plainer proposition than this. What is the duty of the legislature? It is to protect persons and property. Do they protect only the persons and property of the voting population? Not at all; they protect the persons and property of the whole state. Then, in putting members of the legislature into office, what should be the basis? Plainly, those on whose persons, as well as those on whose property they are to operate. But how are you to get the true basis, as they are to operate on persons and property both? Why, clearly, persons or white inhabitants, whether they own property or not. Suppose the gentleman from Nelson has fifteen children and grand children, and he the only male representative of the family, and that he loses his life, while fighting the battles of his country. Previous to that event the persons and property of his widow and descendants were represented. Well, he fell not by his own act, but while defending the rights of these identical men who are opposing this resolution. What then becomes of the rights of his widow, children, and grand children? They are represented no longer. They are stricken down, trampled under foot. Now, I ask if the gentleman can reconcile it to his conscience, that the loss of the head of the family shall be followed by the further misfortune of the loss of the right of having their persons and property wholly unrepresented, by having their persons stricken out of the basis of representation?

There is another point of view in which this question presents itself to my mind. It is this: Although persons that have no property have not the same interests to protect in that respect with those who have, yet they have persons and character to protect; and it seems to me that women and children have the same right to have their persons and reputation protected, whether they have property or not, that men have. They own persons and reputation, and persons and reputation have the same right to be represented and protected that property has. It strikes me, that when you look at the object of all laws, (which is to protect and regulate persons and property,) that all persons, capable of owning property, or having persons and character to protect, should be represented.

Mr. IRWIN. Mr. President: When this proposition was first presented, I regarded it as a restriction upon the river counties, and the foreign population that seemed to concentrate in the large cities on the Ohio river—that were constantly roving from one point of the state to another, and that ought not be represented—more than the stationary population in the country,



although that population might be females or minors. I regard that population as the true basis of representation; but, I see that the effect of the proposition will be to affect the rich counties as well as the cities; and if the rich counties choose to barter that part of their population whose "heritage are their children," why, let them take the consequences.

I have made out a table of twelve counties. Six I consider among the most wealthy, and six are considered as poor; and you will see that the children in the six poor counties will give them great advantages, by increasing their political power:

Anderson,	-	-	-	1086 voters	1546 children
Breathitt,	-	-	-	588 voters	996 children
Butler,	-	-	-	870 voters	1312 children
Wayne,	-	-	-	1423 voters	2231 children
Allen	-	-	-	1413 voters	2221 children
Morgan,	-	-	-	1225 voters	1815 children

			Voters.	Children.
Breathitt,	-	-	588	996
Morgan,	-	-	1225	1815
Total,	-	-	1813	2811

Bourbon,	-	-	-	1769 voters	1628 children
Jessamine,	-	-	-	1323 voters	1482 children
Woodford,	-	-	-	1255 voters	1242 children
Clarke,	-	-	-	1715 voters	2030 children
Madison,	-	-	-	2549 voters	2913 children
Scott,	-	-	-	1839 voters	2387 children

			Voters.	Children.
Bourbon,	-	-	1769	1628
Woodford,	-	-	1255	1242
Total,	-	-	3024	2870

The result of the above table is very remarkable. Take the counties represented by the gentleman from Morgan and Breathitt, (Mr. Hargis) and we have the astonishing fact, that the aggregate voters only amount to 1,813, and there are 2,811 children between the age of five and sixteen. Truly, this is a great place for children. Sir, I believe that all the free population

is the best basis of representation, and shall vote for the proposition.

Mr. NUTTALL. We have got along very well under our old system of enumeration, and by trying to amend it, it is possible we may make it worse. This is not a new proposition to me, and it does not strike me as altogether just. I think that the voting community, should be the basis of representation. If we are going to attempt to provide in this constitution for every possible contingency that may arise, our labors will be endless. I am as much in favor of widows and orphans as any delegate on this floor. I have always had a special leaning in that direction; but I do not propose to make a constitution that will meet the case referred to by the gentleman from Daviess. If a lady is made a widow by her husband falling in battle, it is only a casualty; and for such, no constitutional provision can be made. But if the gentleman will go a step further, and propose that widows shall be allowed to vote, I could never oppose such a proposition as that. I would go for it as certain as the Lord liveth. But there being nothing of this sort contemplated, I shall adhere to the old doctrine, of basing representation on the voting population. I am very much like the boy who was found one morning trying to jump into his breeches. When asked what he was doing he replied, "why daddy jumped into his breeches this way, and I am following the old plan."

Mr. GHOLSON. It is to me a matter of astonishment that upon so plain a proposition there should be so much debate. If it be in order, I will move the previous question.

The previous question was then sustained.

The question was then taken upon the resolution offered by the gentleman from Simpson, (Mr. Clarke,) and it was adopted; yeas 69, nays 23.

YEAS—John L. Ballinger, John S. Barlow, Wm. K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, John D. Morris, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbot, John J. Thurman, Philip Triplett, John Wheeler, Andrew S. White, George W. Williams, Silas Woodson—69.

NAYS—Mr. President, (Guthrie,) Richard Apperson, Charles Chambers, Garrett Davis, Ben-

jamin F. Edwards, Alfred M. Jackson, David Meriwether, William D. Mitchell, Thomas P. Moore, Hugh Newell, Elijah F. Nuttall, John T. Robinson, Ira Root, James Rudd, John W. Stevenson, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, John L. Waller, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—23.

#### LEGISLATIVE DEPARTMENT.

The convention then proceeded to the consideration of the report of the committee on the legislative department.

The pending question being upon the amendment offered by the gentleman from Christian, (Mr. Morris,) to the fifth section of said report.

Mr. GHOLSON. If it is in order, I will move to strike out, the latter clause of this amendment. "But no ward or municipal division shall be divided by such division of senatorial or representative districts."

The PRESIDENT. The amendment having been adopted as a substitute, it will not be in order to amend by striking out.

Mr. C. A. WICKLIFFE. The amendment as it now stands, is perfectly correct. It is necessary, I think, to preserve the municipal divisions of the city, that no ward shall be divided in forming a representative district. There is no necessity for it; and if the latter portion of the amendment be stricken out, it will be in the power of the legislature, if such should be their inclination, to gerrymander the city.

Mr. MERIWETHER. If you permit a division of wards in forming an electoral district, a portion of the voters may have to go to two wards to vote. A voter may have to go to one ward to vote for representative, and to another to vote for senator.

Mr. PRESTON. As I have heretofore stated, I will vote against the amendment, and for the section as it has been reported. But if the proposition of the gentleman from Christian should be adopted, I would like to have it in as proper a shape as possible. It strikes me however, that it would be better to leave it alone altogether, lest difficulty should arise out of those divisions of wards.

Mr. GHOLSON. It does appear to me, with all deference to the gentleman, that it will still be subject to the same objection that lies against confining representation to county lines. My object was to make it incumbent upon the city authorities, to divide the city into districts, that this gerrymandering should not be practiced.

Mr. C. A. WICKLIFFE. I think I can obviate the difficulty by inserting the words "representative district," so that it will read "no representative district shall be divided."

Mr. IRWIN. I cannot believe it is necessary that the city should be divided into wards for representation. She will not have more than three or four representatives in the lower house. Suppose when you divide out the city in this way, you have two individuals in favor of emancipation, and two opposed to it; and suppose the open clause shall be adopted in this constitution. You immediately raise the question of emancipation. I believe that if you adopt the principle of dividing the city for representation in the lower house, it will have the worst possi-

ble influence. I can see no reason why Jefferson, or any other county, might not be divided for a similar purpose.

Mr. DAVIS. The difficulty in relation to this matter, occurred to my mind last evening, when I suggested some verbal alterations. If a city is to be divided into election districts, it certainly is desirable that the districts should be equal, that they should each contain, as nearly as may be, the exact ratio of representation. There must be ward arrangements, and if these ward arrangements are to be adhered to strictly, in the formation of districts, they might constitute districts of unequal strength, in point of voters. I think this ought to be guarded against while we are on the subject, and I will suggest an amendment, to be added to the latter part of the amendment of the gentleman from Christian. It is this, "unless it be necessary to equalize the senatorial or representative districts."

Mr. RUDD. If gentlemen will reflect, I think it will be evident to them, that the city council, being themselves elected in wards, are better qualified to make the proper divisions than any other persons. The census is taken once in every year, and the wards become from time to time unequal in population. You cannot prevent it. Leave the matter then as it is, without any alteration, and let the representative districts be equalized by the city council. They are better qualified to regulate the election precincts than any other body of men. If you leave the amendment of the gentleman from Christian as it is, there will be no danger of gerrymandering. That is what I want; I do not want any of this cutting and dividing.

Mr. C. A. WICKLIFFE. I am satisfied with the amendment that is proposed by the gentleman from Bourbon, (Mr. Davis,) and I will therefore withdraw mine.

The question was then taken upon the amendment of the gentleman from Bourbon, (Mr. Davis,) and it was agreed to, on a division, yeas 41, noes 18.

And the question being then put upon the amendment as amended, and the yeas and nays being demanded, they were taken, and resulted as follows, yeas 62, nays 29:

YEAS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Se-lucius Garfield, James H. Garrard, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelley, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John Wheeler, Andrew S. White,

Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Wesley J. Wright—62.

**YAYS**—John L. Ballinger, William K. Bowling, Thomas D. Brown, Charles Chambers, William Chenault, Archibald Dixon, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alexander K. Marshall, Martin P. Marshall, Nathan McClure, John H. McHenry, William Preston, Johnson Price, Larkin J. Proctor, John W. Stevenson, Michael L. Stoner, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Silas Woodson—29.

So the amendment, as amended, was adopted.

**Mr. WM. JOHNSON.** I will re-offer the amendment that was proposed by the gentleman from Muhlenburg, (Mr. Jackson.) It is this, "Provided, That no city, or county, shall ever be entitled to more than two senators."

This motion the president heretofore ruled out of order, but after an argument on the point by **Mr. W. JOHNSON** the decision was reversed, and the motion received.

**Mr. C. A. WICKLIFFE** demanded the yeas and nays.

**Mr. NESBITT.** I suppose that I represent the only county of the state, in which the question of restricting cities has been discussed. There were several adjourned meetings for the purpose of nominating candidates for this convention, and there was drawn up, by the old preceptor of the gentleman from Todd, a platform, or a set of resolutions, one of which was, that it would be expedient to incorporate into the constitution, a provision for restricting the representation of cities and towns. The resolution was submitted on county court day, and I believe it did not meet with a single dissenting voice, until it came to me. I remarked to the gentleman who drew it up, that he had put it in a little too strong language, that it would be as well to let the constitution remain as it is, in that respect; that it would furnish restriction enough. I became the nominee, and pledged myself to sustain the old constitution in every provision, where I was not instructed to change it, but reserved to myself the right to act as a free delegate on this floor, on all questions on which I was not instructed, and on which the old constitution was silent. In carrying out what I believed to be the will of the people of my county, I have universally voted in favor of restriction upon cities.

**Mr. A. K. MARSHALL.** My course on this subject has been a silent one. I have voted for restricting cities, and shall vote for this proposition. Upon almost every proposition that has been submitted to this body, I have been able to form some idea of the opinions and feelings of my constituents, and felt instructed by the knowledge of what these feelings were. This proposition however, was entirely a new one, and as I have always felt desirous of carrying out the wishes of my constituents, I took occasion yesterday—it being court day in my county, to visit the county, and I conversed freely with the people upon this subject. It was not new to them—they had examined the discussions which have taken place in this house, and with but one single exception, I found the people of Jessamine county,

most decidedly in principle, agreeing with me in the course which I had pursued. They have always believed that it was essential to maintain the separation of the two branches of the legislative department of the government, that it was essential that the senate and house of representatives should be differently constituted. They look upon the division that exists in the legislative department, into two branches, as a conservative principle. They have believed that those two branches would be found to be in some degree, a check upon each other. And they believed that if constituted exactly alike, the object of division is entirely lost. I shall vote for the proposition.

The question being taken by yeas and nays, resulted thus, yeas 40—nays 53.

**YEAS**—John L. Ballinger, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Garrett Davis, James Dudley, Milford Elliott, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, James M. Nisbitt, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Michael L. Stoner, Albert G. Talbott, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, John Wheeler—40.

**NAYS**—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Britow, Charles Chambers, William Chenault, Ben. Copelin, Edward Curd, Lucius Desha, Archibald Dixon, Chesteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Ninian E. Gray, James P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, George W. Johnston, George W. Kavanaugh, Charles O. Kelly, James M. Lackey, Peter Lashbrook, George W. Mansfield, Martin P. Marshall, John H. McHenry, D. Merriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, William Preston, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, John D. Taylor, William R. Thompson, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson, Wesley J. Wright,—53.

So the amendment was rejected.

**Mr. IRWIN** moved to strike out the 5th section, and insert the following.

"Elections for representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, or in the several election precincts into which the legislature may think proper to divide any or all of those counties: *Provided*, That when it shall appear to the legislature that any town or city hath a number of qualified voters equal to the ratio then fixed, such town or city shall be invested with the privilege of a separate representation; which shall be retained so long as such town or city shall contain a number of qualified voters equal to the ratio which may, from

time to time, be fixed by law; and thereafter, elections for the county in which such town or city is situated shall not be held therein.

"The same number of senatorial districts shall, from time to time, be established by the legislature as there may then be senators allotted to the state, which shall be so formed as to contain as near as may be an equal number of free white male inhabitants in each, above the age of twenty one years, so that no county, town, or city shall form more than one district; and when two or more counties compose a district, they shall be adjoining."

A division was called for by Mr. Waller, and the question was taken, first on striking out, and it was decided in the negative, as follows—yeas 36, nays 55:

YEAS—John L. Ballinger, Wm. K. Bowling, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, William Cowper, James Dudley, Milford Elliott, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, William Johnson, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Michael L. Stoner, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller—36.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Charles Chambers, William Chenault, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Ninian E. Gray, Jas. P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Geo. W. Mansfield, Martin P. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, William Preston, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—55.

The question then recurred upon the adoption of the 5th section as amended. The yeas and nays being taken, they resulted as follows:

YEAS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Charles Chambers, William Chenault, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Ninian E. Gray, Jas. P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Jas. M. Lackey, Peter Lashbrooke, Geo. W. Mansfield, Martin

P. Marshall, David Meriwether, Wm. D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, William Preston, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson, Wesley J. Wright—61.

NAYS—John L. Ballinger, Wm. K. Bowling, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Thomas J. Gough, Ben. Hardin, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Michael L. Stoner, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller—30.

So the section was adopted.

The convention then took a recess until 3 o'clock, P. M.

#### EVENING SESSION.—3 O'CLOCK, P. M.

The sixth section was then read.

Mr. GRAY moved to strike out the section, and insert the following:

"SEC. 6. Representation shall be equal and uniform in this commonwealth, and shall be, forever regulated and ascertained by the number of free white citizens therein. At the first session of the general assembly, after the adoption of this constitution, provision shall be made, by law, that in the year \_\_\_\_\_, and every eighth

year thereafter, an enumeration of all the free white citizens of the state shall be made. The number of representatives shall, in the several years of making these enumerations, be so fixed as not to be less than fifty-eight, nor more than one hundred; and they shall be apportioned for the eight years next following, as near as may be, among the several counties, cities, and towns, in proportion to the number of free white citizens; but when a county may not have a sufficient number of free white citizens to entitle it to one representative, and when the adjacent county or counties may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio; in that case, one representative shall be added to that county having the largest residuum."

Here is the principle contained in the old constitution, amended so as to correspond with the indication given by the vote of the convention this morning, of what should constitute the basis of representation, and in relation to the taking of the census every eight years, in which it corresponds with the report of the committee. I am not particular about this last change, and do not care whether the convention shall think proper to require the apportionment of repre-

sentation on the returns of the United States census, or one taken every eight years, at the expense of the state. Under the old plan of making the apportionment once in every four years, it was complained of, that there would sometimes be two senators residing in the same district, and this, at least, would not happen more than half as often under the proposed plan. The plan of apportionment in the present constitution, I think, the people are satisfied with it, and that it is far more equal in its operation than would be the plan either of the committee or the gentleman from Trigg, (Mr. Boyd.) The plan of the committee—as shown by the tables of the gentleman from Montgomery—is very unequal. It would give six representatives to counties with eight thousand nine hundred, and only the same number to counties with ten or twelve thousand voters. That clearly is a greater inequality than any which ever existed under the present constitution. If it is thought proper, however, to provide here for an apportionment by districts, I should much prefer that of the gentleman from Montgomery, (Mr. Apperson) as being more equal, to that of the gentleman from Trigg. I have made some calculations which will show the inequality of the latter gentleman's plan. In his eleventh and twelfth districts, lying in the same section of the state, there is a residuum of one thousand three hundred and eighteen voters not represented. These districts are composed of the following counties: Estill, Owsley, Breathitt, Floyd, Pike, Perry, Letcher, Clay, Harlan, Madison, Rockcastle, Lincoln, Laurel, Casey, Pulaski, Whitley, and Knox. Now, his eighth district, with a residuum of only seven hundred and fifty-seven votes, has an additional representative upon that residuum. This district is composed of the counties of Scott, Harrison, Pendleton, Kenton, Campbell, Nicholas, Mason, and Bracken. Now this certainly was a very great inequality. Two districts lying together, with a joint residuum of thirteen hundred and eighteen, were to have no additional representative, while another district, with a residuum of only seven hundred and fifty-seven, has an additional representative. These inequalities show the plan to be imperfect, and not so well adapted to the situation of the counties as the plan under the old constitution. I hope, therefore, we shall adhere to the old constitution on this subject, amended as I have proposed in my proposition.

Mr. BOYD. I would offer the following as a substitute for the amendment:

"That representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of qualified free white citizens, electors, therein. The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation as aforesaid, the state is hereby districted into twelve districts.

DISTRICT No. 1. To consist of the counties of Fulton, Hickman, Graves, Ballard, McCracken, Calloway, Marshall, and Livingston.

DISTRICT No. 2. To consist of the counties of Trigg, Christian, Caldwell, Crittenden, Union, Henderson, and Hopkins.

DISTRICT No. 3. To consist of the counties of

Todd, Muhlenburg, Logan, Simpson, Allen, Warren, Butler, and Edmonson.

DISTRICT No. 4. To consist of the counties of Daviess, Ohio, Hancock, Breckinridge, Grayson, Hart, Larue, Hardin, and Meade.

DISTRICT No. 5. To consist of the counties of Monroe, Barren, Cumberland, Clinton, Adair, Green, Taylor, Wayne, and Russell.

DISTRICT No. 6. To consist of the counties of Jefferson, Bullitt, Nelson, Shelby, Spencer, Washington, and Marion.

DISTRICT No. 7. To consist of the counties of Oldham, Trimble, Henry, Franklin, Owen, Carroll, Gallatin, Grant, and Boone.

DISTRICT No. 8. To consist of the counties of Scott, Harrison, Pendleton, Kenton, Campbell, Nicholas, Mason, and Bracken.

DISTRICT No. 9. To consist of the counties of Fayette, Woodford, Bourbon, Clarke, Jessamine, Anderson, Mercer, Boyle, and Garrard.

DISTRICT No. 10. To consist of the counties of Lewis, Fleming, Bath, Montgomery, Morgan, Greenup, Carter, Lawrence, and Johnson.

DISTRICT No. 11. To consist of the counties of Estill, Owsley, Breathitt, Floyd, Pike, Perry, Letcher, Clay, and Harlan.

DISTRICT No. 12. To consist of the counties of Madison, Rockcastle, Lincoln, Laurel, Casey, Pulaski, Whitley, and Knox.

In the year and every fourth year thereafter, an enumeration of all the free white citizens of the state shall be made in such manner as shall be directed by law.

In the several years of making such enumeration, each district shall be entitled to representatives equal to the number of times the ratio is contained in the whole number of free white citizens in said districts: *Provided*, That the remaining representatives, after making such apportionment, shall be given to those districts having the largest unrepresented fractions.

Representatives to which each district may be entitled, shall be apportioned among the several counties, cities, and towns, of the district, as near as may be, in proportion to the number of free white citizens; but when a county may not have a sufficient number of free white citizens to entitle it to one representative, and when the adjacent county or counties, within the district, may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the general assembly to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, and in the same district, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to the county having the largest residuum."

As I remarked on a former occasion, my object in proposing this plan of districting the state into representative districts was to prevent the carrying of residuums from one section of the state to another, which was the practice under the present mode of apportionment. It does not make any difference whether any of the districts I have proposed have a greater or lesser number of representatives, so that each get the share it is entitled to, according to the ratio.

The gentleman from Montgomery the other day was pleased to intimate that in making these districts, regard had been had to the political strength of parties in these districts. To satisfy the gentleman and all others that I had not that object in view, an examination of my proposition only is required. In the first district composed of the counties of Fulton, Hickman, Graves, Ballard, McCracken, Callaway, and Livingston, they would have their full ratio of five members and a residuum of 470; that residuum will be unrepresented, and the district is democratic by about 1300 majority. The second district will be fully entitled to seven members, and there would be a residuum of 1009 which would entitle it to an additional representative. This will fall to the county of Christian and be taken from the democratic counties of Hopkins and Caldwell. It would be the whigs therefore, who would gain there. The Third district would be entitled to seven members, and there would be a residuum of 856, and be entitled to an additional representative. That district is whig by some 1700 or 1800. The fourth district would have eight members, and there would be a residuum of 913 which would entitle it to an additional member. The district is also whig by some 1400. The fifth district would have eight members and a residuum of 207. The district is democratic by about 200 majority. The sixth district would be entitled to twelve members, and there would be a large residuum of some 1224, and entitling it in any way to an additional representative. The district is whig by some 1700 to 2000. The seventh district, it is true, gets an additional member upon a residuum of 735. It is democratic, and in that perhaps, the gentleman may find some grounds of complaint. The eighth district would be entitled to eleven members with a residuum of 735, only five less than the seventh, and it gets no additional member. It is democratic also. There is but one district, it will be seen, where there is any considerable residuum, which gives a whig majority, where it will not receive an additional member. It is the twelfth district composed of the following counties: Estill, Owsley, Breathitt, Floyd, Pike, Perry, Letcher, Clay and Harlan, and they will have a residuum of 740. I am sure, therefore, that there is no gentleman but what is satisfied that I had no such intention, as was insinuated by the gentleman from Montgomery, in view in offering my proposition. No plan I have seen is more fair and equal than this, except that of my friend from Fulton, which is certainly more equal, but I have my doubts whether it is practicable in its details.

Mr. GARRARD. I am not prepared to say what effect the alteration of the basis of representation may have in the sixth section of the report, but if that change had been made, I believe the section notwithstanding the many attempts that have been made upon it, would have more friends here than it now seems to have. The desire of all is to agree upon some plan that will forever put it out of the power of any party that may be in the majority in the legislature to gerrymander the state for their particular benefit. The plan of the committee, if the relative strength of the counties continue as they now

are, will not operate more injuriously upon any particular section of country, than any plan we may possibly adopt. I have made up a calculation upon mature reflection and examination, which I think, will satisfy gentlemen that the plan of the committee is about as near correct as any that can be devised.

All the calculations are based upon the list furnished the convention by the second auditor, for the year 1849, of white male citizens over the age of twenty one years, and not by the qualified voters, and I only propose to show how the section would operate under this list.

By the first provision all the counties that have two thirds of the ratio are entitled to a separate representative. They are, Allen, Anderson, Boyle, Bullitt, Carter, Crittenden, Calloway, Grant, Grayson, Green, Hart, Jessamine, Knox, Larue, Lewis, Lincoln, Montgomery, Meade, Monroe, Morgan, Oldham, Pendleton, Simpson, Spencer, Todd, Taylor, Trigg, Trimble, Union, Woodford, Wayne, and Whitley; in all thirty two. Larue, with 1,013, the smallest, and Todd, with 1,499, the largest county in the list. The thirty two counties have an aggregate population of 39,626, which is an average of 1,238 to a representative, and an actual deficit of 232 to each county.

The counties under the second provision having the ratio, and not two thirds over, and which will not under this plan have but one member, are, Adair, Bracken, Breckinridge, Boone, Bath, Campbell, Caldwell, Clarke, Daviess, Franklin, Graves, Greenup, Garrard, Hopkins, Henry, Harrison, Bourbon, Logan, Mercer, Marion, Nicholas, Owen, Henderson, Muhlenburg, Scott, and Washington, in all twenty seven; with an aggregate population of 50,543, which is 1872 to a member, or a surplus of 352 in each county.

The cities and counties under the third provision, that have the ratio and two thirds are, Louisville city, three, Barren, Fayette, Hardin, Kenton, Madison, Mason, Jefferson, Pulaski, Shelby, Fleming, Christian, and Warren. They will have two representatives each, in all twenty four, and the city of Louisville three, with an aggregate population of 37,885, or 1,403 to each member, and a deficit of 117 to each representative. The counties of Hardin, Pulaski, Shelby, Fleming, Christian, and Warren have two members each, under the last provision of the sixth section, which gives to the largest unrepresented fraction the surplus members, notwithstanding the counties of Christian and Warren have not the ratio and one half of the ratio, and yet complaint is made that counties near their numbers are treated badly by this section.

The remainder of the counties under the fourth provision are attached together under two provisions of this section: first, small counties with less than two thirds of the ratio attached together. Secondly, where there is no similar adjacent county, they are united with the smallest contiguous county. Casey and Russell one, Ohio and Hancock one, Estill and Owsley one, Breathitt, Perry and Letcher one, Ballard and McCracken one, Butler and Edmonson one, Carroll and Gallatin one, Cumberland and Clinton one, Clay and Harlan one, Floyd and Pike one, Hickman and Fulton one, Lawrence and Johnson one, Rockcastle and Laurel one, Livingston and Mar-



shall one. These twenty nine counties have an aggregate population of 26,450, or 1,888 to each member, and a surplus of 368 to each member. So that the twenty nine counties attached together to send fourteen members have a larger surplus fraction than any other lot of counties. Still this is said to be a proposition for the benefit of the small counties.

This gives fifty nine counties a separate representative. They have an aggregate population of 90,159, and an average to each member of 1528—within eight of the ratio.

Under the present apportionment fifty seven counties have separate members. At the time the apportionment was made, Russell, the smallest, had but 822, and Pulaski, the largest, had 2156 votes, by this plan Larne with 1013 has a member, and Campbell, the largest, has 2182, which is much nearer equality than the old plan, when comparing counties represented by a single member. I have not examined what would be the effect politically, but I have understood from a friend, who generally attends to such matters, that there would be about sixty whigs and forty democrats, if the counties voted as usual. I find that in this respect, there is positively no difference between the plan of the committee and that of the gentleman from Montgomery, which seemed to meet with so much favor here. But there was this difference in the new plan. The one reported by the committee, requires the legislature under any and all circumstances to confine themselves to numbers which might not be the case under the plan of the gentleman from Montgomery. I have not fully examined the plan of the gentleman from Trigg, but I am fully satisfied that in both his and that proposed by the gentleman from Christain, there would be a greater inequality between the counties than could possibly arise under the plan of the committee. I have no personal interest in this matter, as my county can in no case be affected by any apportionment, and my only desire is to guard against the improper adjustment of the matter hereafter by any party which may be in power in the legislature.

Mr. DESHA. From the reflection that I have given the subject, I have been led to believe that the principle contained in the proposition of the gentleman from Trigg is more correct than any that has been submitted, or that I can conceive. The twelve different localities to be provided for under it, would leave to the legislature but little discretion in the manner of rolling residuums as they have heretofore. They are compelled to be confined to the district in which they occur, and thus each and every locality in the state will be fairly represented in the house of representatives. By the plan reported by the committee, the region of country from which I come would be deprived of two representatives. By reference to the second auditor's report, it will be seen that the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Kenton, Boone, and Grant, embrace in the aggregate a voting population of 18,756. The ratio being 1520 would entitle these counties to thirteen representatives, if it be determined that the house of representatives shall consist as now of one hundred members; whereas, if the report of the committee on the legislative department be

adopted, those counties will only have eleven members, thereby depriving that region of two representatives, to which it is justly entitled. It may be said that I am actuated by interested motives, but in this matter I only claim clear justice. I represent, as I believe, a just people, and I want to convince them that justice has been administered to them as well as to all other portions of the state. And who gains the representatives that we lose? Their are gained by the small counties in the southwest that have but two thirds of the ratio. Is it fair that the residuums belonging to this section of the state should be rolled to the opposite extreme? It would give to them, when questions came up in the legislature affecting particular localities, a decided advantage over the section from which I came. With these views, I am decidedly of the opinion that the principle contained in the proposition of the gentleman from Trigg is much more correct, and awards even handed justice to every portion of the state. The twelve different localities would have their fair representation in the house, and therefore the plan in this respect, would operate far more upon the principle of even justice. I hope gentlemen will take the matter into consideration, and if they have not made their calculations, will look to it, and see how they are all affected, if the principle proposed by the committee is adopted.

Mr. BRADLEY. I have made up my mind to vote for the substitute presented by the gentleman from Trigg, believing it to approach nearer to equality in representation than any other that I have seen or can conceive of. I prefer it to the plan under the existing constitution, as proposed by the gentleman from Christian, and I differ with him when he asserts that there has been no fault found in the country against the present constitution on that account. There was great complaint, to my knowledge, on the subject. If he will remember, he will find that in the celebrated platform laid down by the friends of constitutional reform, to which some gentlemen attach a great deal of consequence, this very subject is complained of as one of the wrongs in the present constitution which requires amendment. Some statesmen in by-gone days, and of very considerable experience too, have held that it was utterly impracticable, under the present constitution, to apportion representation equally. We can only approximate to it as near as possible, and this I think is done by the proposition of the gentleman from Trigg. Of the twelve districts into which he divides the state, but six of these districts have any residuums, and the great principle is sought to be established there of settling representation in each locality, and of preventing residuums being rolled beyond the districts where they arise. By this arrangement, the largest unrepresented residuum in any one district would be 735; and taking all the districts together, the unrepresented residuums would amount to only 3140. Believing that no system can be proposed which will be found to approximate so nearly to just and equal apportionment, I shall vote for the proposition of the gentleman from Trigg. I am at any rate decidedly against the provisions of the old constitution on the subject.

Mr. JACKSON. I came here with the design

to effect certain changes in our constitution, such as were demanded by the citizens of the state. I did not come here to alter the basis of representation, nor can I aid in doing it; but if the vote taken this morning on the proposition submitted by the gentleman from Simpson be an index to the mind of the convention, then a most unexpected alteration in that basis will be effected. Nor did I come here to cut up cities into representative districts, and thus destroy their unity; but this has been effected.

I did hope to preserve to some extent that cardinal conservative principle, recognised in our present constitution, in relation to the senatorial representation of the state, and with that view I offered my amendment yesterday, which, being ruled out of order, was offered by my friend from Scott, (Mr. Johnson) to-day; but that great principle has been overthrown.

In relation to the apportionment, it is certainly to be desired that we adopt some plan for apportioning representation, which will be as far as possible just and accurate in its results. I am sensible of the difficulty of the task. After casting my eye over the various plans submitted for this purpose, I am convinced that the one submitted by the gentleman from Trigg, approximates as near to correctness as we may hope to arrive, and I will give it my support, as a substitute for the amendment offered by the gentleman from Christian.

Mr. GRAY called for the yeas and nays.

The question was then taken on substituting Mr. Boyd's proposition for that of Mr. Gray, and it was agreed to, yeas 49, nays 38, as follows:

YEAS—Mr. President, (Guthrie,) John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Ira Root, Ignatius A. Spalding, John W. Stevenson, John D. Taylor, John Wheeler, Charles A. Wickliffe, Wesley J. Wright—49.

NAYS—Richard Apperson, John L. Ballinger, William K. Bowling, Thomas D. Brown, Charles Chambers, William Chenault, Garrett Davis, Chasteen T. Dunavan, Milford Elliott, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, George W. Johnston, Charles C. Kelley, Thomas W. Lisle, Nathan McClure, John D. Morris, William Preston, Johnson Price, Thomas Rockhold, James Rudd, Michael L. Stoner, Albert G. Talbott, William R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, Andrew S. White, Robert N. Wickliffe, Silas Woodson—38.

The question was then taken on substituting

Mr. BOYD'S proposition for the sixth section, as reported by the committee, and it was rejected, yeas 34, nays, 53, as follows:

YEAS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Lucius Desha, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, William Hendrix, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, Peter Lashbrooke, George W. Mansfield, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Thomas P. Moore, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, Ira Root, Ignatius A. Spalding, John W. Stevenson, John Wheeler—34.

NAYS—Mr. President (Guthrie,) Richard Apperson, John L. Ballinger, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, James Dudley, Chasteen T. Dunavan, Milford Elliott, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, George W. Johnston, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Willis B. Machen, John H. McHenry, David Meriwether, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, James Rudd, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—53.

Mr. HARDIN moved to amend the 6th section by striking out the words "qualified voters therein," and substituting the following: "free white inhabitants of such county, town, or city, and who shall be citizens of the United States, and residents of the state two years, or of the county, town, or city, one year next preceding the enumeration, or children born within one year, of mothers who are entitled to be enumerated."

It was designed merely to carry out, in the section, the idea in the amendment of the gentleman from Simpson, adopted by the convention this morning.

Mr. C. A. WICKLIFFE. I conclude, from the vote given this morning, that it is the settled purpose of the convention to change the basis of representation. I could add something to what I said this morning upon the subject, but I will not detain the committee with any additional reasons why I am not in favor of doing it at this time, except that I think we may be misled by adverting to the tabular statements presented by the Auditor's report, as to its effect or operation. I was not mistaken in supposing, this morning, that it was the warfare between the rural districts and the cities, that in some degree led to this innovation upon the basis of representation. The tendency of population in our state is found to be, I admit, to the borders of the state, and gentlemen will be mistaken if they do not suppose that tendency will be as great, aye, greater for the next fifty years. So

far as relates to the purpose which this amendment is calculated to effect, time will prove that it has been founded in a mistake.

I suppose it is the intention of gentlemen who wish this innovation, that all the citizens of Kentucky, native born and qualified voters shall be enumerated somewhere in this commonwealth, when the assessors are directed to take the enumeration. Ours is rather a moving population, and a large portion of our native population are in the habit of changing their residence. Now if a citizen of Madison, in the month of July, shall remove to Allen, though he may have a family and become a resident, yet the resolution adopted this morning, forbids him and his family to be enumerated until he has been a resident of the county twelve months before he is assessed, and becomes a part of the basis upon which representation is authorized. All will find by referring to the resolution adopted this morning, that such will be its effect. Was it the intention of the convention thus to exclude native born citizens who might be removing from one county to another for permanent or temporary residence?

Mr. HARDIN. A reference to the books of the census and the tables of population exhibits the fact, that the population of women and children in the country is much larger than in the town. I can show that it is so in any county in the state, if gentlemen desire it. Go to Malthus on population, the best author that has ever written on the subject, and he gives you the tables of the population of every city and country in Europe, and they, in all cases, show that there is a greater proportion of men in the town than in the country, in the same amount of population. And the reason, as assigned by the gentleman from Simpson this morning is, that the people in the country are more inclined to marry than in the town. The same reason is given by Malthus, and is explained by the fact that men have not the means, do not own land and houses, and if they do, may not possess the inclination. As to the objection of my colleague, (Mr. Wickliffe,) the amendment might be liable to it if the word "and" instead of "or" had been used, in reference to the requirements of residence. The amendment also provides for the enumeration of children born within the year, because it is said somewhere, they are to come unto the Lord, and I think they ought to be taken care of. I have no feeling on the subject myself, and have introduced the amendment merely to carry out what I suppose from the vote this morning, to be the settled purpose of the house in regard to the basis of representation.

Mr. C. A. WICKLIFFE. My objection to changing the basis of representation is not based upon the question whether more children are born in the county or in the town, but on higher grounds. We should not throw into the element of representation either property, territory, or human beings who cannot act in the selection of the public servants.

And then the convention adjourned.

WEDNESDAY, NOVEMBER 21, 1849.

Prayer by the Rev. Mr. LANCASTER.

BASIS OF REPRESENTATION.

Mr. BROWN gave notice of a motion to reconsider the vote taken yesterday adopting the resolution offered by the gentleman from Simpson, (Mr. Clarke.)

LEGISLATIVE DEPARTMENT.

The convention then resumed the consideration of the article reported by the committee on the legislative department.

Mr. TRIPLET. The convention adjourned last evening after a few remarks by the gentleman from Nelson, (Mr. C. A. Wickliffe,) which attracted my attention, and for a moment alarmed me. I thought if I had allowed a provision to pass without my usual watchfulness, that could bear the construction which the gentleman gave it, I had done that which I did not intend. The purport of the gentleman's remarks was, that if this resolution was not altered the free white inhabitants would not be enumerated unless they had been born in Kentucky, and had also resided in the town or county two years. On reading it over, I thought there might be something in it. But on further examination, I am satisfied it will not bear the construction which was put upon it, and that it should not be altered, provided the principle is right. Our present constitution provides that,

"In all elections for representatives, every free male citizen (negroes, mulattoes and indians excepted,) who, at the time being, hath attained to the age of twenty one years, and resided in the state two years, or the county or town in which he offers to vote one year next preceding the election, shall enjoy the right of an elector; but no person shall be entitled to vote, except in the county in which he may actually reside at the time of the election, except as herein otherwise provided."

The provision now proposed makes all who have resided in the county, town, or city, one year preceding the census or enumeration of the people, (aliens not naturalized excepted,) the basis of representation.

It is best always in writing out an instrument which is to last for ages, as I hope this constitution will, to use language to which a construction has been given, with which we are familiar, provided it corresponds to the course we wish to pursue. The old constitution says "every free male." The word free is surplusage, because whites are free of course. The language is precisely that which is used in the resolution which this house adopted, with the exception of the words relating to a residence of one year in the town, county, or city, preceding the election. If not born in the state, but having resided one year in the county, town, or city, you are a citizen. I would prefer that the resolution should be so altered as to agree, word for word, with the old constitution, and also adopt the resolution, that where the party has resided in the state two years, he shall be enumerated, although he has not resided in the county or town one year.

When in order, I will move to strike out all of that part of the sixth section of the present

report, which comes in contact with this, which I propose to offer, and insert this in lieu of it. It will save the very difficulty into which we have sometimes fallen in the old constitution—the difficulty of construction. That is a thing on which I wish to keep my eye fixed, to leave as little as possible to judicial construction. The principles are not the same in two respects, as the house will see.

"At the first session of the general assembly after the adoption of this constitution, and every eighth year thereafter, the general assembly shall cause an enumeration to be made of the representative population of this commonwealth, and such a ratio shall be fixed as will give one hundred representatives, which shall be divided among the different counties, cities, and towns, in the following ratio: Each county, city, or town, having two-thirds of such ratio shall be entitled to one representative: each county, city, or town, having the full ratio and two-thirds over, shall have two representatives; and when any county, city, or town, shall have less than two-thirds of the ratio, it shall be added to the next adjoining county having the smallest representative population: and if, when thus added, the two counties shall have the full ratio and two-thirds over, they shall together, be entitled to two representatives."

Some advantage is gained here by the clearness of expression, leaving little to construction. Another matter in which it differs is, it authorizes the legislature to vary from seventy five to one hundred representatives. I am opposed to that, and I believe the convention will be. When it is necessary to decrease or increase for party purposes, they can do it to some extent, as they formerly rolled residuums from one part of the state to the other. It is better to have it fixed in the constitution. Who has a better right to say how many representatives Kentucky shall have than this convention?

Mr. C. A. WICKLIFFE. The remarks I made last evening, were more immediately directed to the amendment offered to the section under consideration, and a little reflection and examination of that amendment, have not changed my own opinion of the proper construction and reading of it, nor do I rise to extend any philological discussion on the article. But I suggest to my friend to take that article and read it. I think it proposes to enumerate all persons who pay taxes, though not entitled to vote; that you propose to make population the basis of representation; that you intend to enumerate all citizens of the United States, who are inhabitants living within any county. Do I understand the advocates of the amendment? I will put the case. A citizen removes from Indiana into Kentucky with his property, or from Tennessee, or Virginia, being a native born citizen of the United States, and will not be entitled to vote for two years. But do you not intend to have him enumerated? Your resolution does not reach him, according to my construction.

Mr. TRIPLETT. It is perfectly apparent that if a family moves across the Ohio the day before the election, they should not be enumerated, and it was to prevent frauds that a residence of one year was required. One of the causes of complaint against the river counties and cities

is, that with great ease they could import voters when voters were the basis of representation. Unless you require a residence of some time within a city, county, or town, you do not get clear of that fraud. On the contrary, you leave it wider than before, because if they could move voters across the Ohio, now they can remove families, and by enumeration would increase the representation from that city or county. Therefore, it was proper that a residence of some time should be required. How long a residence? The probability is, that if they live in a county for one year, they will feel an interest in the state, and should be added to the population. It is only those whose interests are identified with Kentucky that Kentucky should represent. We ought not to represent those who have no Kentucky feelings or interests. I am willing that those who have resided in the state two years should be added, although they have not resided in the city or county one year, and thus place them on the same footing that voters formerly occupied.

Mr. HARDIN. The constitution now requires that a man should have lived two years in the state and one year in the county, immediately preceding the election. If he has resided in the state two years, he may vote, although he has not resided in the county one week. The present provision of the report requires all that the present constitution requires, in the eighth section, with this addition, that they must have resided in the precinct, town, or county, sixty days; and further, that each voter must vote in the precinct in which he lives; because, before that time he might vote in different precincts. I know a man who once voted in three precincts in one day. This is a wise provision, that they shall vote only in the precinct where they live, and shall have lived in that precinct sixty days before the election. I recollect there was a whig out at the furnace in Bullitt county, who went over into Hardin and Grayson, and hired a number of wood-choppers ten days before an election. That is what they call in the state of New York "pipe laying." It was to prevent that, that a residence of sixty days was required. This provision requires that the qualifications of those enumerated shall come up to those contained in the eighth section; that is, they shall be citizens of the United States, residents of the state two years, and of the county sixty days. Whatever would qualify a man to vote, would qualify him to be enumerated.

Mr. PRESTON. I offer the following substitute for the amendment of the senior gentleman from Nelson, (Mr. Hardin.) Strike out the words, "qualified voters," and insert, "free white inhabitants."

We have heard this subject discussed with a great deal of ability in this house, and though differing from my colleagues in my vote, I went for the resolution offered by the gentleman from Simpson, and am prepared to maintain it, and not only to maintain it, but to proceed a step beyond it. I listened with no little pleasure, to the senior gentleman from Nelson, when he proposed and advocated his amendment yesterday. He invoked the authority of the federal government, cited the practice of our sister states, and proposed that a different basis of representation

should be introduced into the commonwealth of Kentucky. Now, the right of suffrage is one thing, and the basis of representation another.

For instance, under the federal constitution three-fifths of the negroes in Kentucky are represented. They enter into the basis of representation, and fall within the enumeration, but they constitute no part of the voting population. And so far as I understand, those states of the union that have adopted white inhabitants—including the women and children—as the basis of enumeration, not one has deemed it necessary to place the same guards around it that they do around the right of suffrage; but simply state that the white inhabitants are to be enumerated. Thus the federal constitution operates, and you enumerate every alien in this state in order to send our representatives to congress. The reason of that enumeration was the one referred to by the gentleman yesterday; that is, the alien pays taxes, as well as the women and children, and that motive has induced most of the states of the union—fourteen, as I find from examination—not to make the qualified voters the basis of enumeration, but the free inhabitants of the several states. I would direct attention to the list of states, and mention, in order to be brief, that there are three bases of enumeration, in the states of the union. First, qualified voters; second, inhabitants—in some, free white inhabitants, in others, are enumerated free negroes—and in the third, it is arbitrary, thus:

Wisconsin, Texas, Indiana, Tennessee, New Jersey, Maine, and Kentucky, require an enumeration to be made of qualified voters; making six states of the union. But Iowa, Texas, and Missouri require the white inhabitants to be enumerated. Michigan requires the whole population to be enumerated, free negroes and others. Ohio, and our sister states, Alabama, Mississippi, and South Carolina, require the free white inhabitants to be enumerated, with no restrictions, such as the gentleman desires to be thrown around them. Pennsylvania requires those who pay taxes to constitute the basis. New York makes it broad, and applies it to all her inhabitants, excluding simply aliens. Connecticut uses the broad word, "population"—Rhode Island the same—Massachusetts, "inhabitants," and some arbitrary provisions. Taxation is the basis in North Carolina. The state of Georgia adopts the federal plan of enumerating three-fifths of the negroes. Virginia, Maryland, Delaware, New Hampshire, and Vermont are arbitrary in their provisions.

Now, what I mean to say is this: that Kentucky and her six sister states use the term, qualified voters, in forming the basis of representation. Fourteen of the states have generally declared for the free white inhabitants; some of them, however—the northern states—making a variation in relation to free negroes, to form the basis of representation. In order to be consistent, we have to come to one of those three plans.

But what is the necessity of throwing the guards around the enumeration which the gentleman has introduced? Are we to invest the census taker with the power of judging whether an alien has received his naturalization papers or not? Are we to give him the right of saying

whether a man is a citizen or not? Is there any state in the union that constitutes a census taker to be a judge of the qualifications of citizens? Is he like a man midwife, to tell the period of the birth of children? Is he to proceed and ascertain how long a man has been in the country? and cross question him about his domestic affairs? With what compulsory powers is he to be invested? These exist, and are exercised only, by the judges of election; but they are absolutely unknown to the census taker, either under the federal or state government. It is perfectly impracticable in itself. Now, this is the first great practical difficulty in throwing guards around the enumeration. The gentleman from Daviess says, unless you throw guards around the mode of taking the enumeration, and unless you make the census taker, he says, the judge in this case, you will be flooded by immigration from all the neighboring states around our borders. Is not the fear absolutely idle? It is a hard enough thing to colonize the real voters when a pressing election is near at hand, for the purpose of making an enumeration in the city, but to set to work a year before the legislature meets in this hall, to frame its apportionment bill, and get men, women, and children all huddled together—because a child does just as well as a man under this plan—and bring them across to Kentucky to be represented, is absurd, and not at all likely to take place.

Mr. TRIPLETT. I expressly said the object of putting in one year, was to prevent their being brought in, as heretofore, just before the election.

Mr. PRESTON. It amounts to the same thing. The fear is perfectly unfounded. The city of Louisville, it is said, is not blessed with the same number of children as the country—that she is not so prolific as the counties. Gentlemen go to a certain extent in reference to forming a basis. I am willing to go further. We have some fifteen hundred children in the counties of Hart, Todd, Logan, and Trigg, more than Louisville has. It seems to be made an incident in the proposed restriction. I was willing to do any thing fair, and I voted for it, and I will not only sustain the gentleman in that, but I will vote to put the whole population of the state in, and carry that principle out to the extent to which fourteen states have gone. I will give him all the assistance I can, in the furtherance of his plan. To return to the gentleman from Daviess. Is it not, let me ask the house, an unnecessary apprehension, that when seven or eight thousand souls will constitute the basis of an assembly district, we will proceed to colonize just before an enumeration takes place, in order to swell it up? I want the attention of the house to that point for one moment. That is the main argument of the gentleman from Nelson, on which all his others are based, if I understand him correctly. Now, out of all these fourteen states, none of them have ever deemed it necessary to throw this guard around the enumeration. None have armed the census taker with the examination of the rights of citizenship and suffrage.

Mr. DIXON. I voted for that resolution, offered by my friend from Simpson like many others. I suspect I voted too hastily, although it

looks well in the resolution. I am not disposed to attach any thing to the constitution which I think will weigh it down, when it comes to be acted on by the people. I have examined the amendment offered by my friend from Nelson, and I say, that in his opinions on this, and all other subjects, I have the greatest confidence, and I would yield to his views, if I could with consistency. But I am not prepared to go for his amendment.

I see many difficulties growing out of this matter, which cause me to pause before I proceed further. The difficulty suggested by my friend from Louisville is a great one, which is, that of determining who is, and who is not to form the element of this basis. We start the census taker through the state or city to find out who the qualified persons are. He comes to a house where there are children, a woman, and a man, and the question comes up, is that man naturalized. He may be a foreigner; the children may have been born here, or not; the wife may have been naturalized, or not. I do not see how in the name of justice he is to tell, who is to form the basis.

There is another objection. It is substituting one basis for another, and this will have some effect. It will transfer representation from one point to another, or from one class to another class. I want to know if gentlemen have made up their minds that this transfer is fair. Are you to take it from the slaveholding population, and transfer it elsewhere? How will it effect the slaveholder? I do not know, and I want gentlemen to inquire into it.

I understood it was the object of the gentleman to restrict cities, but I think this will not do it. If I understand it, Louisville contains 50,000 inhabitants, and the whole population of the state is 700,000. If from the 50,000 in the city of Louisville, 10,000 are taken for negroes and aliens, it will reduce the population to be represented to 40,000. If those not represented in the balance of the state are subtracted, it will leave 600,000, beside the 40,000 in Louisville. If this is true, Louisville will then have, instead of four representatives, six and two thirds. That is the way the matter presents itself. I was for giving them the old basis, but it is now a question whether, if the principle is correct, we should apply it in this instance. If we take the new basis of representation, we transfer that which belongs to other parts of the state to the city of Louisville. I do not wish to do it. Whether children are born there in as great numbers as in other parts of the state, in proportion to numbers, or not, people are moving in there from all parts of the United States, and swelling the population of the city. I am not for taking population from the slave counties, and transferring it to that city.

Mr. DAVIS. We are now about to settle—I suppose—what is to be regarded as a just representative principle; and some of our friends are very fond of following out, and identifying principles. The question is, what principle does the convention intend to adopt, and adhere to, in regard to representation? It was a favorite notion, a few days past, that population should be the basis of representation—not population generally, because if so, the slave population would be represented, or at least would be made

one of the elements of the basis of representation; and free negroes, also, would be made one of the elements of this basis of representation. But all gentlemen repudiate these, as two of the components of this basis of representation which we are about to form.

Something has been said about the mingling of taxation, in the adjustment of the principle of representation. If this should be the case, my county would fare much better than she is likely to do. The taxable property of Bourbon county, is about \$12,000,000; furnishing a revenue of from \$18,000 to \$20,000 a year. But I believe, on the principle of representation, as indicated yesterday, she would fare worse than any county in the state; for she seems to have a smaller proportion of children than many other counties—whatever the reason may be, I am not able to account for it.

It seems to me, that there is a principle, that should be traced as a golden thread, in the adoption of a basis of representation. We have a representative government, and we are about to adopt a basis, upon which the representative principle shall be carried out. What is the correct basis? It is, that the population of the country which possesses the political power, and which has a right to possess it, shall form the basis of representation. It is not numbers that we propose to represent, it is not slaves, it is not free negroes, it is not women and children that are to be represented, according to the philosophy of our system of government. It is the political authority of the country that is represented; and that alone can be represented. Women do not vote, children do not vote; they do not petition for a change of measures, they do not remonstrate against the adoption of measures. They exercise no control whatever, over the operations of government. There is a power that does exercise the control, and what power is that? It is the adult male voting population of the country. It is not numbers alone, it is will and purpose that is represented—it is only purpose—will, that ought to be, and in truth is represented. We may give to a country additional political power and strength, on account of children, yet they do not vote; or on account of women, yet they do not vote. They have no voice in the adoption of measures of government—like that which is spoken by men; no persons have a right to be heard, save the men who have the power and the right to vote. They instruct the representatives at the polls, and they instruct them afterwards by petition and remonstrance. This being the only controlling power, then, it is idle to say, that women and children are to be an element in forming the basis of representation. Your political power is derived from the voting population, and all you have to do is, to represent that power. Suppose you could modify your form of representation, and instead of establishing agents, go back to the primary and original holders of power, and let them wield that power, and rule the destinies of the country. Upon whom then would it fall? Upon the voting population of the country. But this being inconvenient, and in fact impracticable, it becomes necessary to rule by agencies. Is it not as important then, that the voting population should be the basis, when agencies prevail, as



when the primary power is employed—otherwise you subvert and revolutionise the principles upon which the government is founded. That is the power that wields all political authority; that power alone speaks potentially in all the measures of government; and it is that power alone that has a right to be represented.

Now it seems to me very plain, that all you have to do, is to ascertain the voting population of the country, and when you have done that, provide for the impartial and just representation of their power. Whatever the frauds which the gentleman from Nelson adverted to yesterday—that intervene in cities, and that may be prevented by legislative enactments—may be, guard this mode of representation, represent fairly that power, and constitute it the basis of representation, and when you have done that, you have adhered to the true principle upon which representation should be based. Any departure from it is a departure from the true philosophy of our system of government.

Mr. HARDIN. A great part of the argument of the gentleman from Henderson and the gentleman from Louisville consists in the supposed difficulties of ascertaining the number of qualified voters on the part of the individual who takes the census. Are not the gentlemen aware, that as the law now stands, he is required to take the number of qualified voters? Any man who chooses to see spirits, can see them. Gentlemen can conjure up difficulties where none exist. The assessor or commissioner is now not only required to ascertain who are entitled to vote and who are not, but he is also required to ascertain the number of children between the ages of five and sixteen years; and the United States marshal is required to ascertain the number of individuals between the ages of ten and fifteen, and so on to one hundred. I understand the force of the gentleman's argument very well. You are, says he, only to take those who are inhabitants of a county or a city. That is the very thing I want to guard against. I want the population which is to be the basis of representation, to have precisely the same qualifications that voters have in regard to naturalization, and not swell your representation by taking in persons who are not citizens. It is upon this point that we are at issue. The gentleman assigns one set of reasons and I another. He says it is impossible to take into the enumeration women and children under the age of twenty one years. I say there is no difficulty whatever in doing so.

My friend who was last up, says it should be confined to the voting population because they are the only persons who have the power to act in relation to the measures of government. Well sir, I take the whole population. Suppose the whole population in a county is sufficient to entitle it to a representative in the house, and the voting population is not sufficient. Take the county of Larue, she has about two thirds of the ratio for a representative. And in the course of two years, if the river counties should increase as they have done, and the interior stock raising counties should not increase in the same proportion, Larue will fall below two thirds; but if you take in the women and children, Larue will be entitled to a representative. Take Hardin county, and at the end of two years, she will

hardly have enough for one representative and two thirds over; but if you take in women and children, she will have a number amply sufficient for two without any controversy. The voters in Hardin county are 2,367, the children between five and sixteen years of age are 3,308—a difference of about 1000. The gentlemen can see exactly what I am driving at. It is that the interior counties will be cut off from their due share of representation, if you take the voting population as the basis of representation; whereas they will be entitled to their proper share if you include women and children; and as to the difficulty of enumerating them, there is none whatever.

As to the argument of the gentleman from Henderson. He says there is a constant crowd of population pouring into the cities. I know there is; but there is a larger proportion of men than of women and children. Why is it so? Because men go there for business purposes. Examine the commissioners' books all over the United States, beginning at Massachusetts and going to the mouth of the Mississippi river, and you will see that the numbers of the two classes of population, male and female, in city and country, approximate much nearer between the ages of twenty and forty, than at any other age. Take any age below twenty and above forty, and you will find a wide difference in the population. What does this prove? It proves that there is less difference between the voters and the whole population in the towns and cities than there is in the country.

The gentleman from Bourbon advanced, I presume without much reflection, a proposition which I hope he will retract. That women and children have no right to petition. They are the very class of population that are entitled to the right of petition.

Mr. DAVIS. I did not intend to assert that they have not that right.

Mr. HARDIN. That is what I supposed. I know my friend from Louisville, wants to get in men, women, and children, who are not citizens, and if his amendment should be adopted, he will get in hundreds and thousands who are not citizens; who are not Americans, and who may, perhaps, not have been in the country fifty days. I want to exclude them, unless they have been here two years. The gentleman says we should protect the foreign population. Well sir, I shall vote for making the native population and the naturalized aliens the basis of representation.

Mr. MITCHELL. It seems to me, the whole scope of the gentleman's argument goes to show that what has been presented here as the basis of representation, is not in fact, such a basis. The principle, if there be any principle, that is embodied in this resolution, is designed not to fix what I regard as the basis of representation, but to establish the means of distributing political power throughout the state. It amounts to nothing more than that, a means for the distribution of political power throughout the state; and we shall be at length compelled, in establishing representative responsibility, to fall back upon the true basis of representation, which is political numbers. In the federal constitution, population is assumed, for what purpose? Not

as I conceive, to fix the basis of representation; but to give to each state the measure of its political power. I apprehend that federal numbers assigns, by our national compact, the measure of its political power to each state, and that the state itself afterwards fixes the basis of representation. This results from compromise and necessity. In some of the states the right of suffrage is restricted, in others it is more extended; hence the necessity for adopting the plan which is laid down in the federal constitution; which amounts to nothing more than a distribution of political power among the states, and the state afterwards fixes her basis of representation when she determines the extent of her elective franchise. The very term basis, itself, implies that something must rest upon it. When therefore, you say that the whole population is the basis of representation, and yet that that representation covers but a part of this basis, there is a portion of the basis on which nothing rests. In adopting the resolution which has been adopted here, and engrafting the amendment now proposed to be engrafted on the section under consideration, we depart from the principle which has heretofore governed us in our apportionment of political power among the different sections of the state, and adopt a new mode. But when we carry out the principle of representation, we are compelled to fall back upon the old principle. Whose voice does the representative bring into the council chamber? It is not the voice of the whole population. It is the voice of those who created the representative! Representation must be as large as its basis. I cannot conceive of an agent, without supposing some principal who has vested power in the agent; I cannot conceive of a principal outside of those who have created—if you please, this agency. It is true, sir, that there are other interests in the country, besides these which reside in the political numbers, who wield the power of the country; but these other interests are so intimately associated with the interests of those who wield the political power, that while subserving the one you subserve the other, also. The voting population of the country is the *quasi* guardian of all other interests in the country which are not represented. By adopting the principle contained in the resolution, and contained in the amendment now proposed, you create an irresponsible mediate representation. Inasmuch as there is no voice represented, but that of the voting population, the voting population must represent the other interests. If this be true, then, those who have the largest amount of this sort of association connected with them should have the largest voice. If the husband represent the interests of his wife and children, the husband ought to have, at the polls, a more potential voice than the man who has none of these interests connected with him. If on the other hand it is right that every freeman who is entitled to vote should have an equal voice, then sir, there is none of this mediate representation which this new basis would seem to contemplate. I take it, sir, that this is nothing more than a provision for the distribution of political power—it is not a basis of representation. I was opposed to the resolution, and I am also opposed to this amendment.

Mr. WOODSON. Mr. President: The amendment just offered by my friend from the city of Louisville, (Mr. Preston,) involves an interesting and an exceedingly important principle—no less sir, than the true basis of a free representative government. I have given no vote since I have occupied a seat upon this floor, that has not had for its object the promotion of the interest, the welfare, and happiness of the greatest possible number of my fellow-citizens. The maxim, "the greatest good to the greatest number," has never been lost sight of in any vote I have given—any speech I have made, or in any act I have performed.

I have been voting for, and uncompromisingly advocating, for the last five or six days, the extension of equal, political, and representative rights and privileges to all the citizens of every portion of the state, regardless of partizan or local considerations; permitting my love of equality and my devotion to principle alone to govern my action. And when the convention on yesterday determined, by an overwhelming majority, to regard nothing but numbers in the distribution of political representative rights, I supposed that the same high and elevated considerations were influencing every other delegate upon this floor.

The resolution of the delegate from Simpson, (Mr. Clarke,) which this convention adopted yesterday morning almost without a dissenting voice, asserts that the free white inhabitants in the state shall constitute the basis of representation in both branches of the legislature. The amendment now pending reiterates the same great principle, and nothing more or less. We yesterday declared, in the most solemn manner—no one seriously objecting that I remember—that such should be the basis. This morning we are about to reverse the decision of yesterday, and declare that representation shall be founded upon the number of qualified voters, and not the number of free inhabitants in the state.

The resolution was presented yesterday, and its inherent merits were so manifest to all, that few of us failed to give it our support. The pillows of gentlemen during the past night, suggested I suppose, a different policy; and we find this morning the friends of the measure yesterday, most boisterous in its denunciation. It is not for me to say, why this change? Gentlemen have sufficient reasons, I doubt not. I trust, however, that a bare suggestion, that figures may have been resorted to by them, and that a mathematical demonstration, that certain localities were to be shorn of a portion of their political privileges, may have had a tendency to overcome their preconceived predilections for the intrinsic merits of the proposition, will not be unkindly received. Sir, when an attempt was made recently to deprive the counties bordering on the Ohio river of their just rights in the administration of the government of Kentucky hereafter, I did not stop to enquire what effect the injustice attempted would have upon my particular locality; I only looked at the great principle of equal representation which was sought to be violated, and I determined, at every hazard, to do all I could to prevent its consummation. We succeeded—and now, let us adopt what basis we may, there are no invidious distinctions to be

drawn between the rights of the citizen living upon the green banks of the beautiful Ohio, and the citizen of the interior. This is all as it should be. But sir, I desire to regard other interests than those of the qualified voters, in fixing the basis of representation. The widows, orphans, mothers, and children of this commonwealth, in my estimation, have equal claims upon our attention. Where ever a woman or child is found, protection is required. The truth is, the children of Kentucky have a greater interest in what we do, and what the legislature may do, than ourselves. The subject of education has occupied much of the attention of our legislatures for many years past, and no subject is more worthy the attention of this convention, or will have higher claims upon those who are destined to fill our legislative halls under the new constitution. Mothers and children are peculiarly interested in the legislation of the state upon the subject of education. Yet sir, if qualified voters are to be the established basis of representation, the wishes and interests of mothers and children are not to be consulted in this matter. I do not desire that minors or women shall exercise the right of suffrage. The first has not the maturity of judgment to warrant its judicious exercise, nor is the latter to be soiled by being thrown into the political arena. What I desire, is, that they shall be represented by some one who feels an interest for them. Why sir, if there was not a qualified voter in the counties I represent, I should still feel the responsibility resting upon me here, or in the legislative councils of the country, to be quite as great as at present—indeed, more so. I represent upon this floor two thousand seven hundred and forty six children, between the ages of five and sixteen. Shall I be told that these children have no interests in the government? No one will do it sir. Yet in the apportionment of representation under the present constitution, they have no more weight than so many cattle, horses, or hogs. I do not think that this is as it should be.

But my friend from Henderson, (Mr. Dixon,) says that when the proposition to apportion representation according to the resolution of the gentleman from Simpson, that is to say, when the proposition to apportion representation agreeably to the number of inhabitants in each county, including women and children, was voted upon, that it was passed for the purpose of restricting the rights of the cities—particularly the city of Louisville—but that it has now been ascertained, that so far from injuring Louisville, that she will get an additional representative, and that he does not suppose that gentlemen wish to give her any more political power than she already has. Now sir, I must confess that I was greatly surprised indeed, when the gentleman resorted to such an argument. He has been the bold, fearless champion of the rights of Louisville, in all that has been done to affect her, in any wise, since we have been here; and I now venture to say that if he were directly asked if he voted for the resolution because it was to injuriously affect Louisville, he would not own it—indeed I know that he did not—that he could not have been influenced by any such considerations; after the unlimited and unqualified advocacy of equal rights to all, in which he indulged

a day or two since. No sir, no. But then there are perhaps gentlemen upon this floor who were influenced by such motives, and who the gentleman may think will reverse their steps whenever it is ascertained that Louisville is to be benefitted by their course. How far the remarks alluded to were intended or expected to influence such gentlemen, the author of them is better aware than myself. I have not been able thought to increase the strength of Louisville by the establishment of the basis proposed. I do not believe that it will be increased.

That the mountains are to be benefitted by it, however, no one doubts. For sir, let the residue of the state outstrip us as far as may be in every other sort of prosperity, thank God we stand unrivalled in the number, the beauty, and (equal opportunities afforded,) the intelligence of our children.

If the proposition under discussion should be carried, the county of Knox will not only have the full ratio entitling her to a separate representative, but a large overplus. The same advantage will accrue to Whitley, Laurel, Rockcastle, and Floyd, and perhaps Clay. And if the increase of the population of the mountain counties increases as much faster for the next ten years, as it has for the last ten, over the counties of the interior, every mountain county will have a separate member upon the floor of the house of representatives. And when such shall be the case, does any gentleman suppose that because the mountain representative has the interests of the rising generation in his hands, particularly, that he will occupy a less interesting, important, or responsible position, than if he were representing qualified voters alone? But sir, I will extend my remarks no farther, simply suggesting that when the rights of the city of Louisville were pending in this hall gentlemen were appealed to—their sense of justice invoked—and equal rights have been extended to her. I now ask for no equal rights for a great city—already the proud metropolis of a great state—I ask sir, though, for justice to be done the women and children of our beloved, glorious old commonwealth. I admit that some portions of the state will be deprived of the privileges they now enjoy. But gentlemen ought to be and will be consoled by the reflection that all they have lost, the women and children, the pride and glory of our common country, have gained.

Mr. NUTTALL. I understand that the principle contained in the resolution of the gentleman from Simpson, is now proposed to be engrafted in the Constitution. Whilst I would not vote with my friend from Hardin (Mr. Brown,) for a re-consideration of the vote, by which that resolution was adopted, I nevertheless cannot vote for the incorporation of an abstract proposition in the constitution. It is strange indeed, that the pro-slavery men in this convention who have been, on all other subjects, so vigilant, so watchful, so careful, to guard their interests, are now for the incorporation of a principle in the constitution that will pull down one of the bulwarks by which their property is protected. I will not stop here to assign the reasons why it will have this effect. I think they ought to suggest themselves to the mind of every delegate. We have heard a great deal

about the river counties, by which the interior of the state is belted. With what sort of population are those counties and the cities that are to grow up within them, to be filled? With a population sir, that care nothing about your slave property. And you do not base your representation on the population of the state.—The negro population is to be totally disregarded in the enumeration.

I declared originally that I was willing to violate one of the cardinal doctrines of republican government, in order to restrict the cities; and I shall not go now for giving them greater power under the enumeration proposed, than they would otherwise have. I understand that the adult voting population is the proper basis of representation in this country. They, and none other, have the right to exercise political functions. No other class of the population is clothed with political power. The women and children of the country have no political powers—have no power to control the measures of government. They ought not therefore, to enter into the enumeration, in order to form a basis for representation. I shall vote against this proposition, believing it is wrong in principle.

Mr. BROWN. The question is not whether women and children should be taken into the enumeration; it is whether the voting population of the country shall be the basis of representation. I conceive their interests will be as well represented upon one basis as the other. The question is not whether we shall permit them to come to the polls and cast their votes. They are not allowed to do this. If they were, I would be in favor of including them in the basis of representation. The senior gentleman from Nelson has taken occasion to refer to my county and to present the fact, that it has a larger proportion of children than other counties. That may be true; and I am glad if it be so. But I shall allow no such consideration to influence me here. For more than half a century, the voting population has constituted the basis of representation; and there has been no dissatisfaction expressed on the part of the people—they have not demanded a change in this respect. But I have seen a disposition on the part of delegates to go beyond the public demands, in reference to reforms in the constitution of Kentucky. I have occasionally had the honor to represent my county, and as a public man, I have always been prepared to meet my responsibility. The gentleman need not give himself any uneasiness on my account. I do not fear that my county will be deprived of her two representatives. I have no such apprehension. And if I had, I would not permit any consideration of that kind to induce me to depart from an established principle—a principle sanctioned by time and experience.

Mr. McHENRY. I voted yesterday for the resolution of the gentleman from Simpson, though my intention was originally, to vote for no abstract proposition whatever; and subsequent reflection has confirmed me in my first determination. I believe that vote was wrong. The people have not complained of the present basis of representation, and I think it is better to let the present system remain, than to adopt an-

other that might operate unequally, and detrimentally to some portions of the state; and which might create many enemies to the new constitution. I have not arrived at this conclusion, from any calculation by figures, as the gentleman from Knox (Mr. Woodson) has suggested, in regard to the effect it may have upon my county. In fact, I have not been able to see, precisely, how it will operate. As the resolution for which I voted was a mere abstract proposition, I do not feel myself bound to vote for its introduction into the constitution, but shall sustain the old basis of representation; that is, according to the number of qualified voters. That is a system that the people understand, and I believe it is the one they most approve of.

Mr. GHOLSON. I do not suppose I can shed any light upon the subject; indeed I will not attempt it. I want to know the nearest mode of getting a vote upon the question. If I was ever astonished in my life, it was to see the exhibition that has been made here. The proposition that was before the house yesterday, was so evidently founded in justice, that I thought the house could have no hesitation in coming to a conclusion; I therefore moved the previous question.

Now, I want to see how many of the talented gentlemen of this body—to whom we have been accustomed to look up, as examples for our imitation, in point of consistency—will, within twenty-four hours, change their minds, and vote against a proposition which they were once in favor of. What does it matter, where the representation shall fall, so long as the result must be that representation will be equal, in proportion to numbers. If it be now in order, I will move the previous question.

Mr. CLARKE. I hope the gentleman will withdraw the motion for the previous question for a moment, and I will renew it if he desires that I shall do so.

Mr. GHOLSON. Certainly, I withdraw it.

Mr. CLARKE. I had supposed, after the debate which took place yesterday, and after the vote that was taken, that the principle had been settled, that the description of population referred to in the resolution I had the honor to submit, should form the basis of representation. I supposed the principle had been settled, and permanently settled, by that vote. I should not trouble the convention, however, with any remarks, were it not for the fact, that the gentleman from Henderson (Mr. Dixon) has presented an argument here, based upon a calculation, that in my judgment, is fallacious, and logically speaking, false. The gentleman assumes that we are all in error when we say, that the rural districts of this state will be benefited, by making the whole white population of the state—with the restrictions thrown around them by the resolution—the basis of representation; and he contents himself with assuming this to be the fact, without furnishing the basis upon which he arrives at such a conclusion.

Mr. DIXON. I presented the basis of my calculation as I received it from the honorable president of this convention, from the gentleman from Louisville, (Mr. Preston) and from my friend from Shelby, (Mr. G. W. Johnston.) I gave what I supposed to be a fair basis.

Mr. CLARKE. I have no doubt the information of the honorable president, and of the other gentleman from Louisville may be correct; they may have the means of obtaining the number of free white persons in Louisville. I say they may be correct, because I do not know what their city regulations are; I have not examined the subject for I felt no interest in it. But I would like to know how it is that gentlemen can state with any certainty, what the free white population now is, or what it has been at any period since 1840? I grant, that if you allow gentlemen to assume their facts, there is no difficulty in arriving at the conclusion to which they wish to come. But when the census was taken in 1840, I believe the whole population of Louisville was but 21,000, and at that time the population of the state was 590,000. Is it not reasonable to conclude, that if Louisville has, since 1840, grown from a population of 21,000 up to 50,000, the state has grown in the same ratio? Let me assume facts, and I can give to Louisville, or any other city in the state, twenty members in the lower house. But there has never, since 1840, been a criterion furnished, by which the white population of the city can be ascertained. I grant, sir, that we can ascertain the number of white citizens over twenty-one years of age; I grant, sir, that we can ascertain the number of qualified voters; I grant, sir, that we can ascertain the number of children between the ages of five and sixteen. We ascertain all these facts from the Auditor's report; but, sir, when you go to the innumerable number of those males and females under five years of age, and females over sixteen, there are no data furnished, by which you can arrive at a correct conclusion.

Now, sir, allow me to assume a fact. If it be assumed here that Louisville has a population of fifty thousand, I assume that the state has a white population of one million, and then let the gentleman make his calculation upon this assumption of facts.

Many difficulties present themselves to gentlemen here this morning. One is the supposed difficulty of ascertaining the number of the white male citizens of Kentucky; and the gentleman from Louisville undertook to say that you are conferring upon the commissioner the exercise of an arbitrary power, in permitting him to determine who are the qualified voters. Now, sir, if I know any thing about the duties of a commissioner, as prescribed by the laws of this state, they are, that he shall ascertain the number of qualified voters, and it is upon his report that the apportionment of representation is based. There is no other practical mode by which you can ascertain the number. Why, the commissioner has the power of fixing the value of your property. If you do not place it as high as he thinks you ought to place it, he can put his own value upon it. And I ask how long it will take, when he is ascertaining from the head of a family how much taxable property he has, to ascertain, at the same time, how many children there are in his family between certain ages. And yet this has presented an insuperable objection to the minds of some gentlemen. I have not time to discuss the merits of the principle contained in the resolution; but if we are to establish the principle that population shall furnish

the basis of representation, I appeal to every gentleman on this floor, whether it is not safer and better, as far as the rural districts are concerned, that we should base representation upon the whole white population, than that we should base it upon the voting population? For no one here will be bold enough to say that if there is an increase of population that increase consists of voters, and not to the same extent of women and children. You may take any place you please, in the union, that is increasing in population, and you will find that where an increase of voters has taken place, more women and children are to be found, in proportion to those voters, in the rural districts than in any city or town.

Mr. BRISTOW. I fear that we are attaching rather too much importance to Louisville. I have been constantly voting to give to Louisville equal representation with the balance of the state. I did so because I thought it was but just and proper that she should have it. But I apprehend that if every question is to be settled by a reference to the bearing it is to have upon Louisville, we shall find ourselves involved in some difficulty.

But we are about to settle a very important question. It is proposed to change a principle that has been acted upon, under our present constitution, ever since its formation, and which has been entirely satisfactory to the country.

It is one of the points on which I was particularly guarded before I left home, that I would not spring new questions, nor vote for new propositions, which had not been considered by the people. I came here to make changes on those subjects only, upon which complaint existed. But the principle contended for here, gentlemen say, is so clear, so palpably just, that we ought not to hesitate to adopt it; especially as we voted for it yesterday. There are a great many principles that I would vote for, as abstract principles, that I would not put into the constitution. Looking at this question in a practical point of view, I am satisfied that the qualified voters in the state should be the basis of representation. My course in regard to this proposition, is not influenced by any effect it may have on my section of country; for I suppose gentlemen are correct when they say it will increase our representation. But if the elder gentleman from Nelson is correct, I am the more confirmed in my opposition to the introduction of this new principle; for if all these frauds can be committed in cities, when qualified voters constitute the basis of representation, I ask how it would be if we put a new element into that basis? We must then, of course, be swallowed up entirely. How do gentlemen find out that frauds are committed? The proper mode of preventing fraud is, to constitute the voting population the basis of representation. It is true, I voted for the resolution on yesterday, but I would not then have voted to incorporate the principle into the constitution. How can we tell what the result will be? We have not the data before us to enable us to come to a conclusion. Gentlemen say they care not what the result may be, if we have a correct principle to stand upon; but I would like to test its practical operation before adopting it. Besides, the

question has not been discussed before the people, and they are not prepared for it. However clear it may seem to some gentlemen, it may not prove advantageous in its operation; and it is better that we should not risk the introduction of a new principle, that may prove injurious in its operation.

Mr. CHAMBERS. I am one of the few who voted against the new basis of representation adopted yesterday, and I shall continue to vote against it, however just and correct its principles may appear to other gentlemen. This new measure of representation appears to me as but another effort to create political inequality amongst the freemen of this commonwealth, and it loses none of its inherent vice and injustice by being involved in such uncertainty, that gentlemen cannot point to the particular locality which is to be unduly benefitted or injured by it. Indeed, this uncertainty enhances its dangers, and to such a degree, that they may be dire to the friends of this movement and their constituents, and may work out results the very reverse of those anticipated by these gentlemen yesterday. Gentlemen seem to be sensitive on this point this morning, and many of them willing to retrace their steps; hence they move a reconsideration.

This is a struggle to transfer political power from one portion of the commonwealth to another; and to effect it, gentlemen resort to a basis of representation containing new elements, and propose to take from the qualified voters of some section, (but what section is uncertain,) their political power, influence, and weight, and to transfer and lodge the same with the women and children of another section of the state, but denying to these women and children the exercise of these powers, whilst their husbands and fathers are allowed the double privilege of voting for themselves and their families, and for the widows and orphans of these favored districts. Sir, if this new basis is to be acted upon, let us confer upon the women of this commonwealth the right of suffrage, and let them vote for themselves and their children; but let us not give to one freeman double the political weight and importance of another in the legislation of the country.

I have examined the auditor's book, and I find that the new basis of representation would probably advance the weight and influence of my county as greatly as that of almost any other county. I find that, whilst in many counties the children aged between five and sixteen do not exceed in numbers the qualified voters therein, in Boone there is an excess of children, within the years before named, of near four hundred over the voters; and it is not from any apprehension that my constituents will lose by the change that I oppose this new measure of representation. No sir. It is because, to my mind, it appears unequal and unjust, and full of inconvenience, that I have recorded my vote against it. Sir, let us strip the thing of all disguise and concealment, and how will it appear? Is there any delegate upon this floor that is willing to say that he will vote for an apportionment which shall give to one thousand voters in the county of Cumberland, or any other interior county, as much political importance and weight

as he gives to 1500 or 2000 voters in Jefferson, or a border county. Scarcely, sir, will any one be found to advocate such a proposition. Yet, sir, in principle the new basis of representation is the same, and in practice it may work out very similar results.

Thus stands this measure in its naked deformity; but when disguised under the habiliments of conferring rights upon women and children, it appears a very different thing from what it really is. Our present constitution provides "that all freemen, when they form a social compact, are equal," but I have never yet heard of any declaration of principles, or political platform, declaring that women and children were equal, or that they were equal with men in a political point of view. At present the qualified voters of the commonwealth form the basis of representation and I think the correct basis. These voters are the husbands, fathers, or guardians, of the females and children of our state, and they represent them and do their voting; and as the people have not demanded any change I shall not vote for any.

But as to the mode of apportioning representation, whatever basis may be adopted, I have a word to say. My county, with a large residuum above the ratio required for one representative, has never yet been entitled to two; but has, for many years, been a creditor of her adjoining counties—lending them her residuums to entitle them to a representative. But, sir, under this new or amended constitution, which we are making, we want to use our whole force for ourselves; and if I can ascertain that the plan offered by the gentleman from Fleming can be made practicable, I shall go for it. This plan proposes one representative to each county, and that each representative shall be entitled to one vote for every one hundred constituents he may have. This would leave no residuums, and would give to each county its just weight in the legislature of our state; but in committee of the whole I do not see how the vote could be taken under this plan, and it would be somewhat troublesome even in the house.

I hope we shall adhere to the old basis of representation, and adopt that plan of apportionment which shall operate most equally and justly upon the counties, towns, and cities, entitled to separate representation.

Mr. C. A. WICKLIFFE. I rise, more particularly, to ask my friend from McCracken and Ballard, (Mr. Gholson,) that although his perception is so clear upon this subject, that he is astonished that men differ with him, I hope he will bear with this convention, and allow us to take a little time for reflection and further examination of this important subject. I said yesterday, I thought I saw, without the aid of figures, without the aid of the Auditor's report, or the old census books, the general effect of this principle, if engrafted in the constitution of your state. I do hope, that there will not be manifested by my friend—with whom I differ with great pain on this occasion—so much impatience, and so much astonishment, that we are consuming time on this important question. I said yesterday, that the effect of the proposition is, to give to certain persons, wherever located, a greater political power than they had under the old ba-



sis of representation. When gentlemen talk about constituting women and children a part of the basis of representation, I ask them to engraft in the constitution, if they fear that the interests of married women, widows and children will not otherwise be secured—the principle that once existed, if it does not now, in the constitution of New Jersey—to give to widows and unmarried women of mature age, the privilege of voting. But do not sir, under the plausible declaration that emanates, I know, from a kind heart—that you are giving to women and children additional security, while in fact you give them nothing—increase the number upon which representation is based. Give them the power to vote, if you will, and let them exercise it. When you establish the true principle of responsibility in reference to the basis of representation, and place all freemen upon a perfect equality, then I am content. I do not wish to increase the power of one freeman, when his location may be among women and children, at the expense of another, who may not be similarly blessed.

Sir, I know that gentlemen may go to the Auditor's books and reports, and ascertain the number of children, of a particular description, in different parts of the state; and ascertain the number of the foreign population that is contained in the despised city of Louisville, and how much that population is to increase the power of the city; yet all this does not affect the great principle of equal representation.

How this provision is to operate, I do not know. But I do not wish to engraft in the constitution, an element in the basis of representation that will have the effect of creating a prejudice against this constitution that we are now making, when it shall be submitted to the people.

Mr. GHOLSON. There are certain gentlemen in this house, who seem desirous of having every thing their own way. I recollect that I made a movement in this house at an early period of the session. Gentlemen were not then prepared to vote upon the proposition I submitted. They wanted time for reflection. It was granted to them, and they then had it all their own way. Now I am again told not to press this question, and I have no doubt gentlemen will have this matter all their own way too. Yet I have no objection to pass this section over, and take up the next. I am willing they shall have as much time as they want. What I object to is, so much talking and no voting.

Mr. MACHEN. There seems to have been such an entire revolution in this house, within the twenty-four hours past, that perhaps the same course of reasoning that has superinduced the change of opinion on the part of gentlemen who oppose this proposition, might, when understood, change the opinions of the balance of us. I think it is due to us, that we should at least have time for reflection. The resolution was passed by such a triumphant vote yesterday, that I did not think it necessary to prepare any arguments in its support; for I did not expect it would meet any opposition to-day. I thought the question was settled. It is now pronounced to be an abstraction; if so, it is an important abstraction; it is one on which a great deal of the future action of this government is to be based.

I will therefore move, that this subject be passed over until to-morrow. I think we shall then be better prepared to act upon it.

Mr. DIXON. I believe the gentleman is right in making that motion. My friend from Simpson (Mr. Clarke) has satisfied me it should be done, both for his sake, and for the sake of all of us, in order that we may come to a right understanding. The gentleman asked me how I knew my basis of calculation was correct. I told him, and he replied, that that was no basis of calculation which any body could say was correct—that there was no data on which I, or any member of the convention, could determine the number of the white population in Kentucky.

Mr. CLARKE. The gentleman certainly misunderstood me. I did not say there was no data upon which he could base such a calculation. I said there had been no census taken since 1840, of the whole population of the state.

Mr. DIXON. I understood the gentleman. He said, according to his basis of calculation, the population of the rural districts increased as fast as that of the cities and towns. But he does not pretend to say that his basis of calculation is correct. Is it fair for the gentleman not only to grope his own way in the dark, but to insist that others shall follow such a lead? I do not wish to make any innovation upon the great principles of the old constitution, unless I know what I am doing. I am not for doing injustice to the people of any portion of Kentucky. If the gentleman chooses to rush madly into the adoption of a principle, the result of which he cannot calculate, he ought not to expect us to follow him.

The PRESIDENT. I ask leave of the convention to state in a very few words the position I occupy on this question. I am in favor of the basis established in our present constitution and voted for it, not that I believe the new basis would unjustly affect my constituency, for I believe from all the calculations I have made that it would, in all human probability, give them an additional member; but I have felt satisfied that the old basis was correct, and understood by the people, and that no change was demanded. I did not come here to vote for any thing that would give my constituency any advantage to which they were not entitled. All that I desired for them was equal representation according to the number of qualified voters in every portion of the state. That was the reason I voted against this measure yesterday, well apprised, from a calculation made by my colleague, and my own observation, that in all probability it would give Louisville another member. I will state my objections to the proposed basis. It might so happen that a gentleman who had been twenty years a naturalized citizen might have a wife who never had been naturalized, and who, under the provisions of this proposition, would not be entitled to be enumerated; she not being a citizen; though the laws of the state entitle her to all the civil rights of holding property and enjoying it. If he came with infant children they would be aliens and not entitled to be enumerated. Those that are born here, though of foreign parents, according to my understanding of the law, are free born citizens, and when they come to mature age are entitled to the rights of mature age upon that subject.

Thus, according to my understanding of the law, all that are born in Kentucky or in the United States are citizens, although of foreign born parents. The assessor then, in making out the enumeration, is to select from the household of the naturalized citizen and leave the wife out if she is not native born, and to exclude the children not native born and to take only those born here. I have another objection, and that is, the requirement of residence one year in the city and county next preceding the enumeration. They would by the time the apportionment was made for two years have been entitled to vote, and thus for one year they would have been excluded from the apportionment. It struck me that even if it be true that a larger portion of children between the ages of five and six are found in certain counties of the state than in others, there would be the same proportion of from sixteen to twenty, and that the years as they elapse will add to those counties their fair proportion of representation according to their increase in numbers, and that they will thus be represented. Well, I have another objection, it is the principle (if gentlemen will forgive me for the word,) of native Americanism, which excludes the family and children of men naturalized from the enumeration, and proscribing them, for it has that effect, from participating in the government of the country. It was undoubtedly not designed, and I feel satisfied that many who voted for this principle were unaware that it was striking at that population, and indirectly at the naturalization laws. I have made these statements that gentlemen may reflect on it, and to show my position, which is upon the basis of political numbers. Those to whom you give the right to vote should, in my judgment, be the basis of the representation. If we were a democracy, where all might meet to make the laws and govern themselves, you would select some to do it. We select all that are twenty one years of age, native born and naturalized citizens, and when we make a representative government it is to represent them.

Mr. CLARKE. I beg leave to ask if it was the original resolution, as adopted by the house, or the amendment of the gentleman from Nelson, (Mr. Hardin,) upon which the president commented.

The PRESIDENT. It was the amendment now pending. I was not able to get hold of the original resolution.

Mr. CLARKE. In drawing that resolution I certainly did not intend, either directly or indirectly, to withhold from the children of our naturalized citizens the right to be enumerated. Nobody can be more opposed to Native Americanism, in any shape or form, than myself. And if there be any language contained in my resolution that could be construed into such a thing, I am willing, when the principle shall have been adopted, to place it in language so clear that no such construction can be placed upon it.

The section, by general consent was then passed over.

The seventh section was then read, and adopted without amendment.

The eighth section was then read as follows:

"Sec. 8. Every free, white male citizen of the age of twenty one years, who has resided in this

state two years, or in the county, town, or city, in which he offers to vote, one year next preceding the election, shall be a voter, but such voter shall have been, for sixty days next preceding the election, a resident of the precinct in which he offers to vote, and he shall cast his vote in said precinct, and not elsewhere. Voters, in all cases except treason, felony, breach, or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from elections.

Mr. McHENRY moved to strike out the word "precinct," and insert "county," so that it should require a residence of sixty days in the county instead of the precinct, before the citizen should be entitled to vote.

Mr. DESHA moved as an amendment to the amendment, to strike out all of the section except the clause requiring a residence in the state. He had no desire to disfranchise a citizen of the state merely because he removed from one county to another, a couple of months before the election.

Mr. CLARKE. I will briefly state the reasons which influenced the committee to report the section. They were aware that in some instances it might operate as a hardship upon citizens of the state, who had removed to another county a day or two before the election, but there were evils suggested, the necessity for the removal of which, for the purpose of preserving the elective franchise from imposition, was so powerful as to outweigh the consideration of these little sacrifices. When counties are nearly equally divided, so far as parties are concerned, it very frequently occurs that voters are colonized there from other counties, and it intended to guard against this. And where one would be disfranchised by the operation of this section, every gentleman at all acquainted with politics will bear me out in saying that three now come into a county and give their vote where they are not entitled to. Again, the committee assumed as the sense of the convention, that the different counties in the state, should be laid off into districts, and that there would be election precincts in each district, and the very same reasons which influenced them in the first instance, induced them to say that no voter should vote out of the limits of his district. If this thing of colonizing votes in districts was not restrained, it would allow districts where parties were strong to send their surplus vote into other districts where they were not so strong, and determine wrongfully the result of their elections. These were among the reasons which influenced the committee in reporting the section as it stands.

Mr. MACHEN. I go with the gentleman from Harrison, (Mr. Desha,) in striking out the requirement of a residence of sixty days in the precinct; but I am in favor of requiring him to vote in the precinct in which he resides. Is that the purport of the gentleman's amendment?

Mr. DESHA. My object is to leave the constitution in this respect, as it now is, and as I stated before, to give to every citizen of the state who proposes to become a permanent resident of any county, the right to vote there, even if he has come only a day before the election.

Mr. PRESTON. This vote is to decide whether the voters shall vote within or without

their precincts. The amendment of the gentleman from Harrison gives them the right to vote any where in the county or in the precinct as heretofore provided under the old constitution. This section restricts the voter to his precinct, and the object of this was explained by my friend, the chairman of the committee, (Mr. Clarke,) to be to prevent what has frequently been complained of, pipe-laying and frauds upon the elective franchise in this state. If, as it seems to be contemplated, the counties shall be divided into convenient districts for voting, nothing is so sure as that, if you give the elector the right to vote any where in the county or at the county seat, it will, in excited elections, retard the operation of fair voting by crowding the polls, rendering it difficult to take the votes, and leading to great disorders. But, if the section is to be stricken out, I desire that Louisville shall be made an exception. Otherwise, should the city be divided into assembly districts, the voter would, under the proposed amendment, be allowed to vote out of his district, and where ever he chose in the city.

Mr. GHOLSON. Upon this subject at least, I came here instructed fully. It was fully discussed in my section; and if the people there want any thing, it is that the voter shall be confined to his county and his precinct, and that this pipe-laying shall be put an end to. If there was any objection to the section in my judgment, it was perhaps to the length of residence required in the state, and in the county. Where a man moves into a county, pays taxes, and becomes a *bona fide* resident, he should be entitled to the right of suffrage. However, I shall vote for the section as it stands, believing that the voter should be required to vote in his precinct, and to have resided sixty days in it. Otherwise, men might ride all over the county and vote in as many precincts as they choose. Such things have been done.

Mr. GRAY. The amendment of the gentleman from Ohio, (Mr. McHenry,) if I understand it, does not alter the operation of the section, but merely allows those who may remove from one district to another in the same county, the right to vote wherever they may reside, and before the end of sixty days, if they are *bona fide* citizens of the precinct, and have the requisite residence of sixty days in the county. Then the amendment does not permit, as suggested by the gentleman, the voters to go from one precinct to another to vote. If a gentleman has resided sixty days within a county, there clearly can be no reason why he should be deprived of the right of suffrage. If he has that residence, it makes no difference in what precinct he votes, so that he does not vote in more than one. But the amendment of the gentleman from Ohio is a sufficient guard against fraud, in that it requires him to vote in the precinct in which he resided. The words "and not elsewhere," should be stricken out as mere surplusage, a fault not to be desired in a constitution. The restriction is sufficiently explicit without it.

Mr. TURNER. It was the necessity for reform in the legislative department of the government that mainly induced the region of country in which I live, to go for a convention. It was an every year's practice in the upper part

of the state, and I presume all over the state, for young men to migrate from one county to another in contested elections for the purpose of influencing the result. For instance, there might be a contested election in Franklin, and a very easy race in Anderson. Well, the candidates in Franklin would get young men to come from Anderson into their county, and they might reside or even work there for a few days before the election, and vote there and thus control the result. This is an abominable abuse of the elective franchise, and is practised to an outrageous extent. It is so in other elections. I could allude to an election in my congressional district, which made a figure in the national councils some years ago, in which more than twelve hundred votes were cast that did not reside in the district. This clearly was all wrong.

It is very seldom that I differ from the gentleman from Ohio, and I always doubt my own judgment when I do, for he is a gentleman of most clear and dispassionate judgment, but on this occasion I feel constrained to do so. Besides members of the legislature, it should be remembered that we have to elect magistrates, constables, and other officers, to do the public business. It is necessary to destroy this corrupting influence to which I have referred in reference to them, for there will doubtless be a struggle for those offices, and if permitted in the choice of these minor officers, they will extend to other and greater ones. This colonizing practice would therefore be likely to be increased, from the fact that there would be more persons interested in it, who, by their combination, would carry it to a greater extent than has yet been known. I hope therefore the section, as reported by the committee, will be retained, and that not a word of it will be changed. It is a proposition which will carry out correctly and thoroughly the true principles of the government. Every voter should be confined to the precinct in which he resides. If you allow them to vote at any point in the county, all this corruption which now arises from the congregation of a large body of men at the court house, and their often illegal and immoral proceedings, will continue to go on. Let us have cool and deliberate elections. Let every man vote in his own precinct, and then all the votes can be taken in one day, and the result will be a cool, deliberate, and dispassionate one. But allow all the floating votes to collect at one place, as heretofore, and you keep back the old staid citizens, and allow all the young, passionate, and daring in spirit, to go forward and control the elections. Such has been too much the case in Kentucky, and I would prevent such a thing hereafter. The people desire a government based on the free, uncontrolled, and deliberate expression of opinion, and not one based on brute force and outrage. I think therefore we ought not to vary even in a word from the proposition as reported by the committee.

Mr. MERIWETHER. It will be perceived by the convention, that if they adopt either the amendment of the gentleman from Harrison, or that of the gentleman from Ohio, the great evils complained of in one section of the country will not be remedied. Now, we have some experience in Jefferson, which goes to show the utility of confining voters to their precincts.

Our county seat is at Louisville, and by law, for the last eight or ten years, the voter has been required to vote in his precinct, because by law he was not allowed to go to the county seat. Now, if a man resides in Louisville, he is also a resident of the county of Jefferson, and if a sixty days residence in his precinct is not required, he has but to change his residence to Jefferson, and then he becomes a legal voter.

Mr. GRAY. He ought to be so.

Mr. MERIWETHER. Then it ought to be in the power of the city of Louisville to control the election in Jefferson county, if that principle is right. I have seen an occasion when three hundred voters were thus moved in Jefferson, and I do not attach the blame to either party; but if you look at the vote for and against a convention in the year preceding, you will find that there were only one hundred and seventy-four votes for a convention in 1837. In 1847, after these frauds were committed, it would be found that a large majority in the county went for a convention, and one of the principal reasons for it, was a desire to correct this thing. If you require the voter to reside sixty days in a precinct, the judges of the election or the clerk will know the voter, and whether he is entitled to vote or not, and they can permit him to vote or not, as he may be authorized under the constitution. But if you permit a man to come in but yesterday, and vote to-day, you put it in the power of either candidate who may so wish to obtain the election by fraud, to succeed in the county of Jefferson, more particularly perhaps than elsewhere, because the sixty days residence in the county would also include a residence in Louisville. As to the remark of the gentleman from Harrison, that the voter changing his residence immediately preceding the election, should not be deprived of the right of suffrage. It is true there may be some hardships thereby produced, but it must also be recollected that there are very few *bona fide* residents of the state who change their residence at that season of the year. And as for the few who do, it is better to let them submit to that deprivation, than to open the flood-gates to "pipe-laying" throughout the state.

Mr. HAMILTON, if in order, desired to offer an amendment, reducing the requirement of residence from sixty to thirty days.

The PRESIDENT ruled it out of order at that time.

Mr. IRWIN called for a division of the question, so that the vote could be taken first on striking out.

Mr. APPERSON. I was at first disposed to go for the amendment of the gentleman from Ohio, but on reflection I am satisfied that it would lead us into difficulty. The counties are to be districted for the election of justices of the peace and constables, and experience proves to us that there will be just as much excitement about the election of those officers as any other. Now, if the voter is only required to be sixty days in the county, without reference to the precinct, will they not run over from one precinct to another, for the purpose of electing a magistrate in a particular district? Therefore, it seems to me we had better stick to the text, as presented to us by the committee.

Mr. COFFEY. I am against striking out, and for the best reason in the world. I came here tied hand and foot, and for the very reason assigned by my friend from Madison, (Mr. Turner) that there is a class of young men in the country, that change their residences, and come into counties to influence the election. It was this that brought me here tied hand and foot. I speak, therefore, from my own knowledge. There were some six or eight votes of this description polled, for and against me, and this led to the tie. Let the section stand as it is, restricting every man to voting in the precinct where he resides and is known.

Mr. McHENRY changed his amendment to meet the views of some gentlemen, so as to substitute for county, the words "city or county." He called for the yeas and nays on his motion.

Mr. DESHA. I shall vote for the amendment of the gentleman from Ohio, but I shall vote against the adoption of the section, unless it is further amended, as I have indicated.

Mr. NESBITT. Like the gentleman from Ballard and McCracken, if I have been instructed on any thing, it is to vote to require a man to have a residence some length of time in the county, before he is entitled to vote. The ground upon which I ran the race was, that he should be required to live there nine months, and the people, by a strong majority, ratified it. I would like to enquire of the gentleman from Harrison if he desires to perpetuate what we call importing votes and frauds on elections, by allowing a candidate and his friends to go to an adjoining county, where they do not have so much use for the voters, and bring them over by scores to determine the election? I have seen the people so outraged by transactions of this character, that they have come to the polls armed, and driven off these imported voters. I know in one particular instance, where to the number of twelve; and I could call the names of every one of them, and where they live. They were brought into my county from the adjoining counties. They were taken to one precinct, where the old precinct law was rung in upon them, and they were refused the right to vote. They then came to the court house, where every body has a right to vote, and nothing but the force of arms drove them off. And they went to another precinct, and my friends and the friends of good order generally, had to intercede to prevent the people from going and attacking them on the highway, as a band of political robbers.

The people of Kentucky, are in my opinion *en masse* honest, and they do not desire that a man from another county should be allowed to step into another, and there first cast his vote, and step back again. Some gentlemen seem to think that under the report of the committee, some honest *bona fide* voter of the county will be deprived of voting. That difficulty can be remedied very easily, by every man who desires to retain the exercise of the right of suffrage taking the spring of the year, about the time he intends to plant a crop, and raise something for his family, for the period of his removal. The sixty days then would not touch him. But those fellows who dodge about and come in to cut wood, or get out iron ore, and who vote for the

dollar, and nothing else, and whose residence it would be hard to fix; these are the men I desire to guard against. I am opposed to pipe-laying, and against it out and out. I therefore hope that the convention will adopt the report of the committee just as it stands. It is, to be sure, not quite as strong as I am instructed to go, but I will take it, believing that it will do.

Mr. MACHEN. These things are certainly new to me. We have nothing of this kind in my county, and I should like to hear the experience of other gentlemen on the subject of pipe laying, and see if it corroborates that of the gentleman last up. I certainly am disposed to act for the good order of the country.

Mr. NESBITT. I merely ask that the gentleman should suspend his vote at the next election, and I think I can carry him where he will have ocular demonstration of these facts.

Mr. DESHA. I am as much in favor of guarding the purity of the elective franchise, as any gentleman can be, and notwithstanding I have been engaged in several canvasses, the citizens of my county and all who know me, will attest that I abhor corruption in elections, and have never resorted to it. My amendment was only to guard the *bona fide* innocent residents from being deprived of the right of suffrage. As to the remark, that very few would change their residences, except in the spring, this would apply very well to those engaged in agricultural pursuits, but there are many in other professions, mechanics and others, that would come within that two months requisition, and thus be deprived of their votes. It was these that I desired to protect.

Mr. DIXON. I regard the amendment of the gentleman from Ohio as proper and right. It requires that the voter shall reside in the county sixty days before the election, which is a safeguard against fraud. If a citizen has lived that length of time in the county, why not let him vote at any point in it? It can do no wrong. The object was to prevent those who live out of the county from coming in and voting. I shall vote for the amendment of the gentleman from Ohio and against excluding an honest citizen from voting merely because he may chance to remove from one precinct to another.

Mr. RUDD. The amendment of the gentleman from Ohio, in my view, would promote those very practices against which the committee are seeking to guard. The object of the section was to prevent this immigration from one precinct to another, by requiring a fixed term of residence in the precinct. Without such a requisition, voters would be transferred from one ward to the other in the city of Louisville, as candidates might desire to effect a particular object. It was to prevent occurrences like those referred to by the gentleman from Jefferson (Mr. Meriwether) that the section of the committee was designed. It was hard, to be sure, for a man to lose his vote for want of the requisite time, but it was a greater hardship for the people of a county to see a man foisted upon them against their will, by voters from other counties. I know an instance where one of the parties had forty voters concealed in the neighborhood of the city, with the intention of having them vote the next day in a certain precinct. That night,

however, men of the other party went out and stole them, if you please—took every one of them off and voted every man of them. Well, it was perhaps all fair, seeing that they were brought there for a fraudulent purpose. This is the kind of practice that I desire to prevent.

Mr. DIXON. I desire to present this amendment:—"Provided, That when any city or town, shall be entitled to a separate representation the sixty days residence here required, shall be in the city, and not in the county, and when any town or city shall have been divided off into separate election districts, the same period of residence shall be required in such district."

Mr. PRESTON moved the previous question, which was seconded, and the main question was ordered.

The amendment of Mr. McHENRY was then rejected—the yeas and nays being demanded by him—yeas 30, nays 60, as follows:

YEAS—William Bradley, Thomas D. Brown, William Chenault, James S. Chrisman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Milford Elliott, Selucius Garfield, Ninian E. Gray, John Hargis, William Hendrix, Tho. J. Hood, Mark E. Huston, Thomas James, Geo. W. Kavanaugh, Charles C. Kelly, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, John H. McHenry, Thomas P. Moore, Hugh Newell, Thomas Rockhold, Ira Root, John W. Stevenson, James W. Stone, William R. Thompson—30.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Francis M. Bristow, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Garrett Davis, Jas. Dudley, Chas. teen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Jas. H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, William C. Marshall, Nathan McClure, David Meriwether, William D. Mitchell, John D. Morris, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, James Rudd, Ignatius A. Spalding, Albert G. Talbott, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Andrew S. White, Chas. A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—60.

The question was then taken on the section as reported, and it was agreed to—yeas 66, nays 24, as follows:

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Francis M. Bristow, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Garrett Davis, James Dudley, Chas. teen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, Jas. H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. John-

ston, James M. Lackey, Peter Lashbrooke, Thos. W. Lisle, Willis B. Machen, Wm. C. Marshall, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, John D. Morris, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, Jonathan Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, James Rudd, Ignatius A. Spalding, James W. Stone, Albert G. Talbott, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson, Wesley J. Wright—66.

Nays—William Bradley, William Chenault, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Milford Elliott, James P. Hamilton, John Hargis, Wm. Hendrix, Thos. J. Hood, Mark E. Huston, Thos. James, George W. Kavanaugh, Charles C. Kelly, George W. Mansfield, Alexander K. Marshall, Thomas P. Moore, Hugh Newell, Thomas Rockhold, Ira Root, John W. Stevenson, William R. Thompson—24.

And then the convention adjourned.

#### THURSDAY, NOVEMBER 22, 1849.

Prayer by the Rev. Mr. LANCASTER.

Mr. TURNER moved that the roll be called.

The attendance of members was smaller than usual, attributable probably, to the stormy and inclement weather.

The yeas and nays were called for, and taken on the motion to call the roll, and it was rejected; yeas 23, nays 56.

Mr. BARLOW submitted a resolution to obtain an expression of the sense of the convention on the subject of evening sessions. He proposed that each day at one o'clock, the president should announce a recess to 2½ o'clock.

After a brief conversation, the resolution was laid on the table.

#### BASIS OF REPRESENTATION.

Mr. APPERSON offered the following, which on his motion, was ordered to be printed:

*Resolved*, That representation shall be equal and uniform in this commonwealth, as near as may be, and shall be forever regulated and ascertained by the number of representative population therein. At the first session of the general assembly after the adoption of this constitution; and every eighth year thereafter, provision shall be made by law, that in the year , and every eighth year thereafter, an enumeration of all the representative population of the state shall be made. The number of representatives shall, in the several years of making these enumerations, be so fixed as not to be less than eighty, nor more than one hundred; and for the purpose of apportionment, the state is hereby divided into four districts.

The first district shall be composed of the counties of Pike, Floyd, Johnson, Lawrence,

Carter, Greenup, Lewis, Mason, Bracken, Harrison, Nicholas, Bourbon, Clarke, Estill, Montgomery, Bath, Fleming, Morgan, Breathitt, Owsley, Clay, Laurel, Rockcastle, Madison, Whitley, Knox, Harlan, Perry, and Letcher.

The second district shall be composed of the counties of Pendleton, Campbell, Kenton, Boone, Gallatin, Carroll, Trimble, Oldham, Henry, Franklin, Owen, Grant, Scott, Fayette, Woodford, Jessamine, Garrard, Lincoln, Boyle, Mercer, Anderson, Shelby, and Spencer.

The third district shall be composed of the counties of Pulaski, Casey, Russell, Marion, Washington, Nelson, Bullitt, Jefferson, Hardin, Meade, Grayson, Monroe, Clinton, Cumberland, Wayne, Adair, Barren, Hart, Larue, Taylor, and Green.

The fourth district shall be composed of the counties of Hancock, Breckinridge, Davies, Henderson, Union, Hopkins, Muhlenburg, Ohio, Butler, Edmonson, Warren, Allen, Logan, Simpson, Todd, Christian, Trigg, Caldwell, Calhoun, Graves, Fulton, Hickman, Marshall, Livingston, McCracken, Ballard, and Crittenden.

And the representatives shall be apportioned, as near as may be, among the counties, towns, and cities, in proportion to the number of representative population; but when a county may not have a sufficient number of representative population to entitle it to one representative, then such county may be joined to some adjacent county or counties, to send one representative, or it may draw a residuum or residuums, from one or more counties in the same district, as may be most equitable, having due regard to the number of representative population in each county, and the locality of such county to the residuums from other counties: *Provided*, If there should be any county not having a sufficient number of representative population to entitle it to one representative, yet it shall have one representative if all the adjacent counties in the same district have a sufficient number of representative population to entitle them respectively to one representative: *And provided further*, That due regard shall always be had, in carrying residuums through the district, to that county having the largest number of representative population above the fixed ratio, or which has not a separate representative: *And provided further*, That residuums shall not be taken from any county or city in one district, to a county or city in another district: *And provided*, That any county which may hereafter be formed, may be placed in such district as the general assembly may order.

#### LEGISLATIVE DEPARTMENT.

The convention resumed the consideration of the report of the committee on the legislative department.

The ninth section was read as follows:

"Sec. 9. Senators shall be chosen for the term of four years, and the senate shall have power to choose its officers biennially."

Mr. TURNER suggested that the section required amendment. If the governor should resign, the lieutenant governor would be required to take his place, and it would be necessary that the senate should be convened for the purpose of filling the vacancy occasioned by the removal of the lieutenant governor from the the presi-



dency of the senate. But if this section should remain unaltered, such vacancy could not be filled as the senate would be restricted to biennial elections of its officers.

After a few words of explanation, in which several members of the convention took part, Mr. TURNER withdrew his objection, as it was understood that provision would be made elsewhere to meet the case suggested.

The section was then adopted.

The tenth section was next read and adopted, as follows:

"Sec. 10. At the first session of the general assembly after this constitution takes effect, the senators shall be divided by lot, as equally as may be, into two classes. The seats of the first class shall be vacated at the end of two years, from the day of the election, and those of the second class at the end of four years, so that one half shall be chosen every two years; and when an additional member shall be added to the senate, he shall be annexed by lot, to one of these classes."

The eleventh section was read as follows:

"Sec. 11. The senate shall consist of not less than thirty, nor more than thirty eight members."

On a suggestion of Mr. TRIPLETT, this section was passed over for future consideration.

The twelfth section was read as follows:

"Sec. 12. The same number of senatorial districts shall, from time to time, be established by the general assembly as there may be senators allotted to the state, which shall be so formed as to contain, as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a senatorial district, except such county shall be entitled, under the enumeration, to two or more senators."

Mr. IRWIN said the question arose on this section which had been discussed on a preceding one. The convention had not determined what should be the basis of representation, and hence this section should be postponed for consideration, when a kindred section should again come up.

After a few words from Messrs. TRIPLETT and CLARKE the section was passed over.

The thirteenth section was next read:

"Sec. 13. One senator for each district shall be elected, by the qualified voters therein, who shall vote in the precincts where they reside, at the places where elections are by law directed to be held."

Mr. GARFIELDE moved to strike out the words, "who shall vote in the precincts where they reside, at the places where elections are by law directed to be held."

The motion to strike out was rejected, and the section was then adopted.

The fourteenth and fifteenth sections were read and adopted, as follows:

"Sec. 14. No person shall be a senator, who, at the time of his election, is not a citizen of the United States, who has not attained the age of thirty years, and who has not resided in this state six years next preceding his election, and the last year thereof, in the district for which he may be chosen.

"Sec. 15. The first election for senators shall

be general throughout the state, and at the same time that the election for representatives is held, and thereafter, there shall be a biennial election for senators to fill the places of those whose term of service may have expired."

The sixteenth section was read as follows:

"Sec. 16. The general assembly shall convene on the first Monday in November, after the adoption of this constitution, and on the same day of every second year, unless a different day be appointed by law, and their sessions shall be held at the seat of government; but if the public welfare require, the governor may call a special session."

Mr. GRAY moved to strike out "November" and insert "December," which was both more convenient and in accordance with the custom in this state, for a large portion of the last fifty years.

Mr. MACHEN explained that the committee had fixed the month of November for the commencement of the first session after the new constitution should go into operation, inasmuch as there would be then an unusual amount of legislative business to be transacted, and it was inconvenient for many members of the state legislature to remain from their homes beyond the first of March. The time of meeting, after that session, was left by the section to legislative discretion.

Mr. BOYD called for a division of the question, so that the vote could first be taken on striking out.

The motion to strike out was negatived, and consequently the motion to insert fell with it.

The section was then adopted.

The seventeenth, eighteenth, nineteenth, and twentieth sections were read and adopted, as follows:

"Sec. 17. Not less than a majority of the members of each house of the general assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized, by law, to compel the attendance of absent members, in such manner and under such penalties as may be prescribed thereby.

"Sec. 18. Each house of the general assembly shall judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

"Sec. 19. Each house of the general assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

"Sec. 20. Each house of the general assembly shall keep and publish, weekly, a journal of its proceedings, and the yeas and nays of the members on any question, shall, at the desire of any two of them, be entered on their journal."

The twenty-first section was read as follows:

"Sec. 21. Neither house, during the session of the general assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting."

Mr. C. A. WICKLIFFE. Do I understand that the committee design that the two houses of the legislature shall not have power to adjourn,

for the purpose of transacting public business, to any other place than that which is fixed as the seat of government? If it is the object of the section to take away the power of the two houses to adjourn and meet at some point, when the necessities of the country may require it, I am opposed to it. I know that is the reading of the present constitution. I very well remember that owing to that constitutional restriction, the legislature of 1814, convened in Frankfort, had their session broken up in consequence of the breaking out of a pestilence, called the Canada fever. I think three or four members died in a single night, and we terminated our session, leaving important business unfinished. Had there been power to adjourn to some other place, the business might have been completed. Unless this is provided for by the committee, in some way, I shall be opposed to this section.

Mr. CLARKE. When the convention was acting on the 16th section, this objection occurred to my own mind; and I am inclined to think that some power should be conferred on the executive, to convene the legislature at some other point in case of necessity. As the section now stands, no discretion is vested any where to change the place of meeting.

A conversation ensued, in which Mr. MACHEN, Mr. DIXON, Mr. T. J. HOOD, and Mr. PRESTON took part, on the propriety of certain changes of the phraseology.

Mr. A. K. MARSHALL said he foresaw that the amendment of this section would involve the removal of the seat of government, and therefore on any amendment, he should demand the yeas and nays.

All opposition was withdrawn, and the section was adopted.

Mr. IRWIN moved a reconsideration of the vote adopting the 20th section, with a view of moving to take away the power from two members of the legislature to demand the yeas and nays on any question, and to confer it on one fifth, as in the house of representatives of the congress of the United States.

Mr. CLARKE opposed the motion, contending that it was the right of a representative of the people to have the votes of the house put on record.

Mr. IRWIN replied, and argued that such power should not be given to two individuals to obstruct legislation. It would be much better to give it to one tenth than to two members, though he was willing to add a provision, that on the passage of all laws, and the adoption of all resolutions, the yeas and nays should be entered on the journal.

On the motion of Mr. HARDIN, the motion to reconsider, was laid on the table.

The 22d section was read as follows:

"Sec. 22. The members of the general assembly shall severally receive from the public treasury a compensation for their services, which shall be three dollars a day during their attendance on, going to, and returning from the sessions of their respective houses: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made, nor shall a session of the general assembly continue beyond sixty days, except by a vote of two

thirds of each house; but this shall not apply to the first session held under this constitution."

Mr. KAVANAUGH moved to strike out "two thirds of each house," and insert "unless it be by a direct vote of a majority of each house, which shall be entered upon the journal."

Mr. NUTTALL thought that if there was to be but one session in two years, the legislature should not be thus limited.

Mr. McHENRY thought nothing would be gained by limiting the legislature to biennial sessions, unless some such restriction was placed upon it.

Mr. DESHA approved of the section as it stood. He thought sixty days was sufficient, and with such a limitation, the members would go to work when they met here.

Mr. NUTTALL replied that the example which the convention had set, furnished an argument against the position which gentlemen had assumed.

Mr. NEWELL disapproved of the frequent introduction of the two thirds principle. As they were proceeding, he should not be surprised if it was proposed that the same principle should be carried into ordinary legislation.

Mr. W. JOHNSON called the attention of the convention to the fact that after the expiration of sixty days, this section would place the defeat of the legislation of the country in the hands of a minority of one third, how necessary so ever such legislation might be.

Mr. TURNER was in favor of this section, and he would be willing even to make it more stringent than it is. If there was one thing of which the country complained more than another, it was excessive legislation. This had a powerful influence in inducing the people to call for a convention. A session of sixty days was long enough; but if an extraordinary emergency should arise, the governor could call another session on the very next day after their adjournment.

Mr. GRAY suggested that an effectual mode of shortening the duration of the session would be, to provide that the compensation of the members and officers should be reduced one third at the expiration of sixty days.

Mr. BARLOW. If I were to make any change in this section, it would be, to make it more absolute than it is, for the purpose of getting rid of so much legislation. I call for a division, so that the vote shall first be taken on the motion to strike out.

Mr. KAVANAUGH. I did not intend to say a word, but I know that one of the reasons for calling this convention was that biennial sessions might be had for the purpose of lessening the expenditures of the government. I know that the salvation of some sixty thousand dollars annually was one reason held up by others, and by myself, for the calling of this convention. We say they shall meet once in two years. The business of the session may be increased or it may not. I think it probable it will not, although they meet only once in two years, because I know it is the desire of the convention to cut off special legislation by the constitution. But can the convention foresee what emergencies may arise in the future? Important questions may arise, requiring legislative action near the

close of a session, which, unless the amendment prevail, would be under the control of the minority. What does this amendment propose? That at the expiration of sixty days the session shall close, unless a majority of both branches shall enter their names on the journal in opposition to it, upon a call of the ayes and noes. The legislature will know that their session will close at the end of sixty days, unless their names go out to continue the session longer. It seems to me that this will be a sufficient guaranty, and I therefore desire it may be left to a majority.

Mr. TAYLOR. There is no truer maxim, and thank God the people of Kentucky are satisfied of it, that the world is governed too much. I can easily conceive that in a young and growing state, like those on our western border, there may be a necessity for the legislature to sit more than sixty days; but in an old community like ours, I can see no reason for this. Sir, one of the prophets of old, in looking down the vista of coming years, exclaimed, "when shall the tears of Judah be dry?"

We are engaged in the most solemn acts of legislation, and we know the people are restive at our delay. I will ask gentlemen to walk in to the library with me, and I think they will be satisfied that we have been governed too much. One strong inducement for calling this convention was, because there had been too much money and too much time spent in legislation. The legislation too was like a running stream: "a moment it was, and a moment it was not." The gentleman wishes the word majority inserted. If public interest or public necessity require it, the patriotic representatives of the people, possessing that virtue, intelligence, and patriotism, about which we have heard so much, will continue the session, and the people will be satisfied. I have been forcibly reminded of the old distich:

"The honey bee makes honey, and fills chock full the comb,  
Who are the drones that eat it, they are those who speak for home."

Mr. CHRISMAN. I promised my people that I should go for a sixty days' session, and I shall be in favor of striking out. I hope the house will indulge me in an explanation respecting the table presented by the gentleman from Logan. He has as he says taken six of the most wealthy and six of the poorest counties, and he has placed Wayne, my county, among the poorest counties. I find the fact is, that there are forty eight counties that pay less into the treasury of the state than Wayne. He refers to the number of children. We have in our county 2,221 children. I suppose we must account for it from the pure air we breathe.

Mr. CLARKE. There may be many imperfections in this section, but take it as a whole and I am anxious to see it pass through the house. We have in this same report restricted the legislature in special legislation. We have said they shall not grant divorces, which has consumed one fourth or one third of the time of each legislature for the last ten or fifteen years. We have restricted special legislation in other respects, and it was the opinion of the committee that the restrictions imposed upon the legislature would result in a diminution of the time necessary to

transact the public business, and that there would be no session, after the first session immediately succeeding the adoption of the new constitution—if it shall be adopted—which need sit longer than sixty days. It was thought if there were questions of paramount importance pending before the legislature—questions in which the whole state was interested, the speedy settlement of which involved the rights of the entire community, there could be no doubt a majority of two-thirds of the legislature would concur in lengthening it. These are the reasons why the two third principle was adopted by the committee on the legislative department. The past history of the legislature of the state—I say, without in the remotest degree intending to reflect upon their industry, their motives, or any thing of the sort—shows that the first month, or forty days, was consumed in a variety of ways not altogether compatible with the transaction of business. And, just at the close of the session, the most important matters are brought up in the reports of committees for the action of the two bodies, and they are consequently either compelled to dispose of them without due deliberation, or leave them untouched. Now, I am of opinion that if this section shall be adopted, the members will go to work immediately on their assembling here, and dispose of the business of the legislature before the expiration of the sixty days.

There will never be any necessity for a longer session, in all probability, and if there should be, there will be no difficulty about extending the time.

Mr. THOMPSON. If the legislature is to determine the length of the session, I shall vote for the proposition of the gentleman from Anderson, (Mr. Kavanaugh.) This matter has been acted upon by the conventions of several states lately, and they have been inclined to favor the proposition of the gentleman from Christian. Louisiana, however, has provided that no session shall extend beyond the period of sixty days, from the date of its commencement, and any legislative action had afterwards, shall be null and void. Then the sessions are biennial, and we propose to require the sessions of our legislature to be the same. In the state of Iowa, they have adopted a provision similar to that presented by the gentleman from Christian. After fifty days the pay of the members shall be reduced one half, and I believe a similar provision has been adopted in Illinois. I think that the best mode to remedy this evil. It is admitted by all that the country has for years past groaned under excessive legislation, and no reform has been louder called for than a limitation upon the session. If the power is to be given to the legislature to declare how long they will sit, I am in favor of the proposition of the gentleman from Anderson, that a majority of all elected to both houses should decide, by yeas and nays, to be entered upon the journal, whether they will extend the session. I am opposed to the two third principle in this respect. However, I think the proposition of the gentleman from Christian, would be a better remedy for this evil than any I have yet heard mentioned.

Mr. MORRIS. I am opposed to any of this

close Yankee legislation that has taken place in the state of Illinois and Iowa, to which gentlemen have alluded, and also to the amendment of my colleague, from Christian. If it becomes important and necessary that the legislature should set over sixty days, I want them to have enough pay at least to live on. I am not disposed to restrict their pay, small as it now is. As regards the two thirds, I think it to be particularly applicable here, and if we leave the power to a majority to decide as to the length of the session, it will still leave the question open to all those objections of the people which entered largely into the calling of the convention. All will concede that the people have imperatively demanded that there should be some restriction on the length of the sessions and on excessive legislation. I see very distinctly that emergencies in the disposition of important public business may arise, when it will be necessary for the legislature to set over sixty days, and I believe that the members, generally, will be honest enough to continue in session until such business is disposed of. I hope therefore, this restriction of two thirds will be retained.

The question was then taken on the motion to strike out and it was rejected.

Mr. MERIWETHER moved to amend, so as to allow to the members of the legislature twelve and a half cents per mile as the necessary travel fee, in going to and from their homes, in conformance with the present law on the subject, leaving to future legislatures to change it.

The amendment was adopted, as was the section, as amended.

The twenty-third section was then read, as follows:

"SEC. 23. The members of the general assembly shall, in all cases, except treason, felony, breach or surety of the peace, be privileged from arrest, during their attendance at the sessions of their respective houses, and in going to and returning from the same, and for any speech or debate in either house, they shall not be questioned in any other place."

Mr. TRIPLETT. The original object of this provision was, that members of the legislature should be privileged from arrest, in order that they might not be interfered with in the discharge of the public business. At the time that provision was adopted, there was arrest for debt allowed, which is not the case now. If the object now is, that they shall not be compelled by any legal process to be carried to another part of the state, while in the discharge of their public duties, it is necessary that the section should be amended. A man might now be sued, or by other process prevented from attending here without neglecting his private interests to an inconvenient degree.

Mr. CLARKE. I would enquire of the gentleman if there are not now laws in this state, by which a citizen may be detained by civil process.

Mr. TRIPLETT. He can by attachment, when he is a witness, but I do not recollect any other.

Mr. DAVIS. He may be sued on an action for trespass, and on a judgment being got against him, be put in jail for twenty days.

Mr. TRIPLETT. My object is, that a man

may attend here as a member of the legislature, and not be compelled to attend to suits at home, and the way to attain that would be to put in some clause, declaring that all suits against a man shall remain continued during the time he shall be acting as a member of the legislature. Such has been the course adopted in several states, in consequence of changes in their law. I throw out the suggestion that it may be acted upon or not, as gentlemen think proper.

Mr. PRESTON. The clause of the old constitution was retained because we did not know but that the legislature, in its discretion hereafter, may revive the *ca. sa.* as it existed in the year 1799, when the old constitution was adopted. Neither did the committee design to carry the immunity of the member so far as the gentleman seems to think desirable. For these reasons the committee believe the clause had better be adopted as reported.

The section was then adopted.

The twenty-fourth section was then read, as follows:

"SEC. 24. No senator or representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit, under this commonwealth, which shall have been created, or the emoluments of which shall have been increased during the time such senator or representative was in office; except to such offices or appointments as may be filled by the election of the people."

Mr. C. A. WICKLIFFE. I agree with what I understood to be the principle of the section, and perhaps the intention of the committee in reporting it. It is, that the legislature shall not create offices that they themselves may fill them by appointment or by election. I agree with the section until it comes down to the words in the fifth line "in office" and the latter clause "except to such offices or appointments as may be filled by the election of the people." We intend by this constitution, that all appointments to office of trust or profit shall be made by the people, and the appointing power we are taking away from the governor. The old constitution prohibited the appointment of a man to any office created during the time he was a member of the legislature, and in office. Such is the clause as reported, and I propose to strike out the words "in office" and amend so that it shall read "during the time for which such senator or representative was elected;" and also to strike out the last clause, "except to such offices or appointments as may be filled by the election of the people." I do this from an actual knowledge of occurrences that have taken place under the present constitution. I have seen the members of our state legislature laboring to create offices, and continuing those labors until just before the final passage of the measure through the last house of action, and then resigning their seats to receive the executive appointment. I would therefore take away all temptation to the creation of unnecessary offices by the legislature, whether the appointment is to come through an election by the people, or from the executive.

Mr. PRESTON. The object of retaining the clause as it is in the present constitution, is to provide for offices created by the legislature—such

as an assistant superintendent of common schools for instance—the appointment of which may be devolved on the executive rather than the people. But if such officer should be elected by the people, the committee were not willing that the fact that a gentleman was a member of the legislature at the time the office was created, should exclude him from being a candidate therefor. The first amendment of the gentleman the committee have no objection to.

Mr. MACHEN. I do not see that any thing will be attained by striking out the words assented to by the gentleman from Louisville (Mr. Preston) unless at the same time the latter clause of the section is also stricken out. I am, however, opposed to both changes, and for these reasons. It very frequently happens that after a senatorial election has taken place, circumstances afterwards spring up surrounding the senator elect, which necessarily require him to resign his seat. This may occur at the very first session after he is elected, and then if this amendment was adopted he would not be eligible to any office that might be created by the legislature during the four years for which he was elected. This exclusion I think is not desired by the people. I am opposed also to striking out the last clause of the section, as I believe the people ought to have the privilege of selecting from the great mass of candidates. And if the office was created for the purpose of being filled by those who help to create it, I think the people will have wisdom enough to see and judge of that fact for themselves. Nor do I think any man would risk his reputation by a resort to any such action before the people.

Mr. WOODSON. It appears to me that the section is highly inconsistent and contradictory in itself: in that it seems to draw a distinction between officers elected and those elected by the people. I have not heard it suggested that officers are to be appointed by any other power than the people. I would, therefore, strike out the word "elected" in the second line.

Mr. PRESTON. There are several electoral bodies beside the people. Some elections are made by the legislature, and some by the county courts, and that I presume was the reason for the adoption of the last clause of the section, which gave the members the right to accept those offices elected by the people, but excluded them from those filled by the other different modes of election. For instance, the justice of the peace is nominated by the county court, and that is in fact an election; and there are various other modes of election to office.

Mr. C. A. WICKLIFFE. If we intended to leave the offices of trust and profit to be filled in the same way as required by the present constitution, I should have no objection to the retention of the section as it now stands. I might consent to leave the officers elected by the people, as an exception, under the old constitution, because that instrument prescribed that most of them should be constituted by the governor and senate; but when it is proposed that the appointing power shall be transferred to the people, do not the same reasons which require you in the former case, to guard against an improper exercise of the appointing power, and the purity of the legislature, by disqualifying the mem-

ber elected here to pass your laws, and who had the power of increasing the salaries of your judges, independent of the power of creating new offices, operate in the other case also? You get into the legislative halls a popular man from some district, and the election of judges is about to come off—he has reputation for purity of character at home, and if he can induce the legislature to increase the salary of the judges, he goes home and can be a candidate for the office under the section as it now stands. The argument for the retention of the principle is, that the people will judge properly of the motives of the man who is a candidate before them, and who has been instrumental in getting the salary raised. It is difficult to trace the motives of individual members for their action. There may be such a thing as a member not voting to increase the salary, if a majority without his vote is in favor of it. I have frequently witnessed men in legislative bodies, anxious to get a law passed by any other votes than their own, and my object is, that as we are to transfer the entire appointing power to the people, where it ought to be, we shall guard the purity of the legislature by saying that the members elected, who have the power of raising salaries or creating offices, should be disqualified from filling them during the term for which they were elected. I want to take away all temptation from the legislature to do wrong. As for the objection suggested by the gentleman from Caldwell, (Mr. Machen) in the case of a member resigning from other causes, if the convention agree with the principle I propose, the cases referred to by him can be especially provided for.

Mr. A. K. MARSHALL. If I felt as confident as the gentleman (Mr. C. A. Wickliffe) that all appointing power should be placed in the hands of the people, I should feel assured that all the difficulties he apprehends would be obviated by that appointing power. I cannot understand, how any one, confiding as he does in the judgment and purity of the people, and relying as he seems implicitly upon it, can hesitate for a single moment as to committing into their hands the care and guardianship of those offices. I differ with him in one respect. He says that he is exceedingly anxious to remove all temptation out of the way of these gentlemen to do wrong, while I am exceedingly anxious to put all manner of temptation in their way. I think that the best way is to place them before the people, as then the people could decide whether they can or ought to trust them. I shall vote against striking out any thing. I think the section is correct as it is. It is precisely the language of the old constitution, and those who framed that instrument did not seem to have much confidence in the popular wisdom and purity; and yet if even they could trust the people, I think we who profess unlimited confidence in the people will not do wrong in following their example.

Mr. GRAY. I concur with the gentleman from Nelson in the propriety of his first amendment. If that section means any thing, it has been entirely perverted by the construction that has been given it by the executive, sanctioned I believe by the decision of the court of appeals. I know of a member of the legislature who vo-

ted for a law creating an office, and retained his seat until the law was passed through the senate, and who, while it was waiting the signature of the governor, resigned that seat, and under the construction placed on that clause of the present constitution, received the appointment to that office. Whether that was the object of the gentleman, in seeking to create the office, such at any rate were the facts. This construction of the clause was certainly a perversion of all the framers of the constitution had in view; and, if with these lights before us we re-adopt the section, it will be sanctioning all the action that has occurred under it. I am aware that in making all these officers elective by the people, it will obviate in a great measure the necessity for this provision. Nor am I in favor of restricting the people. If they desire to select a man who participated in creating the office, they have a right to do it, and I would not restrict them. I am therefore in favor of the amendment first suggested by the gentleman from Nelson, and I would make its object so plain as not to be misunderstood.

Mr. CLARKE. I should be very slow to believe that any man, influenced by improper motives in a legislature, in voting for the creation of an office or the increase of the salary of an office, would be taken up and elected by the people to fill such office in either case. But if the people are willing to do that, for one I am willing to give them the privilege of so doing, and I have no fears of the occurrence of such cases, as the gentleman from Christian, (Mr. Gray,) has referred to as having occurred under the old constitution. I can very well understand how there could be great abuses under executive appointments, and how there might be arrangements and combinations to secure an appointment to office through that medium, but there can be no such arrangement between the people and the legislature, if the appointing power is restored to the people. And any attempt to create an office for the purpose of being selected to fill it, would operate against the man when he came to be a candidate before the people.

Mr. TURNER. All concede their readiness to trust the people, but that is not the question here. It is whether we shall place a member of the legislature or any officer of the government in the discharge of his duties in a position where he would be liable to temptation, and to be swerved in his action from the influence of those disinterested and patriotic motives, which should govern statesmen in their action. Even after a man has yielded to such temptation, he might possibly succeed before the people, and it is therefore desirable in making a constitution to guard against it as far as possible. Would it be right for a judge to have the power of benefiting himself by his decision? If we would not allow a judge to place himself in that attitude, why should we allow a member of the legislature? It is true, the present constitution only refers to executive appointments, but here we are going to make all officers elective, and shall we put no restriction on the action or motives of individuals in the creation of offices or the increasing of salaries? I think every conservative principle of government requires that we should, and it argues no distrust of the people so to do.

If we were to put a clause in the constitution declaring that no man should be elected a judge who had been in the penitentiary, or been convicted of a high crime or misdemeanor, it would be said that we were distrusting the people; still no person will say that such a man ought to fill the office. An individual who came to the legislature and exerted his influence for the creation of a new office, or to increase the salary of an office, with a view of going home and becoming a candidate for that office, would be under the influence of just as improper motives as the individual who commits a high crime. Why do we exclude from office those who hold positions under the federal government? Because their allegiance to the state government might be influenced by their office under the federal government, and it would be a temptation for them to sacrifice state rights and sovereignty to the federal government. This matter might be presented in various aspects, but I think what I have said sufficiently illustrates the matter. I shall go therefore for the amendment of the gentleman from Nelson.

Mr. MACHEN here suggested a verbal change in the first proposition of Mr. C. A. Wickliffe, not changing its principle, to which that gentleman assented.

Mr. DAVIS. I am in favor of the amendment, and am glad that it has come up, as it offers a very favorable opportunity for the presentation of a proposition which I made at an early stage of the session. I would propose as an amendment to the amendment to add the resolution I offered in relation to the exclusion of members of this body from office for ten years, and on it I call for the yeas and nays.

The amendment was read as follows:

"And that no member of this convention shall be eligible to any office, or place of trust or profit, established directly by it, or that may be established under the authority of any constitutional provision which it may adopt; or the mode of appointment, or election, to which may be prescribed by any such constitutional provision, or by any such law, until after the expiration of — years from the ratification and approval of this constitution by the qualified voters of this commonwealth."

The question being taken resulted as follows, yeas 22, nays 66:

YEAS—John L. Ballinger, William K. Bowling, Francis M. Bristow, William Chenault, James S. Chrisman, Edward Curd, Garrett Davis, James Dudley, Chasteen T. Dunavan, Vincent S. Hay, Andrew Hood, Mark E. Huston, James W. Irwin, Thomas W. Lisle, Nathan McClure, William D. Mitchell, John D. Morris, Hugh Newell, Johnson Price, Larkin J. Proctor, Squire Turner, George W. Williams—22.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Charles Chambers, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, Archibald Dixon, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Thomas J. Hood, Alfred M. Jackson, William Johnson, George W. Johnston,



George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, John H. McHenry, David Meriwether, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, John L. Waller, John Wheeler, Andrew S. White, Charles A. Wickliffe, Silas Woodson—66.

So the amendment was rejected.

Mr. C. A. WICKLIFFE. I can attain my object by modifying my amendment. I will therefore move to strike out the following words, "except to such offices or appointments as may be filled by the election of the people."

The vote was then taken upon the amendment, as modified, by yeas and nays, which resulted as follows—yeas 39, nays 47:

YEAS—Mr. President, (Guthrie,) John L. Balingier, John S. Barlow, William K. Bowling, Francis M. Bristow, William Chenault, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Thomas J. Gough, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, James M. Lackey, Thomas W. Lisle, Martin P. Marshall, Nathan McClure, William D. Mitchell, Johathan Newcum, Hugh Newell, Elijah F. Nuttall, Larkin J. Proctor, James Rudd, Ignatius A. Spaulding, Albert G. Talbott, John D. Taylor, Phillip Triplett, Squire Turner, John L. Waller, Andrew S. White, Charles A. Wickliffe, George W. Williams—39.

NAYS—Richard Apperson, Alfred Boyd, William Bradley, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Milford Elliott, Nathan Gaither, James H. Garrard, Richard D. Gholson, Ninian E. Gray, John Hargis, William Hendrix, Mark E. Huston, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, John H. McHenry, David Meriwether, Thomas P. Moore, John D. Morris, James M. Nesbitt, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, John W. Stevenson, Michael L. Stoner, William R. Thompson, John J. Thurman, John Wheeler, Silas Woodson—47.

So the amendment was rejected.

Mr. GRAY moved to amend the twenty fourth section by striking out the words "the time such senator or representative was in office," and insert in lieu thereof the words "the term of such office." Which amendment was, upon a division, adopted. Ayes 41, noes 30.

The section, as amended, was then adopted.

The twenty fifth section was next read as follows:

"Sec. 25. No person while he continues to exercise the functions of a clergyman, priest, or

teacher of any religious persuasion, society, or sect, nor while he holds or exercises any office of profit under this commonwealth, or under the government of the United States, shall be eligible to the general assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, That attorneys for the commonwealth, who receive a fixed annual salary, shall be ineligible."

Mr. WALLER requested the convention, as a favor to him, to pass over that section for the present. Other sections had been passed over, and as he desired to make some remarks on that now before the convention, which he was too much indisposed to make at this time, he hoped it would be passed over also.

The section was passed over accordingly.

The twenty sixth, twenty seventh, twenty eighth and twenty ninth sections were adopted without amendment, as follows:

"Sec. 26. No person who at any time may have been a collector of taxes, or public moneys for the state, or the assistant or deputy of such collector, shall be eligible to the general assembly, unless he shall have obtained a quietus, six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible."

"Sec. 27. No bill shall have the force of a law, until, on the three several days, it be read over, in each house of the general assembly, and free discussion allowed thereon, unless in cases of urgency, four fifths of the house, where the bill shall be depending, may deem it expedient to dispense with this rule.

"Sec. 28. All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments as in other bills, provided that they shall not introduce any new matter under the color of an amendment which does not relate to raising revenue.

"Sec. 29. The general assembly shall regulate, by law, by whom, and in what manner writs of election shall be issued, to fill the vacancies which may happen in either branch thereof."

The thirtieth section was read as follows:

"Sec. 30. Divorces shall not be granted, save by courts of justice, in conformity to law."

Mr. T. J. HOOD. I desire to offer this amendment as a substitute for the thirtieth section of the report.

"The general assembly shall have power to pass laws, to regulate divorce and alimony; also to prescribe, by like general laws, the manner in which the names of individuals may be changed; or the lands of infant heirs, or other persons laboring under legal disabilities to act for themselves, may be sold or conveyed. But in no case shall special laws be passed for the benefit of individuals in either of the above class of cases."

By an examination of the thirtieth section, gentlemen will perceive that it provides but for one class of cases. The substitute that I have offered embraces two other classes that fall within the same category, and which have been a fruitful source of legislation. Year after year a great portion of the time of the general assembly has been consumed in the passage of acts, for the benefit of private individuals. Against

this unnecessary consumption of time, and the expense attendant upon it, there has been universal complaint throughout the commonwealth.

It may be said that the provision contained in the thirty-sixth section will supercede the necessity for my amendment; but it will be seen that the amendment provides more effectually against the evil; because, if adopted, the discussions which might arise in the legislature, upon the subjects embraced under these heads, will be cut off.

Mr. CLARKE. The committee all concurred in the opinion that the legislature should be restricted in the practice that has prevailed, to a considerable extent, for many years past, of granting divorces. The question came up as to how we could express this restriction, in the most proper terms; and my friend from Louisville, (Mr. Preston) being a member of the committee, drafted, with much care, the section that is now proposed to be amended. I believe that the constitution of every state in the union, where a restriction has been placed upon legislation in relation to this subject, if they have not followed the language employed in this section, have at least carried out the same idea.

I believe we all understand that under the federal constitution, all powers that are not delegated to the federal government, in express terms, or by necessary implication, have been reserved to the states. But the same rule does not attain, as far as state constitutions and state legislatures are concerned. All powers that are not specially withheld from the state legislature by the constitution of the state, may be exercised by the legislature. I grant that the legislature would have power to settle all cases of alimony, and all questions that might be presented, in regard to the sale of estates, in which infants are concerned. Although I am opposed to special legislation, yet there are many cases having reference to the rights of individuals, in which the legislature ought to have power to act. I have been informed that within the last two or three years, there have been cases, in which the prayer of the petitioner, by the guardian, in behalf of infants, for the sale of lands and the application of the proceeds for the benefit of the heirs, has been refused, and injustice has been done to them. If the petitioner had to stop there, there would be no remedy, and I incline to the opinion, that in such cases as these it would be right and proper for the legislature to act, by laying down a rule by which the court shall be governed, in order that justice may be reached.

We say in this report that the legislature shall not grant divorces; but we do not say the legislature shall not pass laws—on the contrary they are required to pass such laws—conferring on the judicial department the power to act upon applications for divorce; and, as a necessary consequence, the power to settle alimony, and all the incidental rights existing between the parties, or that grow up under the separation of husband and wife.

Mr. T. J. HOOD. I am at a loss to perceive the force of the objection, or of the reasons urged by the gentleman from Simpson, (Mr. Clarke,) why the legislature should not be restricted in its power to pass laws regarding the rights of

infant heirs. If I understand the reason he assigns, it is, that justice is not always done by the courts. Now, this is an objection that may exist in reference to all other cases. We have provided a remedy for a failure of justice in courts of original jurisdiction, by the establishment of an appellate court. If the principle contended for by the gentleman is correct, it would only be converting the legislature into a high court of errors, to correct the decisions, not only of the inferior, but of the superior courts of the state.

As I have said, these subjects have occupied so much of the time of the legislature, that it seems to me to be required of this convention to establish in the constitution, some restrictive provision that will save the state in future, the expense attendant upon special legislation.

The convention then took a recess, until 3 o'clock, P. M.

#### EVENING SESSION.

Mr. PRESTON. The thirtieth section, provides simply, that divorces shall not be granted, save by courts of justice, in conformity to law. That is one class of cases embraced in the amendment that is proposed by the gentleman from Carter, (Mr. T. J. Hood,) and the thirty-sixth section provides, "that the general assembly shall have no power to pass special laws for individual benefit, unless a majority of two-thirds of both houses concur therein." The committee, in drafting the thirtieth section, desired to prohibit the legislature from acting at all, upon the subject of divorce; and that the power of acting in relation to that subject, should be confided to the courts of justice alone; that the decision should be a judicial act. The substitute offered by the gentleman from Carter, is liable to the objection, that it does not require the decision of the court of justice in order to pronounce the decree of a divorce. So far then as any material difference between the substitute and the provision in the report goes, it relates to these classes of cases. One is alimony, another is empowering the legislature to act in regard to the estates of infants; and the third is in regard to changing the names of individuals. In regard to alimony, I have never heard a doubt expressed, that the legislature had the power to act, without any constitutional provision conferring that power. It is therefore unnecessary to insert any such provision. Another objection to the gentleman's proposition is, that it does not provide where the decree of divorce shall come from. The substitute says the legislature shall have the general power of regulating divorces. No one doubts, that they have such power already. And this section is decided by the committee to be better than the substitute, because it says, that divorces shall not be granted, save by courts of justice; making it a judicial act, which the substitute does not require it to be.

If it shall be deemed desirable by the convention, that the legislature shall have the power to act, in regard to the changing of the names of individuals, or to prescribe a general law for that purpose, and the proposition be brought forward at the proper time, I do not know but I will vote for it. So in regard to the provision relating to the estates of infants, or other persons laboring under a disability to act for themselves. The

provision regarding these two classes of cases had better be incorporated in a different section. The committee are desirous that the thirtieth section should relate exclusively to the case of divorces, without having any other question inserted in it. It was also thought by the committee, that the provision contained in the thirty sixth section—for this amendment is virtually a substitute for both—requiring the concurrence of two thirds of the general assembly, was a sufficient barrier to prevent repeated applications being made. But if it should be the opinion of the convention that this is insufficient, it can be remedied by a substitute, such as the gentleman now proposes, when we reach that section.

Mr. T. J. HOOD. I have no objection that the provision contained in my amendment should form a separate section; but I see no reason for dividing it from a class of cases precisely similar, which have given rise to much complaint, on account of the consumption of time, and the expense attending their investigation by the legislature. I did not design that my amendment should be a substitute for the 36th section; if I had I would have extended its provisions to some half dozen other classes of cases, which do not certainly occur so frequently, but which nevertheless sometimes do occur. The check of two thirds may be a sufficient barrier to these; but in relation to granting divorces, and in relation to the estates of infant heirs, they occur every year; and in great numbers; and I desire that my proposition shall embody these paramount points. The gentleman suggests, that the 36th section will meet the difficulty. I would like to hear the answer of the gentleman to this view of the matter. If the complaint be in regard to the consumption of time, and the expense, how will the 36th section remedy it—since the vote by which it is to be ascertained, whether there be a majority of two thirds, or only a bare majority, cannot be taken until the discussion is completed? The time will have been expended, and the expense attending it will have accrued? My object is to cut off the discussion by the legislature altogether; and it is with this view that I have offered the amendment in this connection.

Mr. HARDIN. I am very much in favor of the section prohibiting the legislature from exercising the power of granting divorces. It has been a growing evil for twenty years, and last year I understand, there were perhaps some three hundred cases or more. It is time to stop this kind of legislation.

I have two or three objections to this substitute, which I will suggest to the honorable mover. I understand that the legislature can do any thing that is within the power of legislation; any thing that the law-making power can do, unless they are prohibited by the federal constitution, or the constitution of Kentucky. Their power is unlimited, as to sovereignty, except in those cases where the exercise of that power is prohibited by one or the other of these constitutions. It is now proposed, that we shall give to the general assembly the power to do what? To pass a general law regulating divorces. They have that power now. They have passed laws on that very subject; and those laws have been adjudicated upon, and their validity deci-

ded upon, for more than twenty years. We are then proposing to confer upon the legislature a power that they have already. They have the power, not only of regulating divorces, but of regulating controversies relating to alimony; and they have exercised that power ever since we have had a state government. Our statute book is filled with acts of this description; and the decisions of the courts upon them are numerous; yet here, for the first time, we are told that the power ought to be conferred upon the legislature, to act upon these subjects, and that they should have the power to prescribe by a general law, the manner in which the names of individuals shall be changed. If they choose to pass such a law, they can do it now. But I go further than that. A man may change his name without the intervention of the legislature; and if he do so, he may be sued by the name which he adopts.

The amendment goes on to provide, that the legislature shall have power to pass laws regulating the estates of infant heirs, or other persons laboring under legal disabilities. Have they not that power now? They have the power at any time to remove the disability of infants, by providing that an earlier age may be the period of majority. Does it require a constitutional provision to give to the legislature these powers? Not at all. Why? Because there is no constitutional disability.

The amendment declares that "in no case shall special laws be passed for the benefit of individuals in either of the above class of cases." In regard to this part of the proposition, I think it had better be put into another section, as suggested by the gentleman from Louisville (Mr. Preston.) The first part of the proposition, I do not consider necessary. Besides, it makes us commit ourselves, by the expression of an erroneous view, in regard to constitutional law. I do not wish to declare to the world an opinion, as to the powers of the legislature, which I know to be at war with the opinion that has always been entertained by legislators and jurists.

Mr. GRAY. I am very much inclined to favor the proposition of the gentleman from Carter. It strikes me, it is not subject to the objection taken by the gentleman from Nelson, (Mr. Hardin.) He seems to think, because it is generally understood, that the legislature possesses all the power of legislation, unless specially restricted by the constitution, that it is, therefore, unnecessary to say any thing in relation to legislative power, unless it be by way of restriction. Now this appears to be a construction which prevails or not, according as it may suit the case. Our courts apply such construction when it coincides with the views that they are attempting to establish; but when it fails to accord with those views, that principle of construction does not seem to be acknowledged, as entirely obligatory, in all cases. But the gentleman says, that it will commit us to the statement, that the legislature shall have a power which they already possess. I cannot conceive of any objection to that. Suppose the legislature has the power. Is it not permissible to say, that they shall have such power? It certainly can do no harm. But here you propose to restrict the legislature, by saying, they shall not

pass special laws upon certain subjects. I think it is proper, that when you place a restriction you should declare in the same clause what powers they shall have. And the manner in which those powers should be exercised by the adoption of general provisions, and let the courts of judicature act upon the particular cases that may fall within such general provision. That I understand to be the object and intent of the amendment. There is a similar provision in our present constitution, relating to the subject of slavery. The legislature is prohibited from passing any act for the emancipation of slaves, without the consent of the owner, and the constitution goes on to say that the legislature shall have full power to pass an act to prevent slaves being brought into the state as merchandise.

Now if the construction of my friend from Nelson is right, all this is ridiculous and absurd.

It seems to me to be very proper, that in the same clause which contains the restriction, you should give them the power to pass general enactments in relation to the subject, if you intend they shall have such power; whilst you take away from them the power to act in individual cases.

It seems to me that the language used in the report is not the clearest in the world. It is, "divorces shall not be granted save by courts of justice, in conformity to law." I think the amendment of the gentleman from Carter, carries out the same principle, and makes it much more explicit; because it says, they shall pass laws in relation to divorces and alimony; but that they shall not pass laws granting divorces in individual cases. But it seems to me, if it were intended merely to restrict the legislature, it should have been expressed thus, "that the legislature shall have no power to grant divorces." I am for all the principles contained in the amendment. I think it is better than the original section, and I can see no objection to substituting it for that section.

Mr. BRISTOW. I am decidedly in favor of the principle embraced in the proposed substitute. There are many things that certainly ought not to be the subject of special legislation. But the wording of the amendment of the gentleman from Carter, does not exactly suit my ear. I will read one which I have drawn up, and it will probably suit the views of the gentleman. I believe it covers the whole ground.

"The general assembly shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants, or other persons laboring under legal disabilities by special legislation; but, by general laws, shall confer such powers on the courts of justice."

Mr. T. J. HOOD. I am not at all wedded to the phraseology of my amendment. All that I desire is that the principle shall be incorporated. I accept the amendment of the gentleman as a substitute for mine.

Mr. HARDIN. I have no objection to that amendment.

Mr. APPERSON. I think the gentleman from Carter has given a very good reason why this is the proper place for the amendment. Every

one understands the reason why the legislature should not have power to act upon individual cases. The great object is, to save time and expense. But you will not save either, if you leave the matter to be regulated as provided for in the thirty sixth section; because you never can determine until the final passage of the act, whether there be two thirds for it or not. And I believe there is a general feeling throughout the community, not only in regard to divorces, but in regard to other classes of cases that the legislature shall not interpose its action in individual cases. The estates of infants have been disposed of with great facility and with very little regard for justice, in many instances by the legislature.

The question was taken on the substitute, and it was agreed to.

The 30th section, as amended, was then adopted.

The 31st section was next read as follows:

"Sec. 31. The credit of this commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation, without the concurrence of two thirds of each house of the general assembly."

Mr. C. A. WICKLIFE moved to strike out after the word "corporation" the words "without the concurrence of two thirds of each house of the general assembly." He was opposed to lending the credit of the state by way of endorsement, even though a vote of two thirds of the legislature were obtained.

The amendment was agreed to, and the section, as amended, was then adopted.

The 32d and 33d sections, in relation to the contracting of debts by the general assembly, were passed over for the present.

The 34th section was read and adopted as follows:

"Sec. 34. No law enacted by the general assembly shall embrace more than one object, and that shall be expressed in the title."

The 35th section was adopted as follows:

"Sec. 35. No law shall be revised or amended by reference to its title, but, in such case, the act revised, or amended, shall be re-enacted and published at length."

The 36th section was read as follows:

"Sec. 36. The general assembly shall have no power to pass special laws for individual benefit, unless a majority of two thirds of both houses concur therein."

Mr. HARDIN moved to strike out the whole section. He was utterly opposed to the principle that two thirds should be required to pass a law.

Mr. KELLY moved to amend by striking out after the word "benefit," the words, "unless a majority of two thirds of both houses concur therein," and adding the words "except in cases of claims against the commonwealth, preferred by public creditors."

Mr. HARDIN said there were other cases in which it might be necessary to have a special law, such as for the erection of a toll gate or a dam. He hoped the whole might be struck out. The same law-making power that could take life or lands, was competent to enact a law for an individual benefit.

The amendment was not agreed to.

The question was then taken on the motion to strike out the section, and it was agreed to.

Mr. WILLIAMS offered the following substitute for the section which was stricken out.

"The general assembly shall have no power, by special enactment, to allow any private claim against the commonwealth; and shall direct, by law, in what manner claims against the commonwealth are to be adjusted, and in what courts suits may be brought against the commonwealth."

The present constitution has this section:

"The general assembly shall direct, by law, in what manner, and in what courts, suits may be brought against the commonwealth."

The legislature has failed to point out how suits shall be brought against the commonwealth. The consequence has been, that ever since the present constitution has been in existence, there have been many claims presented to the legislature, and much time has been consumed. I am satisfied the legislature should have power to authorize the courts to adjudicate claims between individuals and the commonwealth, and to point out how these claims shall be adjusted. This will save time and expense; and, besides, these claims are rarely, if ever, adjusted fairly when brought before the legislature.

Mr. HARDIN. There is not a single session of the legislature in which there are not a hundred claims allowed in the bill concerning claims. A man carries a lunatic to the hospital, or another furnishes a few articles to the assembly, and they bring in special claims. We are not to allow the claim at all. The man must bring his suit. I am well aware of the difficulty the gentleman has spoken of. But I have always been unwilling to pass any law of that kind, because there will be too many interested against the government, and none for it, as in the case of an old man who had some beef cattle to sell to the federal government in the time of the Indian war in 1793. He said to the agent, remember there is the whole United States against poor old Jesse Black, now give me about double price, because I have always labored under great disadvantages. If this passes, I think we shall labor under a thousand worse disadvantages than we do now.

Mr. BROWN. I have had the honor to be chairman of the committee on claims in the house of representatives, and I do not think that one hour was consumed in the passage of the appropriation bill, although it contained a hundred little claims. If the gentleman's amendment prevails, the allowance of these claims by the general assembly will be precluded.

Mr. WILLIAMS. My design is to exclude those claims which may be decided by the courts of the country, and not those which relate to the ordinary expenses of the government. I am perfectly aware of the difficulty, named by the gentleman from Nelson, but it seems to me there is another class of claims that has consumed more time, and been decided with less justice in the legislature, than would have been the case, had they been decided in courts of justice. I desire to add the following to the substitute I have already offered:

"No money shall be drawn from the treasury

but in pursuance of appropriation made by law, and no private claim for money shall be allowed in appropriation laws except for necessary expenditures of the government; nor shall any appropriation of money for the support of an army be made for a longer time than one year; and a regular account of the receipts and expenditures of all public moneys shall be published annually."

Mr. HARDIN. There is some complicity in that. There are many claims which government should allow and which a court would not. I will state two cases which occurred during the administration of President Jefferson. He ordered General Wilkinson to Louisiana to arrest Aaron Burr and all others whom he thought concerned with him. Among others, he arrested General Adair and put him in confinement and sent him around from New Orleans to Virginia. There was no proof against him and he sued Wilkinson and recovered \$3,200 for assault and battery. Wilkinson was not worth a dollar, and the execution was returned, "no property found." Mr. Rankin furnished me a copy of the record, and I presented Gen. Adair's claim and congress paid it, with the interest, to a dollar, without a dissenting voice in either house. If that claim had been presented in any court not a dollar could have been recovered. That was the sum total of General Adair's being concerned in the conspiracy. General Wilkinson relied on probable cause for proof, and there was not a shadow of it. Another case was that of James McCarty, of Hardin county, who sold a boat load of lime to the contractors for the erection of certain public works. The contractor failed and could not pay. The government of the United States stepped in and paid the demand, because the lime had been appropriated for the benefit of the United States. There would have been no claim upon which a suit could be based. There are many claims of that kind, in which the government is bound in honor and justice to pay, in which no suit would lie. This is a reason why it is proper it should be left open for the legislature, for there are many strong cases in which the government is bound in honor to pay.

Mr. DIXON. I am not in favor of the substitute of the gentleman from Bourbon. It has been the practice of the government, and I believe of all governments, to appropriate money to individuals, and to public purposes by legislative enactment. I do not know a state in the Union which has a provision by which the state itself is to be sued. I believe some have provided laws for the presentation of petitions, not to the legislature, but to some power created for that purpose. But the gentleman provides that the legislature shall not pass any laws appropriating money to individuals, while it may pass laws to provide the code by which courts shall settle individual claims. Now, if the legislature provides how courts shall settle claims by bringing a suit against the state, after having recovered judgment, how will you enforce it? There will be no use in obtaining the judgment, unless you have some means of enforcing the collection of the demand. I do not see how that can be effected. Suppose the court decides a case in favor of an individual, and the legislature thinks the decision wrong and will not pay the mon-

ey—the decision of the court falls to the ground of course.

Mr. WILLIAMS. I do not like to oppose the wishes of gentlemen. The first proposition contains two provisions—the first of which authorizes the legislature to direct in what mode claims against the commonwealth shall be adjusted. My proposition does not necessarily take the claims before the courts; it merely, as I have already said, leaves it to the Legislature to point out the mode in which they shall be properly and justly settled. The legislature may point out by law the court, or direct the establishment of a tribunal, or a commission before which these claims may be examined and speedily disposed of. My second provision is, that no money shall be drawn from the treasury but in pursuance of appropriations made by law; and no private claim for money shall be allowed in appropriation laws. With regard to the position taken by the gentleman from Henderson, it amounts, in my opinion, to nothing; because, is not the legislature competent to provide by law that when an individual has a claim against the commonwealth, that claim shall be paid out of the treasury, if substantiated? Every gentleman who has been in the habit of attending here when the legislature is in session, knows that the greater part of its time has been consumed in the consideration of private claims. I know one case that has been before the legislature for the last four years, session after session, the case of Robert Williams, which was a claim on account of some contract on Licking river, and I believe it can be shown he has received money time after time. I repeat that the object of this proposition is not at all to interfere with the ordinary expenses of the government.

Mr. DIXON. I have listened to the argument of the gentleman from Bourbon, and I, by no means, think his amendment ought to be adopted. I suggested a difficulty which I still think would exist, and that was the enforcement of the judgment of the court. But there is another still greater, to which I will call the attention of the convention. There are a great many individual claims that must come before the legislature to be adjusted, and nowhere else. There are claims too, growing out of committees appointed by the legislature, of individuals who appeared as witnesses before them, and other claims of a similar description, which must be paid in some form or other. I think the power is better where it is with the legislature, than in the hands of an individual.

The amendment was rejected.

Mr. BOYD offered the following as an additional section:

No charter shall be granted giving banking or trading powers, without providing that the private property of stockholders be made liable for all the debts and obligations of any such corporations or chartered company.

Mr. GRAY moved to substitute the following: "Taxation shall be equal and uniform throughout the state."

Mr. HARDIN. In reference to the proposition of my friend from Trigg, (Mr. Boyd,) I do not see how we can act on it. It will cut down every corporation in Kentucky. It will be a veto on all corporations so long as this consti-

tution shall stand, because we know no company will ever be incorporated. Would I take a hundred dollars stock in any company? Never in the world. It is nearly as broad as that of David Trimble, when he offered a resolution in congress. He said he would take the world for his theatre, that heaven should contribute to his speech, the sun, moon, and stars as his quarry, and with the indulgence of the house, he would take a whack at eternity. [Roars of laughter.] This is the broadest whack at eternity I ever saw. [Renewed laughter.]

Pending this question, the convention adjourned.

FRIDAY, NOVEMBER 23, 1849.

Prayer by the Rev. Mr. LANCASTER.

CLERICAL REPRESENTATIVES.

Mr. DAVIS presented the memorial of two clergymen of the city of Frankfort—Mr. Robinson and Mr. Brush—in opposition to the twenty fifth section of the report on the legislative department, which provides that no person while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, shall be eligible to the general assembly.

It was referred to the committee of the whole, and is as follows:

*To the Honorable, the Constitutional Convention of Kentucky, now in Frankfort assembled.*

The memorial of the undersigned, citizens of Kentucky, respectfully sheweth.—

That your memorialists have observed, with much concern, in the report of the committee on the legislative department, (section 25), a clause proposed for the adoption of your honorable body, as a part of the new constitution, to the following effect, to-wit:

"No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, shall be eligible to the general assembly."

In regard to which proposition, your memorialists beg leave to lay before your honorable body certain considerations, which, in their view, go to establish the injustice and inexpediency of any such constitutional provision.

We make no objection to the opinion that, as a matter of practical duty, clergymen ought not to be aspirants for political office, nor mingle in political strife. Not only are we averse to such a course, but we should feel bound, moreover, as office-bearers in the church, to vote for the suspension of any clergyman from his office in the church, who should be shown to have prostituted the influence of his ministerial character to the promotion of his political elevation. And that this is the general sentiment of the various bodies of christians in our country at large, is most clearly evident from this fact,—that in twenty one states of the Union no such constitutional provision, as we here complain of, exists; this provision being found only in the constitutions of nine states—namely, Virginia, North and South Carolina, Florida, Texas, Louisiana,



Missouri, Tennessee, and Kentucky. And yet in the twenty one states no more disposition to interfere with politics has ever been manifested by the clergy, than in the nine states in which the clergy are excluded from political preferment by the constitution.

It will not fail to occur to any one, on reflection, that such a prohibition in the constitution is, practically, wholly inoperative to prevent the perversion of their clerical influence, by designing men, for the purposes of political promotion. Facts show, that none who sincerely love their calling as clergymen, will be willing to endanger their ministerial influence and reputation by becoming candidates for political favor. While on the other hand, it is obvious that those whose clerical character sits loosely upon them, and who aspire after political distinction, can very easily qualify themselves for holding office under such a constitutional prohibition, by some immorality of conduct, if they be ministers in churches which hold that the clerical office may not voluntarily be laid aside; or by a temporary resignation, (when the views of their church may admit of it) as has frequently been done in this and other states. Or they may render the constitution inoperative against themselves, by holding in fact, the position and influence of a clergyman, without formally assuming the title.

Thus the practical effect of such a clause is to restrain and preclude only the worthy and conscientious of the clergy, whose influence need not be feared in any position; while it is no restraint whatever upon the unscrupulous, who might be disposed to make a bad use of the influence over the minds of men, which their office confers.

Considerations of this kind alone, would not, however, have induced your memorialists to remonstrate, thus publicly against the adoption of the proposed clause in the constitution. But we conceive there are far more important objections to this measure—objections arising out of the grounds on which, if adopted at all, this clause must be adopted. Here we believe are involved certain great principles of civil and Religious Freedom.

We suppose that any constitutional provision clearly in conflict with, or an exception to the general rule of equal privileges to all classes—or which operates in restraint of the power of the people to choose whom they please to office; ought to be founded on the plainest reasons of expediency, if not of necessity. The provision in question is, manifestly, such an exception in both points of view. In the first place, it excludes a large and reputable class of citizens from the enjoyment of one of the highest privileges of citizenship—the privilege of being chosen to office. In the second place, it is an exception to the great law that the people are capable of judging, and ought to judge, who may be chosen to office.

The adoption of the proposed clause, as a part of the constitution implies therefore, of necessity, some more important reason for it, than any as yet alluded to. And though no reason for this ineligibility of the clergy is set forth in the clause reported by your committee, we are constrained to conclude, and we doubt not, the great mass of men will come to the same conclusion,—that the

ground on which a provision, is adopted so obviously in conflict with generally admitted principles, as above shown, must be some supposed incompatibility of the clerical office in its very nature with the duties of civil life. And we are led the more certainly to this conclusion by the fact that we find this reason actually assigned for the ineligibility of ministers to civil office in three out of nine of the state constitutions which make ministers ineligible. In each of the three, (and only three assign any reason) the same words in effect are used—namely: “Ministers of the gospel are by their profession dedicated to the service of God, and the care of souls, and ought not to be diverted from the great duty of their functions, therefore no minister shall be eligible &c.”

If this, therefore, be the implied ground of the restriction reported by your committee—and we can conceive of no other ground sufficient to justify a manifest departure from the general law of equal rights to all—then we feel bound, solemnly, to protest against any such provision, as in conflict with one great principle of free government—which it is the peculiar glory of the American states to recognise—the principle of non-interference of civil government with matters of religion.

We deny the competency of the civil government to define the character and functions of the gospel ministry. Admitting the truth of the general sentiment above quoted, still we protest against such a declaration, as a portion of constitutional law. It is solely the office of the church to declare the functions of her ministers. To say nothing, therefore, of the fact that the tastes, the views, and the habits of those composing the bodies which frame state constitutions, are not necessarily, nor always, such as to qualify them for deciding justly, in regard to the proper character and duties of the gospel ministry, we hold that this declaration, either expressed or implied, in any constitution, is in conflict with the great doctrine of non-interference with religion. And the history of modern nations teaches, that it behooves freemen to watch, with jealousy, any interference of the state with the church; seeing that from the slightest beginning, the precedent shall grow till designing and ambitious politicians corrupt the purity of the church, and thereby render her a fit instrument for the purposes of tyrants.

Not to mark, either, the obvious impropriety of a declaration either in words, or in effect, by the civil authority—or indeed any other authority that the ministry, any more than all other christians, are, by their profession, dedicated to the service of God—we object, furthermore, to the conclusion derived from that premise, that “ministers ought not to be diverted from the great duty of their functions,” by being eligible and elected to the legislature. Why select this one, out of a thousand modes of being diverted from their duty, as the sole object of constitutional guardianship? Why not as well declare that ministers shall not engage in farming or merchandise, or in any other than this single pursuit—the care of souls? Or why provide, by constitutional enactment, that this profession alone shall not be diverted from the duty of its functions? It is obviously equally competent for the constitution to declare that physicians,

who have the important care of the lives of men, ought not to be diverted from the duty of their functions, and, therefore, should not be eligible to political office. And also, that aged men, especially those yet impenitent, ought not to be diverted from the high duty of preparation for death, and therefore shall not be eligible to political distinctions, which are, in their nature, so unfavorable to this great duty.

The chief objection, however, and that which has led your memorialists to obtrude themselves upon your honorable body, is, that while this provision is advocated most warmly, by those who are peculiarly jealous, as all men ought to be, of any interference between the church and state; yet, the insertion of such a clause in the constitution, on such grounds as we have shown to have been expressed, and as are necessarily implied in so doing, is a decision by civil authority of the great theological question of the age.

The great point in dispute between the church of Rome and those who sympathise with her on the one hand, and the churches of the Reformation on the other, is involved in the question—Is the minister of religion a priest? Is he a peculiar sacred person—standing to mediate between God and his offending creatures, by the offering of sacrifice? Or is he chiefly a teacher—an expounder of the truth, and administrator of sealing ordinances in the church? The church of Rome, if we understand aright her teachings, holds the former view; and consistently with that view, has for her ministers *priests*, ministering at an altar—offering the sacrifice of the mass—absolving the penitent on confession and penance, and constituting the channel of mysterious grace to the faithful. Protestant churches, on the other hand, have for their ministers *teachers*, called of God as they believe, and chosen by the people to instruct the people, and administer ordinances established to be signs and seals of spiritual blessing. Of course the ministry of the latter has not that sort of sacredness of character, which necessarily separates them from the mass of christian people—nor that spiritual power and that control over the conscience, which the office of a priesthood in its very nature confers.

Now if the minister of religion be a *priest*—a man apart from the mass of christian people, by the mysterious sacredness of his office, and if in virtue of his office, he have a spiritual power which can be shown to be incompatible with the free suffrage of the people in any way—there might then be some good reason for debarring him from civil office. But if the minister of religion be merely one of the people, set apart to the duty in the church of expounding the truth and dispensing ordinances, with no other influence and power than that, which the faithful discharge of his duty confers upon him; then clearly there is no reason for making any distinction between him and other citizens in regard to the privileges of citizenship.

If this statement of the question be correct—and we have no motive to misstate it—or do we think any one, whichever view of the question he takes, will be disposed to controvert its main features, then it follows that to decide by the constitution, that ministers of the gospel shall

be ineligible to political preferment, is, in so far, to decide this great theological controversy against Protestants. Our complaint, however, is not that it is decided against us—but that it is decided at all by such authority.

It may have been wise to provide against the undue influence of the priesthood in the government, in an age when statesmen still had reason to fear the influence of a doctrine that held the power of the church to be above all civil power. For in that case the priests would be the subjects of an adversary power to the civil government. But we can see no strong reason for such a provision, even against a priesthood, in an age when all men treat with derision, the claim of a spiritual power above civil government, more especially does it seem to us needless, to apply such a prohibition to those teachers of religion, whose distinguishing characteristic as a body of men, has ever been to be foremost in the war against the domination of the spiritual over the civil power.

Entertaining these views we respectfully submit them to your honorable body for consideration. Nor do we doubt that a careful examination of the subject, will lead you, as it recently led the convention of New York, to strike this clause from the constitution of the state, as incompatible with those enlightened views of republican government, which are the glory of our age and country.

And thus your memorialists will ever pray.  
STUART ROBINSON.  
GEO. W. BRUSH.

#### BASIS OF REPRESENTATION.

Mr. WOODSON. I offer the following resolution:

*Resolved*, That the basis, as well as the apportionment of representation, as provided in the sixth section of the report of the committee on the legislative department, is just and equitable, and that this convention will not depart therefrom.

On this resolution I wish to offer a few remarks. We have been engaged about two weeks in the discussion of the proper basis of representation and apportionment among the several counties of the commonwealth. I am emboldened to offer this resolution from the fact, that if it is adopted, to the exclusion of the basis of free white inhabitants, it injures my immediate constituency as much, if not more, than that of any other delegate on this floor. I have been figuring pretty extensively to see what peculiar benefits would accrue to my region of country by the adoption of the basis contained in the resolution of the gentleman from Simpson; and I find the mountain counties, except two, will be entitled to a separate representative in the lower branch of the next legislature. At the first blush, I was inclined to the opinion that it was right and proper that that basis should be adopted. And I now must be permitted to say I am not convinced its adoption would be improper, or that the basis is not the true basis in all free and well organized governments. I know we have the precedents of many state governments for its adoption. But, as the people are not familiarized with it, and as I would do nothing calculated to be the slightest drawback to the constitution we shall

make, I should be unwilling to see this new basis adopted; for I care not whatever benefits might accrue to my own region of country, I trust I shall not overlook the interests of the whole state. Whilst I know it would benefit my own section of country, I am sure it would injure the largest and most wealthy portion of the state; and I feel assured if we were to adopt this basis, that in the large or blue grass counties, it would sink any constitution we might frame, so that it would never be resurrected again.

I have examined the report of the committee on the legislative department, and I find that the old basis of representation is departed from, to some extent, and a new basis, or rather a different basis from that which has obtained heretofore in Kentucky, has been adopted. According to the new rules of apportionment adopted in the report of the committee, the smallest counties, or the counties next to the smallest class in this state, I admit, are to be benefitted to some extent. But I wish the convention to bear in mind the benefits which are to accrue to the smaller counties. There are thirteen large counties having twenty nine representatives, and they are to have one representative for every 1,198 voters within those counties. They gain, on the present mode of representation, two hundred and eighteen voters for each representative, and four hundred and eighty six for each county, included in the large class. If the report of the committee was adopted, what would be the effect on the large counties? The thirteen large counties have two members each, and upwards. Instead of twenty nine members they will have twenty two, and instead of gaining two hundred and eighteen voters for each member, and four hundred and eighty six for each county and a representative for 1,198 voters, they will lose one hundred and sixty four voters to each member, three hundred and one in each county, and will still have a member for every 1,580 voters each county may contain. This looks to me more like justice, and it is certainly more in accordance with the rights of numbers. Now the apportionment according to the number of qualified voters in the state, as set forth in the auditor's report for 1848, will be fourteen hundred and sixteen for one representative. The larger counties will still have a representative for 1,580 voters.

I think there is a little injustice in the matter; but for the purpose of compromising the whole matter, and closing this protracted and unprofitable discussion, let us adopt the report of the committee, which has been well matured. It gives general satisfaction and does equal justice to every portion of the commonwealth. I have offered the resolution as a test question, and I ask the convention to manifest its feeling in reference to the principle contained in the report of the committee. We can do it at once, and settle the matter.

If the convention adopt the resolution, it is evidence that they will adopt the report of the committee, and thus put an end to this exciting debate.

Mr. MACHEN. It seems to me that if we should adopt the resolution of the gentleman

from Knox, (Mr. Woodson,) this body would be presented to the country in rather a farcical attitude. Two or three days since we adopted a resolution, that population should be the basis of representation. Notice has been given, under the rules of this house, that a reconsideration of the vote by which that resolution was adopted, would be moved. The gentleman now comes in with a resolution, and asks this house to adopt it, asserting an entirely different basis for representation, leaving the other resolution upon our journal, sustained by an overwhelming majority. Now, sir, which of the two shall prevail? If his resolution is adopted, I suppose the squabble will then come up as to which one of the two antagonistic resolutions expresses the sense of the house. The gentleman's views upon the proper basis of representation seem to have undergone a change, and his more mature judgment brings him back to that under which we have lived for fifty years past.

I wish, sir, to submit to this house a few of the reasons which governed me in casting my vote, when the resolution now sought to be rendered void was adopted, and which will still govern me in my course in this house. And, as the best argument that can be presented is that based upon facts, demonstrated by figures, I will ask the particular attention of members to the following table, taken from the census of 1840. This is certainly the best source from which we can draw information upon this subject.

In this table I have divided the population into three classes. The first column contains all those under twenty years of age; the second, all the males twenty years old and upwards; the third, all the females twenty years old and upwards; and the fourth the aggregate, made up of the three classes. I have placed the population of the city of Louisville at the head of the table, and have made up the table by grouping adjacent counties of similar character in soil and production, and have, by these groups or blocks, succeeded, as I believe, in fairly representing the population of every portion of the state.

TABLE

OF

Comparative population in different sections of the State, as shown by Census of 1840.

Counties, Cities, &c.	Children under 20 years old	Males 20 years old and upward	Females 20 years old and upward	Total free white population.
Louisville City, -	7,940	5,341	3,880	17,161
Adair, - -	4,060	1,358	1,351	6,770
Allen, - -	3,957	1,248	1,170	6,375
Barren, - -	7,816	2,704	2,627	13,147
	15,834	5,310	5,148	26,292

Bracken, - -	3,655	1,271	1,167	6,093
Pendleton, - -	2,335	938	742	4,015
Harrison, - -	4,976	1,784	1,692	8,452
Nicholas, - -	4,256	1,531	1,523	7,310
	15,222	5,524	5,124	25,870
Bourbon, - -	4,188	1,093	1,671	7,852
Clark, - -	3,862	1,450	1,443	6,755
Jessamine, - -	3,282	1,311	1,217	5,810
Woodford, - -	3,198	1,380	1,238	5,816
	14,530	6,134	5,569	26,233
Nelson, - -	5,030	1,944	1,894	8,868
Shelby, - -	6,224	2,650	2,352	11,266
Spencer, - -	2,043	1,037	970	4,650
	13,937	5,631	5,216	24,784
Caldwell, - -	4,857	1,678	1,557	8,091
Hopkins, - -	4,611	1,496	1,330	7,437
Livingston, - -	4,265	1,742	1,351	7,358
Trigg, - -	3,338	1,173	1,103	5,614
	17,070	6,089	5,341	28,500
Wayne, - -	4,269	1,271	1,214	6,754
Clinton, - -	2,247	714	713	3,674
Cumberland, - -	2,798	902	868	4,568
Pulaski, - -	5,290	1,680	1,612	8,582
Russell, - -	2,350	742	735	3,827
	16,954	5,309	5,142	27,405
Henderson, - -	3,571	1,466	1,144	6,181
Daviess, - -	3,735	1,402	1,195	6,332
Ohio, - -	3,529	1,143	1,076	5,748
Union, - -	2,956	1,265	892	5,113
	13,791	5,276	4,307	23,374
Washington, - -	4,756	1,596	1,548	7,900
Marion, - -	5,031	1,672	1,637	8,340
Franklin, (town excluded,) - -	2,958	1,210	1,031	5,199
Anderson, - -	2,605	924	843	4,371
	15,350	5,402	5,059	25,812
Calloway, - -	5,569	1,679	1,592	8,840
Graves, - -	4,157	1,284	1,203	6,644
Hickman, - -	4,462	1,571	1,312	7,345
McCracken, - -	2,427	892	745	4,064
	16,615	5,426	4,852	26,893
Christian, - -	5,596	2,059	1,836	9,491
Todd, - -	3,509	1,330	1,231	6,070
Logan, - -	4,802	1,877	1,800	8,479
	13,907	5,266	4,867	24,040
Madison, - -	6,242	2,537	2,161	11,040
Garrard, - -	4,105	1,527	1,476	7,108
Lincoln, - -	3,757	1,423	1,400	6,582
	14,204	5,489	5,037	24,730
41 counties, Total, each class,	167,414	60,856	55,662	283,932

To have increased the population of males twenty years old, and over, in the above counties, to the same proportion of Louisville, with the whole population would, instead of 60,856, have given 88,309—near 50 per cent. The above counties were entitled to 45 or 49 members. If males, over twenty years old, had governed, they would have been reduced in proportion to Louisville, to 34 members.

In 1840, Louisville had a small fraction over one twenty fourth part of the male population of the state of twenty years old and over. She had one forty fourth part of the children under twenty years old, and one twenty ninth part of the female population. She had one thirty fifth part of the free white population.

The population was then divided as follows:  
Males, 20 years old, and over, - - - 127,990  
Females, 20 years old, and over, - - - 114,994  
Children, under 20 years old, - - - 347,279

Total, - - - - - 590,263

By her commissioner's return in 1848, Jefferson county was entitled to one twenty eighth part of the representation. By the clerk's return for the same year, to one twenty first part; and by commissioner's return for 1849, to one sixteenth part.

The above table may not, in all particulars, be exactly correct, but approximates so near to it, that for all practical purposes it may be relied on with confidence.

Mr. President: The above table speaks for itself and needs but little comment. The blue grass region of the state has nothing, as I conceive, to fear from this change. There is no basis of apportionment that can be adopted (unless property be made that basis,) by which she

can retain the full amount of representation which she now has. The mountain region, and southern portion of the state, are rapidly increasing in population and must draw a part of the representation from the centre. This plan will give to the country the full force of population, and, to some extent, keep up the equilibrium between it and the cities on the border.

Mr. APPERSON. The subject of the apportionment of representation, including the basis of representation in the legislature, was passed over by consent, some days ago, and it was not expected that the attention of the convention would have been called to them again until the sixth section of the report on the legislative department should be considered; but suddenly this morning, my friend from Knox sprung the subject into the convention, by way of resolution. This was wholly unlooked for, and out of the order in which every one had supposed the business would have been conducted. But, Mr. President, as the resolution has brought the subject up, I must be permitted to say, that no sufficient reason has been presented to my mind for changing the basis of representation from "duly qualified voters" to "white population." No such question was ever made, so far as I know or have ever heard. No complaints have ever been heard, as being made by the people, that they desire so fundamental a change in the constitution; and indeed, I am fully persuaded that were we to consult the people, we should hear, from one extremity of the commonwealth to the other, that the basis of representation upon the number of duly qualified voters, is the true basis, and the only one that they desire. Why propose a change, when no such change has been asked for by the people? I hope that the basis of representation will continue the same in the constitution which we are about to form as it is in the old one. I hope no radical innovations will be made, except such as public sentiment has pointed out—that the material alterations which the country has required will be made, and other material points will be left untouched. Let us not launch forth upon the ocean of experiment, but speedily reform the obnoxious portions of the old constitution, and submit the result of our labors to the people, for their ratification or rejection.

I desire now to call the attention of the convention to the resolution which I heretofore submitted, and which has been printed and now lies on the desks of delegates. I announced heretofore, that at the appropriate time I would offer the proposition embodied in that resolution as a substitute for the sixth section of the legislative report. My proposition is, to lay off the state into four representative districts. The first district will be entitled to twenty-six members in the house of representatives, the second to twenty-five, the third to twenty-five, and the fourth to twenty-four. If gentlemen desire it, the county of Whitley can be taken from the first and put into the third, and the county of Grayson taken from the third and put into the fourth. Should this be done, then each district will be entitled to the same number of representatives. In this state of case, as no residuums are to be taken from any county in one district to any county in another, the first district will

have voters enough for the twenty-five representatives, and just one voter more to each representative. The second district will lack only five voters for each representative, to reach the ratio. The third district will have eleven votes over the ratio, to each representative, and the fourth will have twenty-one votes more than the ratio, to each representative. Exact equality is not to be expected, and I think it would be difficult to approximate nearer to it than has been done by my mode of apportionment. I lay down a positive rule by which the apportionment of representation is to be made, but do not confine residuums to counties immediately adjacent, but take them through the district and give the member to that county having the greatest number of voters under the ratio, and which is so situated as not to be united to another county in opposition to another principle. To illustrate my principle, I will take the counties of Lawrence and Carter, one of which will, most probably, get a separate representative. Lawrence has 956 voters, and Carter only 908; yet the latter would get the representative, because Greenup, Lewis, and Morgan will all have a separate representative, and there is no small county to which to attach Carter; whereas, Lawrence joins the small county of Johnson, and they can be united for representation. It might, however, turn out that Floyd would get the separate representative, and in that event Carter and Lawrence would continue together. This would depend upon the number of voters, and also the fact whether Pike and Johnson lie so as to be united in a district. Estill and Morgan would each have a separate representative, although the adjacent counties have but small residuums; but the counties of Bath, Harrison, Bourbon, and so forth, would be taken to those weaker counties.

By another principle in my proposition the small county of Hancock will obtain a separate representation. This however, occurs, because all the counties which are adjacent to her have the full ratio and some of them large residuums. It is not doing justice to a county which has the full ratio, to attach a small county to her without giving them, united, any greater representative strength than the one had. The county of Ohio has nearly one hundred votes more than the ratio, and yet if Hancock should not be represented alone, she would have to be united with Ohio, she being the weakest of all the counties adjacent to Hancock. The ratio of representation which I have assumed is 1416, as I adopt the auditor's last report of the number of voters in the state. With Whitley retained, there are 36,351 voters in the first district; if she should be taken to the third, there are 35,430 voters. In the second district there are 35,278. In the third including Whitley and excluding Grayson, there are 35,683 voters; and in the fourth district, including Grayson, there are 35,947 voters.

The residuums should be represented some where, and to avoid all difficulties, a principle is laid down in my proposition to govern future legislation. My figures may not be exactly correct, but if there be any errors they are very inconsiderable.

Mr. IRWIN. I had not intended to have made a single remark on this subject of repre-

sentation, or of the basis of representation, because I saw that in any event Logan must lose a member, but on this question of the "free white population" being the basis of representation, I have made some tables which may be, perhaps, useful to the convention, in coming to a correct conclusion as to what basis shall be adopted. I do this for another consideration. I am clearly of the opinion, that the report of the committee is unjust, and unequal, and that the house should not adopt it; it is especially unjust to Logan, to Nelson, and counties of that size. My first object is to prove (which I think I can do,) that by adopting the free white basis, you will throw the weight of representation on the Tennessee border. I have taken the entire line of counties on the Ohio border, and I find that the increase of children over the voting population is not so large as the middle line; and that the middle tier of counties do not increase so rapidly, as the line of counties on the Tennessee border. I will read the tables which I have prepared.

## OHIO BORDER—1847.

	Voters.	Children.
McCracken, - -	603	919
Livingston, - -	822	909
Union, - - -	1,300	573
Henderson, - -	1,476	1,860
Daviess, - - -	1,751	2,031
Hancock, - - -	523	740
Breckinridge, -	1,689	1,969
Meade, - - -	1,096	1,412
Bullitt, - - -	1,130	1,406
Jefferson, - -	6,737	7,406
Oldham, - - -	1,038	1,240
Carroll, - - -	846	1,113
Gallatin, - - -	786	829
Campbell, - - -	1,282	1,927
Kenton, - - -	2,089	2,722
Boone, - - -	1,863	1,872
Pendleton, - -	1,214	1,049
Bracken, - - -	1,510	1,755
Mason, - - -	2,729	2,838
Lewis, - - -	1,232	1,653
Greenup, - - -	1,582	1,665
	<u>33,098</u>	<u>37,888</u>

The increase is about  $14\frac{1}{2}$  per cent.

## MIDDLE COUNTIES—1847.

	Voters.	Children.
Hopkins, - - -	1,751	2,582
Muhlenburg, - -	1,477	1,873
Ohio, - - -	1,463	1,969
Grayson, - - -	1,075	1,617
Nelson, - - -	1,967	2,017
Washington, - -	1,672	2,403
Anderson, - - -	998	1,474
Woodford, - - -	1,244	1,222
Fayette, - - -	2,603	2,119
Bourbon, - - -	1,819	1,510
Nicholas, - - -	1,587	2,100
Fleming, - - -	2,321	2,720
	<u>19,977</u>	<u>23,606</u>

Here the increase is about 20 per cent.

## TENNESSEE BORDER—1847.

	Voters.	Children.
Pike, - - -	781	1,301
Perry, - - -	457	706
Whitley, - - -	985	1,451
Wayne, - - -	1,436	2,545
Clinton, - - -	769	1,234
Cumberland, - -	985	1,398
Monroe, - - -	1,152	1,719
Allen, - - -	1,228	2,103
Simpson, - - -	952	1,312
Logan, - - -	2,047	2,537
Todd, - - -	1,322	1,954
Christian, - - -	2,086	2,321
Trigg, - - -	1,337	1,865
Calloway, - - -	1,269	1,902
Graves, - - -	1,525	2,529
Fulton, - - -	602	775
Hickman, - - -	633	893
Floyd, - - -	920	1,631
Lawrence, - - -	877	1,514
	<u>21,363</u>	<u>30,696</u>

The increase is about 45 per cent.

The largest increase of children is in

	Voters.	Children.
Rockcastle, - -	790	1,120
Laurel, - - -	715	1,122
Knox, - - -	1,036	1,614
Harlan, - - -	631	1,009
Clay, - - -	697	1,214
	<u>3,869</u>	<u>6,069</u>

Now sir, the committee on the legislative department have made an arrangement by which the state is to have one hundred members in the lower house, and have adopted the principle that when a small county shall have a fraction over two thirds of the ratio, the county shall have a member; but when they come to carry out the principle, and apply it to the larger class of counties, they provide that the county shall have the ratio and a fraction over two thirds, or she shall have but one member. Now let us suppose that the ratio by the committee's report will be 1,500. If a county, according to the committee's bill, have 1,001, she will be entitled to one member. Now, take a large county and if it has 2,499 voters, it can have but one member, according to the committee's plan.

Now sir, this is manifestly unjust. If 1,001 voters in a small county are to have a member, surely a large county, with 2,002 voters ought to have an equal right. Now if the committee have adopted the principle for large counties, that they should have a ratio and three eighths of a ratio, it would have placed the large counties upon a footing of equality with the small counties. Equality, justice, and a fair consideration of the position of the largest class of counties is all that I want.

The committee have divided the state into four classes of counties; and you will see that there is manifest injustice in the application of the principle of the committee's bill.

The first class of counties, thirty two in number, representing 39,626 voters, get 32 representatives, and they are as follows:



Allen,	Jessamine,	Monroe,
Anderson,	Knox,	Morgan,
Boyle,	Larue,	Oldham,
Bullitt,	Lewis,	Pendleton,
Carter,	Lincoln,	Simpson,
Crittenden,	Montgomery,	Spencer,
Calloway,	Union,	Todd,
Grant,	Woodford,	Taylor,
Grayson,	Wayne,	Trigg,
Green,	Whitley,	Trimble,
Hart,	Meade,	

The above counties have 39,626 voters, and have 32 representatives.

The second class of counties are

Adair,	Franklin,	Mercer,
Bracken,	Graves,	Marion,
Breckinridge,	Greenup,	Nicholas,
Boone,	Garrard,	Nelson,
Bath,	Hopkins,	Henderson,
Campbell,	Henry,	Muhlenburg,
Caldwell,	Harrison,	Scott,
Clarke,	Bourbon,	Washington,
Daviess,	Logan,	Owen,

The above 27 counties represent 50,543 voters, and they get 27 members.

The third class of counties are

Louisville city,	Madison,	Henry,
Barren,	Mason,	Christian,
Fayette,	Jefferson,	Warren,
Hardin,	Pulaski,	
Kenton,	Shelby,	

Now the above 12 counties have only 37,885 voters, and yet they get 27 representatives. I would ask is this just? Is it right that 37,885 voters shall have the same power as 50,543 voters? Surely not. There is a difference of nearly 13,000 voters, and the same difference should exist in the representation.

In the application of principles, when all the circumstances are equal, I hope the house will not give an advantage to the small counties that cannot be participated in by the large counties. It will operate against the adoption of this new constitution we are about making, and which I hope will be made satisfactory to the country.

I shall vote for the free population basis; but I am induced to favor its principles, because the committee's bill I consider manifestly unjust. If the committee would strike out "two thirds," and insert "three eighths," as it would be an equivalent basis, I shall be better satisfied with the report.

Mr. GARRARD. The gentleman from Logan, if I understand, wishes to alter the basis of representation so that a ratio and three-eighths shall entitle a county to two members. If I recollect the gentleman's position, this would include Logan, and would injure that class of counties of which he has complained. He does not complain of the present apportionment under which this house is constituted. By that apportionment there are twenty seven counties having an aggregate vote of 46,307, which have one member each, making the average vote to each member, 1,733. There are thirteen other counties and the city of Louisville, having an aggregate of 34,328 voters and twenty nine members of the legislature. This agrees with the report of the committee, except that, by the gen-

tleman's table, Logan will be entitled to two members.

With regard to the resolution offered by the gentleman from Knox, in relation to altering representation, I am in the condition of many of my friends, disposed to take back my vote on that subject. I think the country will be better satisfied to have representation based upon the number of qualified voters. I would suggest to my friend from Knox, therefore, to withdraw his resolution and let the question of reconsideration be taken.

Mr. C. A. WICKLIFFE. I do not wish to prevent the gentleman from Knox having a vote taken on his resolution; but if he will allow me, I will move to lay it on the table for the present, with a view to take up the sixth section of the legislative report.

Mr. WOODSON. I have no particular desire to press my resolution. My object was to bring the convention to a direct vote, supposing they were prepared to do so. If the object can be attained more expeditiously by adopting the suggestion of the gentleman, I have no objection.

The resolution was accordingly laid on the table.

Mr. DESHA offered the following resolution:

*Resolved,* That the house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation, the state is hereby laid off into ten districts.

District No. 1, shall consist of the counties of:

Ballard, -	(Legal voters for 1848.)	728
Calloway, -	-	1,206
Caldwell, -	-	1,860
Crittenden, -	-	947
Graves, -	-	1,576
Hickman, -	-	656
Hopkins, -	-	1,813
Livingston, -	-	808
Marshall, -	-	824
McCracken, -	-	742
Trigg, -	-	1,381
Union, -	-	1,264
Fulton, -	-	631
		<hr/> 14,436 <hr/>

District No. 2, shall consist of the counties of:

Breckinridge, -	(Legal voters for 1848.)	1,745
Butler, -	-	875
Christian, -	-	2,138
Daviess, -	-	1,933
Edmonson, -	-	647
Grayson, -	-	1,127
Hancock, -	-	560
Meade, -	-	1,022
Henderson, -	-	1,467
Muhlenburg, -	-	1,539
Ohio, -	-	1,510
		<hr/> 14,563 <hr/>

District No. 3, shall consist of the counties of:

Allen, -	(Legal voters for 1848.)	1,413
Barren, -	-	2,939
Hart, -	-	1,345
Logan, -	-	2,016
Monroe, -	-	1,230
Simpson, -	-	924
Todd, -	-	1,383
Warren, -	-	2,131

13,381

District No. 4, shall consist of the counties of:

Adair, -	(Legal voters for 1848.)	1,507
Boyle, -	-	1,136
Casey, -	-	938
Clinton, -	-	807
Gumberland, -	-	971
Green, -	-	1,340
Lincoln, -	-	1,436
Pulaski, -	-	2,305
Russell, -	-	919
Taylor, -	-	1,025
Wayne, -	-	1,426

13,810

District No. 5, shall consist of the counties of:

Anderson, -	(Legal voters for 1848.)	1,086
Bullitt, -	-	1,165
Hardin, -	-	2,384
Larue, -	-	981
Marion, -	-	1,768
Mercer, -	-	2,125
Nelson, -	-	2,007
Spencer, -	-	1,007
Washington, -	-	1,770

14,293

District No. 6, shall consist of the counties of:

Clay, -	(Legal voters for 1848.)	750
Estill, -	-	1,011
Floyd, -	-	961
Garrard, -	-	1,563
Harlan, -	-	661
Knox, -	-	1,091
Laurel, -	-	777
Letcher, -	-	365
Madison, -	-	2,566
Owsley, -	-	566
Perry, -	-	463
Pike, -	-	807
Rockcastle, -	-	802
Whitley, -	-	1,021
Breathitt, -	-	590

13,994

District No. 7, shall consist of the counties of:

Carroll, -	(Legal voters for 1848.)	923
Gallatin, -	-	813
Henry, -	-	1,849
Jefferson and Louisville, -	-	6,774
Oldham, -	-	1,073
Trimble, -	-	994
Shelby, -	-	2,317

14,743

District No. 8, shall consist of the counties of:

Bourbon, -	(Legal voters for 1848.)	1,773
Fayette, -	-	2,584
Franklin, -	-	1,723
Jessamine, -	-	1,325
Owen, -	-	1,674
Scott, -	-	1,839
Woodford, -	-	1,255

12,172

District No. 9, shall consist of the counties of:

Bath, -	(Legal voters for 1848.)	1,823
Carter, -	-	908
Clarke, -	-	1,719
Fleming, -	-	2,311
Greenup, -	-	1,597
Lawrence, -	-	956
Lewis, -	-	1,336
Morgan, -	-	1,225
Montgomery, -	-	1,398
Johnson, -	-	570

13,843

District No. 10, shall consist of the counties of:

Boone, -	(Legal voters for 1848.)	1,865
Bracken, -	-	1,586
Campbell, -	-	1,447
Grant, -	-	1,098
Harrison, -	-	2,060
Kenton, -	-	2,560
Mason, -	-	2,845
Nicholas, -	-	1,713
Pendleton, -	-	1,210

16,384

#### RECAPITULATION OF DISTRICTS.

First District, 14,436, ten members, and a fraction of 276.

Second District, 14,303, ten members, and a fraction of 143.

Third District, 13,381, nine members, and a fraction of 637.

Fourth District, 13,810, nine members, and a fraction of 1,066.

Fifth District, 14,293, ten members, and a fraction of 133.

Sixth District, 13,995, nine members, and a fraction of 1,251.

Seventh District, 14,743, ten members, and a fraction of 583.

Eighth District, 12,173, eight members, and a fraction of 845.

Ninth District, 13,844, nine members, and a fraction of 1,100.

Tenth District, 16,384, eleven members and a fraction of 808.

The number of representatives shall, in the several years of making these enumerations, be apportioned among the ten several districts, proportioned to each according to their respective representative population. And the legislature, in apportioning the representatives to each district, shall be governed by the following rules:

[ Rules to be supplied. ]

When a new county shall be formed of territory belonging to more than one district, that county shall be added to, and form a part of,

that district having the least number of representative population.

Mr. DESHA. In submitting that proposition, I wish it to be distinctly understood that I am not governed by any selfish or political motives. I believe, as I said the other day, that the method of laying off the state into a certain number of districts is best, and the greater the number of districts the better, in order to provide that the different localities of the state may be fairly represented according to the respective numbers embraced in each district. I have laid off these districts into the ten congressional districts, with two exceptions. The reasons for these exceptions I think will be obvious to this house. The first exception is that of the county of Gallatin, which belongs to the tenth district, but which I have added to the seventh, for this reason, that the counties of Gallatin and Carroll are both small counties, neither of them being entitled to a separate representative. They are so situated, with respect to surrounding counties, that neither could be attached to any other so as to entitle it to a representative. Hence I have thrown them together. The other change is in the north-eastern part of the state. Johnson is added to the ninth congressional district, whereas Breathitt is taken from the ninth and added to the 6th. This is done for the same purpose. So far as the politics of the counties are concerned, both now have a majority on the same side of the question. I do not think that politics should govern any member here, and I am satisfied it will not, so as to prevent the adoption of some safe and just method of representation. We have no assurance that the disparity will remain as it now is, and consequently it could have little influence, if members were so disposed. If I thought I could be governed by selfish or political motives, I should consider myself unworthy of a seat in this body. My object is to prevent rolling residuums beyond the district, and I wish to take away discretionary power from the legislature, if it can be done, and to insure a just apportionment to the different parts of the state. I therefore move that the resolution be printed.

The motion was agreed to.

#### LEGISLATIVE DEPARTMENT.

The convention resumed the consideration of the report of the committee on the legislative department.

Mr. KAVANAUGH. I rise to give notice, under the rule, that I shall, at the proper time, move a reconsideration of the vote by which the thirty-fifth section of the report on the legislative department was adopted yesterday.

The object of the provision was to require that the whole law on any given subject should be contained in one statute only, that it all might be seen at a single view. But as the section now reads, it will in my opinion be burdensome to the legislature, expensive to the treasury, and will utterly fail of accomplishing its purposes.

While I am up, I will ask the indulgence of the convention to make a correction. The gentleman from Logan, (Mr. Irwin,) a day or two since, took occasion to distinguish between what he termed the rich and the poor counties of the state; and I see he has placed Anderson in the

latter class. In his remarks he seemed to think the people must be poor wherever children were numerous, and as Anderson has a fine crop of them, he has placed her among the poor counties.

Now I beg leave to give the gentleman a small item of information. It is this: That though Anderson is a small county, and has but few voters compared with some others, she yet pays more nett revenue into the treasury, than any one of forty eight other counties in the state. I speak advisedly. And sir, it is true, that we have abundant crops of children. We are proud of it. And we intend to teach them, at least this much of politeness—that whenever any of them may by accident or otherwise get rich, they are not, in the next company into which they may happen to fall, to say to this one or that: "Sir, I am rich and you are poor."

Mr. BOYD. As there seems to be considerable anxiety, on the part of delegates to get on with the business of the legislative report, I rise to withdraw the amendment I offered yesterday, with a view of offering it again when the report of the committee on miscellaneous provisions shall come up.

Mr. GRAY offered the following amendment, as an addition to the section which he offered yesterday:

"All property, except franchises and corporate privileges, shall be taxed in proportion to its value, to be ascertained as provided for by law."

Mr. C. A. WICKLIFFE. I am much in favor of the principle of the proposed amendment. I will however, suggest that it would be more appropriate under the head of miscellaneous provisions. The term property, may be interpreted variously. It may be interpreted so as to exclude the right of taxation on the principle of what is called the equalization law. I am in favor of the principle, that all property shall be taxed according to its intrinsic value, equally; yet there are many subjects of taxation, which perhaps would not fall under the exception which the gentleman proposes. I therefore will ask him to withdraw it for the present, that it may be matured with reference to the system of taxation, which may be done by the gentleman, I think, in such a way as will entirely meet my approbation, and that of the house.

Mr. GRAY. I have no objection. My object is to have some regulation, so that taxes may be equal and uniform, and that the legislature may not have the right to discriminate between different kinds of property. I think the words franchises and incorporated privileges would embrace every species of property that ought to be specifically taxed. But I will withdraw it, as it may be better to come up under the general provisions.

Mr. HAMILTON offered the following as an additional section.

"Within five years after the adoption of this constitution, the legislature shall appoint not less than three, nor more than five persons, learned in the law, who shall revise, digest, and arrange the statute laws, civil and criminal, so as to have but one law on any one subject, to be in plain english, in such manner as the legislature may direct—and a like revision shall be had as often as shall be found necessary."

Mr. HAMILTON. This is a section which I

think ought to be added to the constitution, and it will be a benefit to the people, by making the laws clear to all. It is plain that we have now too large a quantity of statute laws. I believe there are more than 3,000 pages of them. We have laws on every subject, and among them, old british laws, which were made in the fourteenth century. The reason is, that when Virginia sprang into existence, she was without a code of laws, and had to adopt these old laws; and if I mistake not, she did not revise her laws till after Kentucky became a distinct commonwealth. We, under the same necessity, adopted the Virginia code. We have statutes made 400 or 500 years ago, and some of them made by old women.

Why this subject has been permitted to remain so long in Kentucky, while we have had so many great statesmen, has been a wonder to me. Our laws have been multiplied to such a degree that no man except a regular lawyer can keep up with them. If a man learned in the law cannot do it, what must be the situation of the common justices of the country? It is as clear as A, B, C, that they cannot do it. Frequent appeals are taken from the decisions of the circuit court judges, because they have pursued a kind of guessing principle in many cases. I wish to call attention to an act passed in 1838, entitled, "an act to regulate equitable proceedings under five pounds before justices of the peace." In 1839 that act was amended, and then again in 1840 it was so amended as to increase the jurisdiction of justices of the peace to all sums under fifty dollars and over five pounds. I happened to be a kind of jack-leg magistrate and was applied to for an injunction, which was granted. It is plain I had no jurisdiction over five pounds. It was not strange that a common magistrate like me should be mistaken. I recollect my friend from Bourbon told me he once had a case of the same kind, in which it was difficult for him to persuade the learned judge of the mistake that had been made. This shows the necessity of having the laws plain. And it is necessary they should be plain English too. There are many technical terms that I cannot see the use of to any body under the heavens but a lawyer. In Hardin county a case of mine came before the county court in which the lawyer put a technical term into the plea, which I knew no more of than of the sound of a bull frog in a pond. (Laughter.) I found out when it was too late, that the plea could not be sustained, for it was not applicable to the case. If the plea had been in plain English, I would not have suffered it to be put in. I think the necessity of this is plain to every body, and I am in hopes the convention will adopt this section.

The PRESIDENT. I understand that this amendment is the first section of a report of a select committee. That report has been referred to the committee of the whole, and I think it is now out of order to offer it as an amendment to this article; but I will submit the question to the convention whether it shall be taken up.

Mr. HAMILTON. That committee have taken two or three of the resolutions which I sometime since offered, and I want them all to go together.

Mr. TRIPLETT. I was on that select committee and drafted that amendment, and I have something to say about it, but I am not prepar-

ed to say it now. I wish it to be laid over for the present.

Mr. HAMILTON. I will consent to lay it over.

It was laid over accordingly.

Mr. MACHEN offered the following as an additional section:

"The legislature shall have no power to pass laws sanctioning, in any manner, directly or indirectly, the suspension of specie payments by any person or corporation, issuing bank notes of any description."

Mr. HARDIN moved to pass over the further consideration of this report till Monday next, which was agreed to.

#### COURT OF APPEALS.

The report of the joint committee on the court of appeals, circuit, and county courts, was then taken up for consideration.

The 1st, 2nd, and 3rd sections of the 1st article of the report were read and adopted, without amendment, as follows:

"SEC. 1. The judicial power of this commonwealth, both as to matters of law and equity, shall be vested in one supreme court, (which shall be styled the court of appeals,) the courts established by this constitution, and in such inferior courts as the general assembly may, from time to time, erect and establish."

"SEC. 2. The court of appeals shall have appellate jurisdiction only, which shall be co-extensive with the state, under such restrictions and regulations, not repugnant to this constitution, as may, from time to time, be prescribed by law."

"SEC. 3. The judges of the court of appeals shall hold their offices for the term of eight years, from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the governor shall remove any of them on the address of two-thirds of each house of the general assembly: *Provided, however,* That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected."

The 4th section was then read as follows:

"SEC. 4. The court of appeals shall consist of four judges, any three of whom may constitute a court for the transaction of business: *Provided,* That whenever a vacancy shall occur in said court, from any cause, the general assembly shall have the power to reduce the number of judges and districts; but in no event shall there be less than three judges and districts. In case a change in the number of the judges of the court of appeals shall be made, the term of office and number of districts shall be so changed as to preserve the principle of electing one judge every two years. The judges shall, by virtue of their offices, be conservators of the peace throughout the state. The style of all process shall be, "The commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

Mr. HARDIN. I will merely mention that this section is the one that was so much controverted, and its present state is the result of a compromise by the committee.

Mr. CLARKE. Whilst the propriety of having four judges was under consideration, I understood the gentleman from Nelson (Mr. Hardin) to say, that he had been informed by one of the judges of the court of appeals, that a fourth judge was unnecessary; that three judges could transact all the business devolving on that branch of the judiciary. I was originally in favor of the appointment of a fourth judge, on the ground that if the court of appeals should be branched, the labors of the court might be somewhat increased; and I was in favor of it also on the ground, that I was informed, and believed the information to be correct, that three judges could not transact the business well.

According to this bill, however, the court of appeals is not to be branched; and for one, I am unwilling to increase the expense by adding another judge. I shall act upon the statement made by the elder gentleman from Nelson, (Mr. Hardin,) who has always been opposed, I believe, to branching the court. I shall act on the statement made by him, upon the authority of one of the judges of the present court of appeals. If, as he states, three judges are sufficient, I shall be inclined to move, and do now move, to strike out "four" and insert "three."

Mr. HARDIN. I did not talk with chief justice Marshall myself on the subject, but Mr. Jas. Harlan told me he had. I will mention again that I have been in favor of having only three judges; but we had to make a compromise on the subject, and I am willing to stand by that compromise.

Mr. A. K. MARSHALL. I took occasion not only to talk with chief justice Marshall, but also with ex-chief justice Robertson, on the subject. And in the conversation that I had with judge Robertson, he expressed a preference for four judges instead of three. I asked him why, and enquired particularly whether it was because the labors of the court of appeals had so increased as to render four judges necessary. He said no; that so far from a fourth judge expediting the business of the court, it would rather retard the business. He gave rather a different explanation of the course pursued by the court of appeals from that which has been given by some gentlemen on this floor. He stated that it was the habit of the court of appeals to consult the opinion of each judge, and of course the more judges there were to be consulted, the more time would be consumed in the consideration of each case. But he stated as a reason why he preferred four, that he thought there would be more dignity attached to the opinions of the court if it were composed of four judges. I do not exactly agree with this view of the case. It occurs to me, that unless we place men in office whose character and standing can give dignity to their proceedings, we might multiply the number *ad infinitum* without giving additional dignity to the court. In respect to some things, two heads are said to be better than one, but I do not think it is applicable in this particular instance. In the conversation that I had with judge Marshall, he expressed no preference for three or four, but

stated emphatically that three were amply sufficient to transact the business of the court; and he coincided with the opinion of judge Robertson, that four judges would rather retard than expedite the business, and that it would be no disadvantage, as far as the transaction of the business of the country was concerned, that the court should consist of but three judges.

I for one shall go against the addition of a fourth judge. I cannot conceive on what possible ground we are to advocate the creation of an additional officer, when those who now hold the office, and who are best qualified to form an opinion on the subject, tell us that an additional judge is unnecessary. What excuse can we make, either to ourselves or to our constituents, for adding another? If the business of the court requires four judges, I shall be in favor of having four; but I must be satisfied that the fourth judge is necessary, before I can vote for adding a fourth. While those gentlemen, who certainly have no interest in the matter, and who are best qualified to know whether or not the interests of the country require it, tell us, one and all of them, that so far from there being a necessity for it, there are strong reasons why an additional officer should not be created, I cannot very well understand how we can apologize, either to ourselves or to the state, for increasing the number of officers, and thereby increasing the expenses of the state.

I am told there are about fifteen or twenty candidates for the judgeship upon this floor. I am not one of them. If I were, in all human probability I should be in favor of creating an additional judgeship. If that be the motive by which gentlemen are actuated in seeking to create an additional judge, it may be a good reason with them, but it does not suit me. I shall be compelled, therefore, to go against it. We have had three judges on the bench of the appellate court for some time, and the business of the court, I believe, has been pretty well attended to. I have heard very little complaint on the subject, on the part of the people. The judges themselves say, that three are enough to transact all the business that comes before them, and that if you place another judge upon the bench you will, instead of expediting the business, retard the action of the court. There are some forty or fifty lawyers in this house, and as this office is confined entirely to the legal profession; and as one of the most eminent lawyers upon this floor has told me there will be twenty candidates at least, among the delegates here assembled, for the office of judge, I have almost been induced to suppose that this is intended as a provision for supplying the wants of the legal profession, by providing an office for one of them. For myself, I could offer no sufficient apology to my constituents for adding another judge to the bench of the appellate court.

Mr. MANSFIELD. It will be remembered that I voted at the outset to strike out from the bill four judges and insert three. I have been in favor of branching the court of appeals, but it appeared to me that it could be branched with three judges; that was my calculation, but afterwards I was made to believe that it would require four. It was for this reason that I moved a reconsideration of the vote striking out the

fourth judge. My desire was, that the court of appeals should be branched; if that is not to be done, or if it is to be left to future legislation, I should fall back to three judges, as the number which shall constitute the court.

Mr. WOODSON. I voted originally for striking out the fourth judge, believing that three were competent to discharge the duties devolving on the court of appeals, but the whole matter has been referred to a committee of thirty intelligent gentlemen. They gave it a thorough investigation, and I think their report ought to be sufficient evidence to us of the propriety of adding a fourth judge. Consequently, as it comes endorsed by this high authority—confessing that I do not perceive the necessity for it myself—I feel inclined to vote for the report of the committee.

In regard to the remark of the gentleman from Jessamine, (Mr. A. K. Marshall,) that the legal profession are endeavoring to create sinecures for themselves—

Mr. A. K. MARSHALL. I did not say that there was any effort of that kind made here. I stated emphatically, that if my constituents called on me for the reason for creating an additional judgeship, I did not know any other that I could give.

Mr. WOODSON. I understood the gentleman distinctly. He said that was the only reason he could assign for the creation of this additional office; and I understood from the gentleman's remarks that he thought, from the number of the members of that profession in this house, some such provision was necessary. I have no doubt there are a great many lawyers in the country who are sufficiently needy, but they are not more numerous nor more needy than those of the profession to which the gentleman belongs; nor are they a greater blessing to the country, nor a greater curse, than those of his profession. I cannot conceive, sir, that there is any lawyer upon this floor—I care not how aspiring he may be—who is influenced by such considerations as those the gentleman has intimated. I do not know that there is a single aspirant for office upon this floor. I have heard nothing of the sort; but I know that there are prejudices existing in the country against the legal profession, and I am sorry to see that there are a great many men who are endeavoring to pander to this popular prejudice. It is not necessary that I should endeavor to exculpate the profession, from the calumnies that are so frequently cast upon it. The lawyers, sir, in this country, need no defence at my hands. I care not at what period of the history of this government you look. The lawyers of 1776 need no vindication of their patriotism, or devotion to their country. Sir, when the first fires of liberty were kindled in New England, and answered back by the equal lights that were reared in the Old Dominion, I ask where the bright particular stars of that period were to be found, if not among the legal profession of the Old Dominion and of New England? The names of Adams, of Quincy, and of Henry, will be remembered as long as liberty finds a votary on earth. Go back to the revolution in England. Who was it contributed most in delivering the people from the shackles of despotism? Lawyers were particularly con-

spicuous. I care not to what period, or to what epoch you refer, whenever the question of popular rights has been involved, the legal profession has always stood up for the rights of the people. The members of the legal profession, sir, are behind none—notwithstanding the intimation of the gentleman that lawyers come here endeavoring to create offices for themselves—they are second to none, sir, in patriotism, talent, and devotion to the rights of the people.

Mr. GHOLSON. I sir, am no lawyer, and the report of the committee, unfortunately for me, has appropriated the office of judge, for the benefit only of the lawyers. This of course cuts me off from any chance of ever being a candidate for a judgeship. Although I have no chance of being a judge, yet I am for having four judges of the court of appeals, and I am extremely sorry that my talented friend from Simpson, (Mr. Clarke,) has flown off, just at the time of our greatest want of his aid. Now sir, I was for four judges, for four districts, and for putting the machinery into operation at once, because I knew that such was the will, and wish of those who sent me here. But I could not have the thing all my own way, and must take what I can get. My talented friend from Nelson, (Mr. Hardin,) voted with many others, to limit the number to three, and I was overruled. The compromise agreed upon by the committee, however, gives to those who are in favor of branching the court, a very decided advantage. Being unable to procure the branching of the court at once, as I desired, I am willing to take the report of the committee, which gives us four districts, and four judges, believing that with these we shall certainly have much less difficulty in consummating our wishes through the legislature, than with three districts and three judges. Besides this sir, no man here should expect to have all things to suit his own particular views, regardless of the wishes or opinions of others. We should all concede something, in order that we may come to an amicable agreement. I neither have, nor will I bluster and threaten. No sir, I have not seen, and do not expect to see, anything done that will make me oppose this constitution.

I appreciate the patriotism and the talent of the legal profession, as highly as any gentleman on this floor, and I concur fully in all that was said of their patriotism &c. by the gentleman from Knox. Yet, were I to speak my sober opinion, I must be permitted to say, that in my own humble judgment, Kentucky is most wofully lawyer-ridden. I am not for assisting the lawyers; far from it sir. But I am for helping the people to have justice within their reach.

It was contended by many who opposed the branching of the court, and by others who were willing it should be done, that the question was entirely new, that they did not know the wishes of their constituents; that the question was not heard of in many sections of the country. This being the case, is not something due to those gentlemen who are willing that the court should be branched, but not willing to make it unconditional in the constitution, lest it might not please their constituents. Mr. President, I think much, very much, is due those magnanimous gentlemen from the central portions of the state, who thus nobly offer to meet us with so liberal a com-



promise as that reported by the committee. Now if the people want it branched, they will certainly have it done; if not, the legislature will provide that there shall not be a fourth judge, after the first term of two years shall have expired. The report of the committee puts it entirely within the power of the people, and for one, I say their will be done. The paying a two years salary for one judge, cannot, will not be of very great consequence. But sir, the opinion of this body will no doubt have great weight with the people, and I want the advantage of that opinion as indicated in the report of the committee, when the subject is presented to the people.

As to the opinion of my talented friend from Jessamine, (Mr. A. K. Marshall,) that this is designed to furnish an office for lawyers, I beg leave again to assure him, nothing is further from my wishes. How many candidates there are upon this floor, I do not know. But in my portion of the state, I think sir, there are many gentlemen, not now on this floor, who in talents, attainments, integrity, and in all that adorns the head and heart of man, have few superiors here or elsewhere, that might perchance be found very formidable competitors of any aspirant in this body (if any such there be.) I sir, am not attempting to create an office for lawyers. I am for the good, the convenience of the people. I am for procuring a cheaper, more equal, and more perfect administration of justice to all.

There is another feature in this matter, that I had greatly at heart, sir; it was overruled however, but I am strongly tempted to try it again. It is, that the concurrence of three judges shall be required to reverse the decision of the inferior tribunal. This I think sir, is due to the circuit judge, who, if equally capable and honest, all I think will agree, must in the very nature of things, be a better judge of the real merits of a case, than any set of judges here, who act from a mere brief of the case.

It was the overruling of what I believed a correct opinion (one judge dissenting,) that first suggested to my mind the addition of a fourth judge. It is wrong sir, to let the opinion of two men overrule that of two others, when one of those overruled must best understand the case.

I beseech those who favor four judges and four branches, to stand by the report of the committee. Do this and I doubt not our wishes will be consummated by the people. To them I am willing to leave the matter, and I again say, their will be done.

Mr. BOYD. I am one of those who voted to strike out the fourth judge. I was also on the judiciary committee, but unlike a good many of the members of that committee, I never gave in my adhesion to all that was done there. My friend from Ballard (Mr. Gholson,) says, that those in favor of four judges and the district system, have the vantage ground. It is my opinion that he is correct in that. As a matter of compromise, then, I am willing to go for four judges, if the court is branched, and made to sit in each of the districts; and I am inclined to think that I am not alone in this. If the convention is disposed to pass over this section for the present, and take up the ninth section and act upon it, and if they decide that the court shall be branched, I shall then be prepared to

give my vote for the four judges; if they do not, I am still in favor of three.

Mr. APPERSON. I was in favor of four judges, and I gave my reasons for it. And I was in favor, also, of branching the court. I believe with the gentleman from Ballard, (Mr. Gholson,) that the probability is that the legislature will branch the court, if the convention determine that there shall be four judges. This, however, is left entirely at the option of the legislature; and if it be decided by the legislature that the court shall not be branched, there will only be the additional expense of a judge's salary for two years.

Something has been said about creating offices for lawyers. So far as my district is concerned, like that of my friend from Ballard, (Mr. Gholson,) there are within its limits individuals who not only have talent enough to fill such an office, but who would only have to signify their willingness to accept the office, and it would be tendered to them. I allude to Judge Simpson, particularly, as belonging to that class of individuals. I presume every gentleman is disposed to cast his vote in the manner which he conceives will most redound to the general benefit; and I see no mode which I think is better calculated to harmonise the conflicting views of delegates, than the one here proposed.

Mr. OHRISMAN. When this question was first up, the younger gentleman from Nelson (Mr. C. A. Wickliffe,) moved to strike out "four" and insert "three." When that vote was taken I chanced to be absent. I desire to state here, that I am in favor of four judges, in the event of the court being branched; but if this body refuses to branch the court, I am determined to fall back on the old number—three.

Mr. W. C. MARSHALL. It is known to all that I have been opposed to having four judges of the court of appeals. I voted against four, and one of the many objections that operated with me was, that I believed the appointment of a fourth judge would necessarily result in branching the court of appeals. And according to the convictions of my mind, branching the court would be one of the greatest calamities that could be inflicted upon the state. I have never changed that opinion. And I believe that the proposition for the appointment of an additional judge to the bench of the court of appeals, could not prevail if separated from the idea of branching the court. I did not expect there would be perfect harmony—I did not expect, in coming here, that I could obtain all that I desired. I came prepared to yield somewhat, in order to secure unanimity. And if every gentleman would act with that view, we might come together upon one common platform; and by mutual concession and compromise, agree upon a constitution that would be satisfactory to all. I gave my voice for the committee of thirty, in the hope that a compromise would be agreed upon by them, that would meet the views of all, and in the belief that more good would grow out of their deliberations in committee, than we would be able to secure by means of discussion in the convention; because, in committee it is not as here, where speeches are made that are to go to the country—speeches

which gentlemen make with a view to being well spoken of in the newspapers. I was sorry to hear from the gentleman from Trigg, (Mr. Boyd,) that he is so tenacious of his opinion. I suggested to the gentleman that I was willing to make concession, and that if the people of the country desired the branching of the court, I was willing they should have it. But I was not willing to make it a constitutional provision, for it would be putting into the hands of those who are opposed to the reforms you are about to make, a power which they can wield against you. My venerable friend who sits near me (Mr. Hardin,) occupies the same position that I do upon this subject; he agreed with me, and we both went in favor of the additional judge. It was carried through the committee with something like unanimity of feeling; and although the gentleman from Trigg feels disinclined to go for it here, yet as the committee have agreed upon four judges, by way of compromise, I think we should all go in favor of it. Suppose you strike out "four," and insert "three," what is to be gained by it? Many gentlemen believe that three judges are not sufficient to do the business. But if you allow the section to stand as it is, there will be four judges, until the question comes up before the people, whether they want the court branched. It will be discussed in every county. If they want the four judges they will retain them—if they require the four judges without branching, the four will remain—if they require but three, they will have but three. If the court is to be branched, four judges will be requisite. But I am against the branching of the court—I believe it is wrong. I believe that the court should be held at the seat of government, where the judges will have the use of a good library. It is the only security we can have for the stability of the decisions of the court; for the correctness of the rules and precedents that will be established by the court, and which are to govern and control the rights and interests of the people of the country. I hope my friend from Simpson will withdraw his proposition, and allow the report to remain as it is. I think this is the course we ought to take, and I trust he will withdraw it, when he comes to review the matter.

Mr. LISLE. When the proposition was first up in the house, to strike out "four" and insert "three," I was in favor of it. Afterwards, when the three committees were united, forming a committee of thirty, I was a member of that committee, and voted in committee against four judges, and shall continue to do so. As has been said by some gentlemen who have addressed the house, it has been urged throughout, as the strongest reason why we should add another judge, that the branching of the court would necessarily result from the increased number of judges. That, sir, is not proposed to be done. I ask gentlemen, if this proposition for adding a fourth judge to the court of appeals had come up upon its own merits, disconnected with the question of branching the court, how large a support would it have received? I imagine from the arguments we have heard, that its supporters would have been few.

We are told by various gentlemen who profess to be well informed on the subject, and who

give us the information as coming from the present judges of the court of appeals, that an additional judge will not facilitate the dispatch of business. For what purpose, then, are we to add another judge? It has been said, that the object is, that it may ultimately lead to the branching of the court of appeals. If it be necessary to branch the court, let us do it at once.

I will give the reason which shall influence me in the vote I am about to give; but it is a reason that may not perhaps influence others. As far as I am concerned, until I came into this body, I did not hear of a politician, I did not know of a newspaper, or in fact of a single man in the country, who advocated the addition of a judge to the court of appeals. It was perfectly new to me when proposed here, and delegates will recollect, that it was proposed and argued in connection with branching the court; and in that connection only, is it entitled to any force. Now this is the ground I occupy; I am willing to let the number of the judges of the court of appeals stand just where it is, because I do not believe that an increase is demanded, as far as the public is concerned—at least this is the case so far as I am informed upon the subject—and to authorize the legislature whenever the public good requires it, to add to the number of the judges; and if the branching of the court be demanded by public sentiment, to authorize the legislature to do so. Why should we act in anticipation of public sentiment? And whenever the court of appeals shall be branched, if the legislature, in its wisdom, deem it necessary that there shall be an additional judge, let the power be confided to the legislature to authorize the election of such judge. I therefore, shall vote against retaining the fourth judge, because I have heard no demand for an addition being made to the number of the judges of the court of appeals.

Mr. C. A. WICKLIFFE. Mr. President, I did not anticipate the motion from the delegate from Simpson. I am content, sir—individually—to abide by the judgment of the house, in whatever form that judgment may be pronounced.

I am one of those who believe that the public sentiment of Kentucky—yes sir, I repeat it in the hearing of the members of the legal profession, and they will sustain me—demanded that in the reorganization of the judicial department of the government, there should be infused into it something of new element by which to insure public confidence in the decisions of that tribunal. Having formed the opinion from some practical knowledge of that tribunal, that a fourth judge was necessary to increase that confidence, I should have been in favor of constituting the court with the number of four judges, with or without the districting the court in its sessions. My duty as chairman of the committee, necessarily required me to advocate the report of the committee as originally made, and I shall vote for, and sustain it as agreed upon in a spirit of harmony.

The remark of the gentleman from Jessemine, (Mr. A. K. Marshall), that he was informed by the ablest lawyer in this house, there are at least twenty lawyers, members of this convention, who were, or would be candidates for the office of judge; that he (Mr. Marshall) had heard no

reason assigned for the addition of a fourth judge to the appellate court, and when he returned to his constituents he could give them no other reason than that the office was created by the legal profession, that some of them might fill it—with what justice and with what parliamentary propriety the remark has been made, I will leave others to decide for themselves. I have never yet, sir, aspired to the judicial ermine—though tendered to me—and I never shall. I would be unworthy of the position I occupy here, if I could be influenced by a motive so unworthy as the remarks of the gentleman would seem to imply. I know, sir, that in deliberative bodies, constituted as this is, of different professions, it is sometimes unfortunately the case, that men seek to excite prejudices against the legal profession. I shall leave them who attempt it, in this house, to the enjoyment of all the pleasure and power which such a course may give. I shall not attempt to enter into any vindication of the profession. It is enough for me to know, that so far as the gentleman's implication of motive was designed or calculated to have effect upon the action of this house, or upon the country at large, I certainly claim the privilege of saying, I should not fall within the denunciation. And on this subject, I will let those who sent me here decide.

I do not know to what distinguished member of this house the delegate from Jessamine referred, as furnishing the fact, that there were twenty lawyers in the convention who would be candidates for this office, if it should be created by the convention.

Mr. President, most of the states of this Union—three fourths of them, at least, I think—have their appellate courts constituted of at least four judges—some of them as many as eight. I gave the reason when this subject was up on a former day, why I thought a fourth judge on the appellate bench was necessary. I think that we should, in organizing the court, fix the number of judges in the constitution, beyond which legislative discretion should not be permitted to increase them, to prevent, if a crisis should arise, the temptation in times of high excitement, such as we have passed through, the legislature from adding to the number of appellate judges. This thing has been done in some of the states, to secure decisions in conformity to a misdirected and misguided public opinion. Hence I was for fixing and limiting the number in the constitution. It is the court of last resort. Its decisions become the law of the land. The legislature should not have power, at discretion, to add to or diminish the number of its judges. No doubt there are members upon this floor, whose opinions, as to the necessity for four judges are based on the propriety of districting the court, and requiring it to hold its sessions in the different districts. I confess sir, that I am in favor of districting the court, and if I had the power, I would at once prescribe in the constitution, that they should hold their sittings in each district, at times and places to be fixed by the legislature. But I will not disturb the compromise made by the three committees. I will take the whole as it is. There are two or three modes by which it is proposed this court shall be organized. One is an election, by the

people at large, by what is termed general ticket. Another mode—and I believe the gentleman from Jessamine submitted the proposition—is to elect the chief justice by general ticket, and to elect two associates, by districts; and there is the present mode, to elect one judge in each district, and one every two years. These, I believe, are the only conflicting propositions before the house which looks to the election of the appellate judges. I prefer the article as it now stands for the election of four judges. I prefer it because the people in each district will have a better opportunity of electing a man, known to them to be qualified to fill that high and responsible station, than they would by general ticket. Nor do I see the reason why we should dignify the presiding officer of the court—the chief justice—by an election by general ticket.

I see no reason why we should make an exception in the mode of selecting the one judge or the other; their salary is the same; their power is the same; their duties are the same; and I presume that their talent will not be increased by general ticket election. By this distribution of the power of appointment to the different sections of the state, you bring the court more immediately under the proper influence of the people, who will have a just appreciation of their talent, worth and responsibility. As you enlarge the district, if you make the election by general ticket for the whole court, or if you have three districts and divide your state into three divisions, and elect but three judges, one object we have, that is to infuse into the tribunal something more of public confidence, will be defeated. In proportion as you remove the personal knowledge, or opportunities of knowing an individual, you defeat one of the objects which I have in view in voting for an elective judiciary.

When this subject was under the consideration of the convention, some weeks since, I remember very distinctly that the very able member from Franklin, (Mr. Lindsey,) who is a resident and practising lawyer in this city, and who is opposed to districting the court, so far as its sessions are concerned, distinctly stated it, as his opinion, that four judges were necessary in the appellate court, whether you district the court or not; and he so voted. Upon what facts he based that opinion, I do not now remember. We are told, however, that the present distinguished chief justice is of opinion that three judges can do the business better than four, and that three are sufficient. Yes sir, and one could do it perhaps quicker than three. It is not always that business is best done, when it is done most speedily, especially in reference to adjudications in courts of justice of the last resort. I stated on a former occasion, that in conversation with gentlemen who have filled that bench with as much distinction as the present incumbents fill it, they told me before this convention met, that the number should be increased to four; and, sir, for the last six or seven years, during the sitting of this court, I have heard but one opinion expressed upon this subject, and that was that the number of judges on that bench ought to be increased. I never have heard a different opinion in Frankfort until the conflict arose upon the

question of district sittings of the court. With the present incumbents on the bench of that court, I have not had the honor of holding any conversation on the subject. I felt that I could not, with propriety, converse with them, being a member of the committee which had charge of the subject, or I should have done so. The number of four judges seemed to have been disapproved of by gentlemen who thought that four judges, connected with branching, was wrong. The argument was, do not put this principle of branching your court in the constitution, because it was not expected by the people. It will endanger the constitution; public sentiment does not require it. But the offer was made in this house to constitute the court of four judges, and leave the question of district sessions to be decided by the legislature, and by the people hereafter. In that state of the case, the article, at the suggestion of gentlemen who were not members of the committee, which originally reported the project, together with the other articles of the judiciary department of the government, was referred to a joint session of three committees, having the three articles under their immediate consideration, that the conflict of opinion might be compromised and the convention induced to harmonize on the question. I should have done justice, when I reported the article from the joint committee, to the motives, principles—and if the word is not too much hackneyed—the patriotism of the members of this committee. They manifested a disposition to harmonize; to yield up opinions once entertained; to meet on some safe ground that would consolidate the two portions of this house; those who opposed the four judges because they were opposed to the branching; and those in favor of the four judges because they desired the branching of the court. And, sir, my colleague who led the opposition to branching in this house, and whose powers were great and were felt in the contest, submitted the proposition which we have now under consideration, as the terms of a compromise between the extremes in this house.

Some believe that four judges are necessary, whether the court is branched or not; others think three are enough, whether branched or not. Some believe that the court ought to be branched by provision in the constitution; others think that it ought to be left to legislative discretion, after an expression of public sentiment on the subject; and therefore it was proposed to leave the subject, whether the court should be required to hold its sessions in more places than one, to legislative action. It was agreed to in the large committee, and you have now under consideration the result of their harmonious action.

For myself sir, I would prefer to put the provision in the constitution; but I have not the vanity to suppose that what I most desire is best for the country, especially on this subject. I yielded my assent to the proposition of the gentleman from Franklin, and others on this floor, in lieu of the section districting the court, and requiring its sessions to be held in each district. I am willing to leave the subject where the opponents of districting said it ought to be left, to the people through their agents—the legislative department—properly advised and

instructed on the subject. If they believed, two years after the first election, that three judges are sufficient to transact the business of the court, and best calculated to create that increased confidence which the convention think necessary they should possess, I am content. I have no cause Mr. President, of complaint against a member of that committee; they have treated me always with the utmost respect, still sir, when I am called on to form a constitution, and to re-organize and re-construct the judiciary department upon a different principle than that upon which it is now constructed. I will not consent, so far as I am concerned, to construct it in such a mode or manner, as would look exclusively to the re-appointment, by general ticket, of the same gentlemen who now fill the offices.

What would be the effect of the two sections of the bill, which are so intimately connected in this discussion, if the legislature shall believe that it is necessary, for the prompt and cheap administration of justice, in any of the districts of this commonwealth, remote from the seat of government, that the judges should be required to hold terms in that district, they can do it, leaving the court to transact the business of the balance of the state at the seat of government. This would be more convenient, perhaps, than if the balance of the state were at once districted by constitutional provision. It is due perhaps, that I should give my opinion as to what may be the probable operation of it. In all probability, there may never be more than two places for holding this court under the operation of this constitution, besides the seat of government. I think this highly probable; and I judge not so much from what I see manifested here, as from my knowledge of the composition of the state legislature, in times past.

I think it very probable that the legislature will, in the course of time; answer the demands of the southern extreme of the state to meet the wants of that portion of the state, and direct the court to hold one or more terms there, while the balance of the state will perhaps be content to have their business done at the seat of government, as now. And hence it was that I the more willingly acquiesced in the proposition contained in the 9th section, and the proposition which is now under consideration. If, however, experience should point out, during the two first years of the existence of the court under this constitution, that four judges are not necessary for the transaction of the business, the legislature will declare so by law. I do not mean the mere manual labor of writing out opinions alone—I do not mean the drudgery of mind in searching up authorities alone; but I mean the union of mind and talent—the concentration of thought and intellect, in the discharge of the important duties of that tribunal. If the general assembly believe that a fourth judge is not necessary, they will have power to direct the court to be held by three judges, and to make the districts conform to that number, and to make the term of office conform to that number, electing the judges every two years. This is the effect of the compromise, and I am unwilling sir to insert in this constitution, what a large portion of this house, probably a majority, are opposed to. I do not

know, if the question were now presented by an amendment to this bill, to retain the four judges, and reinstate the provision to require the court to hold sessions in four districts, how that question would be decided; but I know there is a powerful array of numbers, as well as talent, against it, and to that I defer. I am willing to accept the proposition of these gentlemen, to leave the whole subject of branching to the legislature. And with this explanation of the objects of the two sections, and of the principles upon which the committee compromised, and as I thought, harmonised, I am willing to leave the decision of the question to the house. I do not know that I should have arisen at all, had it not been for the gentleman's remark, in supposing that the advocates for the fourth judge, must have designed it to have an improper influence on the country, or that it was calculated at least to provide a place for lawyers. I rose to say to him, and to the country, that whether you district the court or not, whether you have four judges or not, the humble individual who addresses you has never thought of filling the office, and if the power to give, should ask me to fill it, I would not do it. Thank God, He has blessed me in his kindness with something to live on in old age, and although I cannot boast of much, I do not belong to that class of the profession to which the gentleman so unkindly alluded.

Mr. A. K. MARSHALL. When I remarked a few moments since that I had understood that there are some twenty lawyers in this house who are candidates for the judgeship, I had supposed that the tone, and spirit, and manner in which the remark was made, would have redeemed it from being considered by any body in the least degree offensive. When, however, the gentleman from Knox (Mr. Woodson,)—seemingly not at all in the spirit of anger—alluded to the remark, I deemed it necessary to disavow to him, and to the house publicly, the slightest disposition, or intention on my part, to make a remark that might be regarded as offensive. I do not often apologise once; I never do twice, to any body. Having publicly disavowed that I intended to make the remark applicable to any one on this floor, individually, I think it should have been sufficient to have prevented any gentleman here from having commented so very extensively upon it; and especially if the remark did not apply to him. I have only to say that if any gentleman feels it to be applicable to himself, "Let the galled jade wince, my withers are unwrung."

Mr. HARDIN. When I met this convention I looked around to see what kind of men it was composed of; and I have since repeatedly remarked, that although I have been in many deliberative bodies—ten years in congress, and ten years in the legislature of this state—yet I think that in the whole course of my public life I have never been associated with an hundred men of more talent—men with whom I am more proud to be associated—than the hundred men that compose this convention. I did intend at some time in the course of the session, to draw a portrait of the whole house collectively, and of some of the distinguished men separately; that posterity might know of what kind of men this conven-

tion was composed; because it has been a great desideratum with me in reading the debates of the Virginia convention, and the debates of the convention that made the constitution of the United States, to know the particular history and description of the men who figured in those conventions; and if I ever worried a gentleman in my life it was Mr. Madison, when I first went to congress, to get from him the personal anecdotes, and the reminiscences of the incidents of the time of the formation of the federal constitution, with which his mind was well stored.

I have procured a statement showing the occupation and ages of the delegates here, which I will read:

Lawyers,	-	-	-	-	-	42
Doctors,	-	-	-	-	-	9
Farmers,	-	-	-	-	-	39
Minister,	-	-	-	-	-	1
Salt-maker,	-	-	-	-	-	1
Trader,	-	-	-	-	-	1
Sheriff,	-	-	-	-	-	1
Merchant,	-	-	-	-	-	1
Miller,	-	-	-	-	-	1
Clerk,	-	-	-	-	-	1
Inn-keeper,	-	-	-	-	-	1
Mechanics,	-	-	-	-	-	2
Delegates,						100

AGES.						
Between 20 and 30,	-	-	-	-	-	4
Between 30 and 40,	-	-	-	-	-	24
Between 40 and 50,	-	-	-	-	-	41
Between 50 and 60,	-	-	-	-	-	24
Between 60 and 70,	-	-	-	-	-	6
Between 70 and 80,	-	-	-	-	-	1
						100

JAMES DUDLEY, oldest delegate, 72.

SELUCIUS GARFIELDE, youngest delegate, 26.

I had this paper prepared preparatory to the work I had proposed to myself, of drawing the portrait of this convention; and it was probably something that I may have said in connection with this that was referred to by the gentleman from Jessamine, (Mr. A. K. Marshall,) a few moments since. When the subject of the court of appeals was under consideration some weeks ago, I remarked, I believe, in a jocular manner to my worthy friend—for I am proud to call every one of the name my friend—a name that comes from old Fauquier county—that I thought this house could furnish candidates enough for the judgeships we were about to create; that as I was going on to sixty six years of age, I was too old, and that my colleague, commonly called "the young gentleman" from Nelson, was going on to sixty two, and he was too old; but that there were as many as fifteen or twenty who were not too old. It was all a piece of fun from beginning to end. I have been personally acquainted with every distinguished man, I believe, who has figured in public life in the United States, from the year 1815 up to this time, and I have served year after year in deliberative bodies, and I do not think that I flatter this convention when I say that I have never seen a more talented body of men, of the same number, any where.

Mr. TURNER. I have been uniformly against branching the court of appeals, and am so still. I have been, and am still, in favor of having four judges, because I think I have seen the necessity for it; and I will say this, that in no conversation that I have had with lawyers of this city, and members of the court, have I heard a different opinion expressed by any one of them until it seemed to enter a little into the matter of branching the court; and I care not what any judge, or what any lawyer has intimated, since the subject has been talked of here. I do not believe judge Marshall has given an opinion; he is one of the most cautious, prudent, discreet men, that I am acquainted with. I do not think that any gentleman, occupying the station that he does, could or would give such an opinion. I know that in the matter of consultation it does take a little additional time, but there is an opportunity of arriving at a more correct result; and when you come to writing out opinions you gain, in point of time, five times as much as you lose in consultation; because it is the writing out finally, in which the great labor consists, in order that the opinions of the court may be presented in such a manner as to settle the law definitely, correctly, and concisely. There is the difficulty. Many a man can arrive at a correct conclusion, in much less time than it would take him to write out his opinion. And it is exceedingly improper that any opinions should be written and published as authority, for governing future decisions, that are not correct in every particular. It is a matter of infinite importance to the country, because incorrect decisions must tend to increase litigation, and consequently to increase the profits of the profession.

It is scarcely necessary for me to say, that I do not expect a judgeship under any circumstances. There is no office that I wish or desire. I have never asked for one, and I never shall.

There is another reason why I desire that there shall be four judges. If any thing of a party nature enter into the composition of the bench, I say in all candor that I do believe that the court will be better constituted, if there be four divisions and one judge be taken from one section of the country, and one from another section. I believe it will keep down all political contention, so far as the judges are concerned, and that they will be more circumspect in regard to having any thing to do with the party politics of the country, and more devoted to the duties of their station.

There is another reason that influences me. If you have but three judges, the term of office will be but six years. I do not think that even eight is long enough to give the proper stability to the decisions of the court, and I appeal to gentlemen on all sides, if we would avoid having a partizan court, whether it is not better that there should be four districts, and four judges, and a term of service of eight years. I hope this section will be permitted to stand; for I think the recommendation of the committee is entitled to some weight and consideration.

Mr. G. W. JOHNSTON. The county which I represent in part, in this body, has no interest in branching the court of appeals, that will influence me to vote for it. The people of my county have suffered no inconvenience—they

have nothing to complain of in this respect; and in the canvass during the last summer in Shelby county, there was nothing said on the subject. I came here uninstructed and without knowing the opinions of those I represent in relation to this matter. I know, however, that the people of Shelby will not expect me to withhold any benefit or privilege from any part of the State of Kentucky, which they enjoy, on account of their peculiar location. I came here, sir, without having reflected on this subject. I listened, however, to the arguments of gentlemen, and became satisfied that a large number of the people of Kentucky suffer much inconvenience, because of the distance at which they live from the seat of government, rendering it difficult for them to be represented in that court, by the counsel who have been in the first instance engaged in their causes; and I determined, therefore, to extend, as far as possible, to those who live in remote sections of the state, the benefits that we enjoy, in regard to the administration of justice. I could only do this by voting to branch the court of appeals. I have voted for it. I have served on the committee to which the matter was referred. I voted for it there, and united with the other members of the committee in the compromise that was made in relation to the whole matter.

Now, sir, although I was willing and did vote for incorporating in the constitution a provision for branching the court of appeals and for the appointment of four judges, yet we have not done that, as delegates will perceive, but we have left the whole matter for the people to determine hereafter, through their representatives in the legislature. And, in doing this, we have risked nothing; we have imposed no burden on the treasury, save the salary of one judge for two years. If the court should be branched by the legislature, it is admitted on all hands that four judges would be necessary. If it be not branched, then, at the expiration of two years, the fourth judge may be discharged by action of the legislature.

Mr. RUDD. This subject has been discussed for two weeks, and then referred and acted upon by a committee of thirty, and it seems to me that every gentleman in the convention, that has paid any attention to the debate, must be prepared at this time to vote. Believing that the opinion of ninety out of the hundred members is fully formed, and that not a word that may be offered will change the mind of a single man, I will now move the previous question.

Mr. GRAY. I hope the gentleman will withdraw his motion, as I desire to submit a few remarks on this question, important as I view it, to my constituents. We certainly have not as yet consumed much time on this report, having already, although it was first taken up this morning, adopted three sections of it.

Mr. RUDD. I do not desire to interfere with the expression of opinion on the part of any gentleman, and I will therefore withdraw the call for the previous question, and move an adjournment.

The motion was not agreed to.

Mr. GRAY. I feel that I ought to return my thanks and the thanks of the people of my section of the country to my friend from Shelby



(Mr. G. W. Johnston) for the magnanimous manner in which he has expressed himself on this occasion, and his desire to carry out the true principle that should actuate every gentleman in the formation of a government. I conceive every government to be formed for the benefit of the whole people, and that its blessings ought to be extended to them as far as it can be. If this court of appeals confers any blessing or benefit on the people of this state, why should it not be brought down, as far as practicable, within the reach of all? That is all we, in my section of the country, ask. Gentlemen have said that this question was not agitated before the people in any of the counties in this state, but I will say to them that it was made directly before the people of my county. I argued the question there on the stump, and I never heard the first man oppose the branching of the court; on the contrary, all of them desired that one of its sessions, at least, should be held in their neighborhood, or somewhere nearer to them than Frankfort. The principle objection urged against it here is, that these judges will not have so fair an opportunity of arriving at correct conclusions and decisions under such a system. When the question was up before, my friend from Kenton (Mr. Stevenson) seemed to think that if the judges were required to go down into the Green river country, so far off from the seat of government, and travel around over the dirt roads to which we are forced to submit, there was something in the atmosphere there that would cloud their minds so that their decisions would not be as clear and as enlightened as if delivered in the capitol. I can assure my friend that there is no such corrupting influence in the atmosphere of that region; and I can tell gentlemen that although we are so far away from Frankfort, there are a few books there out of which the great judges of the court of appeals might enlighten even their well stored minds. And if they would decide from the lights they can procure from the libraries now in that country, I think no apprehension need be entertained of the correctness and justice of their decisions.

This question has been fully discussed, and I do not intend to repeat the arguments on the subject; but I think the branching of the court is a measure the people call for, which they have a just right to, and which this convention should not deny to them. The people have repeatedly demanded it at the hands of the legislature, and have been put off by the pretext—whether right or not—that the constitution denied them the power to do it. We are now forming a constitution, and this act of justice may, therefore, now be done without injury to any one. For myself, I shall go with my friend from Trigg, (Mr. Boyd,) in requiring the constitution to declare that this court shall be branched; but, if we cannot get that, then I am willing to take the report as it is. I believe it is a duty which I owe to my people, to secure, so far as I can, the holding of one of the sessions, at least, of this court somewhere in our section of the state. Now, I have no objection, if it is the sense of the convention, at once to take up the ninth section, as suggested by my friend from Trigg, and settle the question whether we shall, or shall not, require this measure to be inserted in the

constitution, and then to return to the section now under consideration. Or I am willing at once to vote for this section as it now stands. Whether there is a necessity for four judges instead of three, I am not as able to judge as others who are more experienced on this subject. I am willing to go for four, and as remarked by the gentleman from Shelby, if the people should think proper to diminish the number, they would have the power to do so at the end of two years, and the only expense incurred would be that of two years' salary to one judge. I hope my friend from Simpson, therefore, will withdraw his opposition to the four judges.

Mr. CLARKE. The report provides for four judges, and leaves the question of branching to the legislature. I have declared myself in favor of branching, which this report does not do. I have also declared myself in favor of four judges, if the court should be branched. If it is necessary that the one question should be left to the legislature, is it not quite as necessary that the other should? I will go for that, but I will not provide for the four judges by constitutional provision, and then leave it to the discretion of the legislature, as to whether the court shall be branched or not. That is the position I occupy.

Mr. GRAY. I agree with the gentleman as to the branching, but I believe we shall be more apt to get it if we have four judges, than if we have but three, and that is one of the strongest arguments which induces me to go for four judges. Another reason is, that experienced practitioners in the appellate court—such as the gentleman from Madison and the President—have told us that four judges were necessary for the better discharge of the business there. And I believe that if the section is adopted as it is, that a sense of justice in the legislature will provide that the people of all sections of the country, in accordance with the desire of that people, shall have this court brought nearer to them. This belief is a strong inducement to my support of this proposition as it comes from the committee. I hope, also, that my friend from Simpson will adopt the same views. If you reduce the number of judges to three, you reduce our chances of having this court branched. This is a compromise reported by the committee, and although I am not bound by it, yet it seems to be the plan that comes nearest to justice in this matter, and I am for taking it as it is, unless we can do better.

Mr. HARDIN. Every body knows, if they have not forgotten, that I was against four judges, and against branching; and upon that question we fought a hard battle for two or three weeks. I gave up part of my own views to get a compromise, and that was, to leave it to the people, whether they would branch or not, and to place it in a situation so that they might do so if they chose. In this I yielded a great deal, but the gentleman last up, and the gentleman from Trigg, say they do not feel bound by that, and that they will try to break up the present compromise. I have only to say, that if they do that, I shall vote for retaining the four judges, and then move for a reconsideration, if they persist in this branching business. I do not

mean to yield all, when they take back what they give to me.

Mr. STEVENSON. I do not intend to enter upon an argument of this question now. I delivered very briefly my views, when this subject was under consideration before, in which I avowed myself strongly opposed to branching. The gentleman from Christian (Mr. Gray) wholly mistakes me, if he supposes I intended to cast any reflection on any portion of the state. If he will read my speech, I think he will find that the whole character and tenor of it was against any thing like sectional feeling. I never was in the Green river country, but there is no portion of the state which more sincerely commands my respect.

Mr. GRAY. I did not understand the gentleman as casting any reflection, and it was only the arguments he used in opposition to the branching of the court to that section, that I was replying to.

Mr. STEVENSON. I thought the whole tenor of his remarks were to show that I had supposed there was something in the atmosphere of the Green river country that would render a judge unfit to the discharge of his duties, and that certainly would have been an unjust and unwarranted remark on my part. I referred to no particular section of the county, and my argument was, that by establishing the court at one point, the building up a large library, and considerations of that nature, it would give character to the court itself, and I cited the supreme court of the United States, to show that the same arguments which would apply in favor of branching the court of appeals, would apply to branching the supreme court of the United States. I have the highest respect for the Green river country, and for the people who inhabit it; and if I had ever doubted their intellectual ability or purity, those doubts would have been agreeably removed by the specimens which they have sent here. I agree with the gentleman from Christian, that government is for the benefit of the whole people, and I think I am disposed to give a stronger evidence of my faith in that great principle than he is. He says his people want the branching of the court of appeals, and therefore he is for it. Yet if a majority of the people in other sections of the state was opposed to it, my friend ought to give it up, if he is disposed to subscribe to the principle that the interests of a small portion ought to yield to the demands of the balance of the state. Now I stated in my speech before, that although I believed this court ought not to be branched, yet I was ready to bow to the popular will, and was willing to leave the question to the legislature, in order that if the people desired the branching, no matter what my feelings or those of my constituents might be, their will might prevail. Is not that a practical carrying out of the doctrine? I think it is.

I am opposed to four judges, and I think if we desire that the popular will should be expressed on the subject of branching, it should also be expressed as to whether they require four judges. Let us have three judges, giving the legislature the power to increase it to four and to branch if they desire. I think when questions are presented to the people for their

decision they ought to come up fairly, and my friend from Christian frankly avowed that the reason he desired four judges was in order to get the advantage in the submission of the question of branching to the people. I can very clearly see that is the object of my friend, because if you have provided in the constitution for four judges and four districts, why in the legislature you will have the advantage at once, by concentrating the very feelings my friend avowed—a desire of local benefit to his constituents. If there are four districts, why you will have the delegates from each district in favor of branching. I think if we desire the public opinion on both of these questions we should submit them both to the people.

Mr. W. C. MARSHALL. Believing that the time would be better applied in mutual consultation with a view of compromise on this question, than in the making of speeches here, I move that the convention adjourn.

The motion was agreed to, and the convention adjourned.

#### SATURDAY, NOVEMBER 24, 1849.

Prayer by the Rev. Mr. NORTON.

#### COURT OF APPEALS.

The convention resumed the consideration of the report of the joint committees on the court of appeals.

The pending question was the motion to strike out of the fourth section the word "four," and insert "three," as the number of which the judges of the court of appeals shall consist.

Mr. KAVANAUGH called for the yeas and nays, and being taken, they were—yeas 35, nays 37.

YEAS—John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Cope, Garrett Davis, Lucius Desha, James Dudley, Milford Elliott, Green Forrest, Nathan Gaither, James P. Hamilton, John Hargis, William Hendrix, Andrew Hood, William Johnson, George W. Kavanaugh, James M. Lackey, Thomas W. Lisle, George W. Mansfield, Alexander K. Marshall, Nathan McClure, Elijah F. Nuttall, Johnson Price, John T. Robinson, Thomas Rockhold, Ira Root, Michael L. Stoner, John J. Thurman, John Wheeler—35.

NAYS—Mr. President, (Guthrie,) Richard Apperson, Luther Brawner, Thomas D. Brown, Henry R. D. Coleman, William Cowper, Edward Curd, Chasteen T. Dunavan, Benjamin F. Edwards, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, Alfred M. Jackson, Thomas James, George W. Johnston, Peter Lashbrooke, Willis B. Machen, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, Henry B. Pollard, Larkin J. Proctor, James Rudd, Albert G. Talbott, John D. Taylor, William R. Thompson, Philip Triplett, Squire Turner, Andrew S. White, Charles

A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—37.

So the amendment was rejected.

The section was then adopted.

The fifth, sixth, and seventh sections were adopted as follows, without amendment:

"Sec. 5. The general assembly, at its first session after the adoption of this constitution, shall divide the state, by counties, into four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one judge of the court of appeals."

"Sec. 6. The judges first elected shall serve as follows, to-wit: one shall serve two, one four, one six, and one eight years. The judges, at the first term of the court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The judge having the shortest time to serve shall be styled the Chief Justice of Kentucky."

"Sec. 7. If a vacancy shall occur in said court, the governor shall issue a writ of election to fill such vacancy for the residue of the term, and another judge shall be elected by that district, to serve until the expiration of the time for which the judge was elected, whose death, resignation, removal, or other cause, produced such vacancy."

The eighth section was read as follows:

"Sec. 8. No person shall be eligible as judge of the court of appeals, who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to eight years."

On the motion of Mr. MITCHELL, a correction was made by inserting the word "not," before the words "be equal to eight years," at the close of the section.

Mr. WM. JOHNSON called for the yeas and nays on the adoption of the section.

Mr. BOYD thought there was a portion of the section which should be preserved, and therefore he moved to strike out the words "and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall not be equal to eight years."

The yeas and nays were called for on the motion to strike out, and they were—yeas 26, nays 45.

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Thomas James, William Johnson, James M. Lackey, Willis B. Machen, George W. Mansfield, Henry B. Pollard, John T. Robinson, William R. Thompson, John Wheeler—26.

NAYS—Mr. President, (Guthrie) Richard Apperson, John L. Ballinger, Thomas D. Brown,

Charles Chambers, William Chenault, James S. Chrisman, Henry R. D. Coleman, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Mark E. Huston, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, Elijah F. Nuttall, Johnson Price, Larkin J. Proctor, Thomas Rockhold, Ira Root, James Rudd, Michael L. Stoner, Albert G. Talbott, John D. Taylor, John J. Thurman, Philip Triplett, Squire Turner, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—45.

So the motion to strike out was rejected.

Mr. W. JOHNSON withdrew his call for the yeas and nays, and the section was adopted.

The ninth section was read and adopted, as follows:

"Sec. 9. The court of appeals shall hold its sessions at the seat of government, unless otherwise directed by law; but the general assembly may, from time to time, direct that said court shall hold its sessions in any one or more of said districts."

The tenth section was read, as follows:

"Sec. 10. The first election of judges of the court of appeals shall take place on the second Monday in May, 1851, and every two years thereafter, in the district in which a vacancy may occur, by expiration of the term of office; and the judges of the said court shall be commissioned by the governor."

Mr. GHOLSON said that an August election was a time-honored custom in Kentucky, and he disliked to change it. He, therefore, moved to strike out the words, "and every two years thereafter, in the district in which a vacancy may occur, by expiration of the term of office." This would leave the first election under the new constitution to be held in May, and afterwards in August, as heretofore.

Mr. C. A. WICKLIFFE explained. The reason why the month of May was fixed, was, that it was desired to separate the judicial from the political elections, and thus prevent the one having an influence on the other; and the year 1851 was fixed because that was the earliest period at which an election could be held. As it was intended to submit the new constitution to the people, and as the legislature must necessarily make laws to carry the new constitution into effect, an earlier period was not practicable.

Mr. A. K. MARSHALL approved of the object of the committee, to separate the political from the judicial elections, but he believed this could be accomplished without changing the election from the month of August. As it was intended to elect the legislature biennially, he suggested that the members of congress, members of the general assembly, governor, lieutenant governor, &c., could be elected one year in the month of August, and the judicial officers in the same month of the alternate years.

Mr. C. A. WICKLIFFE replied, that it was impossible that these judicial elections could take place in the year 1850, and in August, 1851, the congressional elections would take

place. The members of the legislature would be elected in the same month of the year, 1852.

Mr. A. K. MARSHALL still thought a provision could be made to avoid the contemplated change from the usual period. The convention had certainly the power to change the period of holding the legislative elections.

Mr. GHOLSON urged that the month of May was unfavorable for the farming population, as it was with them a busy season of the year, and if that month was retained they would not be able to participate in the election.

Mr. TRIPLETT called the attention of the convention to the fact that it was impossible to hold the election in May, 1850, and hence it was better to let the section stand as it is.

Mr. THOMPSON moved the previous question, under the operation of which the amendment was rejected, and the section was adopted.

The eleventh section was read and adopted, as follows:

"Sec. 11. There shall be elected, by the qualified voters of this state, a clerk of the court of appeals, who shall hold his office for the term of eight years from and after his election, and who may be removed by the court of appeals for good cause, upon information by the attorney general; and in case the general assembly shall provide for holding the court of appeals in any one or more of said districts, they shall also provide for the election of a clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the clerk of the court of appeals."

The twelfth section was next read:

"Sec. 12. No person shall be eligible to the office of clerk of the court of appeals, unless he be a citizen of the United States, a resident of the state two years next preceding his election, of the age of twenty-one years, and have a certificate from a judge of the court of appeals, or a judge of the circuit court, that he has been examined by their clerk, under the supervision of the court giving said certificate, and that he is qualified for the office for which he may be a candidate."

On the motion of Mr. McHENRY, the word "judge" was substituted for "court," in the passage which provides that the examination of candidates for the clerkship has been made "under the supervision of the judge giving such certificate."

Mr. THOMPSON moved to strike out the words, "and have a certificate from the judge of the court of appeals, or a judge of the circuit court, that he has been examined by their clerk, under the supervision of the judge giving said certificate, and that he is qualified for the office for which he may be a candidate."

The yeas and nays were called for and taken on the amendment, and resulted thus—yeas 29, nays 42.

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, Thomas James, James M. Lackey, Willis B.

Machen, Alexander K. Marshall, David Meriwether, Thomas P. Moore, Henry B. Pollard, Thomas Rockhold, Michael L. Stoner, William R. Thompson, John Wheeler—29.

NAYS—Mr. President (Guthrie,) Richard Apperson, John L. Ballinger, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Edward Curd, James Dudley, Benjamin F. Edwards, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Mark E. Huston, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, Richard L. Mayes, Nathan McClure, John H. McHenry, William D. Mitchell, Elijah F. Nuttall, Johnson Price, Larkin J. Proctor, John T. Robinson, Ira Root, James Rudd, Albert G. Talbott, John D. Taylor, John J. Thurman, Philip Triplett, Squire Turner, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—42.

So the convention refused to strike out.

Mr. MOORE, when his name was called, said he should vote in the affirmative in obedience to instructions, but it was decidedly against his own judgment.

The section was then adopted.

The thirteenth and fourteenth sections were also adopted without amendment, as follows:

"Sec. 13. In case of a vacancy in the office of clerk of the court of appeals, the governor shall issue a writ of election, and the qualified voters of the state, or of the district in which the vacancy may occur, shall elect a clerk of the court of appeals, to serve until the end of the term for which such clerk was elected: *Provided*, That when a vacancy may occur from any cause, or the clerk shall be under charges upon information, the judges of the court of appeals shall have power to appoint a clerk *pro tem.*, to perform the duties of clerk until such vacancy shall be filled, or the clerk acquitted."

"Sec. 14. The general assembly shall direct, by law, the mode and manner of conducting and making the returns to the secretary of state, of all elections for judges and clerk or clerks of the court of appeals, and determining contested elections of any of the officers."

Mr. TURNER. I offer the following additional sections:

"Sec. 15. Writs of error shall be allowed on questions of law, to the accused, in penal and criminal cases."

"Sec. 16. The court of appeals shall have such other officers as may be prescribed by law."

There is now no provision for the appointment of tipstaff and other minor officers, which the court will need, and I offer this, to allow the legislature to permit their appointment.

Mr. C. A. WICKLIFFE. I hope the gentleman from Madison will not press this amendment in this part of the constitution. Indeed, I should be unwilling to engraft the first section in the constitution. It is perfectly within the power of the legislature, unless we inhibit it, to authorize the prosecution of writs of error in criminal cases, as to matters of law or fact either. I was once honored with a seat in the legislature, when I undertook to prepare such a law in obedience to my own judgment, and what I thought the public sentiment at that

time, but I found it did not meet with favor in the lower house. Pardon me for using that term, for when I first served in the legislature, the popular branch occupied the lower floor, and the senate occupied a room just above. We always called it the upper house from its locality.

There is a great diversity of sentiment on the propriety of such a law as the gentleman proposes, and indeed the popular opinion is, that the means of escape of those who deserve punishment are sufficiently numerous. The argument is, that no man who is convicted would rest short of an appeal to the higher court. The difficulty and expense of such an arrangement would be great. I would not therefore make it imperative to pass such a law, but would leave it for the people to direct whether the legislature shall do it. As a member of the legislature, I would vote for it, but as a member of this convention I cannot do it.

With reference to the other section, the gentleman has charge of the very subject matter, in the bill providing for the appointment of ministerial officers, in which he can more appropriately introduce it. Another gentleman has charge of a bill for the appointment of officers generally, to which it may be attached, but I believe it is unnecessary to give this power, for if we do not take it away the legislature will have it as a matter of course.

Mr. HARDIN. If this amendment comes in at all, it would be more appropriate in the bill relating to circuit courts. The writ of error would be from that court. But I protest against its coming in any where. I know the desideratum which the gentleman wishes to secure; to produce uniformity of decisions in relation to criminal cases. That is what we all desire. But if you shall take a writ of error for all cases what would be the result? It would be that in case of conviction a writ of error would be prosecuted almost invariably. Where a man is sent to the penitentiary or condemned to be hung he will take a writ of error and trust to the chapter of accidents to have something turn up in his favor. I would put the case to my friend from Madison, who has as warm a heart as any man I ever knew, suppose he or I have a son who is a hot-spur of a man, and he should kill a man and be sent to the penitentiary, all that we were worth would be turned into a golden key to turn the lock of that prison. If I were worth millions of dollars, and a son of mine was condemned to the penitentiary or to be hung, every dollar should go if necessary to unlock that door. During the time the writ of error was pending in the court of appeals it would take a strong guard to keep him, because all I had and nearly every friend I had would aid in getting him out. If the guard should succeed in keeping him it would be at an enormous expense.

During the time that the unfortunate Mr. Baker was confined in Clay county, after the governor had respited him, there was some alarm lest he would break out, or be rescued, and the guard in that case cost between five and six thousand dollars. I will take occasion to remark that if the governor in that case was blameable for any thing it was for granting the respite. He and I, after consulting over and over, heartily concurred that a pardon ought not to be

granted. I never said that before, but in that case we agreed on every principle, and we investigated it nearly two weeks, the whole of the record, and the arguments of every gentleman. The governor did right in refusing to pardon, because I never would pardon where the jury has not done wrong, unless there were circumstances which could not come out on trial. I hope the gentleman will withdraw his motion.

Mr. TURNER. The remarks of the gentleman from Nelson may make it necessary that I should say something on the other side, that both sides of the question may go out together. I had two cases, one in Garrard and the other in Madison county, in the same year. The punishment in Garrard county was thirty nine lashes, and in Madison it was hanging, for the same identical offence. Cases like this occur every year, and I think, a uniformity of decisions should be had where the penalty is life or liberty. I have known cases where the popular current was against an individual, and he was condemned, while others have been acquitted when they ought not to be. The great men of this country and their sons are acquitted, but the poor men are convicted, and sometimes contrary to law, merely to gratify popular prejudice at the time, and when they would not have been convicted if there had been a settled, uniform code throughout this commonwealth. I have seen this, and I do know that the penal laws are not sufficiently explicit, and that life is not sufficiently secure. The hotspurs of the country are going at large, and too often public sympathy is in favor of the criminal. It is a mistaken sympathy in their favor. I think, we ought also to do away with the practice of carrying concealed weapons. We ought to do every thing we can to secure life and property, and punish the great of the land when they are guilty, and on the other hand secure the poor and the weak against the improper current of public opinion, and get the best talents of the country to sustain and protect them. This right of appeal is allowed under the federal government. If a man is convicted in California, he can appeal to the seat of government. This is allowed in Great Britain, where they hang a man with as little compunction as if he were a dog; still they give the right of a decision by the highest court. But as some who are friendly to the proposition, think it will be better to bring it in in another place, I will withdraw the first section for the present, but I shall ask for a vote on the second.

Mr. HARDIN. I will go heart and hand with the gentleman against this practice of carrying concealed weapons, and I will go further to put something into the constitution against duelling, to prevent these barbarous murders. I drew the duelling law of 1811. Such were the sentiments I then had and I have them still. Hanging a man is not to reform him, but to deter others. When you put a man in the penitentiary, he may reform, but if he is sent there when condemned to be hung, in the pendency of the appeal, attempts to get him out will be made, and a guard will have to attend around the prison.

The question was then taken on the adoption of the section proposed by Mr. Turner, and it was rejected.

## CIRCUIT COURTS.

The convention continued the consideration of the report of the joint committee of thirty, proceeding with the article concerning circuit courts which was next in order.

The first, second, and third sections were adopted, without amendment as follows:

"Sec. 1. There shall be established in each county now, or which may hereafter be erected in this commonwealth, a circuit court."

"Sec. 2. The jurisdiction of said courts shall be, and remain as now established, hereby giving to the general assembly the power to change or alter it."

"Sec. 3. The right to take an appeal or sue out a writ of error to the court of appeals, is hereby given, in the same manner and to the same extent, as it now exists, giving to the general assembly the power to change, alter, or modify, said right."

The fourth section was read as follows:

"Sec. 4. At the first session of the general assembly after this constitution shall go into effect, they shall divide the state into twelve judicial districts, having due regard to business, territory, and population: *Provided*, That no county shall be divided."

Mr. HARDIN. It may be necessary that some explanation should be given of that section. The convention will perceive that seven parts out of nineteen of the business will be added to the labors of the judges.

We have nineteen judges now and we propose to have but twelve, which will increase the business seven parts out of nineteen. It was believed by the committee that we had more judges than were necessary, and I am satisfied that two or three districts were created to get some troublesome men out of the legislature. It would be ill-natured to mention names, but I believe this was the fact. I have made the best estimate I could, and I have had opportunities to judge. My practice during forty three years, has been principally in the circuit courts. I come to the court of appeals occasionally by way of self-defence, but I come with as few cases as possible. I reckon there is not a man more intimate with the operations of the circuit courts of Kentucky than I am, and there will not be for fifty years to come. When I am dead and gone, there will be no other as well acquainted with them.

The business of the circuit courts now occupies from seventy five to ninety juridical days. It will not, perhaps, go over ninety, nor fall below seventy five or eighty. We know very well that the salary of the circuit judge, which is \$1200, will scarcely command the second rate talents at the bar, and our system has run down on that account, and got into disrepute. The object of the committee was to get the best talents which the bar could furnish and to give them employment equal to 140 or 150 days in a year. Here is my friend from Madison, (Mr. Turner) and myself, and I could name many others who are on the down hill of life, and yet take the labor in our offices and in riding from court to court in which we are employed nearly 300 days in the year. I think, therefore, the circuit judge can labor 140 or 150 days and do his

work well; and I believe that the best lawyers in Kentucky will accept the office.

I will explain the plan of the circuit court bill. It is that there shall be a minimum salary of \$1600 in order to command the best talents. On that subject we voted in the committee, beginning at \$2,000 and finally settling on this as a minimum salary, and the whole plan of the bill will fail, and be brought into disrepute, unless we carry the whole plan of the committee into effect. We intend that there shall be twelve districts, and to add seven parts out of twelve more to the judge. We intend to give \$1,600 salary, and unless you will say to the legislature that they shall not come lower than \$1,600 you had better strike out twelve and put in nineteen.

Why do I say it? Because we want the best talents, and there are many lawyers of high private character, who would rather take an office worth \$1,600 from their fellow citizens than to take one worth \$16,000 under the government. It is a matter of feeling, and of pride, because he stands high in the opinion of his neighbors. I believe \$1,600 will bring this talent. I know it will not do to leave this to the legislature, for the members will hunt popularity at home, by reducing salaries.

In the memorable controversy between the old and new courts, we among the old court party saw that the new court party were endeavoring to court popularity, by reducing the salaries, and we determined to out Herod them. We reduced them and cut them down in a most scandalous manner. We had to do it because we were determined not to be beat by them.

I hope the salaries will be fixed at a minimum of \$1,600, and if there are twelve judges, this will save to the state \$5,700. The circuit court system now costs \$28,000 and over. The plan we propose will reduce the judges seven parts out of nineteen, and will add to the salaries only one fourth. There will also be seven attorneyships to be cut down. Just take it then as it is and restore the minimum and I think it will be acceptable to the people every where.

I will remark once more, give us a good judiciary, and if we can make it cheaper than the old system, it will win its way with the body of the people at large. This constitution has to go through a trial. There will be thousands and tens of thousands of objections to every thing. Let us make it good, and at the same time invite the favor of the people, by making it as economical as possible.

Mr. MITCHELL. I supposed the subject of the circuit courts was a subject of compromise as well as that of the court of appeals, and I was astonished to hear the chairman of the committee on the circuit court urges this minimum. I am disposed to adopt the section as it stands. As it has been left out of the provisions in the report on the court of appeals, I think it should be left out here. It may be a clog to the constitution. I am willing to leave it to the legislature, for I believe they will give ample salaries.

Mr. HARDIN. If that was understood to be a compromise in the committee, I will stand to it till I die. But I think it was not.

Mr. BALLINGER. I do not believe that the committee have chosen a sufficient number of circuit judges to transact the business of the com-



monwealth. And I think it will be found, that there is a great disproportion between the labor they are required to perform, and the compensation to be allowed them. I am willing to give them a salary that will compensate them for their labor, time, and the talents requisite to the efficient discharge of the onerous duties of their responsible office. This matter was much discussed in the county I have the honor to represent, during the last summer, and whilst the canvass was going on, for a delegate to this convention. The opinion of the people, as there manifested, was, that they should have the election of all the judges, and all the other officers that heretofore have been appointed. But, whilst they entertained this opinion, they were, so far as respects the judges, for selecting men of the highest talents to discharge the duties imposed upon them, and paying them liberally. Now, wherever it is a mere matter of expediency, and I know what my constituents ask, I will endeavor to carry out their wishes; but when I do not know what their opinions are on particular subjects, I shall do what I consider to be right, and not suffer my action to be controlled or influenced by what I believe personal consequences to myself. We have here appointed four judges of the court of appeals, and what is the amount of the labor they are to perform during the year? In 1848, there were 575 cases: divide that among four, and it gives 143 $\frac{3}{4}$  cases to each judge.

The judges of the circuit courts will have to decide 17,212 cases, excluding from the calculation the Louisville chancery court. So that twelve judges will have over 1440 cases each; and besides, they have a large district to travel over, and their physical labor and expenses are greater than those of the judges of the court of appeals. The judge who presides in the district where I live, although an old man, is of an iron constitution, and performs all of his duties with despatch. He remains in the court house from eight o'clock in the morning till sundown, and that, too, frequently without disposing of all the business before the court. It will be found difficult for twelve judges to discharge the duties imposed upon them, therefore I would move to strike out "twelve" and insert fourteen. That will be few enough to dispose of the business that will come before them. Heretofore the judges have been unable to dispose of all the cases that came before them, and citizens have petitioned the legislature, year after year, and from time to time, for the erection of judicial districts. According to the report before the convention, it allows the legislature the power every fourth year to create additional judges and another judicial district, but I do not believe that twelve circuit court judges are sufficient at this time, and therefore I have made the motion that fourteen be the number.

Mr. M. P. MARSHALL. I had the honor to be appointed a member of the circuit court committee, and of course that appointment continued over to the committee of thirty. This question of limiting the number of circuit judges was considered with uncommon attention on the part of the committee. As much information as could be obtained from lawyers—for I am not a practicing lawyer—we had before us.

One of the great faults of the present system was considered to be the number of circuit court judges, amounting to nineteen. Our inquiries led us to the conclusion that many of the nineteen judges did not occupy more than half the juridical days allowed them. We considered this matter with much deliberation, and concluded that by reducing the number of judges we would really increase the efficiency of the circuit corps; and after getting all the information we could, we concluded that twelve could do the business of the commonwealth, as the population and business now stands, and if twelve could do it, the treasury would be able to pay them easier than an increased number. With a view of increasing their efficiency and giving them an increased salary we reduced the number to twelve, still giving power to the legislature to increase the number to sixteen. We fixed the salary at a minimum of \$1600. We came to that result from making the calculation that we could well afford to pay the increased salary, when we decreased the number of judges, and we concluded that by paying \$1600, we could command the best talent. Some of us considered the fact that we were making an experiment; that we were making an elective judiciary; and, in order to have a fair trial, we should command the best abilities of the state to carry it out before the people. As an inducement to get this talent, we put it in the power of the treasury of the country to pay them well for their services.

These reasons resulted in the report of the circuit court committee. We threw that report before the house, and the reports of the appellate and county courts both. They created much debate with various opinions, and the wisdom of this house appointed a committee of thirty and enjoined on them to make a report. We went into that committee to express the meaning of this house and compromise our own cherished feelings and present a report which should be acceptable to the house.

For one, I will say, it does not present all my favorite views upon the subject of a judicial structure. But the favorite views which I had, I saw were not the views of this house, and it was my duty, if I would compromise, to give up those views which I still consider correct, in order to produce peace and harmony. And at the altar of peace I did agree to sacrifice my views to a very great extent, and now this report is made with the proposition for twelve judges in it, which meets my hearty approval. This, with the minimum proposed, embraced two of my favorite views, and if you had added intelligibility, these would have constituted the whole of the relics of my view of the circuit court tribunal.

It must be conceded, so far as I can gather the opinions of practical lawyers, that twelve circuit judges can now do the business. By reducing the number to twelve and increasing the salary, you increase the talent and efficiency. For depend upon it, talent is to be bought. It is to be called from the bar not only by money, but by honor. When you diffuse this honor, it is weakened to a great extent, and when you diffuse the pay, the motive for labor is weakened. The two ideas are both met by reducing the

number of judges. Give them such a salary that they may have full command of their time, and you increase their efficiency, which efficiency you cannot have without talent. If I had my way, I should insist on the increase of the salary to \$1600. My knowledge is limited on the subject, but my observation induces me to believe that in a great majority of the circuit courts, one half of the juridical days are not employed. Just increase the salary and make them fill out the term of juridical employment, and you gain for the people that which they sent us to confer upon them, good judges, laborious, industrious, well paid, and, if it is not offensive to this house, dignified.

Mr. APPERSON. I did not originally belong to the circuit court committee, but as a member of the court of appeals committee I became one of the committee of thirty. Before the large committee met, I had not made any calculation as to what the necessary labors of the circuit judges would be. However, inasmuch as that report was laid before the committee, of which I was a member, I thought it my duty to make a calculation to ascertain what amount of labor would be required of each judge that the business of the state might be well done. I acknowledge I am one of those who are in favor of paying the judges liberal salaries, but at the same time I would give them plenty of employment, and their salaries should much depend upon the amount of their labors. I became satisfied, as I went on with the investigation, that twelve circuit judges could do, and conveniently too, all the business that legitimately comes before these courts. The gentleman from Lincoln remarked that the judges of the court of appeals have only five hundred and seventy-five cases to determine annually, which he has been pleased to divide by four, because there are to be four judges, as though each judge had not to be consulted as to the determination of each case and to agree as to the proper judgment to be rendered. Although but one judge writes the opinion, still they have all to understand the merits of the case, and the whole five hundred and seventy-five cases have to be understood by the whole four judges. But he says there were upwards of seventeen thousand cases instituted in the circuit courts during the past year. This is true, and according to my calculation, one thousand four hundred and forty cases will be the average for each judge, assuming there will be twelve judges—but does not the gentleman know that something like one third, or perhaps one half, are generally undefended, such as actions upon plain notes, and small presentments, as for Sabbath breaking, swearing, &c.? Does he not know further, that generally speaking, it is our most important cases which are taken from the circuit court to the court of appeals—and of course they are the most difficult and require the most investigation? We see there are about one thousand four hundred and forty cases, including the common law, chancery, and penal, or criminal prosecutions, to be disposed of by twelve judges. Now, let us see if twelve cannot do that business. I had some hesitation about it, because an old and experienced lawyer, with whom I conversed, and who has done a great deal of business, was

of opinion it would not do. Let us examine this matter. I have divided the state into twelve districts, not that I design to offer any proposition so to divide the state in the constitution, but simply as a matter of experiment, that gentlemen may reflect whether the work of each district cannot be conveniently done by one judge. The 1st district embraces fourteen counties, and the 9th embraces thirteen. These are the heaviest districts because of the territory, but there is less business in each than any other of the nine.

The 1st district embraces the counties of Whitley, Laurel, Knox, Harlan, Rockcastle, Owsley, Clay, Breathitt, Perry, Letcher, Pike, Floyd, Johnson, and Morgan. The appearances in these counties amounted last year to only about one thousand one hundred and forty, which number is about three hundred under the average for each circuit.

Permit me, Mr. President, again to remark that in naming the counties to compose the district, it is not by any means designed to be incorporated into the constitution, but to satisfy gentlemen that twelve judges can do the business.

The 2d district would include Lawrence, Carter, Greenup, Lewis, Fleming, Bath, Montgomery, and Clarke, which had one thousand four hundred and three appearances, being thirty seven less than the average. I know one judge can do all the business in this district.

Well, the next district had one thousand four hundred and ninety five appearances, and embraces Mason, Nicholas, Bourbon, Harrison, Bracken, Pendleton, and Campbell, and is a very compact district, and not too much for one judge.

The 4th district is composed of Fayette, Scott, Franklin, Anderson, Woodford, and Jessamine, with one thousand four hundred and eighty two appearances.

If we allow three weeks to Fayette, two to Scott, two to Franklin, two to Anderson, two to Woodford, and two to Jessamine, there will be but thirteen weeks at each term, making twenty six in the year.

The 5th district embraces Madison, Estill, Garrard, Lincoln, Pulaski, Boyle, and Mercer, with one thousand four hundred and eleven appearances; and if two weeks be given to each county at each term, there will be only twenty eight weeks labor in the year.

The 6th district embraces Kenton, Boone, Gallatin, Carroll, Trimble, Henry, Owen, and Grant, which has one thousand four hundred and six appearances, and is but little more labor than judge Pryor now has. The business of this district would not require more than twenty six weeks of labor in the year.

The 7th district embraces Shelby, Spencer, Jefferson, and Oldham, with one thousand four hundred and seventeen appearances. Allow Jefferson ten weeks at each term, and yet the business for the whole circuit would not occupy more than twenty eight weeks in the year.

The 8th district is Nelson, Washington, Marion, Meade, Bullitt, Larue, Hardin, and Breckinridge, with one thousand four hundred and ninety one appearances. This district might require twenty eight or thirty weeks annually, but not more.

The 9th district is composed of Wayne, Russell, Adair, Cumberland, Casey, Clinton, Taylor, Green, Barren, Hart, Edmonson, Monroe, and Allen, with one thousand three hundred and sixty nine appearances. This, like the first district, has under one thousand four hundred appearances, but has a large territory.

It will appear that except the first and the ninth districts, all the others have over one thousand four hundred appearances, and under one thousand five hundred except the twelfth, which has one thousand five hundred and seventy four, and embraces Caldwell, Livingston, McCracken, Marshall, Calloway, Graves, Ballard, Hickman and Fulton.

The tenth district embraces Hancock, Grayson, Butler, Muhlenburg, Ohio, Daviess, Henderson, Union, Hopkins, and Crittenden, which had one thousand four hundred and seventy seven appearances, and is a district requiring as much labor as any other; but, yet lawyers from that district say the business can be well done, at the most, in thirty two weeks.

The eleventh district embraces Warren, Simpson, Logan, Todd, Christian, and Trigg, with one thousand four hundred and forty four appearances, and the business in this district can be well done in twenty eight weeks.

As at present laid off, the districts are very unequal—for instance, in the eighth district there were only three hundred and seventy five appearances; a few more than there were in the county of Harrison, fewer than in the county of Fayette, and fewer than in the county of Mason, or the county of Christian.

The eighteenth circuit was taken from the eighth, and it was said, for the purpose of providing a place for one who was in the way of others. The eighteenth district had but six hundred and sixty eight appearances, and to unite it and the eighth together as they formerly were, they had but one thousand and forty three. This shows that the districts should be greatly reduced in number.

The twelfth district is the largest, but it must necessarily have all the counties southwest of the Tennessee river in it, and also Caldwell county. With these counties it had less business than the tenth district which adjoins it; and, of course the county of Livingston has to be united with the twelfth, and thus constituted, it is the heaviest district in the number of appearances, though, perhaps, will not require more labor than the tenth. I have been assured that the business of this district can be conveniently done by one judge. It will be seen that the nineteenth district, which was the last one made, has as much business nearly, as both the eighth and eighteenth together.

In my judgment, as far as I have been able to learn of the business done, and likely to be done, twelve judges will be amply sufficient. I know that this is giving a great deal more labor to the judges than they now have, and some gentlemen think it is too much. They, however, should remember that the judges now are not occupied half their time in judicial capacity, and they cannot practice at the bar whilst in the receipt of a salary. I would say to a judge, I will give you more salary, but I intend to give you more work to do. In the very largest dis-

trict you can lay off, you cannot have more than thirty or thirty five judicial weeks. Many would like to see a minimum salary inserted in the constitution. I think, however, that when the legislature is satisfied of there being more labor to be performed, they will be disposed to pay for it. I believe that by getting good judges, and giving them much to do, they will do their work well. They will feel there is more obligation resting upon them, as they receive their appointments direct from the hands of the people. I suppose that every judge will feel some pride in having been selected by the people to administer justice among them. They can do all the work well, and easily, and comfortably.

The following are the tables which were used by Mr. Apperson during his speech.

#### TWELVE CIRCUIT COURT DISTRICTS.

FIRST DISTRICT.		No. Cases.
Whitley,	- - - - -	72
Laurel,	- - - - -	51
Knox,	- - - - -	76
Harlan,	- - - - -	56
Rockcastle,	- - - - -	102
Owsley,	- - - - -	73
Clay,	- - - - -	89
Breathitt,	- - - - -	75
Perry,	- - - - -	66
Letcher,	- - - - -	66
Pike,	- - - - -	129
Floyd,	- - - - -	140
Johnson,	- - - - -	74
Morgan,	- - - - -	70

1140

SECOND DISTRICT.		No. Cases.
Lawrence,	- - - - -	108
Carter,	- - - - -	70
Greenup,	- - - - -	162
Lewis,	- - - - -	94
Fleming,	- - - - -	197
Bath,	- - - - -	288
Montgomery,	- - - - -	234
Clarke,	- - - - -	250

1403

THIRD DISTRICT.		No. Cases.
Mason,	- - - - -	378
Nicholas,	- - - - -	247
Harrison,	- - - - -	331
Bracken,	- - - - -	116
Bourbon,	- - - - -	266
Pendleton,	- - - - -	89
Campbell,	- - - - -	68

1495

FOURTH DISTRICT.		No. Cases.
Fayette,	- - - - -	432
Scott,	- - - - -	200
Franklin,	- - - - -	283
Anderson,	- - - - -	139
Woodford,	- - - - -	290
Jessamine,	- - - - -	138

1482

FIFTH DISTRICT.				No. Cases.
Estill,	-	-	-	145
Madison,	-	-	-	215
Garrard,	-	-	-	237
Lincoln,	-	-	-	163
Pulaski,	-	-	-	171
Boyle,	-	-	-	134
Mercer,	-	-	-	346
				<u>1411</u>

SIXTH DISTRICT.				No. Cases.
Kenton,	-	-	-	363
Boone,	-	-	-	142
Gallatin,	-	-	-	63
Carroll,	-	-	-	89
Trimble,	-	-	-	78
Henry,	-	-	-	225
Owen,	-	-	-	230
Grant,	-	-	-	216
				<u>1406</u>

SEVENTH DISTRICT.				No. Cases.
Shelby,	-	-	-	296
Spencer,	-	-	-	77
Jefferson,	-	-	-	886
Oldham,	-	-	-	158
				<u>1417</u>

EIGHTH DISTRICT.				No. Cases.
Nelson,	-	-	-	203
Washington,	-	-	-	311
Marion,	-	-	-	244
Meade,	-	-	-	138
Bullitt,	-	-	-	158
Larue,	-	-	-	113
Hardin,	-	-	-	199
Breckinridge,	-	-	-	125
				<u>1491</u>

NINTH DISTRICT.				No. Cases.
Wayne,	-	-	-	113
Russell,	-	-	-	60
Adair,	-	-	-	97
Cumberland,	-	-	-	105
Casey,	-	-	-	94
Clinton,	-	-	-	63
Taylor,	-	-	-	40
Green,	-	-	-	200
Barren,	-	-	-	279
Hart,	-	-	-	85
Edmondson,	-	-	-	83
Monroe,	-	-	-	50
Allen,	-	-	-	100
				<u>1369</u>

TENTH DISTRICT.				No. Cases.
Hancock,	-	-	-	63
Grayson,	-	-	-	64
Butler,	-	-	-	73
Muhlenburg,	-	-	-	171
Ohio,	-	-	-	148
Daviess,	-	-	-	180
Henderson,	-	-	-	188

Union,	-	-	-	195
Hopkins,	-	-	-	205
Crittenden,	-	-	-	190
				<u>1477</u>

ELEVENTH DISTRICT.				No. Cases.
Warren,	-	-	-	224
Simpson,	-	-	-	59
Logan,	-	-	-	200
Todd,	-	-	-	293
Christian,	-	-	-	481
Trigg,	-	-	-	187
				<u>1444</u>

TWELFTH DISTRICT.				No. Cases.
Caldwell,	-	-	-	280
Livingston,	-	-	-	156
McCracken,	-	-	-	243
Ballard,	-	-	-	206
Graves,	-	-	-	159
Calloway,	-	-	-	116
Marshall,	-	-	-	36
Hickman,	-	-	-	96
Fulton,	-	-	-	283
				<u>1574</u>

Number of suits and prosecutions in nineteen circuit court districts, to-wit:

	Chancery.	Com'on law.	Crimin pros.	Total.
District, No. 1,	245	545	117	907
District, No. 2,	151	533	129	813
District, No. 3,	267	611	85	963
District, No. 4,	278	632	266	1176
District, No. 5,	39	871	134	1044
District, No. 6,	251	569	148	959
District, No. 7,	228	763	78	1069
District, No. 8,	82	196	97	375
District, No. 9,	197	569	164	930
District, No. 10,	296	642	185	1123
District, No. 11,	284	528	130	942
District, No. 12,	225	527	269	1021
District, No. 13,	287	459	142	888
District, No. 14,	199	415	146	760
District, No. 15,	106	224	100	430
District, No. 16,	290	511	338	1139
District, No. 17,	309	836	93	1238
District, No. 18,	135	421	112	668
District, No. 19,	114	332	371	817
				<u>3,983 10,175 3,104 17,262</u>

Mr. NUTTALL. It was a wise stroke of policy to submit these three propositions for a judiciary system to a joint committee for the purpose of compromise and concession, and it is my decided opinion that unless there is an obvious necessity, the convention should not depart from the report of that committee. Not that I regard it, as of itself, binding on the convention, but because it is a matter of concession and compromise on which extremes have met and united. It is upon this ground that all governments have been framed, and it is upon this ground that I shall support the report of the committee. I am glad also to hear the confession of my venerable friend from Nelson, (Mr.

Hardin,) for 'an open confession is good for the soul,' thus saith the Lord. I will not say of him, that in the times to which I allude, he "*magnam partem vidit et magna pars fuit*;" but it is said in the good book that—

"Long as the lamp holds out to burn,  
The vilest sinner may return."

When the great question was agitated as to the constitutionality of the reorganizing act, and of the old court and the new court, I had the honor of a seat in the legislature, and I recollect that the gentleman himself, and the party who acted with him, went so far as not only to break down the new court, but the old court with it, for they refused to give them a salary, and with it fell every prosecuting attorney in Kentucky. I went against the whole thing, for I was a new court man, and as long as any did stand up for it, I was among them.

Well, for all I know, we in this body, as the senior gentleman from Nelson says, are a very wise set of individuals. I have gone around for the last two or three evenings for the purpose of visiting the members, for none of them will come and see me, and I really can't account for it, and I will venture to predict, as the result of my observation, that during the last three or four nights in the town of Frankfort, there have been more figures made than in the balance of the United States, for the same length of time. I have never before seen the same amount of figures on the face of the earth. I am not much at figures myself, never having cyphered further than the rule of three, and if we are not to come to a conclusion except through cyphering, then I have no earthly chance at all. With my friend from Montgomery, (Mr. Apperson,) and not him alone either, there is nothing in the world that cannot be done by figures. Is it the court of appeals, or the circuit courts, or the basis of population that is being argued? It makes no difference, in either case or in whatever case, the gentleman is prepared with his figures, and has the matter all laid off into districts. He reminds me of the doctor who was called on by a gentleman to see his wife, then on a sick bed. He called on her, and drawing out his big bottles prescribed doses to be given her, a quart at a time. Says the husband—"See here, boss, no more of that." "Let me alone," replied the doctor; "I only want to throw her into fits, and if I can do that she is cured, for I am hell on fits." So with the gentleman; if he can only throw the question into figures, he will carry it beyond a doubt. [Laughter.]

Now, I am for the twelve judges, believing that they can do all the work. We have a very excellent judge in my district, and I believe he can do the business for three or four more counties. But if their labors are to be increased, I should like to see them better paid, and I regret that the committee did not adopt the minimum of \$1600 for their salaries. I want to secure good men, and do not desire to see any jack-legged lawyers on the bench. Men sufficiently qualified will not leave their practice for a less salary than \$1600. My idea of a judiciary is to have fewer and better men, who will do more work and to pay them well for it.

Mr. CHAMBERS. Some misapprehension as to the amount of additional labor which each

of the twelve circuit judges will have to perform, in case this provision is adopted, may grow out of the statements of gentlemen on this subject. The senior gentleman from Nelson says, the additional labor will be seven-twelfths; the gentleman from Oldham corrects him, and says it is seven-nineteenths, which is right as to the amount of additional labor imposed upon the twelve, and this gives the one-twelfth of seven-nineteenths as the additional labor of each of the twelve judges, which is somewhere about the one-thirty-fifth part of the whole business of our circuit courts. I am inclined to think that twelve judges can do the business, and do it well, if they are adequately paid, and I shall go for the section, with the understanding that the 9th section, which is restrictive of the legislative power to create additional circuits, shall be stricken out. I live in the same judicial circuit with the gentleman last up, and concur with him fully in opinion, as to the high qualifications, integrity, and business habits of our judge. It appears by the statements of the gentleman from Montgomery, that the judicial district in which I live contains as great a number of counties as any other judicial district in the state save one, and that the judge of this district decides as many cases as any other judge in the state; yet I am certain he could perform the additional labor of one more county, and this would be his one-twelfth of the seven-nineteenths to be divided, if the labor of the whole state be equally distributed among the twelve judges.

Mr. GRAY. I am satisfied, from my own knowledge, that twelve circuit judges will not do all the business of the state. Even now, with nineteen judges, in some of the counties, in Washington for instance, I understand that their chancery docket is so crowded that it is almost impossible to get a cause tried. Well, this evil will certainly be increased, if we reduce the number of judges to twelve. The judicial business of the country is now, probably at as low an ebb as it ever was in this state, and in making a constitution for future years, we should take into consideration the possible increase of litigation. It is only a few years since the popular will, from the want of facilities for the transaction of their judicial business, demanded the increase of the number of judicial districts to eighteen or nineteen. In the district where I reside, the business had increased so that a judge had to be brought from the northern section of the state, where there were too many, in order to relieve the litigants. And the judge had only about fifteen hundred appearances there, when this relief was considered necessary. I think, therefore, in contemplation of what must be the natural increase of business, we should not restrict the number of judges in the constitution, but leave it to the legislature to increase or decrease it, as the public necessities may require. But if we do fix the number, we clearly ought not to reduce it below fifteen, for I do not believe that even at this time, less than that number can get through with the dockets in each county in Kentucky without it, and with but twelve judges there would be such an accumulation of chancery business on the docket, that there would soon be no such thing as trying a

chancery cause at all. But there was another portion of the report even more objectionable than this. It is, that no matter what may be the exigencies of the community, or the necessity for the increase of judicial labor, the people shall be denied the right, through the legislature, to increase the number of judges. Such, I maintain, will be the practical operation of the section providing that the number shall not be increased over sixteen, until the population of the state shall exceed one million and a half. All know that the increase of litigation is not governed by the increase of population. Now, I am for restricting legislation in some degree, but in a matter of this kind, so vitally important to the best interests of the people, I would not prevent the legislature from affording relief to the people, when their will and necessities may demand it. I doubt whether such a restriction exists in the constitution of any state in this Union, and if it does, it certainly ought not to. Let the people decide the matter for themselves. If they require more judges, give them the power to create them, and do not adopt a provision which will ever prevent them from increasing the number above sixteen. I believe that number to be necessary now, or that it will be, if the business of the state continues to increase in any thing like the proportion it has heretofore, by the next five or six years. And what is the reason—the apology offered for doing this? Why, it is said that if we pay them well, the judges will be more industrious in the discharge of their duties, and that therefore, a less number will be required. I acknowledge this in part, but gentlemen have abandoned this ground. While they refuse to the legislature the right to increase this number, they give to that body the full power to fix the salaries. Gentlemen should not feel themselves bound or restrained by the report of the committee; but if any amendment is needed they should be prepared to make it. The people certainly ought to have the right to create what tribunals they may need, and the right to pay their officers such salaries as may be proportionate to the labors they are required to perform. Do gentlemen believe that these salaries will ever be increased by the legislature, to the point that is here suggested and desired? I say they will not, for the people generally, believe that \$1,200 is as much as the services of a judge are worth. I should therefore, have preferred that the salary should be fixed here. The legislature did once, when money was plenty, and every thing high, increase the salaries to \$1,500, but it did not stand the test of time, and they were again reduced to \$1,200. And gentlemen may certainly expect that if the matter is left to the legislature again, they will be fixed at not more than that amount.

Mr. CLARKE. Does the gentleman want to make a constitution which will prevent the people from reducing the salaries of their officers, if they desire it?

Mr. GRAY. I have made no motion of that sort. I believe that twelve judges are not enough, and that if we had more, their salaries could not be increased. And I say that, taking as an index for the future the course heretofore pursued, the salary will not be above \$1,200, and that therefore, the purposes of those gentle-

men, who, by fewer judges with higher salaries, expect to have all the judicial business performed, will not be achieved. I call upon gentlemen to consider these facts. If there are to be fewer judges with more duties imposed on them, I should certainly be willing to increase their salaries; but I believe the effect would be to clog the constitution, and risk its adoption by the people. I hope we shall not fix the number of judges in this constitution, or if the number should be retained there, I trust we may strike out the provision which prohibits the legislature from increasing the number.

Mr. MACHEN. In my district the judge not only discharges all the duties imposed upon him, but could do it were they thrice as much.

Mr. A. K. MARSHALL moved the previous question, and it was ordered.

The question was then taken on the motion to strike out twelve and insert fourteen, by yeas and nays, on the call of Mr. BALLINGER, and the convention refused to strike out—yeas 7, nays 64, as follows:

YEAS—John L. Ballinger, Nathan Gaither, Richard D. Gholson, Ninian E. Gray, Thomas James, John J. Thurman, Squire Turner—7.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Thomas J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Philip Triplett, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—64.

The fourth section was then read and adopted.

The fifth section was read, as follows:

“Sec. 5. The general assembly shall, at the same time that the judicial districts are laid off, direct elections to be held in each district, to elect a judge for said district, and shall prescribe how, and in what manner, the elections shall be held and conducted, and how the governor shall be notified of the result of the election, and who has been chosen: *Provided*, That such election shall be held at a different time from that at which elections are held for governor, lieutenant governor, and members of the general assembly.”

Mr. TRIPLETT suggested a verbal amendment, by which the election of circuit court judges should be first held on the second Mon-



day of May, 1851, as was provided in the cases of the judges of the court of appeals.

The amendment was adopted, as was the section thus amended.

The sixth section was then read and adopted, as follows:

"Sec. 6. All persons qualified to vote for members of the general assembly, in each district, shall have the right to vote for judges."

The seventh section was read:

"Sec. 7. No person shall be eligible as judge of the circuit court who is not a citizen of the United States, a resident of the district for which he may be a candidate, two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any court of record, when added to the time he may have practiced law, shall be equal to eight years."

Mr. WM. JOHNSON. This section contains a principle entirely new, and which I believe has never been incorporated into the constitution of any state in this union, to the extent in which it is here provided. I refer to the requisition of eight years' practice of the law, or practice and service as judge equal to that time, as a qualification for a candidate for the judgeship. No constitution of any state that I know of, adopts this principle save Louisiana, and there the requisition is for only five years. When we are about to enter upon new ground and establish a principle of this kind, particularly in view of the fact that there are forty two lawyers in this convention, and I say nothing against them, there ought at least to be full investigation. In the State of Mississippi, there is no such restriction. In New York, the only restriction is, as to the judges of the court of appeals, who are required to have been judges of some inferior court. In Louisiana there is a restriction, and they are required to have been practicing lawyers for five years. What has been the rule in Kentucky? Under the present constitution the candidate was not even required to be a citizen of the state, or twenty one years of age—there was no restriction at all. Therefore, when you are about to say to one hundred and fifty thousand voters in this state, not one of you shall be a judge, and to give to some two or three hundred citizens alone this exclusive privilege, I say it becomes necessary to look at the subject and to investigate it. It will be a liberal allowance to say that there are one thousand two hundred practicing lawyers in Kentucky, and of these not more than one fourth have practiced eight years, and it is to these alone you propose to give the exclusive right of being candidates for judge. You say that the people are the proper body to select these officers, and yet you restrict their choice out of one hundred and fifty thousand to some few hundred individuals. No matter how well qualified the candidate may be, you fix the iron rule that he shall not be eligible to the office unless he has been a practicing lawyer for eight years. No matter if he had practiced for seven years and eleven months, and become as good a lawyer as was possible for him to become in another month, still he would not be eligible. I had this idea in my mind when I called for the yeas and nays

on a similar section in the article in relation to the court of appeals. My objection to the restriction, however, is not so great in regard to that body, as in regard to the circuit judges. I now move to strike out that restriction in this article, with a view, at least, to secure a reduction in the term of years required, and on that motion I ask for the yeas and nays.

Mr. HARDIN. The action of the circuit court committee has been to make their article conform and harmonize, as far as possible, with that on the court of appeals, and in so doing they have conceded many qualifications as to age, &c., which they were disposed to require. This qualification, which the gentleman from Scott proposes to strike out, is the same as that contained in the court of appeals article, and if it is necessary for the judges of that court, surely it is necessary for the circuit judge. He has no body to help him, no time given him to make up his opinion, and must decide hundreds of controversies during the rapid progress of a jury trial, and he ought, therefore, to be a remarkably well read lawyer, and not only that, but he should be one whose mind has great powers of concentration and energy, because the lives, liberty, and the fortunes of men are to depend upon his decisions, given upon the spur of the occasion, and without a moment's time for consideration. The court of appeals may take time. A circuit judge, above all others in the state, should be a man of the highest order of talents and attainments. We know that there are men of remarkable eloquence who can run off with the feelings of the voters, and perhaps secure an election from the people thereby, who possess no legal attainments, and who would never get the appointment from a governor and senate, upon whom this influence could not be brought to operate. I knew a young man who was the finest orator I have ever heard, and I do verily believe that if the candidate was eligible at the age of twenty one or twenty two, unless his opponent was a man of great ability, he would run off with all the voters. Great God, how the boys would gather around him at a battalion muster. I have seen him pour in the hot shot, one after another, until he would set the whole battalion in a flame. There will be such men now and then, and what sort of a judge would they make? I will not say a word against him, for the poor fellow is dead and gone, but he never would have made a judge. I do hope, therefore, we shall retain this qualification for a judge. We have already required a qualification of age, and this being the most responsible office in the state, for the truth of which I appeal to every practicing lawyer, requiring the greatest experience and the highest attainments. I do hope the gentleman will be content with having called the yeas and nays, as he says, on the section of the court of appeals article, and let this section go as it is.

Mr. CLARKE. I concur with the gentleman last up, and with the gentleman who offered this amendment, but not upon the same points. As a general thing, these brilliant and sparkling men to whom the gentleman referred as firing their hot shots and carrying off whole battalions, never make good lawyers. Yet this very young man, at the end of eight years practice, without

being a better lawyer than he was at the end of four years, might then, with the aid of his hot shot, according to the section as it stands, have mounted the circuit court bench. I agree with the gentleman as to the importance of the office, and that its incumbent should be a man well qualified, but just here the gentleman and I separate, and I go with the gentleman from Scott, (Mr. W. Johnson.) I maintain that the people are competent to judge of these qualifications. Under our present constitution none of these qualifications have been required; neither has it been required that the governor and a majority of the senate should be lawyers; yet to them was given the power, without restriction, to judge of the legal abilities and attainments of a candidate. But when you are about to place the appointment in the hands of the people, then you come in with your instructions, and seek to throw shackles upon their exercise of that power. If the people are capable of self-government, and of choosing their own officers, why throw these restrictions around them. If you would not impose them on the governor, why should you on the people? If you were to give to the governor the power to appoint his own secretary of state, would you say in the constitution that this secretary should be a fine pensman and a good clerk? I reckon not. You leave this to the governor to determine, though the secretary of state is a very responsible officer, but as I have remarked through the whole sitting of the convention, whenever it is proposed to make an officer elective by the people, a mutual distrust of them pervades the minds of a large majority of this body, and they at once proceed to throw such restrictions around the people as will stamp upon the face of this constitution our distrust of their capacity. I shall in this instance, as in regard to the judges of the court of appeals, vote against these restrictions. I believe in the capacity and the competency of the people to judge as to these qualifications for themselves. I have not the remotest idea that the time will ever come in this commonwealth when the people of any judicial district will be so blind to, and regardless of their own interests and rights as to select for the office of judge a man who is not competent to the discharge of its duties. Having the most abiding and lasting confidence in the intelligence of the people on this subject, I am willing to submit the right unrestricted to them. And if they do on one occasion select a man who is not qualified, their interests, their dearest rights, are all in jeopardy, and if any body suffers, it is them, and as they can soon ascertain when they have done wrong, they have then the motive to do right, and will do it.

Mr. MITCHELL. The gentleman has poured out a torrent of indignant eloquence against those who are so unfortunate as to believe that certain restrictions, if you please, in the constitution will be wholesome. He has thought proper to denounce that portion of the house, who entertain such opinions, as being distrustful of the intelligence of the people. I either do not understand the subject, or else the gentleman does not. He seems to distinguish between this convention and the people, and he says this convention is about to throw shackles around the action of the people. Why, the action of this

convention, whatever it may be, is to be submitted to the people, and if they ratify it, then it becomes the direct action, and the will of the whole people. It is then the whole people prescribing to the various districts of the state, what is their will. You might as well attempt to throw shackles about a flash of lightning, as around the sovereign people of this commonwealth. As long as the constitution about to be made, shall exist, it will be the will of the whole people of this commonwealth, ascertained by their ratification of it, and whenever they object to it, they will take measures to revoke that will—they will call a convention and modify their organic laws. Upon the principle the gentleman contends for, that you should remove all restrictions, where is the propriety of declaring that the citizen shall be twenty one years of age before he is entitled to vote? The sovereign people have the intelligence to judge of that matter. Why are we assembled to make any fundamental law? If there is no necessity for some fixed principles of government, why not say at once, that the people, in their sovereign capacity, are capable of self government, and adopt no such fundamental law. I say, carry out the principle urged by the gentleman, and it amounts to that, and does not stop short of the destruction of all fundamental law. The doctrine of the gentleman reminds me of an anecdote, I once heard, of an old gentleman who had been engaged for some time in a debauch. He came home after nightfall, and found his wife in bed, and feeling considerable nausea about the stomach and desiring something acid, he went to her, and asked, "Jinsey, is there any buttermilk?" He was told, *alta voce*, to look for it in the press, and after fumbling about in the dark without finding any, he again approached his sulky wife and said, "Jinsey dear, did you say the buttermilk was in the press." "Yes" was her angry reply, "go 'long and look for it." Meeting with no better success, said he, at length "Jinsey, Jinsey, (raising his voice.) Jinsey, I say, is the buttermilk in a crock, or is it just loose so." It occurs to me we ought to put our buttermilk in a crock, and not leave it "just loose so." But carry out the argument of the gentleman and we are to have every thing "just loose so." The gentleman who first made the motion to strike out, does not seem to object to the restriction. He does not think the sovereign people assembled here through their delegates may not impose restrictions upon the various districts of the state—the whole speaking to a part; but he thinks the time of practice required, too long, and is against—not the principle, but the matter in its details. He thinks eight years too long, and he says that a practicing lawyer of seven years and eleven months may be just as good a judge as the man who has practiced eight years, and yet you exclude him. We have to fix upon some time, and if it was seven, six, or five years, still there would be the same objections existing. It was the experience and declaration of one of the greatest legal sages the world ever saw, that it is necessary there should be, "*viginti annos lucubrationes*," twenty years of study, to compass the science of law. We have not prescribed so long a period. We have proposed that eight years shall be the time. The mind and the judgment, at the age of thirty, are usually matured, and the profes-

sional experience which eight years bring with them, gives promise that our judicial candidates will be conversant, not only with the theory but the practice of the law. A judge, no matter how well learned he may be in the theory and elements of the law, would be exceedingly awkward, if called upon to dispense justice, without having become familiar with the practice of our courts. This is rarely acquired to the extent required, in less than eight years. The experience of all lawyers, and the practice which has obtained in judicial appointments in Kentucky, justify this. I do not know that an instance has ever come to my knowledge, where a man was placed on the bench in this state who had not practiced for eight or ten years.

The gentlemen have said that we were about to impose restrictions which were not required in the old constitution. Gentlemen would find by referring to that instrument that the circuit court is not the creature of the old constitution, but of the legislature. It has been demanded that in the fundamental law of the land there should be less discretion given to the legislature, and hence we are fixing these details in the constitution. It is the people, by their delegates here, doing this thing, which, when submitted to them and ratified, will become their direct act.

Mr. THOMPSON. I am one of those who believe that the people are competent to select all their officers. If so, there is no necessity for these restrictions in the constitution—if they are incompetent, why then the power to make the selection should be confided to some other tribunal. In N. York, Illinois, Mississippi, Iowa and Wisconsin, the only states I believe in the Union who elect their judges, you find none of these restrictions imposed on the people. Nor were there any restrictions of a similar character imposed upon the appointing power of the governor in Kentucky under the old constitution. The only restrictions, as to governor, members of the legislature, &c., were as to age and residence. Under the federal constitution it is the same. Now we are willing to go as far in this matter of restriction as in the instances to which I have referred, but no further. Turn your attention to those states where they elect their clerks, and you will find that, except in Indiana, a certificate is required of none of them. I shall support the amendment.

Mr. TURNER moved the previous question, and it was ordered.

The question was then taken on Mr. JOHN-SON'S amendment, and it was rejected yeas 31, nays 38, as follows:

YEAS—John S. Barlow, Alfred Boyd, Wm. Bradley, Luther Brawner, Thos. D. Brown, Wm. Chenault, B. L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Wm. Cowper, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, John Hargis, William Hendrix, William Johnson, James M. Lackey, Willis B. Machen, George W. Mansfield, Nathan McClure, David Meriwether, Thomas Rockhold, John T. Rogers, Michael L. Stoner, William R. Thompson, John Wheeler—31.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Charles Chambers, Jas. S. Chrisman, Jas. Dudley, Chasteen T. Dun-

avan, Benj. F. Edwards, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thos. J. Hood, Mark E. Huston, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, Alex. K. Marshall, Martin P. Marshall, Richard L. Mayes, John H. McHenry, Wm. D. Mitchell, Thomas P. Moore, Elijah F. Nuttall, Johnson Price, Larkin J. Proctor, Ira Root, Jas. Rudd, Albert G. Talhott, John D. Taylor, Philip Triplett, Squire Turner, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—38.

And then the convention adjourned.

# MONDAY, NOVEMBER 26, 1849.

Prayer by the Rev. GEORGE W. BRUSH.

## INELIGIBILITY OF CIRCUIT JUDGES.

Mr. LISLE. Mr. President, I offer the following resolution:

"Whereas, it is necessary for the protection and security of the citizens of this commonwealth, that the independence of the judiciary shall be strictly preserved, and nothing should be done which would be calculated to weaken or destroy the independence of that department of the government. Therefore,

*Resolved*, That the circuit judges should be ineligible for the term of one year from the expiration of the term for which they may be elected."

Mr. President: Before any action is taken on the resolution which has just been read by the secretary, I desire to submit a few remarks. The subject of the election of the circuit judges has not been discussed in the committee of the whole. I regard it as one of the most important which has come under the consideration of the convention.

I am satisfied, from the manifestations I have seen in this house, that the fate of my proposition will be somewhat similar to that of my friend from Bourbon; nevertheless, I am willing to risk what little reputation I have on the truth of the proposition.

Perhaps it is proper that I should say that before my constituents I advocated the election of the judges by the people, nay, I may say that I desired the election of all, or nearly all, the officers, and I still desire it. I advocated the election of the judges by the people, not because I thought it free from objection, but because I thought it less objectionable than the present mode, or any other mode which I had heard suggested. How it will work, time only will show. I believe, if well guarded, it will do well.

In relation to the judges of the appellate court, I desire to see them elected by districts. The object to be attained is an intelligent, upright, independent judiciary. When I say an independent judiciary, I mean that the judges shall be free from, and above all improper influence. Such a judiciary all desire. It is admitted that such a judiciary is necessary to the safety and protection of all classes, and more particularly to the humble in society. It is agreed and set-

tioned that the judges shall be elected. Sir, I desire to see the experiment of electing judges fairly tested in Kentucky, though I acknowledge that I have not so much confidence in it as some gentlemen profess. We have been assured that there is no danger to be apprehended from that mode of selecting a judge. We have been assured that we have the light of experience in other states to direct us, and that this light so illuminates our pathway, that the way-faring man, though a fool, need not err therein. The light which we have from our sister states on this subject, is not so clear to my mind as it has appeared to other gentlemen. Let us examine for a moment what that light is. Mississippi was, I believe, the first state in this union which ventured on the election of her inferior judges. She has been electing them since 1831 or 1832. In that state the circuit judges are required to interchange or alternate circuits. This interchanging is a conservative feature in her system; but even with that feature, how has it worked there? I acknowledge that I am not well informed in relation to its practicable operation in Mississippi. I have been informed, however, by respectable gentlemen, who professed to have been present and witnessed it, that during the pressure in 1836 and 1837, their judges, perhaps, and sheriffs, resigned to avoid holding courts and making sales of property, and were immediately re-elected. Such a course as that might suit a state where the doctrine of repudiation meets with popular favor; but, sir, I hope the day may never come, when it will be countenanced in Kentucky. She has given the highest evidence, under the most trying circumstances, that it would not. Sir, during the pressure in this state in 1823 and 1824, when the country was largely involved in debt, when ruinous sacrifices of property were made, by sales under execution, and when the legislature interposed and passed laws and formed a court, to protect the debtor class from those great sacrifices, Kentucky, be it said to her honor, law-abiding as she ever has been, and as I hope ever will be, rose up as one man, and repudiated this new court and those relief laws, and sustained an upright and independent judiciary which had declared those laws unconstitutional.

Georgia, though she has elected her superior judges for some time, has only recently commenced electing her inferior judges. New York and Iowa have been electing their judges since 1846, and Wisconsin since 1848. So, sir, it will be seen that in none of the states in which they elect their judges, except Mississippi, has the system been long enough in existence to test its practicable operation, and it becomes the friends of an elective judiciary to be cautious, and to throw such guards around it, as will avoid the evils which many good and wise men fear will result from it.

Sir, there is another consideration which induces me to proceed with caution and prudence, and to guard in every possible way against any evils which may result from an elective judiciary. It is, that the sages and patriots who formed our federal and most of our state constitutions, were unwilling to elect judges. It has been asserted on this floor, that we are disposed to pay too much deference to the opinions of

our ancestors. But, sir, the men who formed those constitutions were wise and patriotic. They loved liberty; it had cost them much. They had confidence in the people and believed that they were capable of self-government, though they may not have professed as much devotion to them as we have. I acknowledge, sir, that I revere the memory of those great and good men. They were the devoted friends of civil and religious liberty, and I respect the works of their hands. They were willing to confide to the people of this country the election of their governor, members of congress, and members of the state legislatures, and virtually of the President of the United States. Why was it that they thought it unsafe to risk the election of the judges? There was, I suppose, some reason for withholding from the people the election of judges, while they confided to them the election of other officers. I acknowledge, sir, that I am timid, when we are about to subvert great principles which are recognized in our constitutions, state and federal, under which we have lived and prospered for half a century, and from a few scattered colonies, have grown to be a great nation of thirty states—the admiration of the world—principles which were sanctioned by a Washington, a Madison, a Franklin, an Adams, and a Jefferson, and, to come nearer home, by a Breckinridge, a Rowan, a Marshall, and other illustrious names. Sir, my friend from Knox (Mr. Woodson,) while he charges others with too much respect for the opinions of those sages and patriots, boldly proclaims that he is for carrying his principles out, and is for electing all the federal officers, judges, postmasters, &c. Sir, when this is done, what will be its effect on the peculiar institutions of this country? They will, most assuredly, be swallowed up by what the gentleman was pleased to call the aristocracy of numbers.

Have gentlemen reflected on the difference there is between the election of executive and legislative officers, and that of judges? It is the duty of executive officers to see that the laws are executed, and that they operate alike on all. Your congressmen and legislators enact laws, which affect all alike. If they pass oppressive laws, they and their families and relations and friends live under them. If an oppressive law is passed, or an objectionable vote given by a legislator, as it affects the whole community, they become excited, and call their representative to an account. This we have all witnessed. But, sir, it is not so with a judge; he decides private rights between individuals, in which the community at large are not particularly interested. In a legal contest between you and myself, Mr. President, the judge may decide for you and against me, without affecting himself or the community. It was, I imagine, for this reason that the framers of our federal, and most of our state constitutions, thought it unsafe to elect a judge, and it is for this reason, that while I desire the election of the judges, I still wish to guard against any evils which may arise from it.

I have said sir, that before my constituents I advocated the election of the judges. I have heard no argument which has shaken my opinion and views on that subject; but while I advo-

cated the election of judges, I gave it as my deliberate opinion to the people whom I have the honor to represent here, that it was unsafe to elect a judge and make him re-eligible immediately after the expiration of the term for which he was elected. I desired their election, but that they should be ineligible. Entertaining these views, which were freely expressed and discussed, I was returned as a delegate to this body. I desire faithfully, as far as I can, to carry these opinions out. It has been urged against the principle of ineligibility, that it strikes at the principle of electing by the people. Sir, there may be plausible objections urged against any mode of appointment which I have heard named. I have stated that I advocated the election of judges—not because I considered it free from objection—but because it is less objectionable than any other mode which I have heard pointed out. Now, sir, when a gentleman presents himself the first time as a candidate for a judgeship, he presents himself on the great platform of equality. He has no official power which he can use to secure his election. But when you once place him in power, you should throw such guards around him as to prevent his using his official power to perpetuate its continuance. It is a dangerous principle in government, to place power in the hands of any man which he may use to continue his power. Sir, can the power of a judge be thus used? I think it can, and I am, therefore, for making him ineligible for one year, to avoid its exercise.

It has not been, and I suppose will not be, denied, that the judges have, and will continue to have, immense power in their hands. They are to decide on the lives, the liberties, and the fortunes of the citizens of this commonwealth; and, to some extent, will have them in their hands. Will any gentleman venture to assert that this immense power in the hands of a corrupt judge, might not be used to secure his re-election? I do not say that it often, or even ever, would be so used; but I maintain that it might be, and that it is the part of prudence, in arranging our organic law, so to form it as to avoid, as far as possible, the improper use of this power, by any judge. If we are so fortunate as always to have good judges, it will do no harm; but if we should have bad ones, it may do much good.

We have been assured by honorable gentlemen on this floor, that there is no danger of a judge ever attempting to exercise his power for improper purposes. This may or may not be. Judges are men, and sometimes not the best of men. Sir, it was said by my friend from Bourbon, (Mr. Davis,) that the Lord's prayer could not be bettered. I would apply a portion of that inimitable prayer to the judges which we may have—"lead us not into temptation, but deliver us from evil."

My friend from Simpson (Mr. Clarke,) told us on Saturday, that the judges possessed more power than any officers of this government—that they had in their hands the lives, liberties, and fortunes of the citizens. And my friend from Adair (Mr. Gaither,) drew us a dark picture of the judiciary of this and other countries. When speaking of the judiciary, he said:

"I have witnessed the operations of the judicial arm of the government, and paid some attention to the judicial history, not only of our country, but of times past in other governments. And I find that, according to their number, there were as many blood-thirsty despots and tyrants, and infinitely more, among the judiciary, than ever disgraced the legislative halls of any country. Let any man read the history of the state trials in Great Britain, and he will learn that the best blood the world ever saw, has been sacrificed at the shrine of judicial tyranny. Mark the history of the United States, and what will you there discover in relation to the judiciary? Does it exhibit them in a light to be regarded as the depot and reservoir of our liberties, and the asylum to which we must carry ourselves for safety? In this country we have been taught a different doctrine, it may be however, of a school which certain portions of this community will not recognize or adopt. We are told, and every man who has regarded the practical operations of our judiciary, must concede it, that they are embarrassing and suppressing the liberties of the country, gradually, yet certainly, by their decisions, and by their operations on the political acts of government, depriving the sovereign people of many of their rights. They are the great high priests of political jesuitism, and passive obedience and non-resistance will be the inevitable consequence, if the people listen to the doctrines being inculcated by many of the judiciary."

Sir, after the gentleman had drawn this dark and frightful picture of the judiciary, and asserted its power, they oppose any restraints to prevent its improper exercise, and propose that the judges shall be eligible for re-election as often as they choose to present themselves; and thus, sir, they would throw on the community these "great high priests of political jesuitism," with the strongest temptation to exercise their priestly and jesuitical powers. And, sir, they will exercise them, whenever it becomes necessary to secure their re-election.

There is no class in society which are so deeply interested in having an independent, intelligent, and upright judiciary, as the poor and humble. Government was instituted to protect the weak and humble in society against the aggressions of the strong and powerful. The strong man in society can protect himself. Sir, the goddess of justice is represented as being blind, that the parties whose causes were to be decided, might not even be seen; but now, sir, the parties are not only to be seen, but if you make your circuit judges re-eligible, there will be the strongest temptation held out to them, to court the favor of the powerful and influential in society, at the expense of the more humble. But it is said, that if a judge should thus act he would array all the humble in society against him, and as they are much the most numerous, such a course would be fatal to him. Sir, would it be so? I think not. Men take but little interest in the affairs of other men, and particularly in their law suits. It is not like legislation. Judgments and decrees affect individuals only, but legislation affects all. An oppressive law affects all, and all become parties to it; but not

so of the decisions of a court. Sir, if I was disposed, I could refer to hundreds of cases with which history abounds, to show that gentlemen are mistaken in this position. I will mention only one. And it is a strong case, sir. There once lived a man—nay, he was more than man—he was God and man. He was poor and humble as far as this world's goods were concerned. He had not where to lay his head. He had gone about all his life doing good. He had raised the dead, he had opened the eyes of the blind, he had healed the sick, and he had fed the hungry. And yet the Saviour of the world was brought before a judge. His character and course of life were certainly well calculated to excite the sympathy, affection, and admiration of the multitude; yet we are informed that “when the chief priests and the officers saw him, they cried out, ‘crucify him, crucify him. Pilate saith unto them, take ye him, and crucify him, for I find no fault in him.’” Here, sir, we find this judge yielding to the popular feeling against justice, and against the convictions of his own conscience; and this example illustrates another point in my argument; that is, that a judge may use improperly his official power. We are told that “Pilate said unto him, whence art thou? but Jesus gave him no answer. Then said Pilate unto him, speakest thou not unto me, knowest thou not that I have power to crucify thee, and I have power to release thee?” Sir, may it not be, if you make your circuit judges re-eligible, and they desire a re-election, that they will thus speak, or intimate to the hundreds and thousands, whose lives, liberties, and fortunes, will be, to some extent, in their hands. Men are the same frail, imperfect creatures now, which they were two thousand years ago. I ask honorable gentlemen who are disposed to differ with me, if this great power in the hands of a judge who was disposed to use it to secure his re-election, would not be irresistible. Sir, we have been told by honorable gentlemen on this floor, that there are men all over this state, who can and do exercise immense influence in elections. Suppose a judge desires a re-election; and suits should come up before him in the various counties of his circuit, between gentlemen of this class, who could control their fifties and hundreds, on one side, and an humble individual who had but one vote, on the other; think you that a judge might not use his official power to secure his re-election? It seems to me that no judge would desire to be placed in such a situation. Sir, it is not only desirable that the law should be administered impartially, without favor or affection, but it is important that litigants should feel assured that no improper influence has been brought to bear in the decision of their causes. Nothing is more calculated to lessen the respect for judicial decisions than a want of this confidence. Sir, it is due to the judge to place him in a situation where his motives cannot be impugned, and while we do this, we should form our constitution with an eye to the fact that men are frail and erring, and that bad men may and will get into power. If men were perfect, we should need no constitution or laws.

To show the power and influence of a judge, I will mention another fact, which will be duly appreciated by every gentleman of the profes-

sion of which I am an humble member. When a judge refuses to sign a bill of exceptions, you call on by-standers to sign it, and every lawyer will agree with me, that it is very difficult to get by-standers to sign a bill of exceptions when a judge refuses to do it. Few men are willing voluntarily to incur his displeasure. All desire to be on good terms with the judge who may be called on, we know not how soon, to decide on our rights. Though we may not be involved in law, yet no man knows when that misfortune may befall him.

Sir, you propose to make your governor ineligible, and your sheriff, after the second term, and why? Because they may use their official power to perpetuate it. I conceive that it is much more important that a judge should be ineligible, for after his election he has more power which he might bring to bear to secure his re-election, than either or both these other officers. If you have an upright, learned, and independent judge, he will act as a restraint on your sheriff, your clerk, and many other officers; but sir, let all these officers combine to secure their re-election, as they most likely would do, and the man who comes in contact with them and their official power would have most woeful odds to contend against. Sir, I desire that every man, who presents himself before the people for public favor, shall present himself, so far as practicable, on terms of perfect equality, and that capacity and merit alone shall decide the contest.

We have been told by my friend from Oldham, (Mr. Mitchell,) that now is the time to raise the judicial superstructure. So say I; but let us lay its foundation with wisdom and caution. We have been admonished by that gentleman, that we should disregard the dogmas of conservatism. Perhaps it would be as well for the country, if some of us possessed a little more of it. He and my friend from Adair, animadverted on the independence of the judiciary. Sir, whilst I desire to see the judges elected by the people that they may be responsible to them for their conduct, and that they shall acknowledge them as the source of their power, still I hope that the day may never come when this glorious commonwealth, the land of my nativity, shall be cursed with an ignorant, weak, time-serving, electioneering judiciary. Sir, I agree with the gentleman from Bracken, (Mr. W. C. Marshall,) that no greater curse could befall any country.

It has been objected that the principle of ineligibility in a circuit judge, argues a want of capacity in the people to elect their officers. I think not. To gentlemen who argue thus, I would say be consistent. You propose that your governor shall be ineligible, and that your sheriff shall be made ineligible after the second term; you propose to throw certain restrictions around almost all your officers; you propose that no man shall be a judge, unless he has been a licensed lawyer and has practiced his profession a certain time, and that he has attained a certain age and resided in the district or circuit for a period of time; you require your clerk to have a certificate of his qualification; and you require qualification as to age and residence in your senators and legislators. All these are but restraints on the elective franchise, and gentlemen who profess such high devotion to princi-



ple, should strike out all these restraints. Sir, government itself is a system of restraint. I admit that no restraint should be imposed on any individual, which is not necessary for the welfare and preservation of the whole. But the question is, is the restraint of ineligibility on a circuit judge, a necessary one? That is the great question.

Sir, it is not a matter of so much importance to the great body of the community, whether A or B is judge; but they are all interested and deeply interested in having the duties of the station well performed. The great object is not to provide stations for a few individuals, for but a few, comparatively speaking, can be judges; but it is to obtain a proper discharge of the duties of the station. Sir, the people desire a good judiciary; it is necessary for their protection and for the peace and welfare of society, and they will submit to such restraints as are necessary to the attainment of that great object. Sir, one of the objects for which we have been called here by the people is to throw greater restraints around legislators elected directly by the people. The people themselves have demanded this at our hands. They demand that the power of contracting debt, except in cases of emergency, and that to a limited extent, and the power of granting divorces shall be taken from the representatives elected directly by their votes. And they require that their representatives shall not meet as often as they have done.

Gentlemen who argue against all restraints on individuals, strike at the first great principle of all governments. In the formation of government each individual agrees to surrender a portion of his natural rights, in order that he may be secured in the enjoyment of the balance. Sir, do gentlemen wish to see our judicial decisions as uncertain and as changeable as our legislation has been? If they do, let them so organize the system, that the judicial decisions shall reflect truly, all the changes in public opinion, and they will have accomplished their object. Such a judiciary would unhinge society. None of the rights which we hold so dear would be secure. If you would have decisions uniform and consistent, you must give some element of stability to the system. I would as soon suppose that the majestic oak would stand unmoved without support, amidst the raging storm, as that your courts would withstand the frequent changes of public sentiment, without some element of the kind. Sir, when you elect your circuit judges for a short time, and make them re-eligible, you court the storm with little or no power of resistance. Say at once how long you think it prudent that a circuit judge should preside, elect him for that period, and make him ineligible for one year thereafter, and you thus to a great extent draw him from the arena of politics during the time he is judge, and he applies himself to the duties of his station, and to reading and study which are so indispensable to a judge. Some weeks since, I procured a list which was made out from the record in the office of the secretary of state, of all the circuit judges which we have had in Kentucky since the adoption of the circuit court system. The list may not be entirely complete, as there was some difficulty in making it, owing to the want of an index to the early execu-

tive journals. I suppose, however, that the list may be relied on. From this list it appears that we have had in the state sixty-two circuit judges, including the Louisville chancellor. In this list persons are not included who were appointed and did not accept, and yet I find that said sixty-two judges have served on an average eight years and eight months. Of these seven have died, thirty-five have resigned, and twenty are still acting. Several of these judges have been twice commissioned—and in making the estimate of the average length of time which they have served, the computation has been made of the whole length of time they served under both commissions, as if there had been but one.

It has been objected to the principle of ineligibility in a circuit judge, that it would withdraw from the judge all stimulant to improvement, and that in time the high judicial character of Kentucky would be lowered. I am not for lowering but elevating it, and I ask my friend from Todd, (Mr. Bristow,) and my friend from Oldham, (Mr. Mitchell,) who have urged this objection, to examine the list to which I have referred, and they will there find that it is not to those judges who have presided longest on the circuit court bench, to whom they can refer as the brightest ornaments in the list of Kentucky's distinguished jurists. Sir, there are other stations sufficiently alluring to excite and stimulate men of talents and ability to exertion; but shall we risk inflicting on the country the evils of an electioneering judiciary with the hope of stimulating a few men to greater exertion?

What evil to the community can arise from making the circuit judges ineligible? There will be no circuit in the state in which there will not be several persons, between whose qualifications for a judgeship, there will be but little difference. It will bring about rotation in office, which was one of the objects for which this convention was called; competition will thus be excited, and it will, as I verily believe, be a conservative and wholesome feature in our constitution. But let the fate of the proposition be what it may, I shall have the proud satisfaction of having advocated the position here which I did before my constituents.

Sir, at this time I will not ask for a vote of the convention upon my resolution, for it may come up in another shape when we have the judiciary articles before us. I now merely ask that it be passed by informally.

It was passed over accordingly.

#### THE CIRCUIT COURTS.

The convention resumed the consideration of the articles on the judiciary.

The question first in order was on the eighth section of the article concerning circuit courts, which was read as follows:

"SEC. 8. The term of office of the judges of the circuit court shall be six years from the day of the election. They shall be commissioned by the governor, and continue in office until their successors be qualified. The removal of a judge from his district shall vacate his office, and when a vacancy may happen from any cause, it shall be filled as hereinafter prescribed."

Mr. HARDIN. There were three propositions in the committee on circuit courts, fixing

the term of the judge—one for eight years, another for six years, and another for four years. The committee finally settled on six years, but finding the committee on the court of appeals had fixed the term of those judges at eight years, the matter was reconsidered, and the term of the circuit judges made to conform to that. In the committee of thirty it was again fixed at six years. That committee also provided that the term should commence on the day of election, with a view of uniformity throughout the state.

Mr. LISLE moved to amend by inserting the words, "and that they shall be ineligible for the term of one year from the expiration of the term for which they may be elected."

Mr. KELLY. On that question I call for the yeas and nays.

Mr. HARDIN. I have no argument to make on this subject. It was a matter upon which the committee divided equally, and was, therefore, reported as it is found.

Mr. W. C. MARSHALL. I was opposed to making the judges re-eligible, because I considered one of the great means of securing the independence of the judiciary to be ineligibility. I was opposed also to the shortness of the term, believing that six years was not a term sufficient to secure the best men of the country. However, in the committee of thirty, a compromise was had on six years. I believe that either six or eight years is too limited. If the number of years shall be fixed at six, and the number of judges reduced to twelve, as proposed in this report, my word for it, and I call the convention to witness it this day, it will be the greatest misfortune that ever befell this country. What man of the proper character, ability and legal learning in the state would occupy the position of circuit judge under such circumstances? None; it would be accepted only by men wholly unfit for the place, and who could not make their salt at the bar. I am fully satisfied that this will be the case if the term is reduced to six years, and the judge made re-eligible. I am against re-eligibility if you give a fair term and proper salary. My favorite idea is, that no man should go on the bench of the circuit court until he had attained the age of thirty, and that no man should come off of it by a limitation of the term until he had served for fifteen years. And I was willing to give him a salary of \$2000, so that it should be an inducement to competent, qualified men to go on the bench, with the prospect when they retired of having received something like a compensation for their services. But to go on the bench, with the certainty of being turned out at the end of six years, after the loss of all their practice, and being obliged then to come in competition with the boys who had sprung up around them in the struggle for existence, a man of the proper qualifications would never consent to do it. Hold out the inducements to which I have referred and you will have men of talent on the bench; restrict it, as the gentleman from Green, (Mr. Lisle) proposes, and prudent men of that character will not accept of the office. If the term is to be limited to six years, the incumbent of the office ought to be re-eligible. I have made these remarks to define my position, having before opposed re-eligibility.

Mr. MORRIS. I have been in favor of a long term and ineligibility. I have no disposition, however, to interfere with the compromise of the committee, but in order that I may not be misunderstood, hereafter, I wish to say that I shall vote for re-eligibility because I consider the term proposed to be too short to admit of ineligibility.

Mr. IRWIN. I am opposed to the re-eligibility of judges, and I think the term proposed too short. I move to strike out six and to insert twelve years, and upon that question I call for the yeas and nays.

The PRESIDENT ruled the amendment out of order, there being a pending amendment.

Mr. STEVENSON. I am in favor of the re-eligibility of the judiciary, and I am so on principle. I regard the re-eligibility of the judges, as bringing about what we all desire and aim to secure—an independent, a safe, and an enlightened judiciary. There is no system in government, no appointment to any office under any government to which the ingenuity of man may not find some objection. In considering the question, whether a judge should be re-eligible or not, the proper light in which to view it in my judgment, is whether the inducement and incentive to labor and to integrity is not best secured by holding out to him, especially when he has to come before a popular tribunal, the prospect of a re-election—and whether the inducement to good behavior and purity is not greater thereby, than if you tell him that no matter how he behaves or acts, whether he is corrupt or indolent, or comes up to the highest standard of judicial excellence, in either event he is unfit for re-election. According to my judgment, there is no doubt on the subject. I think every thing goes to show, that a bad man will be actuated, as all bad men are, by selfish motives, and that the very fact, that he might lose his office when he came before the people for re-election, would repress his bad feelings, and hold out a corrective on his bad passions. A good judge would also have every motive to the pure, intelligent, and industrious discharge of his duties, in the knowledge that he would be rewarded for it by the people. Gentlemen talk about rotation in office, and those who have talked about it as a democratic principle, will get up and ask us to fix a term of twelve years! That would be rotation in office with a vengeance. My idea of rotation in office is, to let the people have the right to vote a man in or out of office, and to have short terms, so as to give them the choice. It is not re-eligibility, for that deprives the people of the right to rotate in office. It is short terms that gives them that right. I am therefore in favor of the term of six years and of the re-eligibility of the judiciary, and I believe that both will tend to bring about the object we all have in view, an independent, enlightened, and pure administration of justice.

Mr. DIXON. I rise to express my full approbation of the principle contained in the amendment of the gentleman from Green. I thought when I came here it was right and I still think so, and I shall vote for the amendment. I ask my friend from Kenton, (Mr. Stevenson,) this question; suppose a judge on the bench, under the expectation that he may be re-elected, should

surrender up the rights of some weak litigant, to secure the influence of some powerful litigant, would his rejection by the people remedy the evil and the wrong inflicted on the weaker litigant? I do not see how it would. The fact that the judge was not re-elected, would not in any way remedy or mitigate the wrong to which the individual had been subjected. I have given my views on this subject before, and I am satisfied that the principle of the amendment is right, and I should, though I have little hope of it, like to see it adopted in this constitution.

Mr. T. J. HOOD. I am disposed to stand by the compromise, reported by the committee, and I have at all times been in favor of the re-eligibility of judges. Those gentlemen who are opposed to it, seem to look to the single idea that by a long term, sufficient inducements will be held out to secure men of the first order of ability to occupy the station. Now then, those in favor of re-eligibility, look further and beyond that. We also wish to hold out the inducement when they have attained that station, to discharge its duties faithfully, by making them responsible at short periods to the people. Then, if satisfied with his discharge of the duties, the people will reward him, by re-electing him, and if he has been incompetent, they will place the seal of public disapprobation upon him. We wish to hold out an inducement that will not only secure talent, but diligence and industry in office. And I think we may properly and safely trust this power of discrimination between the competent and the incompetent, in the hands of the people, those most interested.

Mr. ROOT moved the previous question, and the main question was ordered to be now put.

Messrs. KELLY and GHOLSON called for the yeas and nays upon the amendment, which being taken resulted as follows—yeas 9, nays 80.

YEAS—Archibald Dixon, Selucius Garfield, Ben. Hardin, Andrew Hood, J. W. Irwin, Wm. Johnson, Tho. W. Lisle, Martin P. Marshall, Jno. L. Waller—9.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thos. J. Gough, Ninian E. Grey, Jas. P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, Tho. J. Hood, Mark E. Huston, Alfred M. Jackson, Tho. James, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, Geo. W. Mansfield, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, Wm. D. Mitchell, Thos. P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William

R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson, Wesley J. Wright—80.

So the amendment was rejected.

The section was then adopted.

Mr. A. K. MARSHALL. On Friday last, in the course of debate, I made the following remarks:

"In the conversation that I had with Judge Marshall, he expressed no preference for three or four, but stated emphatically that three were amply sufficient to transact the business of the court; and he coincided with the opinion of Judge Robertson, that four judges would rather retard than expedite the business, and that it would be no disadvantage, as far as the transaction of the business of the country was concerned, that the court should consist of but three judges."

I left the room immediately after concluding my remarks, and consequently did not hear what was said by the gentleman from Madison, (Mr. Turner,) but my attention has been called this morning to the following remarks of that gentleman:

"I care not what any judge, or what any lawyer has intimated, since the subject has been talked of here. I do not believe Judge Marshall has given an opinion; he is one of the most cautious, prudent, discreet men, that I am acquainted with. I do think that any gentleman, occupying the station that he does, could or would give such an opinion."

I have read these remarks, sir, for the purpose of making an inquiry—

Mr. TURNER. With the permission of the gentleman, I will state, that I did not understand him as asserting that he had had a conversation with Judge Marshall. I supposed that he derived his information from some third person. If I had understood the gentleman as making the assertion, of course, I should not have thought of contradicting it.

Mr. A. K. MARSHALL. I am gratified to hear the explanation of the gentleman, for I was sure that he either misunderstood me, or had not been correctly reported.

The ninth section was then read, as follows:

"SEC. 9. The general assembly, if they deem it necessary, may establish one district every four years, but the judicial districts shall not exceed sixteen, until after the population of this state shall exceed one million five hundred thousand."

Mr. GRAY. I move to strike out the whole section, and insert the following:

"The general assembly shall have power to increase the number of judges and districts, as the exigencies of the country may require: *Provided*, that no more than one district shall be established at any one session of the legislature."

I do not think we ought to restrict legislation upon this subject, as proposed in the report. I think the legislature should have power to increase the number of judges and judicial districts, when an increase shall be demanded by the people. Providing, as I do, that only one district shall be established at any one session of the legislature, we shall avoid any thing like com-

bination between different sections of country. This, I think, will insure us against the establishment of any judicial district, unless the necessities of the country require it.

Mr. HARDIN. I think the whole provision will be valueless, if we adopt this amendment. We began our circuit court system with ten or eleven districts, and we have been adding to them, until we have now got the most cumbersome system of circuit courts in the United States. We have now got nineteen judges, and if we leave it to the legislature, we shall have as many, if not more, in future. Gentlemen are aware that for the last five hundred years, they have had but twelve circuit judges in England, until within a few years past, when I understand they have added a thirteenth judge. There was a judge for the high court of chancery, and a master of the rolls, making but fourteen in all, while we have had nineteen judges. I think there ought to be some restriction upon the power of the legislature in this respect. While up—for I am more anxious upon this subject than any other—and that we may adjourn in the course of a few weeks, I call for the previous question.

The previous question was sustained, and under its operation the amendment was rejected.

The section was then adopted.

The tenth section was then read as follows:

"Sec. 10. The judges of the circuit courts shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected."

Mr. HARDIN. The bill as originally framed, fixed the minimum of the salaries to be paid to the judges at \$1,600, the number of judges being reduced from nineteen to twelve. The committee of thirty struck out \$1,600. I want to see the best talent that can be obtained placed upon the bench, and in order to secure that talent, I think the minimum ought not to be less than \$1,600.

Mr. C. A. WICKLIFFE. I am inclined to the opinion that in putting together the amendments adopted by the committee of thirty, one was pretermitted. My recollection is, that there was an amendment adopted at the instance of the gentleman from Hickman, (Mr. James,) that the salaries of judges should be equal and uniform throughout the commonwealth. I therefore beg pardon of the committee and of the house for pretermitting the amendment, and now offer it for insertion.

The motion was agreed to, and the following words inserted after the word "law," "which shall be equal and uniform throughout the state."

Mr. MERIWETHER. I will offer the following as a substitute for the section under consideration:

"Each circuit judge shall receive from the public treasury an adequate compensation, to be fixed by law, and shall not be diminished during their respective continuance in office, and shall never be less than \_\_\_\_\_ hundred dollars per annum, and which shall be equal and uniform throughout the state."

It will be perceived that this is precisely the

same as the original section, except that it fixes a minimum salary.

Mr. NESBITT. I beg to offer as an amendment to the amendment the following:

"Provided, That whenever a new judge is added, his salary shall be raised by deductions from the salaries of those already in office."

Mr. HARGIS. There is much in this article that is not agreeable to me, but in the spirit of compromise, I am willing to sacrifice some of my own views, and therefore I hope the section will be allowed to stand as it is.

The amendment to the amendment was rejected.

Mr. MACHEN. I prefer that the whole subject shall be left to the people, unless we fix a large minimum. It appears to me that \$1,600 is the smallest salary that will give us any reasonable chance of procuring the services of men of the best talent. But I think it will be better to leave the whole matter to the legislature.

Mr. W. C. MARSHALL. I propose that \$1,800 be the minimum fixed, as the salary of these judges.

Mr. WALLER. I propose \$1,600 as the minimum.

Mr. MERIWETHER. I accept the proposition of the gentleman from Woodford, (Mr. Waller.)

The question then being upon striking out \$1,600, and inserting \$1,800.

Mr. C. A. WICKLIFFE. I shall vote for the largest amount named. I believe, from my intercourse with the delegates upon this floor, that there will be perhaps no better opportunity to test the views of this convention, as to whether the judges shall be liberally compensated for their services. I am disinclined, however, to fix either a minimum or maximum salary in the constitution, for there is great sensitiveness on the subject of the salaries of officers; and although a large portion of the community who are in favor of a well regulated judiciary, would be willing to vote a large and competent salary, yet if you were to tell these men that the organic law had fixed it beyond their control, you might produce in their minds a prejudice against this constitution difficult to be removed. I had intended at the proper time, to offer, on my own responsibility, the amendment which I proposed in committee; that the next legislature, coming in under the new constitution, fully impressed, as I trust it will be, with the importance of giving this experiment a just and impartial trial, should fix the salaries of the judicial officers at a standard which should not be diminished for eight or ten years; and by that means we should secure better salaries, and free the constitution from the danger of attack, because of its inhibition on the subject of salaries.

If the amendment under consideration should be rejected, I shall offer, in the shape of an addition section, the substance of what I have indicated.

Mr. NESBITT. My opinion is, that if we fix a minimum in the constitution, we ought to give the legislature the power to reduce that minimum whenever they increase the number of judges. I have no objection to fixing a minimum, provided this principle be adopted. The legislature may increase the number to twenty,

and if so, it is not to be expected that they should each receive a salary of \$1,600. When in order, I will move to add the following proviso:

"*Provided*, That when the general assembly shall deem it necessary to increase the number of judges, they shall have the power to reduce the salary thereof; but they shall not have power to depart from the principle of equality and uniformity."

Mr. MERIWETHER. I presume the legislature will never increase the number of judges until there shall be an increase of business to justify it. And whenever there is that increase of business, there should be no reduction of the existing salary, because the old judges would have the same amount of business to perform. I make this remark in opposition to the amendment of the gentleman from Bath, (Mr. Nesbitt,) but we are now about to test the plan of an elective judiciary, and I want it to have a fair test; and unless you give salaries that will elicit the best talents in the country, we shall never get good judges. I trust therefore, that those who are in favor of giving this question a fair test, will vote for a minimum salary.

Mr. NESBITT. I presume that if the power is given to the legislature to reduce the salaries of the judges, when it shall be found necessary to increase the number, they will never think proper to say they have too much work to do. Suppose the gentleman from Jefferson (Mr. Meriwether,) should be elected judge under the new constitution, and a minimum salary of \$1,600, is fixed, he would find it convenient to say, I can do the business of my district, provided you leave it as it is, and not reduce the salary. But if I should happen to be elected judge, and power be given to the legislature to increase the number of judges, without the power to reduce their salaries, I might say, I have entirely too much work to do, you must add to the number of judges.

Mr. MERIWETHER. The gentleman has supposed a case that can never exist. They have rendered me ineligible for the office of judge, but he is not ineligible. The gentleman therefore can best judge of the motives that would control his own action.

Mr. NESBITT. I assumed some part of the responsibility by taking myself into the illustration. I rather think that if a minimum salary should be fixed, the gentleman would soon have a certificate in his pocket.

Mr. W. C. MARSHALL withdrew his proposition to fix the minimum at \$1,800.

Mr. BALLINGER. I move to strike out \$1,600, and insert \$1,500.

The amendment was rejected.

The question then recurred upon the substitute.

Mr. NESBITT moved, as an amendment to the substitute, the proviso which he had indicated his intention to offer.

The amendment to the substitute was rejected.

Messrs. GHOLSON and JAMES called for the yeas and nays on the substitute, and being taken, they resulted as follows:

YEAS—Mr. President, (Guthrie,) William K. Bowling, Archibald Dixon, James Dudley, Selucius Garfield, Ben. Hardin, Andrew Hood,

Alfred M. Jackson, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, John H. McHenry, David Meriwether, William D. Mitchell, John D. Morris, Larkin J. Proctor, James Rudd, John W. Stevenson, Albert G. Talbott, Philip Triplett, Squire Turner, John L. Waller, George W. Williams, Wesley J. Wright—24.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chénault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, Thomas J. Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—66.

So the substitute was rejected.

The section was then adopted.

The eleventh section was then read as follows:

"Sec. 11. The judges of the circuit court shall be removed from office by a resolution of the general assembly, passed by two thirds of each house. The cause or causes for such removal shall be entered at large on the journal of each house."

Mr. MITCHELL. I propose the following substitute for that section:

"The governor shall remove the judges of the circuit courts on the address of two thirds of each house of the general assembly: *Provided however*, that the cause or causes for which such removal may be required, shall be stated at length in such address on the journal of each house."

This is a provision that has been adopted in regard to the court of appeals; and it occurs to me there is no good reason for departing from the rule in relation to the judges of the circuit courts.

The question being taken, the substitute was rejected.

The section was then adopted.

The twelfth section was then read as follows:

"Sec. 12. The governor shall have no power to remit the fees of the clerk, sheriff, or commonwealth's attorney, in penal or criminal cases."

Mr. HARDIN. I never believed the governor had this power, but I have heard a great deal of complaint on the part of sheriffs and others, on account of having their fees remitted. It will be seen by reference to the constitution, that these fees were intended to be a part of the

compensation of these officers, and it is consequently out of the power of the governor to deprive them of such compensation.

Mr. MAYES. I will call the attention of the chairman of the committee to this point. It appears to me that the section is wholly unnecessary. The governor has no power to remit any part of the compensation that is due these officers.

Mr. TURNER. I have drawn up an amendment which I think will meet the views of the gentleman; it is as follows, insert after the words "commonwealth's attorney," the following:

"Or the portion of a fine or forfeiture, given by law to the latter office."

I supposed, with the gentleman last up, that the governor had no power to remit the fees of officers; but I am told there are instances in which he has attempted to do it, and there has been no judicial decision upon the point. I should have offered this amendment at an earlier day, had it not been for the position of a member of my family. A son of mine was commonwealth's attorney, and I knew my motive might be misconstrued, if I offered it while he occupied that situation. I am satisfied we shall never get persons who are competent to discharge the duties of commonwealth's attorney, unless we take from the governor the power to remit that portion of the fines which the law gives to these officers, as part compensation for their services.

Mr. HARDIN. I intended by the word "fees" to embrace the very case the gentleman has mentioned, because it is the money that belongs to the officers. The sheriff, clerk, and commonwealth's attorney, each have their fees. However, I am willing to agree to any thing that will make it more explicit.

Mr. THOMPSON. I think there are many cases in which the interposition of the governor is called for. A man may be unjustly convicted of an offence; he may be improperly fined. If the case does not require the interposition of the governor he will not interfere. I am utterly opposed to restricting him in the way the amendment proposes.

Mr. TURNER. We do not propose to prohibit the governor from remitting fines that go into the treasury; but only that portion which goes to these officers, as a part of their compensation for service rendered the commonwealth, which is given to them in order to stimulate them to a proper discharge of their duties. Without this, it would be necessary either to fix an adequate salary for these officers, or else we must not expect to obtain competent persons to fill this office. Public opinion demands that there should be a check upon the power of the governor in this respect.

Mr. WOODSON. Mr. President: Having discharged the duties of attorney for the commonwealth in the 15th judicial district for several years, and having now resigned that office, and not expecting that it will ever be conferred upon me again, I cannot, in justice to myself, allow the present occasion to pass without giving to the convention a very brief statement of my observation and experience in reference to the subjects involved in the section as reported by the committee—in the amendment of the delegate

from Madison, (Mr. Turner,)—and alluded to in the course of the present discussion.

The office of attorney for the commonwealth is a responsible and a very laborious one, and I am sure that few men in the state, possessing the requisite qualifications for an able and satisfactory discharge of the duties of the office, can be induced to accept it, after the judicial districts shall be enlarged according to the provisions of the report of the committee, in consideration of the very low salary now paid that officer, provided the governor, as heretofore, is invested with the power to take from him all the valuable perquisites of the office.

Laws are enacted, high penalties, extending to the forfeiture of life, liberty, and property, are denounced against all who violate their provisions—the expensive organization of the necessary tribunals, to bring to the light and punish the guilty, incurred,—grand juries present, petit juries find the delinquents guilty; the courts pronounce the penalties of the law, without any terrors to the guilty ear, upon which the sentence ought to fall with all the solemnity of the thunders of the judgment day. And why? Simply because of the facilities afforded for the acquisition of executive smiles, remissions, and pardons. Sir, I have heard the awful sentence of death pronounced without any striking effect upon the guilty culprit, executive sunshine enlivening by anticipation the gloom, the horrors, the awfulness of the scene. Hence, I confess that I am not satisfied with the report of the committee, or the amendment, because they do not go far enough in their restrictions of the exercise of the pardoning prerogatives of the executive. But, as the report is the result of compromise, I feel it my duty to support it and such amendments as the committee will allow.

I wish to speak particularly though, Mr. President, in reference to the defects in the present constitution, sought to be remedied by the section under consideration, and the amendment of the delegate from Madison. Little regard has been paid to the penal statutes in Kentucky, by those whose interests or abandoned natures prompted them to set them at defiance, and why? Not because grand juries were disinclined to ferret out offences, or because petit juries and courts were opposed to inflicting the appropriate and legal penalties; but they have been trampled under the feet of the lawless desperadoes of the country in consequence of the certain refuge universally extended, almost, by the executive to them. I have known more than one unprincipled law-defying villian, to laugh at, and defy the officers of government, in their efforts to enforce the penal statutes of Kentucky, knowing sir, that let their delinquencies be never so great, that a merciful executive would avert the chastising rod in the name of poverty, mercy, or something of the sort. So much does not depend upon the number or the severity of penal statutes as a rigid enforcement of their penalties when violated. The certainty, more than the character of the punishment deters from the commission of crime, and a violation of the moral precepts of our penal code. I do not pretend to speak of the practice in any portion of Kentucky, save that immediately represented by me upon this floor; but I do know sir, that within



my knowledge, the exercise of the pardoning power by the governor, and the indiscriminate remission of all fines imposed by the courts and juries of the country, have done more to embolden crime, interrupt the peace of society, and trample under foot the morals of the community, than all other causes combined. I would be willing to deprive the governor of the power to remit fines altogether, and say that after an enlightened court and jury had found a man guilty of a gross violation of the penal laws, he should suffer that punishment which the wisdom of the law-making power had provided. But as I cannot succeed to the full extent, I do hope that the report of the committee will be sustained. There has been a constant warfare going on between the virtuous law-abiding citizens, determined to sustain the morals and well being of society, on the one side, and the reckless out-breaking law-defying desperado on the other, ever since law was invented and applied to human action. The innocent man will never suffer in consequence of the application of the remedy, which the section under consideration proposes, to the evils complained of. The guilty alone are destined to reap, in merited punishment by it, the legitimate fruits of their desperate deeds.

Mr. President, no tongue can tell the evils which have resulted to Kentucky, in a thousand ways, from the grog shops, and tipling houses in the country. The young—the middle aged, the old, black, white, rich and poor, have been, and I fear are, destined to be the victims of these sinks of iniquity in Kentucky. As long sir, as tipling houses &c. are permitted to be set up and money to be made at them in violation of law, under the protecting influences of executive favor, so long will your sons, your brothers, your nephews, and your neighbors be decoyed within their influence—so long will the tears of the mother flow—so long will the heart of the wife bleed, over the fallen depraved fortunes of her husband. If you wish to destroy crime, wretchedness, woe and misery, you must begin at the fountain head. And I now say to you, and this convention, that the whole penal code might as well be repealed, and every man allowed to drink, gamble, fight, and do all he can to ruin the morals of the country, without any restraints at all, as to continue upon your statute books, laws which are rendered wholly and almost universally inoperative by executive clemency. The time has not long passed, when the governor was not only in the habit of remitting the fines and forfeitures imposed upon the guilty violators of the laws, but the clerks, sheriffs, and attorneys fees, allowed by statute. The section now under discussion only deprives him of the power to make the officers of the law labor in their laudable effort to preserve the morals and well being of society for nothing.

Mr. MAYES. I am not commonwealth's attorney nor do I expect to be, but I have acted in that capacity, first under the appointment of Gov. Letcher, and then under the appointment of Gov. Owsley. It is proposed that the commonwealth's attorney, shall have a salary of three hundred dollars, and as an inducement for gentlemen of talents to accept the office—and that violators of the law shall not go unpunished—a portion of the fines and forfeitures are appropriated as fees,

in payment of the services of these officers. I hope the principle of the amendment will be adopted.

Mr. CHAMBERS. I offer the following as an amendment to the substitute for the section.

"The governor shall have no power to remit any fine or forfeiture, except such as may be payable into the public treasury."

The governor has no power to remit the fees of clerks, sheriffs, or commonwealth's attorneys in penal prosecutions. This twelfth section is, therefore, merely declarative of what the law is, and is wholly unnecessary.

The amendment proposes to take from the governor his right to remit so much of any fine or forfeiture, as the legislature may have given or appropriated to the prosecuting attorney or others, as pay or inducement to successful prosecution. I am opposed to the amendment. It is calculated to put it in the power of the legislature to render the executive power to remit fines and forfeitures entirely nugatory. If the legislature may give a part of the fine or forfeiture to the attorney prosecuting, it can give the balance to others, and thus withdraw all fines and forfeitures from executive clemency. We have already deprived the executive of most of the powers delegated to him by the constitution of 1799, and it would be wrong to trench further upon his prerogative. If the commonwealth's attorney, and other officers, have not sufficient compensation, let it be increased in some other way, and let us leave with the governor the power to remit fines and forfeitures, unrestricted.

I shall vote against both the amendment and the twelfth section, for I am unwilling to deprive the executive, to any extent, of his power to remit fines and forfeitures in meritorious cases.

Mr. HARDIN. I, too, have been state's attorney, and know the necessity for having men of talents to fill that office. I have seen that office dwindled down to a mere nothing, when compared to what it once was. The object of the committee was, to give to the commonwealth's attorney such compensation as will induce gentlemen of the best talents to accept the office. I think the house is sufficiently informed on the subject, I will therefore call for the previous question.

The question being stated, "shall the main question be now put," it was carried, upon a division—yeas 35, nays 21.

The question was then taken upon the amendment of the gentleman from Madison.

The yeas and nays being called for, by Messrs. FORREST and HARDIN, resulted as follows—yeas 37, nays 52:

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Francis M. Bristow, William Chenault, Archibald Dixon, James Dudley, Selucius Garfield, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Alfred M. Jackson, George W. Kavanaugh, James M. Lackey, Thomas W. Lisle, Willis B. Machen, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, John D. Morris, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Proctor, James Rudd, Albert G. Talbott, John J. Thurman, Philip Trip-

lett, Squire Turner, Andrew S. White, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—37.

**NAYS**—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Charles Chambers, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, John Hargis, William Hendrix, Thos. J. Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, Charles C. Kelley, Peter Lashbrooke, George W. Mansfield, Alexander K. Marshall, Nathan McClure, William D. Mitchell, James M. Nesbitt, William Preston, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, John D. Taylor, William R. Thompson, Howard Todd, John L. Waller, John Wheeler, Robert N. Wickliffe, George W. Williams—52.

So the amendment was rejected.

The question was then taken upon the adoption of the twelfth section, by yeas and nays, on the call of Messrs. MITCHELL and BROWN, and were—yeas 50, nays 38:

**YEAS**—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Francis M. Bristow, Edward Curd, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Selucius Garfield, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Mark E. Huston, Alfred M. Jackson, William Johnson, George W. Kavanaugh, James M. Lackey, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, John D. Morris, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Albert G. Talbott, John J. Thurman, Philip Triplett, Squire Turner, John Wheeler, Andrew S. White, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—50.

**NAYS**—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, James P. Hamilton, Thomas J. Hood, James W. Irwin, Thomas James, Charles C. Kelley, Peter Lashbrooke, Nathan McClure, David Meriwether, William D. Mitchell, William Preston, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, John D. Taylor, William R. Thompson, Howard Todd, John L. Waller, Robert N. Wickliffe—38.

So the section was adopted.

The thirteenth and fourteenth sections were then read and adopted as follows:

"Sec. 13. If a vacancy shall occur in the office of judge of the circuit court, the governor shall issue a writ of election to fill such vacancy, for

the residue of the term, and another judge shall be elected by that district, to serve until the expiration of the time for which the judge was elected whose death, or other cause, produced such vacancy: *Provided*, That if the unexpired term be less than one year, the governor shall appoint a judge to fill such vacancy."

"Sec. 14. The general assembly shall not change the venue in any criminal or penal prosecution, but they shall provide, by general laws, the mode and manner in which changes of venue in such cases may be had."

The fifteenth section was read as follows:

"Sec. 15. In all trials for treason or felony, the commonwealth shall be entitled to peremptory challenges of jurors equal to one-fourth the number allowed the accused."

**Mr. HARDIN.** As the law now stands, in cases of felony, the accused has the privilege of challenging without showing cause, but the commonwealth has no such right, unless they show good cause. It is known to gentlemen who have prosecuted criminal cases, that men are placed upon the jury, sometimes upon their mere allegation that they have formed no opinion in the case, and who go there predetermined to acquit the accused. This was the reason that operated with the committee, and caused the insertion of this section.

**Mr. TAYLOR.** I will offer the following amendment:

"*Provided*, That in all penal and criminal prosecutions, the accused shall have the right to prosecute an appeal, or writ of error, to the court of appeals."

The first thing, no doubt, that strikes the mind of delegates in this house, upon a few moments reflection, is that there is a vast difference between the life, liberty, and character of a citizen, and his property. In a controversy involving but \$50 you have a right to appeal, you have a right to spread upon the record a bill of exceptions, to any opinion that the judge may render in the progress of the trial; and you have a right to a writ of error to the court of appeals; and to have the decisions of the circuit courts reversed, if wrong. But sir, upon a question involving life, liberty, or reputation, you have no such right. I ask every delegate on this floor, to put the question to himself, and answer it, why this difference between the property of the citizen on the one hand, and his life, liberty, and reputation on the other? The constitution of Virginia, which is said to be the mother of commonwealths, and which has produced such men as John Marshall—and time has not placed upon the sepulchre of the dead a nobler name—allows the accused to appeal from the decision of the court below, and a worthier example we could not follow.

I was struck with a remark made by the venerable gentleman from Nelson, (Mr. Hardin,) the other day. It was, that the circuit judge, has the life, liberty, and property of the citizen in the palm of his hand, and it was a remark that came from his heart. And he added, that if he had a son upon trial, he would expend the whole of his fortune in order to purchase his release. He might have gone further, and said that he would have coined his heart's blood for the redemption of his son.

The power and influence that a circuit judge has over the life and liberty of the citizen, is exhibited upon the admission or rejection of testimony. Suppose that I am on trial, and that the admission of certain testimony which I seek to introduce to the consideration of the jury, would absolve me from the charge; and make my innocence as clear as sunshine, in shady places, and the judge should exclude it, then it is that the power of the circuit judge is felt. Why should we, I ask, make this invidious, this inexcusable and unjust distinction, between the property and life of a citizen? The old constitution is radiant with the principle of protection, in relation to property, as the firmament with stars. And gentlemen have introduced here certain abstract principles, which they intend to incorporate in the bill of rights, that are not only to protect us now, in the enjoyment of our property, but at all future times. And this convention is laboring, by a thousand methods, to secure and protect persons in the enjoyment and acquisition of property; whilst life, liberty, and reputation is entrusted to a single judge, without check or limitation, in any form whatever.

Gentlemen say it would have a tendency to increase the expenses of the judiciary. It is true, that in many cases it would be expensive. But I ask, is any gentleman so wedded to his peculiar notions, as to be willing to make life and liberty a question of pounds, shillings, and pence. It is proper, that the humblest as well as the most exalted, should have the right of appeal, upon questions involving his liberty or his life.

If gentlemen have talked about bribery and corruption, sir, this provision is intended to prevent bribery and corruption; to prevent money from having an influence in our criminal jurisprudence; and to adjourn questions, involving life and liberty to another court where the matter may be clearly and deliberately examined, in all the lights possible to be thrown upon it. The decision of the judge is sometimes given, under the influence of feelings favorable, or hostile to the parties; sometimes under the influence of the powerful arguments of counsel, upon questions that affect a man's life, liberty or character. What is a man's character? Like his shadow, it sometimes goes before him, and at others follows him. And when this and other interests dear to him, are at stake, I for one, would admit of no petty consideration of pounds, shillings and pence, to interfere and prevent protection by having the questions of law, involving their safety, examined and settled by an appellate tribunal, and hence I have submitted my amendment.

Mr. HARDIN. The power is now in the legislature to give the right of appeal to the accused, and our government has been in operation for fifty seven years, last June, and such a right has never been granted. And if this provision should now be put into the constitution, I do not believe, that any application would ever receive the support of more than one-tenth of the legislature. I will venture to say, one thing certain, that there would not be one conviction out of ten, unless he be some poor beggarly, vagrant, in which there would not be a writ of error de-

manded; and before the trial came on, the accused—if out on bail—would make his escape, and if in jail, would require three or four men to guard him. I ask the gentleman, if he is not as likely to get justice in the circuit court as in the court of appeals. Some judge must decide the case, and the inconvenience of suspending the execution of a judgment in every case, would be beyond the endurance of the country. But that is not all; sometimes escapes might be had through the great influence of money. I want it left to the legislature. If we adopt it here, we cannot afterwards get clear of it. It is an old adage, "that it is better that ninety nine guilty men should escape, than that one innocent man should be punished." I do not think I ever saw an innocent man punished in my life; but I believe that ninety nine guilty scoundrels escape for every one that is punished. I hope the proposition will not be adopted.

Mr. DIXON. I am against the entire section and against the amendment of the gentleman from Mason, (Mr. Taylor.) The commonwealth has advantages enough over the accused now, and I am not disposed to increase them. I have been engaged a great deal in the management of cases of a criminal character, and I know the great difficulties which the accused has always to contend against. The very fact that a man is charged with a high offence as murder, excites the public suspicion and prejudice against him, and the cry of the community at once, too often without stopping to enquire into the facts, is crucify him, and the protection which the law affords him and the ability of his advocate can scarcely save him from becoming a victim to that popular prejudice. The commonwealth has advantages enough, and the accused should have every opportunity afforded him of an impartial trial. He should have a jury not packed to decide his case against law and in favor of himself, but one that will secure him an impartial trial. This was the object of allowing him the right to challenge twenty jurors peremptorily, and thus to secure himself against the influence of popular prejudice. The commonwealth have nothing to fear from any such prejudice, and therefore there is no such reason why it should have the right of peremptory challenge. It is a principle in the laws of Kentucky, except to a limited extent. I believe in the correctness of the maxim, to which my friend from Nelson has referred, "that it is better that ninety nine guilty men should escape, than that one innocent man should suffer." Although I am for punishing crime, I would save those who are not guilty. I am satisfied with the constitution as it is, and I hope the section, together with the amendment, will be rejected.

Mr. MAYES. I wish to say a few words upon this section before the vote shall be taken. I have never yet been able to see why it is that the man charged with crime should be allowed to challenge twenty persons presented as jurymen, without being required to show cause for such challenge, when the right is denied to the people of the state to object to a single one, unless cause can be shown for such an objection. The gentleman from Henderson, (Mr. Dixon,) says that the state has advantages enough now over the man arraigned for crime. I know not

of the advantages of which that gentleman speaks. He says that great prejudice is engendered in the public mind against the accused, and that this is an advantage. Another advantage he tells us consists in the fact that the attorney for the state has the right to open and conclude the argument before the jury. Now, sir, I cannot admit that the public are prejudiced against a citizen merely because he may be accused of crime. No sir. Our sympathies are all in favor of the accused, unless the evidence of his guilt be clear. If it be true that the concluding speech operates as an advantage in favor of the state—which I by no means admit—the defendant in a civil action for the same reason should have the right, without cause, to object to at least six; for in such case the plaintiff has the right to open and conclude the argument. I do not, however, admit that an honest jury can be swayed or controlled by the last argument. They are, generally, and at all times should be, controlled by the law and the evidence touching the subject under consideration, and not by the last speech, as supposed by the distinguished gentleman from Henderson.

It may be that I occupy a singular position upon the subject under consideration, for I am a member of the legal profession, and it is said that all men are controlled in their action by that which may be regarded as affecting their own peculiar interest. I however contend that there have been instances, and there have been many such, where persons have lost sight of personal aggrandizement, and have done that which was best calculated to advance the greatest good to the greatest numbers. I am and have long been satisfied that the right of challenge should be given to the state in criminal causes; and that without it, in many instances, the criminal law of the country is nothing more than a farce, and is rendered wholly impotent and ineffectual to suppress and punish crime. There have been instances of packed juries. I have thought, nay, I am sure I have seen this thing done. All who are conversant with the administration of the criminal law of the state, have seen it outraged by bribery and perjury upon the part of persons sworn as jurymen. Yes, sir, they have seen those miserable wretches standing at and around the court house door, ready, whenever the regular panel should be exhausted, to present themselves as jurymen. They have been thus presented—have sworn that they had formed no opinion as to the guilt or innocence of the accused, and have taken their seats on the jury; and in defiance of the most positive proof of the guilt of the fiend in human shape, he who had perhaps crimsoned his murderous hands in the blood of the husband and the father, by their verdict have declared him not guilty, and turned him loose to prey again upon society, and again to violate that law with impunity, which was made, as it is supposed, to secure to the citizen the right to his life and property. They have done this too when all who heard the facts of the case—and who have no wish to gratify but that the guilty be punished, and the majesty of the law vindicated—are satisfied of his guilt. It is not proposed, sir, to take from the accused the right of challenge—nor is it proposed to deprive him of any advantage whatever, which he may now en-

joy. The object is to secure to the people—for whose protection the law has been made—some little chance, that the man who has no regard for the law of the country, and who is ready at all times and upon all occasions to commit crime, shall not, by a packed and corrupt jury, be declared innocent, when his guilt is manifest to all. Sir, we all know the power of money; its power has been wielded in such a way as often, very often, to set at open defiance the criminal law of the country, and set at liberty the veriest murderers and scoundrels that ever disgraced the shape of man; yes, it has entered the very temple erected and dedicated to justice, and has contaminated and poisoned that stream which should ever be kept pure. It has bribed jurymen and witnesses, and has rendered the criminal law of your state little better than a dead letter. What is more common at this day, than when it is said that murder has been committed, to hear the information answered by the remark that the man who may have committed the deed is in no danger, he has too much wealth, his family connexion is too extensive and powerful, and that the law was not made for him? What, sir, does all this mean? It only means that if you give a man money, united with strong family friends and influence, he may at his will laugh to scorn your courts of justice, trample the law with impunity under his feet, and commit crime without the fear of punishment. The poor, the weak, the humble, and the penniless, regard the criminal law as but a poor shield indeed to them, against the wrongs and outrages which the strong and mighty impose upon them. The people have, in a great measure, lost confidence in the security offered by the criminal law. Let a poor and friendless man be indicted for crime, and he is convicted or executed, or sent to the penitentiary to expiate his crime; and to effect this, the evidence of his guilt need not be very strong. The unfortunate man has no money; no powerful and influential friends to stand by him in the hour of his need. He has no money with which to bribe miserable wretches to come in and take their seats on the jury bench, predetermined to acquit him. This provision allowing a challenge to the state, as far as the man thus friendless may be concerned, may not be so very important; but sir, I maintain that it is most important, when the man of wealth and influence is charged with and guilty of crime, to combat in some degree the wicked use he may make, and which he often does make, of his money, when he has robbed a better man than himself of his life, deprived the wife of her husband, and the children of their father and protector. I have said, sir, that as I am engaged in the practice of law, and am sometimes engaged in the defence of such as are charged with crime, it may appear singular that I advocate this section of the report, as it is the interest of the lawyer to use all honorable means to succeed in his client's cause. I expect to find most of the members of the profession arrayed against this section, for the reason that, if it should be adopted, it will take from them in some small degree a portion of the advantage which the law, as it now is, gives to the man charged with crime, over the people of the state whose rights have been by him trampled under

foot; and for that reason, some of them at least may be expected to oppose it. As a class, there is it not, in the wide world, a more honorable high-minded, and patriotic portion of the citizens of this or any other country, than are the lawyers. Their love of country, their hatred of tyranny and oppression, has been evidenced upon every battle-field wherever and whenever the flag of liberty and free government has been raised. They have at all times been found along side of the friends of free government in every country upon earth. Yes, sir, their blood has been freely and nobly shed, and their treasure has been expended to secure to us the free government, the benefits of which we this day so abundantly enjoy. Still, Mr. President, they are but men, subject to all the frailties and imperfections of our unhappy and fallen condition; and perhaps as a class, they may feel it to be a duty they owe to their present and future clients to oppose this section. We should, however, and I hope we shall, upon this occasion, forget all other considerations save the public good, and vote upon this question with an eye alone to the just administration of justice. I presume all will thus vote.

Why is it, sir, that the sympathies of gentlemen appear to flow so freely in favor of those who are charged with crime, or who may be arraigned for trial? I too can sympathize with the wretch who has wantonly outraged the law of the country, but at the same time, when he has my sympathy and my sorrow, I desire that he shall be punished as certainly as he has committed crime. I have much sympathy for those upon whom he has brought ruin, distress, misery, and wretchedness, by his high-handed violation of law. The man of crime has no sympathy. In cold blood he can take the life of his fellow, without mercy, or remorse. In my judgment he is not entitled to a great deal of compassion, and should, when arraigned, be allowed no advantage over the state. He should have a fair trial. So should the state have an equally fair chance. If, sir, we would banish from our land crime and immorality, the laws made for the punishment of such as may be guilty of it must be enforced, and all the facilities and aids necessary to its enforcement must be afforded. Without this, it is and ever will be futile to think of suppressing crime. If it be understood that the heavy penalty of the offended law will certainly be visited on him who may dare violate it, then we may hope to see less of crime, and not otherwise; for sir, when it is seen that the punishments demanded by the law against such as commit crime, are easily evaded, and that there is little or no certainty that such will be punished, just so sure as this is the case, will crime increase in the land. And sir, to this unfortunate condition we have arrived, and the people of the state have in a great measure lost confidence in the power of the law to protect, shield, and secure them against outrage and wrong. It is, Mr. President, the hope with which I flatter myself, that the principle contained in the section under consideration, will, if adopted, afford some little aid in bringing to justice such as regard not the law, that I am induced to advocate it. If adopted, as I have before said, it will not take

from the man charged with crime one single privilege which he now has.

The gentleman from Mason has offered a substitute by which it is proposed to allow appeals in criminal causes. I am disposed, sir, to vote for some principle which will give the accused an opportunity to have an error, committed to his prejudice when upon trial, corrected; for although I am anxious that such as commit crime should be punished, still sir, I would have no one improperly or illegally punished. I do not know why it is that in criminal causes, the judgment as rendered in the circuit court, must stand unchanged, whether it be supported by law or not. We have no tribunal to which the accused can appeal, that an erroneous opinion which may deprive him of his life or liberty may be revised and corrected. Our circuit judges entertain different opinions upon different questions of criminal law, yet we have no court to which such opinions may be taken, and when wrong, corrected. That which is a crime in one circuit, may be no crime in the adjoining circuit. I have never been able to see why it was, that Kentucky had no tribunal of last resort, where the criminal law of the state could be settled, and made to operate in all parts of the state alike. I think there should be some such tribunal. It has ever been a source of surprise to me, sir, that persons are allowed, when they deem that justice has not been done upon the trial of a civil action, to take an appeal, and have such errors as may have been committed corrected, and the same may be done in penal prosecutions, and yet when the life or liberty of the citizen is in peril; when he has been tried and condemned upon what he and his counsel regard as an erroneous construction of the law, there is no appeal except to the clemency of the executive. This looks, Mr. President, somewhat as if we thought more of property than of that which we all, in fact, hold most dear, our lives, our liberty, and our reputations. It is said, as an argument against the proposition of the gentleman from Mason, that if persons condemned for crime are allowed to appeal, the costs of criminal prosecutions will be greatly increased. This may be true; but sir, it will surely be better that additional cost be incurred, than that one who may have been wrongfully condemned should be punished; and this shows that those who oppose the right of appeal in such cases, are hard run for argument to sustain their position.

Mr. CLARKE. I am against the section as it stands, and in favor of the amendment. This section is the introduction of a principle that has been adopted in no country, so far as my reading extends. It is true, that in Great Britain peremptory challenges on the part of the crown are allowed, but even then it is confined to Ireland, and does not apply to the English people. In no state in this union, so far as I know, is this right conferred upon the commonwealth. It has been asked what advantages has the commonwealth over the accused? Why, in the first place, the very fact that an indictment is found against a man excites public suspicion and prejudice against him, and places the mark of Cain upon his brow, without his having the opportunity at all to explain the circumstances which operate against him. There the con-

monwealth has its own feed attorney, and by the vote of this morning, you do not even allow the governor to say his fees shall be cut down by the exercise of the pardoning power. And with all these powers heaped upon the head of the accused man, it is now proposed to give to the commonwealth the additional power of peremptorily challenging five jurors. Who has not seen, the very moment a man is apprehended on suspicion of crime, the women and children gaze on him as he walks through the streets, and heard the murmurs that pass through the crowd as he passes along. Some then say that "they do not think his eyes look exactly right," or that "he has a bad countenance;" and others, that they "knew him when a boy, and from little circumstances that then occurred, they always supposed he would turn out badly." Others again, significantly shake their heads and repeat stories that have been told in the neighborhood where he once lived, and there will be a thousand influences of this kind operating against the accused, and exciting the public prejudice against him. And just in proportion to the magnitude of the offence and the severity of the punishment which is impending does the popular condemnation of the moment rest on the accused, and deprive him, in many instances, of a just and impartial trial. I trust this innovation will not be made upon the established usage of this state. No proposition has been presented to this convention to which I am more opposed than to the fifteenth section of this report. There is no evil existing, or that has existed in this state, demanding this innovation.

I desire that the accused shall also be allowed to take an appeal to a higher tribunal. I want the man whose life, and liberty, and reputation, and the reputation of his family, are put in jeopardy, to be permitted to take an appeal. If you allow it to a man in a matter of dollars and cents, in the name of heaven give him the same privilege where these sacred rights are endangered. I had the occasion the other day, when speaking on the question of uniformity of decision, to refer to a fact well known to those who live in the southern part of the state. It was the case where, in one county, upon a motion to give a prisoner the benefit of clergy, the judge sustained the motion, and the prisoner, who had been tried and convicted of the highest offence known to our laws, was set at liberty. In another county, a man was tried for a less offence, found guilty, and, on the same motion being made before another judge, it was overruled, and the criminal paid the penalty of his crime under the gallows. Here was one man hung and another set at liberty under the very same code of laws. One or the other of these decisions must have been wrong. There is a want of uniformity in the decisions of the circuit court, upon questions of law. Give to the prisoner the right, then, if his counsel is convinced that questions of law have been wrongfully decided, of appeal to the higher tribunal. There is great need of some uniformity of decision being established. As it is now, the circuit judges decide according to the lights they have derived from their various reading, and according to various authorities, and thus we see one man hung and another set at liberty, under the

same state of circumstances. If a court of appeals is to be established in this state for the sake of securing uniformity in decisions, in the name of common sense give to the man who has life and liberty at stake, the benefit of it. I shall vote to strike out every word of this section, and I trust that a majority of this convention cannot be found to vote for this privilege of peremptory challenge on the part of the commonwealth. I trust, also, that we shall all concur in the opinion, that the life, liberty, and reputation of a man are just as sacred as his property in dollars and cents, and that if we give the party the right of appeal in the one case, we shall be ready to do it in the other. The right of appeal in criminal cases has existed in Tennessee from the formation of the present constitution down to the present time, and I have never heard any complaint from lawyers, judges, or from any other source, as to its working wrong. Nor have I heard the least complaint that the additional expense is so great that this privilege should be withheld from the citizen. I would rather, at this moment, see the state incur an expense of \$500,000, than believe that from an erroneous opinion of the circuit judge an innocent man's blood had been shed. Such things have been done, or guilty men have been turned loose on the community as in the case I put.

The convention took a recess.

#### EVENING SESSION.

Mr. APPERSON proposed the following as a substitute for the whole section.

"*Provided*, that the general assembly shall provide, by law, that any criminal who may be convicted in the circuit court, may, under proper restrictions, have the law of his case tried by the court of appeals, provided, one of the judges of the latter court shall order a supersedeas to issue to restrain the execution of the sentence until the case can be heard and determined by the court of appeals."

Mr. TAYLOR asked and obtained leave to withdraw his amendment, and to offer the following substitute for the whole section in lieu thereof:

"In all trials for treason and felony, as well as in all prosecutions for penal offences, the accused shall have the right to prosecute an appeal, or writ of error, to the court of appeals, to any judgment which the circuit court may render against him, and the general assembly shall provide, by law, in what manner such appeal, or writ of error, may be prosecuted: *Provided, however*, that such appeal, or writ of error, shall extend only to questions of law which may arise upon and be decided during the progress of the trial in the circuit court.

Mr. GHOLSON. I do not agree, for one, to either of these substitutes. For God's sake, if we intend to punish any man in Kentucky, let us continue the right to challenge to the commonwealth, and for this the substitute does not provide. My experience teaches me that your very rich, moneyed man, can purchase jurors enough where this right of challenge is not granted to the commonwealth to keep their necks out of the halter. It is to prevent men being bought and sold in the market and placed where they



can be put in the jury box, that this right of challenge is proposed. It has become a remark in my section of the country that you cannot hang or punish a moneyed man. Indeed I have heard men go so far as to say that they would not hesitate to shoot any man who would offend them, if they had five or ten thousand dollars to expend to get themselves clear. Instead of striking it out entirely, I should prefer to extend the right of the commonwealth to challenge.

Mr. DIXON. I am decidedly against the section, and greatly prefer the substitute of the gentleman from Mason, (Mr. Taylor.) That is, that there shall be an appeal taken only in cases where there is a dispute upon a question of law merely, and nothing else. I do not know that I am in favor of the right to appeal at all, but I greatly prefer it to the section as it stands. I think that the arguments adduced by the gentleman from Graves, (Mr. Mayes,) are very far from proving the proposition he assumes. As I stated before, the accused has but a poor chance against the commonwealth, with the advantages it has on its side. He is compelled to rebut as far as possible the popular prejudices which the very fact that he is charged with crime excites against him before he can have a fair trial. The commonwealth should stand as the protector of the accused and stand between him and the popular prejudice, rather than in the attitude of seeking to urge him to the sacrifice without an opportunity to defend himself. The gentleman tells us that he is a prosecuting attorney, and that because he has discovered that errors have crept into our criminal system, he desires this amendment. And he tells us that gentlemen of the bar are deeply interested in protecting the accused. Are not commonwealth attorneys deeply concerned in convicting the accused.

Mr. MAYES. The gentleman is mistaken if he supposes I learned the facts I stated only during an experience as commonwealth attorney.

Mr. DIXON. I have no doubt but that gentleman has learned it by experience, but the question is whether he has been rightly taught or not. The school in which he was taught was that of prosecuting the accused, and what prosecuting attorney does not come forward with a determination that the culprit should be convicted whether he is guilty or not; and then if the jury happen to differ with him, what is his opinion? Why that there is a great defect in the criminal jurisprudence of the state, and that it ought to be remedied. Of course there is no man who defends the accused, but who believes if he is found not guilty the verdict is right. The one is a fair set off for the other. The rich and the powerful can protect themselves; but who shall shield the poor and the impotent from the storm of popular prejudice when it is excited against him. Would the gentleman break down the great barriers to this prejudice which the law has thrown around the weak and the defenceless. And yet to get at the rich and powerful, you must strike down all the poor and powerless. That is the argument, and I do not assent to it. The most powerful talents are brought to assist the rich and powerful, while the poor devil who comes into court with suspicion upon him, if he has no money in his

pocket, will find it difficult to array this talent in his defence. And when the suspicions of the moment have excited the popular prejudices against him, under these circumstances, would you take from him the little protection the law has extended to him in the right to challenge those who are prejudiced against him, or give to the commonwealth the right to challenge the few who might be disposed to do him justice? This is the whole sum and substance of the proposition. I am not for that, for I well know how difficult it is sometimes for men to get even a show of justice.

I was once engaged in the county of Hopkins in the case of a miserable negro, who was charged with breaking open a house, with the intention to commit a felony. There were two counts in the indictment,—one charging him with intention to commit a rape, and the other with intention to commit a theft. Under one of these counts, of course he could not be punished other than by stripes, because the crime would not constitute a felony; but the intent to commit a rape was a felony, for which the punishment was death. The suspicion however went forth, that he intended to commit a rape on the lady of the house, though her husband was in bed with her at the time, and the excitement ran so high against the accused, that when a jury came to be called up the pannel was exhausted as well as the crowd outside; for the reply to the usual question put to jurors on such occasions, was almost invariably that they had made up their minds, and that was that the negro ought to be hung. It was an honest and a generous feeling which impelled the people—it was a desire for the safety of the commonwealth; but in this case it was mislead, misdirected, by passion. We labored for a long while in securing a jury; and such was the influence of this feeling upon them that they could not agree; and another jury had to be called, when the same difficulties of empannelling one were encountered. At last one was formed, and they came to the conclusion that the man was not guilty, and acquitted him. What chance had he under that state of facts with the commonwealth? Had he any power to pack a jury? None. Nothing but the justice of his cause and the shield of the law had he, to save him from the sacrifice demanded by the passion-led and excited multitude. I am not therefore for wresting from the accused the only chance which the law gives him of securing a fair and impartial trial. And I tell gentlemen that if bribery and corruption is to be brought to bear, that if they do give the commonwealth the right to challenge four or five of the jurors, it will not deprive the rich and powerful of the means to exercise it. But you take from the poor man the protection which the law throws around him with a view of securing him a fair and impartial trial. I would not extend the power the commonwealth now has, when it can array whatever talents it may desire to prosecute any man who may be accused and bring him to conviction, even when not guilty. It has been said here that the cry comes up from all parts of Kentucky, that the guilty are allowed to escape from the punishment due their crimes. Has it not been complained of also, that men have been sacrificed to the popular fury and excitement of the moment.

Have we not recently heard of two negroes who were charged with killing their master, and who without trial, upon the mere charge, were burned at the stake? It was against these popular excitements this right of challenge was designed to protect the accused, and to secure him a fair trial. Let justice then be administered without prejudice, and in the spirit of mercy, and not of revenge. If a victim has to be offered up to justice in her high place, let mercy and pity be allowed to drop a tear on the sacrifice. Do not give all these things to the wild and mad fury, gotten up to reflect the feelings and passions of the multitude. Give the accused a fair opportunity of being heard, and then if he is convicted, let him suffer the penalty of his crime. But I would not give to the commonwealth any more power than it has. The chained and trembling culprit stands at the august bar of the commonwealth, with all her strength and power around him, and she has but to speak the word, and he dies. And yet gentlemen desire to increase that power, and it is sought to deprive the miserable accused of the chance of warding off the influence that the prejudices and excitement of the community may bring to bear against him. I am for striking out the section altogether.

Mr. HARDIN. There is a great deal of very fine declamation in what the gentleman has said, but he does not meet the question fairly. The proposition is this: the accused may challenge for cause, if he can show any cause which is known to the law as good ground for challenge, and in addition to that, he can challenge twenty without showing any cause. That is the situation of the accused at this time. The commonwealth can challenge for cause, and I need not enumerate all the causes that exist and are known to the law. The cause of complaint is this: the commonwealth has no right to challenge, without showing cause, the men who are brought forward and hired to come to the court house to get on the jury after the regular pannel has been exhausted, with a view of saving the prisoner, who will always swear that they have not made up an opinion, and then the commonwealth is obliged to take them. I recollect very well hearing judge Buckner say that he had tried a man who lived in Jefferson county, some six miles from Louisville on the Bardstown road, some half a dozen times or more, for either counterfeiting bank notes or passing those which were counterfeit, and he never could convict him, because he had a great many strikers unknown to the body of the people, who hung about the court house and contrived to get on the jury, and thus managed to hang the jury. I recollect the case of a man by the name of Carter, who murdered another on a boat on the Ohio river. The victim was a man of money, who came up to buy a load of lime, and Carter murdered him and sold the boat and the lime and pocketed the money. It was as clear a case of guilt, I reckon, as any man ever saw or read of. Carter had some funds, together with the money of the murdered man, and I was one of the two or three lawyers who defended him. And without our knowing anything about it, or having a chance to know, except to guess, some man hung about the court house, and hung the jury for him. And so for

four successive trials, on each occasion, one man hung the jury, until at last, a jury could not be got in the county. He laid there in the Brandenburg jail for three years without a jury being procured, and the judge and officers were obliged, at last, to declare that the whole county had made up their opinion, and that no trial could be had, and governor Metcalfe was obliged to let him out. And yet perhaps, a more guilty man never lived. He told his wife, I think, of his guilt, for he was married to a very respectable woman who lived in Mason county; for when I took the pardon to her in New Albany, Indiana, she staid and made him up some clothes, and when she handed them to him, she told him to go away from her, she never wanted to see him again. Four times this man, without the knowledge of his lawyers, succeeded in securing one man on the jury, and thus avoided a conviction.

I believe the eloquence of the gentleman from Henderson to have been entirely misdirected. What is the proposition? Is it to restrict the challenges of the accused? No. Whenever they show cause they may challenge, and when they cannot, they still may challenge twenty. But I would give to the commonwealth the right of challenging one-quarter of the number allowed the accused. That is all. Now a man may kill my father, son, or relation, and have I not the right to see that justice is done upon him; and when the law in such a case, should allow me only four challenges, does it take away a single right that the accused has? No; it is only to give the government the right to get clear of the men who come to the court house prepared to go on the jury.

The gentleman from Henderson has said that a man who has been a long time a commonwealth's attorney, is apt to run off too much against the accused, I suppose upon the same principle that in England they would not let a butcher serve on a jury. But at the same time, is there not a danger of gentlemen who have never prosecuted, but have always defended, of running off too far in favor of the accused? I hope we shall give the government this right to a mere one-fourth of the number of challenges allowed to the accused. We know that there is no protection to a man's life in this country, and that the hotspurs of the land are in the habit of walking around and shooting down and stabbing whoever they please, just by way of playing 'big airs.' Take away from a man the protection of the law, and that very instant life is rendered insecure, and men will kill sooner than they ought in self-defence. Whenever you proclaim to the peaceable citizen that his life is not safe, and that upon slight provocation a man may take it, that instant you render him the aggressor in his desire for self-defence. I say, without the fear of contradiction, that already in the case of crimes which cry to heaven for justice, there are too many facilities for the escape of the guilty. Who do they employ to defend them? Why some four or five gentlemen just as eloquent as my friend on the right, (Mr. Dixon.) And who has the commonwealth? Why some little lawyer, who is sometimes called queen's solicitor, and who has got the office by way of charity, and who cannot represent the government at all.

I think I may say that I have defended or prosecuted some one thousand cases of felony and other offences. From 1808 to 1815 I was a public prosecutor, and since then I have alternately prosecuted and defended, but more of the last than the first. I never prosecute a man unless I believe him to be guilty, and then I would just as leave prosecute him as I would a sheep-stealing dog. I recollect very well the case of a man by the name of Spencer, who six or seven years ago was arrested on a charge of killing his stepson, a boy some eight years old, in the most barbarous and cruel manner. The evidence against him was entirely of a circumstantial kind, and it was made up of little scraps of circumstances, but which, when put together, amounted to a demonstration to my mind, at least, of his guilt. The commonwealth's attorney did not view the testimony as I did, and therefore did not push the prosecution with his accustomed energy. I urged him to push it, but he declined, and at last I persuaded him to make an excuse to go to Hodgenville, that the case might fall into my hands. He did so, leaving me to prosecute the case. Spencer was very ably defended, but the jury was not out more than five minutes before they found him guilty, and the court being satisfied, he was condemned. I did not know but that I might be wrong, and I rode over to Elizabeth on the day he was hung, to see whether he would make a confession. I went with the sheriff, a clergyman, and the clerk, and after they had prayed and sang with him for some time, and we were about to go, said the clergyman to him, "Now, Spencer, tell us whether you are guilty or not." Said he, "it is not worth while to go over all the circumstances; I will only say that Mr. Hardin was about right in what he said, except that I killed the boy about half an hour sooner than he said I did." This man was near being cleared merely because the commonwealth's attorney did not view the facts and circumstances as I did, during the examination of witnesses. One thing satisfied me that he was the murderer. This was when the horse came home without the boy, and his mother started to go and seek him, the step-father drove her home and would not let her go. I could name a thousand cases where men have escaped the punishment due their crimes. I know at first there is a strong prejudice against the accused, but is there a lawyer who allows his case to come on for trial at such a time? No; you do not—you get a continuance, and you get one again and again, until at last the people begin to say, "poor fellow, he has suffered enough, God knows. We can't bring the dear man to life again, so let him go."

I recollect the case of a man named Sy. Hults, who shot another, but who, however, did not die. He did not give bail, and I did not want him to do so, preferring that he should remain in jail. For a while, every time that he was brought out, I would always walk with him. I found that there was a strong prejudice against him, rendering it necessary that I should get a continuance. After laying in jail for two winters, and becoming frost bitten, he was brought out in the spring, and as we passed along, I could hear the people saying, "poor Sy. he has suffered enough God knows—and he fought the

British too," and similar expressions of commiseration. Said I, "Sy. now is the time, I shall clear you now;" and the suit being brought on, he was cleared in five minutes after the jury retired. There is a prejudice against the accused at first; but lawyers of skill and ingenuity will not let a trial come on until that prejudice shall subside, and the public sympathies become excited in his favor. There will be no right therefore, of which the accused will be deprived, by giving to the commonwealth this privilege to challenge. I know the government has the advantage in what is called the last speech to the jury. But on the other hand, the accused has the benefit of four or five first rate speeches, and by the time you come to the last speech, the jury are in pretty much the same condition we are here sometimes, so tired out, as to feel no desire to listen to the last speech.

As to this proposition to allow an appeal in criminal cases, I am opposed to it. It is said that appeals are only to be taken on questions of law; but cannot an ingenious lawyer make a law point on almost any question that arises? Hardly a question can be suggested, that may not be made one of law. Once a delay of a few months is obtained, a hundred hopes are excited of the escape of the prisoner. He may escape from jail, important witnesses may die off, or be bribed to leave the state. In a word, you would double the chances of the prisoner for escape, and in addition, you greatly increase the expenses of the courts. Now, there is one way in which an appeal may be taken, to which I see no real objection myself, although I am not prepared to go for it. It is the plan proposed in the amendment of my friend from Daviess, (Mr. Triplett,) that provides that whenever the circuit judge entertains doubts on any point of law, in a criminal case, he may refer the case to the court of appeals for their opinion. This too is the plan in England; and it is the only form of an appeal which I could in any way consent to see introduced here. I do not know that I ever saw an innocent man convicted in my life, but I have seen many guilty men acquitted. We come here to make laws for the protection of the commonwealth, of the whole people, and not solely for the accused.

I appeal to gentlemen not to overload this constitution to any greater extent than they have. If they do, I warn them that it will break down before the people by its own weight. The people demand that there shall no longer exist so many facilities for the escape of the guilty from the punishment due their crimes, and I ask gentlemen not to add to these complaints by increasing these facilities. Give to the commonwealth the right of challenge, and you give the people a protection against those who come to the court house for the sole purpose of being hired to go on juries. Give it to them also, if you desire to make friends for your constitution and secure its adoption.

Mr. TURNER moved the previous question, but Mr. MACHEN claimed the floor, and the main question was not ordered.

Mr. MACHEN. I feel much like the elder gentleman from Nelson, on this matter of making a constitution. I do not wish to burden it, and I expected we should strike out a part of

the report of the committee, because I believe it will be oppressive to it when it comes before the country.

What do you propose to do? To give to the commonwealth the right to do—what? Of saying that some of her proud sons are not worthy to sit in a jury box, and not assign a reason for it. I ask where you can place a more damning stain on a man's character, than to deny him the privilege of sitting as a juror in trying the rights, liberties, or life of his fellow citizen? It is this to which I am opposed. I never will, by my vote, sanction any such proceeding. I hold that it is the duty of the commonwealth to look upon all her citizens as true and loyal, till the reverse is proved. But, without proof, there is an attempt to authorize the commonwealth, through her ministerial agents, to say, "you are unworthy of the rights of freemen." I think the commonwealth has nothing to fear, as long as the elder gentleman from Nelson will be able to come to the rescue. How has it been heretofore, when his mind, blessed with intuition, has been brought to bear, and he has had the privilege of coming to the rescue? The guilt of the accused is as clear as the beams of the sun, and nothing but his own power can resist the destructive power of the commonwealth. Again, when he sees he has carried the jest a little too far for the commonwealth, and destruction is about to fall on the man, he interferes, and says, my power has carried you a little astray, and he saves the victim.

I hold that the commonwealth has now power enough in her hands, and there is a vast difference between the right of the accused to challenge, and its being extended peremptorily to the commonwealth. When the man is once arraigned, and on his indictment a true bill is found, declaring him guilty, it is enough to speed, throughout the whole circle of his acquaintance, the impression that he is guilty. Twelve men have pronounced him guilty, on their oaths. His reputation goes abroad, with guilt attached to it, and when he comes up for trial, there is a propriety in giving him the right to challenge peremptorily. Many will come into court with their minds made up, and I ask if he may not exclude these, that justice may be done? I think this is an improper power, to be placed in the constitution.

Mr. TRIPLETT. I have an amendment which I wish to offer as a substitute for the amendment of the gentleman from Mason:

"Whenever the circuit court judge, before whom a criminal or penal prosecution is had, shall entertain doubts on any point of law which shall be decided by him during such trial, he shall have the power of adjourning over such doubtful points of law, to be decided by the court of appeals; and in the meantime, may delay the execution of the sentence in such case, until the court of appeals have decided such doubtful points of law; or the accused may apply to a judge of the court of appeals for a writ of error, [in any criminal or penal prosecution,] which may be granted by him, and shall act as a *supersedeas* to the judgment of the court in which the trial was had, until the opinion of the court of appeals, on the questions involved,

shall be entered in the circuit court, which shall be governed thereby."

I will state the object I have in view, and the reasons for that object. After the most mature examination, I am satisfied that the great body of the argument of the gentleman from Nelson is correct. I have been in the criminal practice for some twenty years, and I am satisfied that there is not one case in twenty, that would not be taken up. But there is another thing which has not attracted the attention of this house. It is a fact that we have not at this day in Kentucky, a settled criminal code, though we have the best civil code in the world. One judge in one circuit is governed by one criminal code and another by another. I could go on from now till midnight, to enumerate differences between the two courts, in which I practice. This ought not to be. The lives and liberties of the people of Kentucky, are too valuable to be sacrificed by judges going too far on the one hand, or not far enough on the other. I would call to my aid, both of the gentlemen from Nelson, and they are both astute lawyers.

The commonwealth has the right to the benefit of their experience. I would like to hear, not only their experience, but the experience of the older delegates, whether the commonwealth ought not to have some means of sending up appeals, where cases have been decided against the commonwealth, improperly. We should have a universal and equal code throughout the commonwealth. But I have not gone so far. I have stated two propositions. First, where the judge doubts upon a point of criminal law, he has the right to test his doubt, and adjourn the case up to the court of appeals. Ought he not to have that right? If it is a matter of property the parties will take it up. But when the judge who sits on the bench, doubts, surely he ought to have the right to send up the case to the court of appeals, where it may be ably and lengthily argued by a court that have time to give it full consideration.

That is one point. The other is this. If the counsel for the accused, or the accused think the judge is prejudiced against him, and he refuses to take an appeal, then the accused has the right to apply to the judge of the court of appeals. And if that judge is willing to take the responsibility, and sees good cause for issuing a *supersedeas*, he ought to have the benefit of it. I go so far, and if gentlemen say the commonwealth shall also have the right, I am not prepared to say I shall oppose it, for I do know, that I have heard points of law urged against the commonwealth, without any good reason, for the purpose of saving the criminal. From that day forward it is put down in that lawyer's mind, and other lawyers appeal to it, till in some cases, more particularly in cases of burglary, it is impossible to convict a man at all. I do not go so far as that. I leave that matter to other gentlemen, but so far as I do go, I do most sincerely hope the delegates will support me. It is necessary to have a settled criminal code, throughout the state. No danger can arise, for the judge will not send up a case, unless there is a doubt. It has been tried in England, four hundred years, and I have heard of no complaint from lawyers,

the bench, or the citizens. Let us at least have as much mercy as they have there.

Mr. RUDD moved the previous question, and the main question was ordered.

Mr. PRICE called for the yeas and nays.

The question was then taken on the substitute of Mr. TRIPLETT for the amendment of Mr. TAYLOR, and it was agreed to—yeas 54, nays 31.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Garrett Davis, James Dudley, Nathan Gaither, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, James M. Lackey, Thos. W. Lisle, George W. Mansfield, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, Henry B. Pollard, William Preston, Larkin J. Proctor, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—54.

NAYS—John S. Barlow, William K. Bowling, Thomas D. Brown, Benjamin Copelin, Edward Curd, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Selucius Garfiede, James H. Garrard, Thomas J. Gough, John Hargis, William Hendrix, Mark E. Huston, Charles C. Kelly, Peter Lashbrooke, Willis B. Machen, David Meriwether, William D. Mitchell, James M. Nesbitt, Jonathan Newcum, John Price, John T. Robinson, Thomas Rockhold, James Rudd, John D. Taylor, William R. Thompson, Howard Todd, Andrew S. White, Charles A. Wickliffe—31.

The question recurred on striking out the fifteenth section and substituting the amendment offered by Mr. Triplett.

Mr. GRAY called for a division of the question, so that the vote should first be taken on striking out.

Mr. C. A. WICKLIFFE called for the yeas and nays, and being taken, they were—yeas 42, nays 46.

YEAS—Mr. President, (Guthrie,) John S. Barlow, Wm. K. Bowling, Luther Brawner, Thomas D. Brown, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, Edward Curd, Archibald Dixon, Chasteen T. Dunavan, Milford Elliott, Green Forrest, James H. Garrard, Thomas J. Gough, Jas. P. Hamilton, William Hendrix, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Willis B. Machen, Nathan McClure, Wm. D. Mitchell, Thomas P. Moore, Henry B. Pollard, William Preston, Johnson Price, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Howard Todd, Andrew S. White, Charles A. Wickliffe—42.

NAYS—Richard Apperson, John L. Ballinger, Alfred Boyd, William Bradley, Francis M. Bristow, Charles Chambers, Henry R. D. Coleman, William Cowper, Garrett Davis, James Dudley, Benjamin F. Edwards, Nathan Gaither, Selucius Garfiede, Richard D. Gholson, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James M. Lackey, Thomas W. Lisle, Geo. W. Mansfield, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, James M. Nesbitt, Jonathan Newcum, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—46.

So the convention refused to strike out the section.

The question was then taken on adopting the fifteenth section. The yeas and nays were called for by Messrs. MITCHELL and BROWN, and resulted as follows—yeas 41, nays 47.

YEAS—Richard Apperson, John L. Ballinger, Charles Chambers, William Cowper, Garrett Davis, James Dudley, Benjamin F. Edwards, Nathan Gaither, Selucius Garfiede, Richard D. Gholson, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James M. Lackey, Thomas W. Lisle, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, James M. Nesbitt, Jonathan Newcum, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, James W. Stone, Michael L. Stoner, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—41.

NAYS—Mr. President, (Guthrie,) John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Archibald Dixon, Chasteen T. Dunavan, Milford Elliott, Green Forrest, James H. Garrard, Thomas J. Gough, James P. Hamilton, William Hendrix, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelley, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Nathan McClure, William D. Mitchell, Thomas P. Moore, Henry B. Pollard, William Preston, Johnson Price, Ignatius A. Spalding, John W. Stevenson, Albert G. Talbott, John D. Taylor, William R. Thompson, Howard Todd, Andrew S. White, Charles A. Wickliffe—47.

So the section was rejected.

Mr. TRIPLETT gave notice that he should move to offer his amendment as an additional section.

Mr. PRICE gave notice that on Wednesday next, he should move a reconsideration of the fourth section of the report of the committee on the court of appeals—fixing the number of judges.

The convention then adjourned.

TUESDAY, NOVEMBER, 27, 1849.

Prayer by the Rev. G. W. BRUSH.

EXPENSES OF LEGISLATIVE SESSIONS.

Mr. THOMPSON offered the following resolution:

"Resolved, That the second auditor be requested to report to this convention the annual cost and length of the sessions of the legislature of this commonwealth for the last ten years, including all expenses incident to the same. Also, a comparative statement of the expenses of the sessions of the legislature since the time of meeting was changed to the last day of December; also, a like number of sessions commencing on the first Monday in December, omitting in said report appropriations not connected with the annual expenses of each session, but giving such as are incident to a long or short session."

In a brief conversation between Mr. THOMPSON and Mr. JAMES on the subject of this resolution, its object was stated to be, to ascertain what would be the probable saving of expense by the adoption of biennial sessions.

The resolution was adopted.

APPORTIONMENT OF REPRESENTATION.

Mr. C. A. WICKLIFFE offered the following resolution:

"Resolved, That so much of the article on the legislative department, and all amendments proposed to the same, as relates to the subject of the apportionment of representation, be referred to a committee of ten delegates, one to be appointed from each congressional district."

He said there was one question which remained unsettled, and if he could look forward to its speedy settlement, he could fix in his own mind the time when this convention would close its labors. He alluded to the apportionment bill. To that subject his resolution related.

He proposed to raise a committee from each congressional district, to be selected by the presiding officer, to whom that subject may be referred, with the hope that by taking into consideration the various projects, a union may be agreed on which will give the house but little trouble. He did not allude to the basis of representation, but merely to the principle of the apportionment of representation.

Mr. COFFEY moved to amend the resolution by striking out "one," and inserting "two."

Mr. C. A. WICKLIFFE had no particular objection if twenty were considered necessary, but a smaller committee had been thought more likely to lead to harmonious action.

Mr. W. C. MARSHALL said the resolution, as it stands, met his entire approbation. He believed that good would grow out of it. If, however, the number should be increased, he feared the action of the committee would be retarded rather than promoted. One member from each district would be amply sufficient, inasmuch as he could, and doubtless would, confer with the other delegates from the same district.

Mr. KELLY moved to strike out "one," and insert "three."

Mr. C. A. WICKLIFFE, in answer to a question from Mr. Hardin, again stated the object of the resolution. It was not intended to appor-

tion the representation among the counties, but to settle a principle to regulate the apportionment equally hereafter.

Mr. WALLER said he should like to have the resolution include the basis of representation as well. He was unwilling to settle on any ratio till the basis of representation was settled.

Mr. TURNER hoped the resolution would not be adopted. They had not yet fixed on the basis of representation, and how a committee could arrange the apportionment of representation between the different counties of the state, without knowing what basis they should finally adopt, was to him inexplicable. He was opposed to delegating this power to a committee, and therefore, he desired that the resolution should be laid on the table for the present.

Mr. C. A. WICKLIFFE begged gentlemen to understand, that whether they fixed the basis according to the resolution which the convention had already passed, or whether they retained it as it is in the old constitution, or adopted any other element in the basis of representation, still the question of apportionment of that representation was different, and wholly unconnected with it. It was designed simply to lay down in the constitution a general principle by which, whenever the basis of representation should be fixed, the legislature should apply that principle in assigning the members as equally as they could be assigned by such a rule. And in the appointment of the committee under this resolution, he hoped he should be omitted. He would also suggest the propriety of the delegates from each congressional district, selecting from amongst themselves who should serve on the committee, to be appointed under the resolution.

Mr. TURNER could not see why it was necessary now to raise such a committee. He protested against referring this subject to a committee of ten men, for they should thereby commit themselves to what those ten men might afterwards submit. He more especially objected when there was so great a diversity of opinion on the subject of the basis of representation amongst the delegates from the several congressional districts themselves.

Mr. C. A. WICKLIFFE replied that he did not propose to refer that subject to the committee at all.

Mr. TURNER. Can we build a house without a foundation? What is the principle unless it is the basis of representation? I move to lay the resolution on the table.

Mr. STEVENSON called for the yeas and nays, and being taken they were—yeas 37, nays 54.

YEAS—John L. Ballinger, William K. Bowling, Luther Brawner, William Chenault, Beverly L. Clarke, William Cowper, Edward Curd, James Dudley, Milford Elliott, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, William Hendrix, James W. Irwin, Thomas James, George W. Johnston, George W. Kavanaugh, James M. Lackey, Alexander K. Marshall, John H. McHenry, James M. Nesbitt, Jonathan Newcum, William Preston, Johnson Price, Thomas Rockhold, James Rudd, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, How-



ard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White—37.

**NAYS**—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, Charles Chambers, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Garrett Davis, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfiede, James H. Garrard, Ninian E. Gray, John Hargis, Vincent S. Hay, Andrew Hood, Mark E. Huston, Alfred M. Jackson, William Johnson, Charles C. Kelly, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Philip Triplett, John Wheeler, Chas. A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—54.

So the resolution was not laid on the table.

Mr. MERIWETHER called for a division, so that the vote should first be taken on striking out.

The question was taken on the motion to strike out the word "one," and it was negatived.

The resolution was then adopted.

The PRESIDENT stated that it would be agreeable to him to receive from the delegates from each congressional district, the name of a delegate that they might be desirous to serve on the committee.

#### LEAVE OF ABSENCE.

Mr. W. C. MARSHALL asked leave of absence for Mr. M. P. Marshall on account of sickness, which was granted.

#### CIRCUIT COURT.

The convention resumed the consideration of the report of the joint committee of thirty, concerning circuit courts.

Mr. TRIPLETT. I believe when the house adjourned yesterday evening, I had just offered the following amendment, as an additional section:

"Whenever the circuit court judge, before whom a criminal or penal prosecution is had, shall entertain doubts on any point of law which shall be decided by him during such trial, he shall have the power of adjourning over such doubtful points of law, to be decided by the court of appeals; and in the meantime, may delay the execution of the sentence in such case, until the court of appeals have decided such doubtful points of law; or the accused may apply to a judge of the court of appeals for a writ of error, [in any criminal or penal prosecution,] which may be granted by him, and shall act as a *supersedeas* to the judgment of the court in which the trial was had, until the opinion of the court of appeals, on the questions involved, shall be entered in the circuit court, which shall be governed thereby."

I was somewhat surprised to find, after the adjournment of the house last evening, that a misapprehension prevailed among members, in reference to the character of my amendment. It

contains two propositions, that are perfectly simple in their character. The first is, that when a judge of a circuit court tries a case, and entertains a doubt on a point of law, he may carry the point of law to the court of appeals. Now, what will be the result of that proposition? Where a point of law is such that a judge entertains serious doubts, and is unwilling that the life or liberty of the accused shall be lost, without first having the decision of the court or appeals, he may adjourn the case to that tribunal. One answers, it very seldom happens. If so, then the remedy for the evil is not frequently called into operation. What is the next point? It will immediately strike the mind of every thinking man in this house, that there is a possibility that the counsel for the accused may be satisfied that there ought to be a doubt raised—that the point of law is not well settled. Take, for instance, the case stated here a day or two ago, of one judge having decided that a negro was entitled to benefit of clergy, whilst another judge decided, in a similar case, that he was not. Now, one of them was wrong, and the other right. A case as strong as this I met with myself.

In 1825-6 the legislature of Kentucky passed a law as important as ever was enacted by them, that a jurymen, when called up and examined on his *voir dire*, whether he had conversed with the witnesses in the case, should be liable to exception. I know, and I so stated at the time, that in two adjoining districts, one circuit judge decided this law to be constitutional, and that it was our duty to obey it, whilst another judge decided it to be unconstitutional and that we ought not to obey it. Is that law important or not? Nothing can be more important than that a man should be tried by an impartial jury, and the question arises, what is that impartiality, while one judge decides one way and another another. If the court of appeals were once to decide that question, it would operate obligatorily upon the circuit judges. I could go on and give instances innumerable, of the uncertainty of the law in such cases. This is enough for the present. What are the benefits to be derived from uniformity of decisions? We may not probably derive any benefit from it, but our children and our grand children may. At the present time, there is no settled criminal jurisprudence in Kentucky; but if my amendment is adopted, it will go far to secure that desirable object. There will grow up, by degrees, a settled, permanent, jurisprudence, arising from the decisions of the court of appeals in this state upon all the important points that will be carried thither, either by the circuit court judges, or by the accused, and thus by and by, we shall have here, what has been the glory and ornament of Great Britain, throughout the whole land. How did her criminal law grow up? Look at her acts of Parliament, all of which may be condensed within one small volume, while her criminal laws are contained in volume upon volume. The law on criminal evidence, since 1776, has been obligatory on the general assembly of this and other states. For a time, the criminal jurisprudence could not even be read in this country. But legislation, like every thing else, is progressive and improving; and five or six years ago,

the legislature agreed that they might be read, but must not be authoritative. Now, that is a very nice question. These questions will be settled and made obligatory on our court of appeals, and the circuit courts throughout the state, and then the judges will decide alike, and that will be some consolation to the criminal.

Mr. DAVIS offered the following as a substitute for the proposition of the gentleman from Daviess.

"The legislature shall pass laws authorizing writs of error, and regulating the right of challenge of jurors in criminal cases."

Mr. HARDIN. I will only remark, that I think the legislature have that right now, unless the constitution prohibits it.

Mr. DAVIS. Not unless it is granted.

Mr. HARDIN. I will waive that for the present. I have not much objection to the first part of the proposition of the gentleman from Daviess; but to the second, I have stronger objections than to any that has been offered.

In England, twelve judges ride the circuits, and if they have doubts on any point of law, they respite the sentence till they get the opinion of the twelve. The part to which I object in the proposition offered is, that a supersedeas may be obtained, on application to any judge of the court of appeals. The trial of criminal cases is generally during the first week of the session of the court. If the man is sent to the penitentiary, he is usually sent off as early as the second week. When is the supersedeas to be applied for? There is no limit. Is it one year, or six months, or three years? When is he to give bail? The sentence or judgment is set aside, or at least suspended so as to take bail, if it is a bailable offence. Who is to take bail? Is it the keeper of the penitentiary? The circuit court has adjourned, and if he gets bail, do you think he will ever appear? He will be out bushwhacking, and if the court of appeals decides against him, he will not appear.

I will repeat, there are too many means for criminals to escape, for the good of the great body of the community, and I do hope they will not be increased. I hope the second member of the proposition will be withdrawn. There is no demand in public sentiment for carrying criminal cases to the court of appeals. I will ask gentlemen if they have heard of any such demand. I have heard no man make such a claim, except some of our profession. Nobody has the right of appeal but the accused. Government does not have it. I never saw an innocent man convicted, while I have seen a thousand guilty escape.

Mr. DAVIS. If there are any minor provisions of the constitution, in which the people of my section of the country feel a deep interest, it is those provisions which are to regulate the trial of criminal cases. It may be called prejudice, or it may be called cruelty; but whenever a man perpetrates a crime, that strikes at the safety of the citizen, and the general welfare of society, I want him punished. I want him punished for the sake of justice, and especially for the sake of the example, and the security which that example gives to the community.

In regulating the subject of criminal trials,

what ought to be the object of this convention, and of all law-makers? It certainly should be that justice should be done, as well to the commonwealth as to the accused; and that such modes of proceeding should be adopted, as would most certainly secure the impartial and enlightened administration of justice. Now sir, is the present mode of trial in criminal cases, so far as it involves the mode of selecting the jury, and especially the right of challenge in favor of the criminal—is it of such a character as to secure the great end—the proper administration of criminal justice? I think not. The right of challenge, as it now exists, is a statutory right, though formerly it was a common-law right. What was the state of criminal jurisprudence, when this right was secured to the accused? The judges were appointed by, and held office during the pleasure of the crown. We all know that a large class of criminal proceedings, involved state criminals, where the minister of the crown took part, and where the crown influence was used to sacrifice the accused; where the king having the power to displace the judge at his pleasure, and appoint a more humble tool to fill the office—when desirous of having a great state criminal convicted—it became a matter of interest in order to secure justice, that the accused should have this peremptory right of challenge. This feature, as to the mode of administering justice, did not exist in this country, and a great blessing it was to our citizens that it did not—nor does it exist now in England. But there were other important features attending the administration of criminal justice, and what were they? The accused was denied, on the merits of his case, the privilege of counsel for his defence. Upon mere collateral questions, he was allowed the benefit of counsel; but upon the general question of guilt or innocence, upon which general question the fate of the accused depended, he was not allowed the benefit of counsel to aid him in making his defence. If such were now unfortunately the condition of persons accused of crime in this country, it is probable that I would be opposed to a change such as I have proposed in the amendment. But no such barbarous principle does prevail in this country.

Well, what are the other important features in the administration of criminal justice? The judge invariably instructs the jury, that the law prefers that ninety nine guilty persons should escape, rather than that one innocent person should be punished; and that if the jury, upon a review of all the facts in the case, entertain a rational doubt, as to the guilt of the accused, they must acquit. Well, now, the principle of law, as it is administered in relation to criminals almost amounts to a total and unconditional immunity to criminals; especially to those who have money, or powerful and influential connexions. But there are some other features in the administration of criminal law. The jury may acquit. If they acquit, there is no new trial granted to the commonwealth against the accused. An acquittal, though it may be against evidence—against law, is final and irreversible in favor of the accused; but on the other hand, if there is a conviction against evidence, where a reasonable doubt prevails, it is not only the privilege of the accused to have, but the duty of

the court to grant, a new trial. These being the general features of the administration of criminal law, in the trial of criminals, the question is, whether they are of such a character, as to secure justice as well to the commonwealth as to the accused. The gentleman from Nelson, (Mr. Hardin,) has given us his experience on this subject. I also have had my experience sir, during a period of twenty-five years. I have never been prosecuting attorney, though I have sometimes been engaged to assist the prosecution, but I have generally been engaged for the defence of criminals. And I can say with him, in perfect truth and sincerity, that in twenty five years practice, in which practice I have seen many criminals tried, and have been engaged in the defence of many, I have never known an innocent man to be punished, but I have known very many guilty ones to go unwhipt of justice.

Now, what is the great object that we ought to have in view, when devising a mode of trial in criminal cases? Do you want to create a piece of machinery that shall result inevitably, in nine cases out of ten, or even a majority of cases, in the necessary acquittal of the criminal. Is that the purpose of your legislation? Is that the object that members of this convention have in view when they refuse to incorporate such a principle, as is embodied in my amendment, in the constitution, against the experience of the country, and against the proper administration of justice. Gentlemen say they are for mercy. Sir, I am for mercy; but the best mercy, would be a faithful execution of the criminal law. The best mercy is, for the law to throw its shield as a panoply over the citizen for his protection. That shield is not now interposed between the assassin and his victim. Well what is proposed to be done? Why, that you should allow the legislature to pass laws, regulating the right of peremptory challenge, in criminal cases; and also to authorize the granting of writs of error in the same cases. Criminals now have the right, in cases of high treason, to challenge thirty five jurors, according to the principles of the common law; and in other cases they have the right, by statute law, to challenge twenty. We do not propose to abrogate that right; we do not propose to interfere with it at all; we only say that the commonwealth shall have the right to challenge one-fifth as many as the accused. I say this is right—it is necessary to the impartial administration of justice; and it is demanded at the hands of this convention. What is it that goes to stimulate the perpetration of crime? What is it that induces the murderer to imbrue his hands in his brother's blood? It is the manner in which the criminal justice of this country is administered; it is that when he looks around him, he sees that slaves are punished—that the humble, and the friendless are punished—there is no difficulty in punishing them—but the man who has the benefit of influential connexions—the man who possesses wealth, goes unpunished. Your law is rendered inoperative, so far as regards these—it is but a dead letter—human life becomes cheap under your mode of administration of the criminal law—there is no security—no protection under it. Why sir, within the range of my experience, I could point to

cases that have occurred in days gone by, where a large and influential party in the state have committed crime—bold and atrocious crime. They were arraigned and acquitted; whereas, if they had been punished, the example would now operate as a terror to evil doers. This impunity of crime, has emboldened men to commit crimes, at which humanity shudders. A peaceable citizen while walking along the street, is shot down by a man whom he had undesignedly made his enemy; and if a trial be attempted, it is but a solemn mockery—the guilty party is never punished, and it is a consciousness of this that stimulates him to do the deed; whereas, if he knew, that punishment would follow the commission of the crime, it would have the effect of restraining him—his victim would be spared—and a mourning widow and dependent orphans would be saved the direst calamity that could be inflicted upon them.

My purpose is simply not to deprive the accused of any right that he now has, but to give to the commonwealth a right that is essential to the administration of public justice, so far as regards the criminal jurisprudence of the country. I knew of a case in Nicholas county, where a young man, walking up to another in the streets, drew his knife, and stabbed him. The man sunk in his tracks and died, leaving a wife and three children, in a state of penury and want. That man's blood cried aloud from the ground for justice, and the sense of the community demanded it so strongly, that the young man was indicted. I was engaged to aid in the prosecution. The criminal had his friends hovering about the court house, and five of them were put upon the jury. I wanted to set aside the array on that account, but failed. Well sir, the jury were provoked by the motion—I suppose—and they found him guilty of manslaughter only, when the facts made the case one of the most diabolical and outrageous murders that was ever perpetrated. The man was convicted and sentenced to the penitentiary; and the judge granted a new trial. Before the time of holding another court, the culprit had given bail and fled. And sir, three of those jurymen, who were packed for his trial, and who prevented him from being sentenced to be hung, were afterwards arraigned for perjury, and sent to the penitentiary. And sir, in the same county, within the last eighteen months, there was a simple hearted fellow, who had \$2,200 in his pocket. It became known to a man of desperate character, who enticed him into the sequestered hills of Licking, after night fall, and had him robbed. Well, he was indicted, and arraigned for trial. I was engaged in his prosecution also—and sir, I recognize no difference between lending my assistance in the prosecution of an infamous scoundrel, and the defence of an innocent man who is arraigned for an alleged misdemeanor. Well, I aided in the prosecution of this man for robbery. He had—as in the other case—his friends and supporters, standing around waiting to be summoned upon the jury. We chanced to get one of these men upon the jury—and I knew as well before he was brought to the book, as I did after the trial, that he was predetermined to acquit the culprit. This man hung the jury; and if we had been entitled to the right of challenge,

we would have excused him, and a verdict of conviction would have taken place. At the late session of the Nicholas circuit court, this juror was indicted for perjury. There is no lawyer, who has had experience in criminal cases, but knows that such occurrences are frequent. It is to guard against such occurrences—to enable the commonwealth, as well as the accused, to obtain justice, that some such provision is necessary. Is there any thing in this to prevent a fair and impartial jury from being empanelled in the case of the commonwealth against a criminal? Nothing. Then why not allow to the commonwealth the privilege of challenging jurors, to one-fifth the number that the accused may challenge. When the jury is told by the court, that if they entertain a reasonable doubt of the guilt of the accused, he should be acquitted, and that the law prefers that ninety and nine guilty men should escape, rather than one innocent man should suffer—and when counsel is allowed to the accused to argue the law of the case, in most of the circuits in the state—I ask you, if the commonwealth should not be allowed the privilege of challenging at least five out of twenty. Would it at all prevent a fair and impartial trial between the accused and the commonwealth? Why sir, it is the object, and should be the object of all men, to secure an impartial trial. There lives no man, who does not desire that the commonwealth should have this power at least. Now, unless gentlemen shall satisfy this convention that this innovation upon the right of challenge, will produce such a state of things as will prevent an impartial trial, it seems to me the convention should not hesitate to grant to the commonwealth this right of challenge. It seems to me, that justice should be done, not only to the accused, but to the commonwealth. I will refer to a single passage upon this subject.

"Challenges upon any of the foregoing accounts are styled challenges *for cause*; which may be without stint in both criminal and civil trials. But in criminal cases, or at least in capital ones, there is, *in favorem vite*, allowed to the prisoner an arbitrary and capricious species of challenge to a certain number of jurors, without shewing any cause at all; which is called a *peremptory* challenge; a provision full of that tenderness and humanity to prisoners, for which our English laws are justly famous. This is grounded on two reasons. 1. As every one must be sensible, what sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another: and how necessary it is, that a prisoner (when put to defend his life) should have a good opinion of his jury, the want of which might totally disconcert him; the law wills not that he should be tried by any one man against whom he has conceived a prejudice, even without being able to assign a reason for such his dislike. 2. Because, upon challenges for cause shewn, if the reason assigned prove insufficient to set aside the juror, perhaps the bare questioning his indifference may sometimes provoke a resentment; to prevent all ill consequences from which, the prisoner is still at liberty, if he pleases, peremptorily to set him aside."

I will also read the law which denies to "the accused, the aid of counsel, in making his de-

fence in chief." When the jury is sworn, if it be a cause of any consequence, the indictment is usually opened, and the evidence marshalled, examined, and enforced by the counsel for the crown, or prosecution. But it is a settled rule at common law, that "no counsel shall be allowed a prisoner upon his trial, upon the general issue, in any capital crime, unless some point of law shall arise proper to be debated."

"The prisoner is not allowed counsel to plead his cause before any jury, in any felony, whether it is capital, within benefit of clergy, or a case of petty larceny. But in misdemeanors the prisoner or the defendant is allowed counsel as in civil actions." 4th Bla. Com. 355.

Now, this examination is begun and conducted by the commonwealth, and its results are such as are indicated here. Is there any such reason existing in this commonwealth at all? Does the convention assembled in the state of Kentucky for the purpose of instituting its fundamental law, and creating a legitimate and important principle by which the government shall be controlled, intend to assume the position that this right of challenge should, in no case, and to no extent, be given to the commonwealth? If it does sir, in my judgment, it lends itself in some degree, to granting to criminals immunity from punishment. They have immunity from punishment now; and this is one of the principal causes why they have such immunity—not the sole cause, but one of the operating causes, and it ought to be removed. Where is the place, except perhaps in Mississippi or Arkansas, where human life is held in so low estimate as it is in Kentucky? Who is there, when he has received an imaginary wrong, who hesitates to assault his adversary? Who is there that fails to strike when passion and vengeance urges him on? There ought to be some stay, some curb, some controlling principle; and the only stay—the only curb—is the seven years' punishment. Yes sir! Blackstone says truly, and with a deep knowledge of human nature, that it is not the sanguinary punishments of the law, but the certainty of punishment, that restrains the criminal, and prevents the perpetration of crime. This certainty does not exist in this country; and it is because it does not exist—it is because those who perpetrate crime know that they have nine chances in ten to escape, that they do commit it. But sir, if you let them know that when they perpetrate crime, punishment will inevitably follow its perpetration, the consequence will be, that crime will decrease. But until you read to them some such salutary lesson, it will go on increasing as it has increased, and there will be no protection—no security for human life. No true liberty can exist where the law does not give this protection. Under the present mode of administration of the criminal law, in the empanelling of the jury, the right of challenge, and the disposition of the judge to allow counsel to argue the law, and the principle which authorizes the jury to give the accused the benefit of a doubt, it amounts to a perfect immunity from punishment. Now, I say, and I say it with the deepest conviction of the importance of the duty resting upon me, and from my knowledge of the great estimation in

which such reform is held by my constituency, that some such reform ought to be made.

I do not propose to incorporate in the constitution any specific provision for the regulation of the trial of criminal cases. I do not think it appropriate that the constitution should contain any such details. I merely propose to vest a general power in the legislature to regulate writs of error, and to regulate the subject of the right of challenge. I believe that both these are reforms necessary to the due administration of the law. As the gentleman from Daviess, (Mr. Triplett,) has said, there is no uniform administration of the criminal law of the state, and it results mainly, I believe, from the fact, that there is no revisory power to regulate and establish a code containing the great principles which should guide the action of the judiciary in the exercise of this branch of their duties.

Mr. MAYES. Will it be in order to offer a substitute for both propositions?

The PRESIDENT. It is not in order.

Mr. MAYES. Then I will have it read for the information of the house, and at the proper time will ask a vote upon it. The amendment was then read as follows:

"The legislature shall have the power to pass laws, giving to the commonwealth the right of peremptory challenge in criminal causes."

Mr. STEVENSON. I voted yesterday for striking out the 15th section. I confess I did it with great doubt as to the policy of the step. I was actuated in that vote by being unwilling to engraft into the constitution more details than were absolutely necessary. So far as I have examined the subject, this right of challenge has been incorporated in very few constitutions. I think it is the duty of the convention to avoid details in the constitution. It is not necessary, and it may have the effect, notwithstanding a good constitution may be formed, of increasing the strength which is already arrayed against it. It occurs to me that every detail we put into the constitution furnishes an additional weapon to our opponents. I therefore voted against the section. But I am very happy that the gentleman from Bourbon, (Mr. Davis,) has offered this proposition. I think it is a medium ground upon which all can unite. He proposed to leave to the legislature the right to carry out the proposition of the gentleman from Daviess, (Mr. Triplett,) and also to provide against this crying injustice, which has been so eloquently depicted to us in regard to the escape of criminals. If the people demand an appellate jurisdiction, they have but to let their will be known in the legislative halls, and their fiat will be carried out. I suppose that there are very few gentlemen on this floor who deny the propriety of having an appellate jurisdiction in criminal cases, and yet there is scarcely a gentleman who can say that the people demand it. I have seen several efforts made in the legislature to have granted to the court of appeals jurisdiction in criminal cases, and if you refer to the legislative records you will find that bills have been introduced from year to year to give to the court the jurisdiction, and they have been voted down. And those who argue that this is a crying evil that should be remedied, must nevertheless acknowledge that the people have not so received it.

I ask gentlemen then, with this fact before them, not to put into the constitution that which will be an element in the hands of its enemies which may give us more trouble than we anticipate. In regard to the right of challenge in criminal cases, the gentleman's amendment provides for it. And if this crying evil—which I do not so clearly perceive, although I have heard a great deal about it—does really exist, the legislature will have power to remove it, if the popular voice demand that it should be done.

Mr. W. C. MARSHALL. With my friend from Nelson, (Mr. Hardin,) I must beg leave to differ. The right to challenge in criminal trials is taken away from the commonwealth by the constitution, as I understand it; and unless the power is conferred upon the legislature, or incorporated into the constitution about to be made, the right will not exist. I ask gentlemen, who contend that the power under the present constitution may not be exercised by the legislature, to explain to me the meaning of this provision: "That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate." Was the right of challenge extended to the crown? All admit that it was not; it was alone extended to the criminal. If then it could not be exercised by the crown, and that mode of trial is to be held sacred, the legislature in my judgment cannot extend it to the commonwealth. If that section of our constitution means any thing, I care not how loudly public sentiment and public justice may demand it, the legislature is disarmed of all power on that subject, unless we here provide for it. Does public sentiment and the due administration of the criminal laws of our country call for this provision? From my limited experience and observation, I would say that it was imperiously demanded in some form.

I would greatly prefer a provision securing to the commonwealth a right to at least one-fourth of the challenges. As this could not be done, as was shown by the striking out of the 15th section of the report, the amendment proposed by the gentleman from Bourbon, (Mr. Davis,) I am disposed to favor, as the best that is now offered. Upon what ground is it that gentlemen oppose the exercise of this power? Sympathy. And for whom? The murderer, the assassin, the felon, the violator of the public peace, the wanton invader of private rights. Such as these, Mr. President, their sympathies cluster around, with a devotion worthy of a better object. The blood of him who has fallen by the hands of the assassin, cries aloud to the violated laws of society, the laws of his country—not for vengeance, but for the due enforcement of the criminal law; and how is this responded to? Gentlemen tell me, let him be tried, let a jury be called. It comes, and what is the result? The whole array, if they are composed of the intelligent and most respectable citizens of the vicinage, are turned off. Who comes in their stead? Stool-pigeons, that hang around and about the court house! You know them,—can point them out. They are called into the box; the culprit quietly whispers into the ear of his counsel, "he will do, take him." The judge upon the bench, the prosecuting attorney, the friends of the murdered man know him. The commonwealth has no chal-

lenge, and he is thus firmly fixed on the jury; and one after another is brought to the book, until the panel is filled; the trial proceeds; the jury retire; and in a few minutes they return with their verdict. What is that verdict? "*Not guilty!*" The murderer is turned loose upon society, to repeat the hellish deed again. And for such as these the gentlemen have the tenderest sympathies. Give to the commonwealth the right of challenge, and their sense of justice is most awfully shocked! Mr. President, it is but the form of a trial, a mere mockery, a mere farce. I trust the good sense of the delegates will see that something is called for. The other branch of the amendment, I am equally sure should be adopted. My friend from Kenton, (Mr. Stevenson,) I think is mistaken, if he supposes the legislature will pass a law authorising writs of error in criminal cases. I had the honor of introducing a proposition of that kind in the legislature, and urged the propriety of such a law with all the force I could command; but it failed, not because it was not demanded or called for, but because it was introduced by a young lawyer, although advocated by nearly all the legal gentlemen in the legislature. I therefore hope the amendment will not prevail; strike out the word "shall" and insert "may," and you defeat the object all have in view. Uniformity of decision is all important in criminal trials. We should have some rules, some land-marks, to govern the profession in Kentucky. We have none. Allow writs of error, and in a few years, what is law in one circuit, will be law over the entire commonwealth. You have heard upon this floor—in truth, sir, it is a part of the history of this commonwealth—that in the lower part of this state, in one circuit, by the decision of one judge, a murderer had extended to him the benefit of clergy, and he went free. Shortly after, in another circuit, it was refused, and the murderer was hanged. Sir, this is not right; it should be remedied; and it can only be done by allowing writs of error. In the circuits in which I practice, I know different rules of decision obtain. A remedy is called for, it must be corrected, and it can only be done in this way.

Mr. DIXON. I am not particularly averse to the proposition of my friend from Bourbon, and with a little modification so as not to make it imperative, but leave it discretionary with the legislature, and I believe I am willing to give it my support. But I must confess that I think it unnecessary, because I believe that under the constitution of the commonwealth, as it now exists, the power does reside in the legislature, to regulate this matter of challenging jurors in criminal cases; and if I understand the proposition, it goes to that extent only.

In 1796, the legislature passed an act reducing the number of challenges on the part of the accused to twenty four in the case of treason, and to twenty in the case of murder or felony. The section of the act to which I allude is in these words: "No person arraigned for treason shall be admitted to a peremptory challenge above the number of twenty four, nor shall any person arraigned for murder or felony be admitted to a peremptory challenge above the number of twenty." This act, it is true, was passed under the old constitution; but I believe the provisions

of the old constitution, so far as it regards the power of the legislature to pass the act, are similar to those contained in the existing constitution of the state. Now, it is very clear, I apprehend, that it was believed by the legislature that passed this act, that the power to pass it did exist, and that it was not violating any constitutional principle. Here is also a decision of the court of appeals, to which I will call the gentleman's attention; it is found in J. J. Marshall's reports, 3d vol. folio 138. It does not determine the question as to the power to pass the law, but it recognizes the existence and validity of the law, which amounts to the same thing.

I have said that, at the common law, the party accused had the right to challenge thirty five jurors, and it is clear that the statute which reduces it in the case of treason to twenty four, and of murder and other felonies to twenty, is in derogation of this right; still it was done, and has been for years past, acquiesced in as the law of the land. As the gentleman seems to think, however, that it is doubtful whether this power, without the section which he has offered, can, under the new constitution, be exercised by the legislature, I am willing to vote for his proposition if he will so change it as to leave some discretion with the legislature as to the propriety of exercising the power he would confer; not that I believe the legislature will ever exercise such a power, or at least to the extent of giving the state the right of peremptory challenge of jurors against the accused, because it would, to some extent, impair the right of trial by jury, which, of all things, should be held most sacred by the people of every free government. If the power which is proposed to be conferred is only to regulate the right of challenge, and not to deprive the accused of it, or to confer upon the state the power of challenging, which she does not now possess, there can certainly be no objection to it; and I suppose the legislature will construe it to mean, as its language purports, merely to regulate.

Mr. DAVIS. I merely desire to satisfy my friend from Henderson, (Mr. Dixon), that the legislature under the present constitution have not the power to act on the subject. That instrument provides that the right and mode of trial by jury shall be held sacred and inviolate. If a proposition was brought into the legislature to take from criminals the right of peremptory challenge, would it not strike at that principle of the constitution? That tests the question of power whether the legislature may act upon the subject of controlling the peremptory right of challenge or not. Such a law, if passed, would be null and void, and of no effect. In the case referred to by the gentleman, that question was not decided. It was the case of a prosecution against a man for keeping a gaming house. His counsel made the point, that he had the same right to challenge as the accused, for felony, and the question was, whether he should challenge six or twenty. The court of appeals decided that as a writ of error is given in all cases in Kentucky, in the prosecution of a misdemeanor, the right of challenge does not and cannot apply, and therefore he had the right to challenge.



but four and not twenty. Here is the power. I read from 3 *J. J. Mar.* 137:

"By the common law, the prisoner has a right, in all prosecutions for felony, to challenge thirty five jurors, peremptorily: but by the statute, 22d Hen. 8th c. 14. s. 57, made perpetual by that of 32 Hen. 8th, c. 3, this right of challenge was restricted to twenty, in all felonies except high treason; and by the 33d Hen. 8th, c. 23 s. 3, the same restrictions applied to high treason. But the statute of 1 and 2 Ph. and M. c. 10, revised the common law as to challenges, in cases for treason, and consequently, in those cases, extended the challenge to thirty five."

"By the 19th section of an act of the legislature of this state, (December 17, 1796,) entitled, 'an act to reduce into one the several acts concerning the examination and trial of criminals, grand and petit jurors, venuries, and for other purposes,' it is enacted that 'no person arraigned for treason shall be admitted to a peremptory challenge above the number of twenty four; nor shall any person arraigned for murder or felony, be admitted to a peremptory challenge, above the number of twenty.' 1 *Dig.* 438.

I admit that on the question of the right of challenge in cases of treason, there is a conflict between the law of England and the act of 1796, and it never has been decided in this country which law prevails. But whenever the question shall be made under that law, our courts will decide that the common law stands supreme in this case, and that persons charged with treason have the right to thirty five peremptory challenges, and that the act of 1796 in that respect is unconstitutional, because it does infringe upon the right of trial by jury, one of the most important essences of which, being this right of challenge. If the legislature may restrict the number of challenges to which the accused is entitled, to a dozen, it may restrict it wholly. I maintain that they have no right to legislate on the subject at all, because it would be in derogation of the ancient mode of trial by jury.

In explanation of the case to which I referred in Nicholas county, I will state, that it was a prosecution for murder. Eight or nine of the jury were for convicting the criminal for murder, but being out six, eight, or ten days, they were at length worried into a compromise, and induced to bring in a verdict of manslaughter, and consign him to the penitentiary rather than to the gallows. And such cases often occur in civil and criminal causes, both. There was scarcely ever a court held in any county in Kentucky, where juries were empaneled that such compromises did not take place. The other case put, was that of a man charged with robbery, and one of his accomplices being smuggled into the jury box, hung the jury. And now he stands indicted, and I trust, he will be convicted of perjury, in swearing that he had neither formed or expressed an opinion as to the question of the man's guilt at the time he was empaneled a juror. It is to sweep such men from the juries and to prevent them from polluting the pure streams of justice, and prostrating the criminal laws of the country, that I desire the adoption of such a principle as my amendment contemplates.

Mr BROWN. I find the amendment of the

gentleman from Bourbon, too imperative in its direction to the legislature. I move to strike out the word "shall" and insert in lieu thereof the word "may."

Mr. STEVENSON. I rose for the same purpose. I had supposed the word "may" was used instead of "shall" and based my remarks on that supposition.

Mr. W. C. MARSHALL. I desire that it shall be made imperative on the legislature to do what we require of them. If it is left discretionary with them, they may not do it. I trust the amendment will not prevail.

Mr. DIXON. If it is a fact, as the gentleman says, that under the old constitution, it would be unconstitutional to pass such a law, then I do not want now, to make it imperative on the legislature to pass a law under the new constitution which would be in violation of the great right of trial by jury. I prefer permitting the legislature on this question to think for themselves.

Mr. DAVIS. Was not the number of challenges allowed to the accused reduced by the act of 1796 from thirty-five to twenty.

Mr. DIXON. I think so.

Mr. DAVIS. If the legislature has the power to make this reduction, what is to prevent them from taking the whole right away?

Mr. DIXON. I think they have the power to take it away. There we differ. The gentleman believes that power does not exist, and he is for providing in the constitution that it shall. I believe that it does exist, and am opposed to giving the power if it does not. If it does not exist, I will never consent to give to any body, the right to act in derogation of the right of trial by jury. If the commonwealth already has that power, let it be exercised, when the occasion shall require it—I would not compel its exercise, when it was not required. I am willing to go this far, but I will never consent to do any thing in derogation of the right of trial by jury. I am willing that it shall be protected as it now is, but I am not willing to deprive the accused of any right the constitution now secures to them.

Mr. GEOLSON. I hope that the word "shall" will not be stricken out. If gentlemen desire to accomplish the object my friend from Henderson seems to have so much at heart, let them vote to put in the word "not" after "shall." The legislature had disregarded for the last fifty years a positive command that they should provide a manner in which suits should be brought against the commonwealth, and therefore gentlemen need not be afraid that they will be too anxious to obey this injunction. I never was more astonished at any thing than at the course of the gentleman from Henderson on this occasion. Why, I have known in my county, and there are gentlemen here cognizant of the facts, the most cold blooded, deliberate crimes to have been committed that ever disgraced human nature, and the perpetrators to escape by this diabolical plan, through the bribery of a juror, of hanging a jury. And the gentleman appeals to the mercy of this convention to allow such a state of things to continue. It is not proposed to array a single right of the accused, but only in some small degree to place the commonwealth on a footing of equality with him.

Mr. PROCTOR moved the previous question and it was ordered.

The question was then taken on the motion to strike out the word "shall" and insert the word "may" by yeas and nays, on the call of Mr. W. C. MARSHALL, and it was agreed to, yeas 57 nays 35, as follows:

YEAS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, James H. Garrard, Thomas J. Gough, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Mark E. Huston, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, John T. Rogers, Ira Root, John W. Stevenson, Albert G. Talbott, William R. Thompson, Howard Todd, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Wesley J. Wright—57.

NAYS—Richard Apperson, Francis M. Bristow, William Cowper, Garrett Davis, Nathan Gaither, Selucius Garfield, Richard D. Gholson, Ninian E. Gray, John Hargis, Andrew Hood, Thomas J. Hood, James W. Irwin, James M. Lackey, Alex. K. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, John D. Morris, Jonathan Newcum, Larkin J. Proctor, Thomas Rockhold, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, John D. Taylor, John J. Thurman, Philip Triplett, Squire Turner, J. L. Waller, Robert N. Wickliffe, G. W. Williams, Silas Woodson—35.

The question was then taken on the substitute in lieu of the section as proposed by Mr. TRIPLETT, and it was adopted, the yeas and nays being called for by Mr. KAVANAUGH, yeas 83, nays 9, as follows:

YEAS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, George W. Johnston, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, John D. Morris, James M. Nes-

bitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—83.

NAYS—Richard Apperson, Beverly L. Clarke, Vincent S. Hay, George W. Kavanaugh, Charles C. Kelly, William D. Mitchell, Thomas P. Moore, John D. Taylor, Philip Triplett—9.

The question was then taken on the adoption of the amendment as a section of the article, and it was agreed to, the yeas and nays being called for by Mr. MITCHELL—yeas 85, nays 7, as follows:

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, Jas. H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Wm. Hendrix, Andrew Hood, Thos. J. Hood, Mark E. Huston, James W. Irwin, Thos. James, William Johnson, Geo. W. Johnston, James M. Lackey, Peter Lashbrooke, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Wm. C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, John D. Morris, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—85.

NAYS—James S. Chrisman, Beverly L. Clarke, George W. Kavanaugh, Charles C. Kelly, Nathan McClure, William D. Mitchell, Thomas P. Moore—7.

Mr. T. J. HOOD. I desire to supply what I conceive to be an omission in the fourth section of the report. The increase in the business of some of the districts, may render it necessary and desirable that the labors should be further divided, although, taking the whole twelve districts together, the judges may be able to attend very easily to the whole of the business. The amendment is designed to obviate this difficulty, and to allow the legislature to make such changes in the districts, whenever it shall be desirable. The amendment is as follows:

"The general assembly shall, after the first division of the state into twelve circuit court dis-

tricts, at their session next preceding the regular election of circuit judges, thereafter so change and regulate said districts, as to equalize, as near as may be, the labors in the several districts then in being, having due regard to the number of appearances, and to population and territory."

Mr. HARDIN moved to strike out the word "shall," and insert the word "may" in lieu thereof.

This motion was agreed to.

Mr. PRESTON. Believing that the additional section proposed by the gentleman but reiterates a part of the fourth section of the article, and agreeing with him in the end he seeks to attain, I offer the following as a substitute for his amendment:

"SEC. —. The judicial districts and circuits of this state shall not be changed, save at the first session after every enumeration, unless when new districts may be established."

Mr. PRESTON'S amendment was then adopted in lieu of that offered by Mr. T. J. HOOD.

Mr. BROWN. This proposed amendment is but a reiteration, in my opinion, of what is already provided for in this report. I am opposed to putting any thing in this constitution that is not absolutely required, and shall, therefore, vote against this amendment. If the constitution is rejected by the people, it will certainly not be because there is too little provided for in it, but because there is too much.

The question being taken, the amendment was adopted as an additional section of the article.

#### EVENING SESSION.

Mr. KAVANAUGH. I offer the following as an additional section to the report of the committee:

"SEC. 16. In regulating the right of challenge of jurors in criminal cases, the general assembly shall never give the commonwealth more than one-fifth the number of peremptory challenges which may be allowed the accused."

I deem it unnecessary to add any thing to the full discussion which has already been had on this subject. The sense of the convention yesterday, however, seemed to be against giving the right of peremptory challenge to the commonwealth, in criminal cases; and to-day, by the section just adopted, as to regulating the right of challenge, and appeals, and writs of error in such cases, we have given the whole power over this subject to the legislature. I, myself, voted against the section, in all its stages.

By the old constitution, the legislature had the power to regulate appeals and writs of error in criminal cases, but they have never exercised it. This, to my mind, is strong evidence that it is not now demanded by public sentiment. If it is, the legislature could give the right of appeal under the new constitution, as well without the section we have adopted as with it.

The present constitution provides that the ancient mode of trial by jury shall be held sacred. The same provision is substantially contained in the constitution of the United States, and in most, if not all, the states in the union. This ancient mode of trial by jury, has been construed by our courts to mean, such right of trial by jury as existed at the time of the adoption of

the constitution. At that time, the accused had the right of peremptory challenge, to the number of twenty; while the commonwealth had no right to challenge, peremptorily, a single juror. In my opinion, the legislature had no power under the old constitution to interfere with the right of challenge thus given. But on this point there seems to be some difference of opinion. Be this as it may, the legislature has never interfered with the right, and never would interfere with it, under a constitution having the provision on that subject contained in the present one. But, by the section just adopted, full power is given the legislature over the whole subject. That body may not only give the commonwealth the right of challenge, but may give it to the same extent with the accused. It may even take the right from the defendant altogether, and give it to the commonwealth to any extent. Why, sir, a day or two ago, we were throwing every kind of restriction around the legislature; now, we are giving them almost unlimited power as to the right of trial by jury—a right held sacred by the people. They have demanded no change on this subject—they did not expect it at the hands of the convention. In my section of country, the ancient mode of trial by jury was to be held sacred, and I greatly doubt if the question were directly made before the people, as to giving the commonwealth the right of challenge, without cause, whether it would be sanctioned.

The section which I have offered only provides that the legislature in regulating the right of challenging jurors in criminal cases shall never give the commonwealth more than one-fifth the number which may be given to the defendant. It is designed as some limit to the power of that body over the subject. This power may never be abused—it is probable it never will—but the ancient mode of trial by jury should be held sacred, and the power to infringe it ought not, in my opinion, to be placed in the hands of any body of men whatever; for this reason among others I voted against any change on this subject, and have now offered the section as a restriction upon the legislature, and am of opinion that it should pass. As this subject, however, has already been discussed at some length, any further remarks are deemed unnecessary.

Mr. MITCHELL. I feel disposed to claim the indulgence of the house for a short time, while I endeavor to set myself right before my constituents, with reference to the vote I gave this morning. I rise with no expectation of making any impression on the convention, or of changing the deliberate vote which has been given, but simply to state the reasons, very briefly, which influenced me in pursuing the course that I did. I have always regarded the ancient mode of trial by jury as a tower of strength to the citizen, and I have always looked on it as a feature in our judicial system which should be preserved inviolate. I should approach it with great apprehension of doing mischief, even if I were to abstract a single brick or stone from the massive pile, and should be apprehensive that to disturb it in the least, would threaten the whole structure.

This convention is called to frame a constitu-

tion. Future conventions may be called, and will look to the action of this convention as sanctioning their action. If we now commence the work of innovation, I am at a loss to see to what extent in future times it may be carried. It is urged that the necessities of the country require it; that crime goes unwhipt of justice, and hence some modification of this ancient system is necessary. Some future convention, influenced by the same motive, may carry the matter still further; it may be urged as necessary not only to regulate the right of challenge but they may go further and say that a concurrence of the peers of the accused shall not be necessary for his conviction. They may say that a majority of the jury shall be sufficient to authorize conviction and death. When innovation once commences we know not at what point it will stop. We are told that to regulate the right of challenge is perhaps not to impugn the ancient trial by jury. It seems to me to attack it in a vital point, if the accused has not the right of peremptory challenge: if that right is abridged, then the ancient right of trial does not remain inviolate. When we come to that portion of the old constitution which declares that the ancient mode of trial by jury shall remain inviolate, there will have to be an alteration. We cannot make the same declaration. We have placed within the grasp of the legislature a power very materially to modify the ancient trial by jury. We have given them a discretion which in my judgment may be more dangerous than the proposition contained in the report. There they were limited to one-fourth. Here there is no limit. They may extend a right of peremptory challenge to the commonwealth equal to that given to the accused; nay, they may go further and give the commonwealth the right to challenge more than the accused. This is extending discretion much beyond what the original proposition contemplated. The reasons which have been assigned for doing this—for obliterating this ancient land-mark—have not been satisfactory to my mind. We have been told that it is necessary for the accomplishment of the ends of justice.

My observation has taught me that justice is fully executed in Kentucky. There is perhaps an exception as to one class of cases, that of homicide. There has not been meted out the punishment which in the minds of just men is deemed to be due to that offence. Does this originate in any defect in our judicial system? Does it not rather originate in public opinion, and is it not subject to the control of that all powerful influence? The same system prevails here now which prevailed in England when her tribunals were drenched in blood, when the temple of justice was converted into shambles, and the ermine foully stained with the blood of innocence. The same provision, in this respect, obtained there as here; the same right on the part of the accused, when that right could not be exercised on the part of the government.

I think this exemption from punishment originates in public sentiment, and cannot be controlled by legislative enactment, which rises above the law itself. The citizen of this commonwealth seems to reserve for himself the privilege of righting the "wrong where'er 'tis giv-

en," he metes out, in dispensing justice, that measure to others which he claims for himself. If the same want of justice in the execution of the laws were observable throughout the whole series of criminal offences, that argument might be deduced to show the insufficiency of the system. But when it is confessedly confined to one description of crime, we must look for the evil—if there be an evil—in the force of public opinion, acting on and modifying the laws of the country and regulating their execution.

We have heard it read here to day, that this right of peremptory challenge originated in that great principle in favor of human life—which should distinguish every system of jurisprudence—that it was given to the accused in tenderness—in *favorem vite*. Will you give it to the commonwealth in *favorem mortis*, to favor execution, to favor condign punishment? The individual who comes into a court of justice charged with crime, comes with the stamp of suspicion upon him; he is *prima facie* guilty, notwithstanding the maxim of the law, that every man shall be deemed innocent 'till his guilt is proved. He has undergone an examination in the county, or the charge has been passed upon by a grand jury, and he stands as one with the impress of guilt upon him. *Prima facie* he is guilty. Give him then the privilege of some share in selecting his jury, the poor privilege in this struggle for life, of acting without a reason—let him not go to the scaffold under the conviction that he has been sent thither by his enemy—let not this cloud darken his dying hour; but let not the commonwealth enjoy the same privilege; for she should never act without a reason; let not the commonwealth stultify her own citizens, and not without a sufficient reason say, "Sir, you are unworthy to serve upon a jury—you bear on your face the stamp of degradation—you have achieved for yourself a character that excludes you from a service of this kind."

It does seem to me that by some provision of law, the matter can be regulated without taking away this ancient land mark. Let the sheriff be required, in summoning jurors, to exclude from the panel those hanging about the courts of justice; let those who thrust themselves in the way, in order to be placed on the jury, be excluded. Let proof of such conduct be good cause for rejection; but never let the commonwealth, actuated by a spirit of vengeance, and lest she should be foiled of her prey, without reason, exclude her citizens, and declare them unworthy of sitting on the jury. I am opposed to the whole matter. I am opposed to the introduction of such a provision into the constitution; but if we must have it, let us have the restriction of my friend from Anderson.

Mr. GHOLSON moved the previous question and the main question was ordered.

The yeas and nays were demanded on the amendment, and being taken they were—yeas 30, nays 55.

YEAS—Mr. President, (Guthrie,) William Chennault, James S. Chrisman, Beverly L. Clarke, William Cowper, Archibald Dixon, James Dudley, Milford Elliott, Green Forrest, Thomas J. Gough, James P. Hamilton, Vincent S. Hay, Andrew Hood, Thomas James, George W. Kav-

anough, Charles C. Kelly, Willis B. Machen, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Rogers, John W. Stevenson, William R. Thompson, Andrew S. White, Chas. A. Wickliffe—30.

<sup>1</sup>NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Charles Chambers, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Garrett Davis, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Nathan Gaither, Jas. H. Garrard, Richard D. Gholson, Ninian E. Gray, Ben. Hardin, John Hargis, William Hendrix, Thomas J. Hood, Mark E. Huston, James W. Irwin, William Johnson, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Geo. W. Mansfield, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, John D. Morris, James M. Nesbitt, William Preston, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—55.

So the amendment was rejected.

#### COUNTY COURTS.

The convention continued the consideration of the report of the joint committee of thirty, the article concerning county courts being the next in order.

Mr. MERIWETHER sent to the secretary's desk to be read, the following substitute for the entire article, which he intended, when the proper time came to offer:

#### ARTICLE —.

"SEC. 1. There shall be established in each county now, or which may hereafter be erected in this commonwealth, a county court, to consist of a presiding judge, and the several justices of the peace of the county.

"SEC. 2. The presiding judge shall be elected by the qualified voters of each county, for the term of four years, and until his successor shall be duly elected and qualified, and shall, from time to time, receive for his services such compensation as may be fixed by law, to be paid by fees, or out of the county revenue.

"SEC. 3. No person shall be eligible to the office of presiding judge of the county court, unless he be a citizen of the United States, over twenty one years of age, and a resident in the county in which he shall be elected, one year next preceding his election.

"SEC. 4. The presiding judges of the county courts shall be sole probate judges for their respective counties, with testamentary and such other jurisdiction as may, from time to time, be given by law.

"SEC. 5. The jurisdiction of the county court shall be regulated by law; and, until changed, shall be the same now vested in the county courts of this state, except as herein provided.

"SEC. 6. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time,

direct. Two justices of the peace, and one constable, shall be elected in each district by the qualified voters therein. The jurisdiction of said officers shall be co-extensive with the county. Justices of the peace shall be elected for the term of four years, and constables for the term of two years; they shall be citizens of the United States, twenty one years of age, and shall have resided six months in the district in which they may be elected, next preceding their election.

"SEC. 7. Presiding judges of the county court, and justices of the peace, shall be conservators of the peace, and shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The legislature shall provide, by law, for the mode and manner of conducting and making due returns of all elections of presiding judges of the county court, justices of the peace, and constables, and for determining contested elections, and also provide the mode of filling vacancies in these offices.

"SEC. 8. Presiding judges of the county courts, justices of the peace, and constables, shall be subject to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant."

The first section was then read, as follows:

"SEC. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, a county court, to consist of a presiding judge and two associate judges, any two of whom shall constitute a court for the transaction of business."

Mr. LISLE. I desire to say only a few words on this county court system, as recommended by the committee, and also on the proposition of the gentleman from Jefferson. This is an important court, and the subject is one, in my opinion, that is deserving of a great deal of consideration. I know the difficulty under which a man labors, when he attempts to resist a proposition which is presented to the house in the attitude and under the circumstances as the one now before it. The proposition of the county court committee was referred to the committee of thirty, and they have re-adopted the plan as recommended by the original committee, with some slight modifications. In the committee of thirty, I offered a substitute, which—if I knew exactly when to offer—I would present again. Now, I hold it to be a correct principle, that no important change should be made in the fundamental law of Kentucky, unless there was a strong reason to suppose it would be for the benefit of the people. I suppose this proposition will not be denied by any man. From the examination I have given the subject, I entertain the opinion that we shall be no better off if we accept the plan presented, than we should be by adopting a system of laying off the several counties into districts, and giving the people the right to elect their magistrates to hold court. I know there is a great deal of objection to the county court system; and, I am aware it has been attacked all over the commonwealth; but the complaint has not been greater against the county.

court than the court of appeals and the circuit court. You propose to remedy the defects in the court of appeals and the circuit court, by electing the judges for a limited time. Why not, then, carry out the principle in respect to the county court? By the first section of this bill, you propose to impose, permanently and irrevocably, upon the commonwealth, the burden of supporting three hundred additional salaried officers. Besides that, you have added a judge to your appellate court. I know not how it may be with other gentlemen, but I came not here to add to the expenses of the government, unless circumstances rendered it imperatively necessary. Now, what reason have we to suppose, that by the proposed new system, recommended by the committee, men of better standing and qualifications will be obtained, than by laying off the counties into districts, and electing magistrates to hold court, as heretofore?

You propose, in the report of the committee, that the salaries shall be paid as provided for by law. I ask gentlemen who advocate this plan, whether there is to be a general law, operating alike on all these judges and the associate judges throughout the state? Are their salaries to be uniform? Is there to be a large salary allowed the judges in all the large counties, as in Jefferson and Fayette? or are the salaries to be fixed and graded according to the size of the county? It is probable that the legislature will provide for the payment of the salaries out of the county levies. How is that to be regulated? I understand that one of the principal objects in calling this convention, is to cut off the excessive legislation that has existed in this commonwealth for many years past. But here you propose to organize the county court in such a manner as must necessarily produce much legislation. Does any gentleman here pretend to say that these judges are to be paid large salaries? They will not venture to say that. Gentlemen talk about procuring the best men in the state. Now, what motive, what reason is held out, to show that such men are to be had? I have heard it said the salary of each will not amount to more than thirty, forty, or fifty dollars. And suppose you pay a man fifty dollars—and there is no magistrate whose fees would not amount to more than that sum—then, as there will be three hundred officers employed, the aggregate amount will be fifteen thousand dollars. Suppose the salary of each to amount to one hundred dollars, then there would be an expense incurred to the state of thirty thousand dollars—a larger sum than is paid to the whole of the circuit judges.

Another objection I have to the organization of the court, as proposed by the committee, is, that it is to be held by a judge and two associates. They also propose that the magistrates shall convene, and assist in laying the county levy. Now, this court not only possesses judicial, but legislative functions. It is to have the power of taxation, which is one of the highest attributes of sovereignty. I am opposed, if it can be avoided, confiding this power to so few hands. But I ask gentlemen, if the magistrates are to be consulted when debts are contracted for which the county is bound? No. These justices of the peace are not to be consulted when the debts are contracted, but they

are to be called upon only when you lay a levy and make an appropriation to pay the debt. Now, I ask if the object that the gentlemen have in view is accomplished by it? Suppose the judge and his two associates contract debts, one on account of building a bridge, another for improving a road, and another in relation to the clerk's office, the county is bound to pay them. The justices are only to come in and levy the money. I want the county represented when the debt is contracted. I know there is a strong objection to the county courts. It will be urged they have been universally repudiated. I admit they have been regarded as objectionable. I know it is said a change was required. What was it? The people required that the mode of appointing the magistrates should be changed, and that they should be elected for a limited term; and, by the plan I propose, these two changes will be effected.

But there is another objection I have to this article. And it is with great reluctance and regret I shall oppose the plan recommended by the committee. Now, these three judges will be selected from about the cities and towns, and in all probability with a view to the influence they can bring to bear upon certain improvements. And if so, your county improvements will be partial, and that portion of a county thinly populated will be imposed upon. The people will be taxed by these men, for the purpose of making improvements in the more densely populated parts of the county. Your circuit judges, senators, and members of congress, are elected from the districts, and your members of the legislature from the different counties. And why is that? In order that every part of the state may be represented. Is it not important that this principle should be carried out in the county court system? I do not propose to fix it permanently in the constitution, but that these justices of the peace shall hold the court until otherwise directed by law. I want to give the legislature the power to remedy it, if it should be found not to operate well. I do not wish every thing fixed and tied up. We have been told that this court is to be a very important one; and that a large amount of the business now done in the circuit court will ultimately be transferred to it. If this be done, it will require judges who are well qualified, to whom good salaries will have to be paid, and thus our expenses will be increased, to which I am opposed.

I will thank the secretary to read my substitute, for the information of the convention.

The SECRETARY read the following substitute for the report of the committee.

#### "ARTICLE —.

"SEC. 1. There shall be established in each county which now is, or may hereafter be erected within this commonwealth, a county court, which shall consist of justices of the peace, until otherwise directed by law.

"SEC. 2. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Justices of the peace shall be elected in each district, by the qualified voters therein, for the term of four years, whose jurisdiction shall be co-extensive with the county.



"SEC. 3. Justices of the peace shall be conservators of the peace. They shall be commissioned by the governor. The legislature shall provide, by law, the mode and manner of conducting and making due returns of all elections of justices of the peace, and for determining contested elections, and for filling vacancies in their offices."

"SEC. 4. The jurisdiction of the county court, and of justices of the peace, shall be regulated by law, and until changed, shall remain the same that it now is."

"SEC. 5. Justices of the peace shall be subject to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to an appeal to the court of appeals, and upon conviction, their offices shall become vacant."

MR. BRISTOW. I am gratified that gentlemen have presented what they consider a complete system for the county courts. This is the best way to furnish the whole plan, and if the delegates prefer one to the other, they can have a view of the whole. I cannot say that I am particularly wedded to the plan recommended by the committee. In the committee we compared our views. Some were in favor of one plan, and some of another. But we came to the conclusion that the best we could adopt, was the one we reported, and which has been but slightly modified by the committee of thirty. In the first place, we thought a county court should be more permanent than it would be if left to the action of the legislature. We therefore made a constitutional provision for the county court as necessary in every government.

I think it is a serious objection to the amendment offered by the gentleman from Green, (Mr. Lisle,) that he leaves it to the legislature to repeal and alter when they please. There should be some county tribunal to discharge the duties required of them by the county. In addition, it will be required of them to try many little matters between individuals, such as county courts have been in the habit of trying. But their important duty is, to attend to county business, and we concluded to present the simple machinery of three individuals, elected by the county. Why not select one only? We thought the responsibility too great. All counties are interested in the duties to be discharged, and indeed we thought the taxing power should not be confined to one. We thought three would do it, and less than three we thought could not do it, and more than that number we thought would be too expensive. He says the salaries of three judges for each county would amount to \$15,000. I suppose the magistrates would not be less than twelve in each county, according to his plan. They would cost \$60,000 then by the same rule. The gentleman seems to suppose the magistrates can do the business without pay. If the county think the magistrates can do the business, we allow them to do it, and if the gentleman thinks there is something about the magistrates which prepares them above all others for the business, the people have the right to choose them.

It seems to me my friend lost some of the modesty which I gave him credit for when he published to the world that three hundred sala-

ried officers were to be made at once by this report. We put no salary in the report. We simply allow the county to select individuals to do the duty. His system allows the county to select, and if there are more, of course the expense will be more. The gentleman need not tell us that magistrates, because they are magistrates, will discharge the duties for nothing. I suppose the court will require pay; but if you can find persons who will discharge the duties better without pay, choose them. The gentleman thinks three not enough to lay the levy and taxes. Three men can control the county courts generally, and we supposed it best to throw the business on individuals selected to discharge the duties. They will be more prompt, and they are the men to be complained of. We give them no scape-goats to carry off their sins. Let them be accountable for the county court.

The gentleman says the magistrates can do the business. I have a high respect for the county court, such as I propose, but not for such a one as he proposes. And it grows out of the nature of things. Men will not prepare themselves for the duties, unless they have a motive. If there is any one tribunal unpopular it is the county court, and gentlemen need not try to hide behind the mode of appointment to account for this. It is a court of individuals got up in the county, and in some cases, wholly unqualified to discharge the duties. There are neighborhoods where there are no individuals qualified to be a judge of any sort. They get no compensation, they have no motive, and it is difficult to get them to hold a court—you must hunt them down through the court yard to get them to do it. When you get them, sometimes they are excellent men and do well, but frequently they do not. I know much can be said on this subject; and as we are in the habit of having what we say put in books, I will not make remarks about particular cases. Every gentleman knows that the court is unwieldy. This court is to lay taxes it is said; and we must have many to do that. Are we ready to appoint men to tax us whom we do not elect? The district cannot be composed of the same number of individuals. Territory must control districts, and what follows? In some districts there will be twenty men, and in some five hundred. Should there be that difference between representation and taxation? Is it not right that all should have something to do in selecting the men who are to tax them? The gentleman says we elect judges by districts. We elect them as judges, not to lay taxes. Again, he says we elect representatives by counties, and not by the general vote of the state. There is a necessity for this. We are not acquainted with individuals all over the state, while we are acquainted in the county and can select for it. But, says the gentleman, they will all be confined to one spot. Let him remedy that by saying that no two shall be chosen from the same district. These judges elected by counties will be superior to some of the men in districts, and you need to get the best men if you can. I would remark here, that any man who is twenty one years of age, and has the requisite qualifications, may be elected. This is the only tribunal which is stripped of lawyers. This court then may be composed of

just such men as I would select of all others—men of sound minds and high reputation. Whether they ever saw a novel would be of little importance. It is true, if the court is to assume the dignity which some suppose, a different class of men may be required; but in my opinion, the best selection now would be the men that I have named. I prefer that the county should elect three men belonging to the county. My friend says that no reasons are given for this change. I suppose the county court will be changed entirely. The selection of magistrates will be changed. Having been heretofore self-constituted, they will, I presume, be elected by districts. Let the old magistrates go on and hold courts; the people will elect them if they choose. We only change the mode of appointing, and we say three shall discharge all the duties, believing they will do so better than a greater number. We have supposed it was the cheapest system that could be adopted. Surely we would not impose duties on the judges without compensation. In Tennessee they get a *per diem* allowance for holding the court, and I presume that is what the legislature will do here. If this is allowed, I know it will amount to a great deal; but surely in any county where there are duties to be performed, the people will be willing to pay them. The gentleman might as well say that because the fees of the justices of the peace amount to fifty dollars a year; therefore, we are creating an immense number of salaried officers. I know not how they will be paid. We contemplate that the presiding judge will discharge many duties—for instance, such as that of the probate judge, and such as have been discharged by the commissioners, and many others for which the legislature may allow him fees. It was our duty only to provide for a good court. As to the mode of payment, and as to jurisdiction, we left that to the legislature, presuming it will be the same as that which the county court now exercises. My friend thinks the whole matter should be left to the legislature. If so, we had better only say there shall be such a court, and leave the legislature to form it.

My objections to the magistrates holding the court have been given. First, they will not be qualified; second, it is not proper that representation and taxation shall be unequal. If three men are not enough, take more; if too many, select fewer. If Kentucky were divided into towns, then the gentleman's plan might be proper and right, but we make our appropriations and levies by counties, and it is a common burden on the county. Then I hold that any one county shall elect the men to do this, because it will be convenient for them to do it.

I have said all I wished to say. I hope not much time will be spent on this subject, though it is a matter which requires all the light we have. It will be seen that we provide that, if the legislature think it will be right and proper, that the magistrates should come together, they may do it. The gentleman complains that the magistrates are not allowed to come together when the debts are contracted. The levy is made and the amount assessed in the same court. That being the case, they will be present and agree on the debts they will pay, and the amount which shall be levied on the towns.

Mr. PROCTOR offered the following amendment, viz:

"*Provided*, That the general assembly shall have power, whenever it shall be deemed expedient, to abolish the offices of the associate judges, and in that case, the presiding judge shall be vested with the same power and jurisdiction now given to the three judges."

Mr. President, I have offered this amendment, believing that it will compromise the different interests which divide this convention. While I am in favor of the substitute proposed by the gentleman from Jefferson, and prefer one judge to three, still sir, I am utterly opposed to the proposition of the gentleman from Green, and prefer even the report of the committee. But it does seem to me, Mr. President, that mine is a proposition upon which all gentlemen may unite, for I propose to leave to the legislature, the question whether there shall be one or three judges in each county, and by doing this sir, you give to the people of each county the power of instructing their representatives, as to whether they will have one or three judges, and you also leave to the people the question of deciding whether the magistrates elected in the county shall compose and constitute a part of the court or not. For my part, I have no objections to the justices of the peace elected in each county, sitting and holding court in connection with the presiding judge, when laying the county levy and making changes in the public roads, and appropriations of money for county purposes, but I am utterly opposed to giving to these justices the power of sitting and determining upon appeals and questions of law. Sir, I differ with my friend from Green, when he says that the decision of these courts and their manner of administering the law has not been complained of by the people. That gentleman seems to think that the mode of appointment of these officers alone was complained of by the people. My experience and my judgment teach me sir, that if there was any system of our government which was odious to the people of Kentucky, and which called for redress at the hands of this convention, it is the county court system of the state. It is not my intention, Mr. President, to enter into an investigation of the errors and corruptions of this system; they are familiar to the people and known to all. But one great reason, Mr. President, which I have against creating a court, to be composed of all the justices of the peace to be elected in each county, and of investing that court with the power of trying appeals, and other questions of law, is, that under such a system, there would be no uniformity of decision, and no certainty of obtaining justice. As the court would be composed of a large number of individuals, you would divide the responsibility of their decisions among the different members of the court, and whenever you divide responsibility, there will not be that correct and deliberate consideration given to any question that there would be if all the responsibility of a decision were thrown on one man; neither will there be that uniformity of decision which is so necessary to the equal administration of justice, and the protection of the rights of all.

Why sir, in the county which I represent, in a contest before a justice of the peace, where the

plaintiff claimed five pounds in his warrant, the justice of the peace rendered judgment against the defendant for a less sum than 25 shillings. From this judgment the defendant appealed to the county court. Upon the trial of the appeal, the plaintiff moved the court to dismiss the appeal for want of jurisdiction in the court to try the cause, but the court overruled the motion, and tried the cause. At a subsequent term of the court an appeal was taken in a case precisely similar, and another court, composed of different members, decided that the defendant was not entitled to an appeal where the judgment against him was less than 25 shillings, and in my judgment they decided correctly. In this case they dismissed the appeal for want of jurisdiction.

Now sir, it is to guard against this instability and uncertainty of decision that I will oppose the revival of that old system. Under that system our county courts became a bye-word and a reproach,—they were composed of men, many of whom were incompetent to discharge the duties of their office, and to seek justice before such a tribunal is about as uncertain as a game of chance.

But I repeat, I do not intend to enter into an elaborate description of the errors of this system, as it has heretofore existed in Kentucky; but I will say that if there is any one thing that has been loudly called for by the people of Kentucky, it is that the present county court system shall be abolished.

I will here remark sir, that while I am satisfied with the substitute as offered by the gentleman from Jefferson, I prefer that we should have but one judge to do all the probate business of the county and to try appeals; and when the levy is to be laid and appropriations to be made that the justices of the county shall sit with him. Yet sir, I have offered my proposition, leaving it to the people of each county to decide whether they will have a court composed of one or three judges. By this plan the whole of the subject will be left in the hands of the people; and it seems to me that this is a compromise ground, upon which all parties and all interests in this house can unite. But if my amendment should not prevail, I will support the proposition of the gentleman from Jefferson.

The convention then adjourned.

WEDNESDAY, NOVEMBER 28, 1849.

Prayer by the Rev. G. W. BRUSH.

DAY OF THANKSGIVING.

Mr. MAYES. Mr. President, to-morrow is the day recommended by the executive of the state to be set apart as a day of thanksgiving and prayer; and to test the sense of the house whether we shall observe that day, I offer the following resolution:

“Resolved, That when this convention shall adjourn this day, it will adjourn until the 30th inst.”

The yeas and nays were called for, and being taken, were—yeas 60, nays 23.

YEAS—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Francis M. Bristow, Thomas D. Brown, James S. Chrisman, Jesse Coffey, Benjamin Copelin, William Cowper, Garrett Davis, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, John H. McNery, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Jas. Rudd, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Henry Washington, John Wheeler, Andrew S. White, George W. Williams, Silas Woodson, Wesley J. Wright—60.

NAYS—Mr. President (Guthrie,) Alfred Boyd, William Bradley, Luther Brawner, Charles Chambers, Beverly L. Clarke, Henry R. D. Coleman, Edward Cud, James Dudley, Nathan Gaither, James H. Garrard, Richard D. Gholson, Ben. Hardin, John Hargis, James M. Lackey, Nathan McClure, David Meriwether, Hugh Newell, John T. Rogers, Ira Root, Ignatius A. Spalding, Howard Todd, Squire Turner—23.

So the resolution was adopted.

#### APPELLATE JUDGES.

Mr. PRICE, in accordance with notice which he gave on Monday last, moved a reconsideration of the vote adopting the fourth section of the article on the court of appeals, which fixes the number of judges of the appellate court at four. On that motion he called for the yeas and nays, and being taken they were—yeas 41, nays 47.

At a subsequent part of the day Messrs. CHENAULT and KELLY obtained permission to record their votes in the affirmative, and Messrs. JAMES and MITCHELL in the negative, and the result was then, yeas 43, nays 49.

YEAS—John L. Ballinger, William K. Bowling, Alfred Boyd, William Bradley, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, Garrett Davis, James Dudley, Milford Elliott, Nathan Gaither, James H. Garrard, Jas. P. Hamilton, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, George W. Mansfield, Alexander K. Marshall, Nathan McClure, Jonathan Newcum, Hugh Newell, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, Michael L. Stoner, John J. Thurman, Howard Todd, John L. Waller, John Wheeler—43.

NAYS—Mr. President, (Guthrie,) Richard Ap-

person, John S. Barlow, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Henry R. D. Coleman, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Selucius Garfield, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, Thomas James, George W. Johnston, Peter Lashbrooke, Willis B. Machen, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Henry B. Pollard, William Preston, Larkin J. Proctor, James Rudd, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, Philip Triplett, Squire Turner, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—49.

So the convention refused to reconsider.

#### BASIS OF REPRESENTATION.

Mr. WOODSON moved to take up for consideration a resolution offered by him on Friday last, and on his motion laid upon the table, on the subject of basis of representation.

The motion was not agreed to.

#### COUNTY COURTS.

The convention resumed the consideration of the article in relation to county courts.

At the adjournment yesterday the first section was under consideration, to which Mr. PROCTOR had offered an amendment.

Mr. MERIWETHER sent up a series of amendments which he desired, at the proper time, to offer; the first of which he submitted as a substitute for the amendment of the gentleman from Lewis.

A brief conversation in relation to this amendment ensued between Messrs. MERIWETHER, CHAMBERS, W. C. MARSHALL, BRISTOW, and others.

Mr. TURNER. I am in favor of having the county court formed by the constitution. The idea of having a court that is partly constitutional and partly legislative, I am opposed to. If you give to the legislature the power to add to, and diminish the number of judges at pleasure, there will be no stability—they will be constantly pulling down and building up. I have an amendment which I shall offer at the proper time, and which I think is preferable to either of the propositions before the convention. It seems to me it will be a proper compromise between the extremes of all parties upon this matter. I am not in favor of magistrates holding court altogether, according to the plan suggested by the gentleman from Green, (Mr. Lisle)—nor am I in favor of the plans suggested by the gentleman from Lewis, (Mr. Proctor) nor that of the gentleman from Jefferson (Mr. Meriwether.) I am in favor of having the court held by one judge at all times, except when there are county debts to be contracted, when there are expenditures to be authorized, and when the county levy is to be laid; then I want the magistrates of the county to come in, and constitute a part of the court. It has been said that the magistrates are not the representatives of the county at large, for they are to be elected by districts, and some of the districts may be smaller than others. It strikes

me that the magistrates when elected under the plan proposed to be adopted in the constitution, will be the representatives of the county, in like manner as are the representatives in the legislature; and coming from different parts of the county, the court, when assembled, will be acquainted with the wants of the whole county. They will be well informed upon all subjects demanding their attention as legislators for the county; and will not represent sectional interests merely, as would be the case if you constitute this court with but three permanent judges. The body of the magistracy thus elected by districts, will better represent the wishes of the people, than the old self-constituted court, which we are about to dispense with. In regard to the judicial business of the county, it appears to me that it can be done as well by one judge, as the business of the circuit court can; for the power that is given to the judge of the county court is not so extensive as that which the judge of the circuit court exercises. The county court does not adjudicate upon questions affecting life and liberty, and its decisions are not final. You can appeal from its decisions to the circuit court, or to the court of appeals. If you extend the number of judges to three, unless you give them such amount of salary as the people would be unwilling to pay, you will not be able to procure three men who will take the trouble to qualify themselves in all those matters which appertain to that court, and which require a good deal of study and reflection.

I practiced a little while under the assistant judge system, where there was one principal judge, learned in the law, who received a competent salary; and two assistant judges, who received two dollars per day each for their services. I recollect the assistant judges were in the habit of coming in and directing the clerk to enter their names as being present so as to entitle them to receive their two dollars; in five minutes afterwards they were gone. They knew they were of no service. The legislature found they were only an expense, and removed them. I am satisfied that one judge, with the assistance of the magistrates, as occasion may require, will do the business much better than three permanent judges. I shall therefore, if the pending amendment should fail, offer my proposition to strike out the words "two assistant judges," and add in substance these words: "which court shall be holden by a presiding judge, except at the term at which the county levy shall be laid and county debts contracted; at which term in each year, the county magistrates shall be assistant judges of the court, and magistrates, together with the presiding judge, shall be required to constitute a quorum for the transaction of business." If necessary, there might be two such terms holden in each year.

Mr. TAYLOR. Before the convention proceeds to take a vote upon the proposition to amend, I will be extremely glad if gentlemen will reflect upon the consequences which are to flow from striking out the three judges and substituting one. In the fifth section of the report, it will be found that "the jurisdiction of the county court shall be regulated by law, and until changed shall be the same now vested in the county courts of this state."

I hope gentlemen will reflect what an immense power the county court, as now organized in this commonwealth, possesses. Suppose it be desired to establish a road through my land—I obtain a writ of *ad quod damnum*, and the jury give me \$1200 for the injury I sustain by the location of the road across my farm. The county court, with the jurisdiction they now possess, either consent that I shall have the \$1200 or not. It is a matter within their discretion; and if they do not choose to pay me the damages that have been assessed by the jury, they have only to issue another writ of *ad quod damnum*, and have the damages again assessed by another jury; and so on until they come down to what they consider the proper sum to be paid. If there is any one thing more than another, that touches the interests of the people, it is the right to take private property for public use; and, sir, never—never would I trust a power of that sort to any one man. What else, sir. The county court in my county, before they had authority given to them by the legislature of the state, to take stock in the Lexington and Maysville turnpike road, had as much right to go into partnership with a banker and raise funds by a county levy, and place them in the hands of the banker for the purpose of accumulation by illegal interest, as they had to take stock in that road. But the act was sanctified—if I may use the term—by subsequent legislation. Suppose you have a court house to build, or a bridge to construct; it is in the discretion of the court, whether these works shall be authorized or not. Just look at it. The very safety of the country requires that these powers should not be delegated to one man; that one man should not be allowed to run the county in debt, *ad libitum*. But these magistrates, the gentleman says, are to come in from all parts of the country, and form a court, to do what? Why, just to examine the accounts—to ascertain to what extent this one man power has run the county in debt—and to say that the county levy shall be so much—for so much is required on account of this debt. Thank God, the levy cannot go beyond \$1 50.

Now I ask if we are going to trust this immense power to one man? What security is there, that the country will not be so involved, as to be unable to discharge her obligations? We are told that the magistrates will come in and assist in laying the county levy. There is no security in that. The evil has been done—the obligations have been incurred—the honor of the county is at stake, and the debts must be paid. What else? I know the old county court has been a most objectionable system—a perfect eyesore. I know it has done more to bring about the meeting of this convention than any other one thing. The court has been, like the fabled bird, that is said to reproduce itself. A friend near me remarks, that the reproduction generally have longer ears than the original stock have.

Now the danger is this. They want to boil the county court down, in some sort of conventional cauldron, and have the court consist of but one man. God forbid! It is not always the case, with the county court, that in a multitude of counsellors there is wisdom, but let us cling to the old maxim still.

I can assure gentlemen of one thing, that if you have but one judge, you cannot get a man of talents and acquirements, you cannot get a man who will fill the bench as it ought to be filled—you cannot get a man to take upon himself the responsible duties that will be imposed upon him—you will find few men, willing to undertake the office, who are qualified to discharge the duties. I am opposed to striking out three, and making it incumbent on the magistrates, that they shall assist, at certain terms of the court. I want three judges. Suppose now, in my city, that they elect this one judge, and clothe him with all this power—there has been a good deal said about the influence of cities, stretching out like Briaricus, their hundred hands to clutch all the power in the state—suppose the election of one judge be authorized as contemplated by this report, he can be triumphantly elected by the city, and he will most assuredly subserve the interests of those who elected him. But if there be three judges to be elected, no such operation can take place; and you will bring to the discharge of these important duties, three men in whose actions the people will have more confidence than they would in the action of a single man. I hope and trust, that gentlemen will put on their thinking caps, and reflect upon this subject—and I think they will come to the same conclusion at which I have arrived.

Mr. MERIWETHER. As the amendment proposed by the gentleman from Lewis, (Mr. Proctor) has been modified, so as to suit the views—as I understand—of the honorable Chairman of the committee, by leaving it to the legislature to determine whether there shall be assistant judges or not, I will withdraw the amendment I offered. But I will remark to my friend, that there is another amendment proposed that will, perhaps, obviate his objections. The legislature must convene, before this court can go into operation; and they may provide that whenever any indebtedness is to be created on the part of the county, the magistrates shall come in and act as a portion of the court.

My friend from Mason, (Mr. Taylor,) seems to think, that if but one Judge is to constitute this court, too much power would be placed in his hands. The power now possessed by the court, is either to confirm or set aside the finding of the jury, and it is easy to provide, that in cases where the property of an individual is concerned, a concurrence of a majority of the magistrates shall be required. I think this will obviate the objection of the gentleman.

Mr. CLARKE. I desire, when it shall be in order, to offer the substitute that was proposed by the gentleman from Green, (Mr. Lisle.) It takes the old county court system, with the exception of the manner in which that court was constituted.

I have no recollection, during the whole canvass of last summer, or during the agitation of the convention question throughout the state, of having heard any complaint made as to the number of judges of the county court; nor any complaints in regard to the county court at all, save and except, as to the manner of appointment of the judges of that court—the self-constituting and self-making power they possessed—

and the further fact that the senior magistrate receives the office of sheriff, by virtue of his seniority.

Some of the amendments propose to constitute one judge for this court, and some three. There will be a very radical change made in the whole system, and as we are making a number of very radical changes, I apprehend it will be safer for us to consider whether or not, we are called upon by our constituents to make any change in relation to that court, save the change proposed by the gentleman from Green, which I desire shall be substituted.

Mr. G. W. JOHNSTON. I understand that to be a substitute for the whole report; and it will be in order first to perfect the report. I have a plan for constituting this county court, which I think will meet the views of a majority of the members of this house, and it corresponds to some extent, with that proposed by the gentleman from Green (Mr. Lisle). I will offer my substitute, and ask the yeas and nays upon it.

Strike out all that part of the section after the word "judge," in the third line, and substitute in lieu thereof the following:

"and the justices of the peace in commission in each county. The presiding judge and two justices of the peace, or any three of the justices of the peace, shall constitute a court for the transaction of business, except at the court of claims, when the presiding judge and a majority of the justices shall be required to constitute the court."

Mr. HARGIS. When this subject was under consideration in the committee of thirty, I understood that this proposition was offered, together with a good many of similar nature. I do not believe we could establish a better principle than that agreed upon by the committee. I should be opposed to the county court being held by one judge. It is a court that is important to the interests of the people. They are all interested in the proper discharge of the duties devolving upon that court, and the rights of the people, it seems to me, will be better represented by having the court composed of three judges, than if you have but one.

Mr. DAVIS. I think this building up of inferior courts is no easy task. It is not like a tailor fashioning a suit of clothes. I think on the contrary, that much reflection, time, and experience would be required to enable us to establish inferior courts—especially courts for counties. We all know, that in attending to the civil business of the state, the inferior court system began with a court of quarter sessions; this was afterwards superseded by the circuit court. Our system of inferior courts has grown into disfavor, to some extent, and is to be modified. The county court system would have fallen long ago, before the system of experiment and improvement, if it had not been a constitutional court. It seems to me, it would be an erroneous mode of proceeding to encumber the constitution with many details. The best plan will be to establish a few general principles, and leave the details to be regulated from time to time, by legislative action, as experiment and experience shall instruct us. I think myself that a provision of this kind would be the best thing that we could adopt, in relation to county courts.

"In addition to circuit courts, the general assembly shall constitute such other inferior courts, justices of the peace, and other magistrates, as may be necessary and proper, to be elected by popular vote."

If you intend to establish in the constitution a frame work for a county court system, you may establish such a system as will not work well. It may become objectionable to public sentiment, and whether it shall be wrong in truth and fact, or only in public sentiment, the consequences are practically the same. I think the constitution ought merely to provide a few general terms, and that the legislature should have power to establish such inferior courts as the people shall, from time to time, require; and then if the system be found not to work well, instead of resorting to a convention to remodel the law, all you would have to do would be, when enlightened by experience, to refer the necessary changes to legislative action. In this mode, I think the system would work much more to the convenience and satisfaction of the people; and that the necessary changes would be much more easily and readily made than if you incorporate a system in the constitution, and make it the fixed and irrevocable law of the land. I am pretty much a looker on this morning, and I merely make these suggestions as a matter of counsel—as a sort of *amicus conventionis*—a friend to the convention. If the suggestions are not agreeable, I have not a word to say in their advocacy. If they meet with favor, I shall be satisfied—if with disfavor, I shall not be dissatisfied. When the other amendments are disposed of so as to make this in order, I will offer it.

Mr. NESBITT. If there is any court that I know any thing about, it is the county court. I have had some experience in it, and I have reaped some of its benefits. I have been elected county attorney for eight consecutive years, and I believe I never absented myself but one term, and we have twelve terms a year. One term I served twelve days consecutively. I believe, sir, the report of the committee presents the best foundation for the county court that can be adopted by the convention; and if I had from now until the end of the session to prepare a report, I do not believe I could find a solitary point, as far as regards the general principle, to amend, except one. I would give to the presiding judge the power to hold the court, which this article proposes as the foundation for the legislature to build upon. I do not agree with some gentlemen here, that we should fix the jurisdiction of the court. That is a matter to be left entirely with the legislature. When we have this foundation, giving the presiding judge the power to hold court, what will the legislature do? My opinion is, they will invest the presiding judges with power in probate alone—with power to receive and take proof of wills—appoint guardians—executors—take bonds from commissioners, and such like. I suppose we would have to invest power in somebody, and the convenience of the thing demanded that one man should have the power to hold court. In some counties, it is necessary that the court should be held every month in the year, and in others not quite so often. The law provides, fur-



thermore, that there shall be appointed, by each county court in the state, three commissioners, whose duty it shall be to settle with executors, guardians, and administrators. It is the easiest thing in the world for the legislature to say that the associate judges of the court, together with the presiding judge, if necessary, shall exercise the power of county commissioners.

It is required that each county court shall appoint various appraisers, whose duty it is to take charge of matters out of doors. Well, how easy it would be that the legislature should send two associate judges to perform this duty. It is objected that the power of this court would be too great. I am not like some gentlemen, who think this court has no virtues. I think there are some good points about it, and some bad ones. But the principal grievance the people have labored under, is the manner in which the court is constituted. There should be I think no alteration except as to the court of claims—and I ask it as a matter of right—that the people of the whole county shall be represented in that court if it should become necessary. I suppose all that is desired can be obtained, by giving the power to the presiding judge to hold the court. But my opinion is, that it would be a little more harmonious, if the power be left to the legislature to make the necessary provision. I am satisfied with the report as it is. It is true, we had a great deal of talk about it in committee, and we finally settled down on the plan reported, and I hope that plan will be adopted.

Mr. W. C. MARSHALL. I would not trouble the convention at this time with any remarks, but that I was a member of the committee which reported this bill, and it seems to be expected that each member of that committee should give his views upon the subject.

The remarks that were made by the gentleman on my right, (Mr. Davis,) who seemed to have a fatherly feeling for the people, were certainly conceived in a kindly spirit. He expects to do nothing himself, but expects that all that is done should be done under his supervision and discretion. I know his kindly feelings, and I appreciate his motives. What does he propose? After the committee had spent days in preparing this report, after the question had been presented in various phases to this house, he comes in and tells us it is all wrong, and that we ought to allow the provisions in the old constitution to remain and allow the legislature—that body which is always composed of the best materials—to concoct a court; and that this convention, composed as it is of combustible materials, is incapable of deciding what would be a proper court. I confess this is a subject, as has been remarked, of more importance to the counties than either the circuit court or the court of appeals. It is a court in which the people of the various counties feel a deep, essential, and more abiding interest, than they do in the circuit court. It is a matter which is brought to their houses and their firesides. It is brought down to the every day intercourse which subsists between men; and when you talk about interfering with the county court, the people will, in the language of the gentleman from Mason, (Mr. Taylor,) regard your action with jealousy, and look upon it with suspicion. It has hitherto been a self-constituted body, and in

the language of my eloquent friend from Mason the reproduction always has longer ears than the original. I trust in God they may have longer years.

What other objection was made to this county court? It was claimed that the people should say who should constitute the court. This right we are about to give them. Do they claim anything further? They object—I only speak of the region of country from whence I came—that the members of the court will be too numerous if all the magistracy be included. That the machinery would be cumbersome—that the number would be too large. Well this may be remedied by the legislature if the community do not require it. One of the objects of calling a convention was, that the counties might be laid off into districts; and that this self-creating court should be differently constituted. How do you propose to remedy the evils that have been complained of? In the first place, you give to the people the election of judges; and then it is proposed by some that they shall have but one judge, and by others that they shall have a full bench of magistrates. It appears to me, there is safety in a medium course. The committee having heard various projects, decided upon the one now substituted in their report. I ask gentlemen who have advocated the associations of magistrates, how they are to procure an attendance—what inducement will this hold out to insure an attendance? It is very rarely that you can get a majority of the magistrates to go upon the bench, because there is no inducement for them to go there, except, perhaps, the sheriffalty to which they are looking forward. Do you propose to give them compensation? If you do, you will place a load upon the treasury that will make it stagger. How many districts will a county compose? Some sixteen or eighteen, I suppose. The improvement that will have to be made, according to the views of the gentleman, will compel them to put their hands deeply into the pockets of the people, and on these occasions, all these little municipalities are to be represented; and how often must they come together? If a road is required to be opened, you must call them together. Whenever an appropriation is to be made, the whole of them must come in; and if it becomes necessary to hold these terms four or five times a year, and give them two dollars a day, the expense will amount—as you will find—to between \$75,000 and \$100,000. You cannot get men to do business unless you pay them. What does the bill provide? That the legislature shall be clothed with power to make such change as the people may hereafter demand. This is the power I am willing to concede to the people. I wish to see the report stand precisely as it does, and if the people hereafter demand a change, the legislature will be ready and willing to carry it out.

What is the objection to the three judges? It is that a large power will be vested in the hands of three individuals. But in what manner are they to be invested with this power? They are to be elected by the people of the county at large; and they will therefore represent the whole county. But the gentleman from Madison, (Mr. Turner,) says it is necessary to have them represent these

distinct municipalities; and that the wants of the whole community will by that means be best represented. But mark my words; they will come up with narrow and selfish feelings, and when appealed to for an appropriation to erect a bridge across a stream, or for some other object in which a portion of the country may be interested; each one will be prepared to say, it shall not be granted, because my particular section is not to be benefited by it. Here is an extreme power to be exerted upon the people of the county, while a large portion of them have had no voice in the election of those, by whose action their interests are to be affected. Sir, give the power to three judges. They will give their attention to the interests of the whole county. They will discharge their duties with a due regard to their responsibility. He who is unwilling to assume responsibility, is unfit to hold any public office. Give us three judges, and my word for it, the country will be satisfied.

The gentleman from Lewis, (Mr. Proctor,) has offered a proposition, to which I have not much objection, for I find that it corresponds almost entirely with my own views. But, it appears to me that the report of the committee, as it stands, is the best plan that we can adopt. Since it was reported by the committee, I have communicated with my constituents, and they have expressed themselves satisfied with it; and have directed me, as far as practicable, to carry it out. Hence I am inclined to sustain the report of the committee.

Mr. TURNER. I shall vote for almost any proposition that may be submitted, in preference to that of the gentleman from Shelby, (Mr. Johnston.) I believe it to propose the worst course we could adopt. I shall offer another amendment if his shall be voted down.

Mr. KELLY. As it is fashionable so to do here, I wish to define my position. I was a member of both the county court committee, and the committee of thirty, and voted against almost every proposition in the report; and although voted down, I reserved to myself the right to oppose it in convention. This I shall do by my vote.

Mr. BRADLEY. I am a member of the committee on county courts, and as such voted for the substitute proposed by the gentleman from Green, (Mr. Lisle,) and I prefer it now. I am opposed to the constitution of three judges. The suggestion of the gentleman from Green as to the expense this system would devolve upon the state, led me to reflect somewhat on the subject, and to arrive at the conclusion that it would be even more expensive than the circuit courts. The country, I am satisfied, will be astounded and dissatisfied if we present them with any system of that kind. Let us examine this matter a little. The circuit court, it is proposed, shall consist of twelve judges, and if the legislature should fix their salary at \$1,600, which is here suggested as a minimum, it will amount to \$19,200. Add to that the salaries of twelve commonwealth's attorneys, at \$300 each, and it will amount to \$3,600. This would make the whole cost of the system amount to \$22,800. This report proposes to create three hundred new and salaried officers, in the shape of three county court judges for each county. Of course

if they are to be men qualified and learned in the law, they are to be paid for their services, and if they are not to be such men what will the country gain by the change in the system? Can men possessing the proper qualifications, and to whom the people would be willing to confide the whole taxing and appropriating power of the county, be secured for less than \$50 per annum? I think myself they cannot be procured at less than \$100. But take them at \$50 each, and three hundred of them would amount to \$15,000. Then there are 100 county court attorneys to be provided for. Allowing for their services \$100 each, which I think is as little as they can be obtained for, and you have an additional item of \$10,000. The cost of the system then would be \$25,000 per annum, exceeding the whole charge and expense of the circuit court system. I do not believe the people are prepared for such a proposition. The complaint against these courts grows out of the manner of their appointment, and the neglect and dereliction of duty consequent upon its being in fact a self-constituted tribunal. The people, at least in my county, would be satisfied with some system under which the counties would be divided into districts, and the magistrates elected for a limited period of time. Another objection I have, is to the vesting of the power of county taxation and appropriation in a court constituted as this report provides. These three judges would generally be three young lawyers living about the town, and but little conversant with the general interests of the county. Would this be a safer depository of this power of taxation and appropriation than a tribunal composed of men selected in the several neighborhoods, and understanding and representing fully the interests of each district? In my judgment it would not. I am therefore against the three judges, and shall vote for the substitute of the gentleman from Green. If, however, that substitute shall fail, then I shall go for the smallest number of judges in addition to the magistracy.

Mr. MAYES. If any department of our government has met the unqualified condemnation of the country it has been the existing system of county courts, and the question now is how shall it be changed. The gentleman from Bourbon desires to leave it to the legislature to establish a system. This is the very thing to which the people object, at least in my section of the country. They desire that the convention shall provide in the constitution for a system, and the plan reported by the committee is very much in accordance with that discussed and desired by them. The present constitution, in declaring that there shall be established in each county a county court, gave the legislature full power over this subject, and yet for fifty years they have not thought proper to change or mould the court so as to conform to the public desire. And yet all admit that the system as it exists has been condemned by the people, and a change demanded. As far as the expense of the system proposed by the committee is concerned, I suppose each would gladly pay the expense requisite to secure a court in which they might repose full confidence. The matter of compensation is very properly left to the legislature. Men of sound sense and integrity, I suppose, could be secured

ata per diem of two dollars. Supposing the court to hold twelve terms a year, and to be able to get through with them, as is the case in my county, with a population of seventeen hundred, in a day or two, the cost would be only about \$30 or \$40 per year for the judges. But, it was said that county attorneys were to cost \$100 per year. Not so, their compensation would be left to be regulated by law, as is the case at present, Mr. BRADLEY. What is the usual compensation allowed them?

Mr. MAYES. In my county it is \$60, and in others it is higher and lower. So under this report, the county court as the representatives of the people, could allow the attorney only ten dollars, if they thought that was all his services deserved. How would it happen, as the gentleman seems to apprehend that all these judges would be selected from men in the towns? The selection has to be made by the free voice and votes of the people of the whole county, and they would certainly understand their own interests sufficiently to guard against the contingency the gentleman predicts. Satisfied that the people never will be satisfied with a constitution continuing the present system of county courts, and that if left to the legislature the desired reforms will never be obtained, and believing the plan reported by the committee to meet the approbation of those I represent, I shall therefore give it my support.

Mr. LISLE. My proposition has been opposed in the debate here, by arguments directly the opposite of each other. It has been urged here, as one objection, that the court thus constituted, would represent conflicting interests and render it difficult to arrive at correct conclusions. Another objection urged is, that in some neighborhoods a man could not be obtained qualified for the magistracy. I do not think that there is any such neighborhood in any county. Another gentleman says that under the committee's system, the cost will be but forty dollars a year.

Mr. MAYES. I said I supposed the judges would probably be allowed a per diem of two dollars.

Mr. LISLE. Now I want to know upon what principle it is expected to get men better qualified at that compensation, than are the present justices of the peace? Their fees would amount to that much. I would give the legislature the power to increase the fees of the justices; to exempt them from working on roads, and from jury duty, &c., in order to compensate them for the loss of the sheriffalty. But if we take from them the right of holding a court, it will detract from their dignity and destroy their character; and to do this merely to create a new set of officers, it seems to me is entirely uncalled for.

Mr. HAMILTON. It seems to be a settled question that the report of this great joint committee is to be sustained in every particular, and as they have said that we shall have three county judges, perhaps it is useless to contend against it. I should have been afraid to say a word against it, had not its members differed among themselves on the subject. It is a great pity perhaps that the grand committee had not been charged with the duty of framing the whole constitution, and the balance of us gone

home. I concede that there has been a great deal of complaint among the people in regard to the county court, and though I have been of it, I have ever regarded it as a rotten concern, which ought to be reformed. The great objection, however, has been to the manner of its appointment, and also of its exercise of its own appointing power. They appointed men of their own political views, and I have known a county not far from where I live, where, with very few exceptions, every magistrate had a son or a son-in-law riding under him. In that case, if a constable should not pay over, and a motion should be made against him, it would be the father who decides upon his son. This is one of the greatest objections to the system, and which the people desire to see remedied. The objection urged by gentlemen in regard to the frequency of appeals I think is not well founded. At all events it will apply with equal force to the three judges proposed, for they certainly will not be so much abler and wiser than the present court, that their decisions will never be appealed from. They were not to receive any more compensation than the present magistrates; and I know from experience that the fees they receive are far from fairly compensating them. They do a great deal of labor, nearly half of which they do not receive any compensation for. I know of a case which came before me, where I had to write a warrant, in the first instance, and sixteen summonses, and then had to continue the case, and then wrote sixteen or seventeen more subpoenas. Then I had to sit humped up and listen while four or five lawyers plead the cause, and after it was decided, to write some ten or fifteen certificates. If a clerk had had the thing to do, it would have amounted to at least fifteen or twenty dollars, and my fees were only some twelve and a half cents. (Laughter.) Pay the magistrates what is reasonable for their services, and they will attend to the county court. As it is now, magistrates only attend there who may be brought to town in discharge of their own business, and yet the courts were generally very well attended to. But gentlemen say that they want qualified men, and how do they expect to get them? They say by the election of these judges by the people! Are not the magistrates also to be elected by the people, and will not the chances for getting good men be as strong in the one case as in the other? The gentleman from Lewis, (Mr. Proctor,) says his county court decided that a man had no right to take an appeal under five pounds. I did not think there was a county court in Kentucky, where the magistrates and the lawyers about it, did not know the difference between twenty five shillings and five pounds, and if such a county does exist, I say it becomes a question whether it ought not to be dissolved, and thrown back upon its original elements. (Laughter.) The gentleman from Bracken, (Mr. W. C. Marshall,) said that the magistrates were too much under the influence of the people, and therefore he wanted these three judges to come in, like so many Julius Cæsars, to tax the people whether they wanted it or not. I believe there is no necessity for the three, and that the people will be satisfied with the election of magistrates by districts, who shall form the county

court, and will not tax the people contrary to their will.

The question was then taken on the amendment of Mr. PROCTOR, and it was rejected.

The PRESIDENT announced the question then to be on the proposition of Mr. G. W. JOHNSTON, to strike out the original section, and substitute his amendment in lieu thereof.

Mr. GHOLSON. I move to strike out the provision for two justices in the amendment. My object is to make it conform to the proposition of the gentleman from Madison, (Mr. Turner.) I think there is no necessity for the justices to be associated with the judges, except in cases where they sit on questions of claims and roads.

The amendment of Mr. GHOLSON was rejected.

Mr. W. C. MARSHALL called for the yeas and nays on Mr. G. W. JOHNSTON'S amendment.

Mr. A. K. MARSHALL asked for a division of the question, so that the vote could be taken first on striking out.

The question being then taken, the convention agreed to strike out—yeas 56, nays 36, as follows:

YEAS—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Thomas D. Brown, William Chenault, Jas. S. Crisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, Alexander K. Marshall, Nathan McClure, David Meriwether, Thomas P. Moore, Jonathan Newcum, Hugh Newell, Johnson Price, John T. Robinson, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Squire Turner, John L. Waller, Henry Washington, Robert N. Wickliffe, George W. Williams, Silas Woodson—56.

NAYS—Mr. President, (Guthrie,) Richard Apperson, Luther Brawner, Francis M. Bristow, Charles Chambers, William Cowper, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ben. Hardin, John Hargis, Vincent S. Hay, Mark E. Huston, Thomas James, Willis B. Machen, William C. Marshall, Richard L. Mayes, John H. McHenry, William D. Mitchell, John D. Morris, James M. Nesbitt, Henry B. Pollard, William Preston, Larkin J. Proctor, Ira Root, James Rudd, John W. Stevenson, Michael L. Stoner, Howard Todd, Philip Triplett, John Wheeler, Charles A. Wickliffe, Wesley J. Wright—36.

Mr. TURNER. I offer my proposition as a substitute for that of the gentleman from Shelby. I suppose that those who sustained the report will now go for my proposition as being nearer to it than any that has been proposed.

Mr. W. C. MARSHALL. As one of those who sustained the report, I shall be prepared to vote for all, if I cannot get the three judges.

Mr. MACHEN. Does the gentleman propose

in his amendment to make it imperative on the legislature to require the magistrates to come in?

Mr. TURNER. I desire that the direction shall be imperative on the legislature to prescribe it. I should like to have the support of the gentleman from Bracken, (Mr. W. C. Marshall,) but at any rate, unless I am mistaken, there will be a majority for the proposition without his vote.

Mr. W. C. MARSHALL. It will not be the first time that the gentleman has been mistaken in his life. Many of his propositions have been rejected here, of course not because they were wrong, but because the obtuseness of the house was too great to comprehend their beauties. This one judge system, this lawyer operation, this business of fixing up little pettifoggers to act as a court, seems to be a favorite notion of the gentleman, but I can tell him that if it goes forth to the people as the concoction of the brain of one of the most distinguished lawyers in the state, they will be very apt to regard it as a lawyer project, and to look upon it with abhorrence. I believed the plan of three judges would give more satisfaction to the people and the better accord with their views. It having been rejected, I prefer to let all the magistrates come in, and shall vote against the amendment of the gentleman.

Mr. MACHEN. There are insuperable difficulties which present themselves to my mind as likely to arise under the propositions either of the gentleman from Green or Madison. We are taking away from the magistracy the only stimulus we have heretofore presented to them to come on the county court bench. There are very few men so devoted to their country as to be utterly devoid of selfishness. Men will not work efficiently in any department of government without being paid for it. It is proposed now to require the magistrates to act in the court when claims are disposed of, and I ask you, by what power you will bring them to the bench? Can you by any other than that of remuneration? I believe nothing less will draw them to the bench. No man will otherwise assume the great responsibility of levying and appropriating the funds of the county. If we direct the legislature to require a man to come on the bench, and he refuses, they will have no power to compel him. Remuneration for his services is the only inducement that will secure him. Is the court, then, in such a case, not to be holden at all? It does seem to me, that the proposition will result in that. I am willing to go so far as to say, that the legislature may have the power to authorize a majority of the magistracy to sit on the bench, but I am opposed to making it imperative on them. I never heard, during the canvass, a dissenting voice to the proposition of establishing the court of three judges of some character, and since the report of the committee has been introduced, I have heard only the highest approbation awarded to it by my people. I certainly prefer it to any that has been introduced here.

Mr. GARFIELDE. As a member of the committee, I took pains, after the report was introduced, to ascertain the public feeling in my own county in regard to it, and I find it meets with the unqualified approbation of my constituents. And although I am not a lawyer, and conse-

quently do not know as much about what should be its practical workings, perhaps, as some other gentlemen, yet it has been a favorite scheme with me. It is said, in making this constitution, we should be governed by a spirit of compromise upon these numerous questions of detail where a difference of opinion exists. To that spirit I have endeavored to conform, and I have compromised one thing after another until now nearly every original view I had has been abandoned. I have met members fairly in this matter, and yet I have always found myself in a minority. Be it so. I had hoped, however, that the report of the committee, meeting the approbation of the people as it has, would have received also the approbation of the convention. I find it has not, and as the next best proposition I shall go for that of the gentleman from Bourbon (Mr. Davis.) It seems to me a very serious matter to impose the county business upon one individual. It was suggested to the committee, and opposed on the very grounds stated by one gentleman (Mr. Bradley) here, that the selection would be probably that of a lawyer residing at the county seat who could know but very little, and might care less, about the interests of the whole people of the county. I therefore proposed to add two other magistrates to the court, who could understand and represent the farming interests. This having been rejected, I now prefer leaving the whole subject to the legislature, believing that they will, in their wisdom, devise some system by which all the various interests of the country will be promoted.

Mr. CHRISMAN. By the rejection of this first section, I deem the whole report to have been rejected. This is an important subject, upon which due time should be had for consideration, and I therefore move an adjournment.

The motion was negatived.

Mr. NESBITT. The vote just given to strike out the first section, makes it necessary for some of us to define our position in regard to the report. It will be recollected that in the early part of the session I offered a resolution providing for a single probate judge. It was the mere beginning, so far as I was concerned, of a system. Upon that subject I appeared before the committee, and introduced such arguments as I was then prepared with, but they disagreed with me, and reported three judges for the court. Then the whole matter being referred to the joint committee, it gave me some time to send the report to my county, and write letters to divers individuals for their opinions upon it. In return I have received the strongest assurances that the report of the committee is universally approved. In view of that fact, although it is in direct conflict with the resolution I offered, I voted against striking out. I prefer, and would risk more to carry out the will of the people I represent, than my own views, let them be what they might. Their opinions have had a fair test before the convention, and this body has decided against them. What will be the action hereafter, I cannot pretend to say, but after having voted once to carry into effect the will of my people on the subject, I am now left to act for myself, and I shall now fall back upon my original proposition, and go for one judge, giving the power to the legislature to call other justices on

to the bench at any time they may see proper, but preferring to have it imperative when the court is considering claims.

#### EVENING SESSION.

##### LEGISLATIVE EXPENSES.

The PRESIDENT announced that he had been furnished by the Second Auditor with a table of the expenses of the legislature for a series of years, in compliance with a resolution heretofore adopted, on the motion of the gentleman from Bullitt, (Mr. Thompson), which he now presented to the convention.

##### COUNTY COURTS.

The convention then resumed the consideration of the report on county courts.

Mr. TURNER said he had been authorized by the gentleman from Shelby, to withdraw that gentleman's amendment, which was pending when the convention took a recess, and also desired to withdraw his own proposition, and to offer a proposition as a compromise, which met the approbation of himself, the gentleman from Shelby, (Mr. G. W. Johnston,) the gentleman from Jefferson, (Mr. Meriwether,) and some others. It was as follows:

"And all the justices of the peace in each county: *Provided*, That the general assembly shall have the power, from time to time, to provide by law, what part of the business of said court shall be transacted by the presiding judge, and what portion by said judge and one or more of the justices of the peace, and what justice shall act as presiding judge during a vacancy in that office, or in the absence of the presiding judge."

Mr. C. A. WICKLIFFE reminded the convention of the position of the question, a vote having been taken on striking out, and hence he questioned the propriety of the course suggested.

The PRESIDENT stated that the substitution could be made with the general assent of the convention.

Objections were made.

Mr. JOHNSTON enquired if he could not accept that proposition for the one which he had before submitted.

The PRESIDENT replied that he could not without general consent, inasmuch as his proposition was in possession of the convention, and had been voted upon. If, however, it was desired, he would put the question to the convention, on granting leave.

Mr. GRAY said, he desired to vote on the proposition of the gentleman from Madison. If that gentleman had withdrawn it he would himself again present it to the convention, for it came up to what he thought a county court should be.

Mr. TURNER said he preferred his own to any other proposition, but still it would be found necessary to make concessions all around.

Mr. GRAY. I hope the gentleman will not take the expression he has received from a few members around him, as the full sense of this house, upon a question of this character. I do not think we ought to proceed in this manner, for it is not calculated to accelerate our progress. It is easy to take a vote upon the proposition; it will not take us long; and if the majority favor

it let us adopt it, but if they vote against it, then we can take the proposition of the gentleman from Madison and take the sense of the convention. In my opinion it comes up to the manner in which we are called upon, as I believe, by the people, to establish the county court. It is easier to pay one judge than three, and one can do all the business that is assigned him by the amendment which the gentleman offered before the convention took a recess. What is the business he will have to transact? To probate wills, to manage estates, to appoint guardians, and all matters of this sort, which are now entrusted to the county court; and from its decisions we have a right to appeal to the circuit court, and there one judge decides. Why cannot one judge also decide in a county court? And why not one man as well as three? Indeed, it is admitted that one able and intelligent man will do equally as well as three, in the decision and settlement of private rights in dispute between individuals and the community. I ask if we cannot afford to pay one man better than three? Now this is a matter, it strikes me, in which the community at large have an interest, especially in all that relates to the imposition of taxes, the laying of levies, the changing of roads, the erection of bridges, and all expenses which the people of the county will have to defray. The amendment of the gentleman from Madison provides that a majority of the magistrates, who are elected, shall be called up and consulted on all such subjects in connection with the judge elected by the people at large. Now, does that not give the county an opportunity of being fairly represented as the people are represented in the legislature, when they impose taxes on the state at large? But the gentleman objects that some of the divisions are larger than others, and says there is something unequal in it. There is nothing in the objection; it makes no more discrimination than in the legislature. All parts of the county are represented, and we do not leave it to one man to say what the balance shall do. And if they cannot get a majority, I take it for granted it ought not to be passed. It is as fair a representation as you can get in any other way. I think if the judges are elected the county will be better represented, if those who lay the levy are from the county at large. Here we divide it into sections, and each section has its voice and is heard.

Now, for these reasons, I think that would be the best plan. But gentlemen say, if we adopt the one judge plan, that it is "a lawyer project." That is an extraordinary way of killing off a proposition, because if you use the word lawyer among the people, they will think it is all wrong. But I do not think we should be frightened from a good project because a lawyer happened to introduce it; almost all the amendments introduced have been by lawyers. I am opposed to killing off a project in this manner, if there be merit in it. If it be right, equal and just, I will support it with as much zeal and sincerity, whether it comes from a lawyer, or a farmer, or a man of any other vocation. Does not the report of the committee provide the same thing, that there shall be a presiding judge? Yes, the people there are to elect a lawyer. Is it not as much of a lawyer project, as if one

judge and two associate judges were to sit on the bench? The gentleman says it is necessary that a man should have some legal ability. If you put two farmers, or men of no legal ability on the bench, do they constitute an efficient court? I suppose the two farmers are to sit and "guess," and if they "guess" wrong, why the third judge, if he is to be a lawyer, would be overruled in his decision. This is an objection, I think, to these two associates. The people elect whom they please. I care not whether he be a lawyer or a farmer, I believe they will elect a man who is better qualified to discharge the duties of a judge than if three men were to preside, as is proposed. You can pay a competent man much better, if he is able to do all the duties, than you can three men, in proportion to their respective services. Thus you will save the expense incurred by employing two associate judges, and the business of the court will be infinitely better performed. If not, why do not gentlemen propose to put two associates with the circuit judge? Because it is the same kind of business, these judges are called upon to transact. On all subjects you can take an appeal from the circuit court. In all matters that concern the counties at large, as the laying of levies, and the opening of roads. I think it would be better to leave it to the magistrates. Let it be designated on what terms they shall come.— That, however, is a subject for legislation. You can pay them by the day to do the business. It will only take them a day or two. The gentleman from Caldwell says you have no means of bringing them up. We have the same power to bring up all that you have to bring up the presiding judge, and his two associates. If you are going to pay him, you will pay them. They will come for one dollar a day, and we can impose penalties for failing to do it. We have required the county court to do this business without compensation. It seems to me we can have no difficulty in it. The plan proposed by the gentleman from Madison is the cheapest, the best, and the most certain and safe, and will meet with the most favor among the people. If you do not choose to adopt it, I will agree to the one the chairman of the committee has proposed. But I think we had better fix it with one judge, to determine all these matters. We must acknowledge he is as competent to do it, as with two associates. We can leave the laying of the levy and taxation to the justices of the peace.

Mr. ROOT. I am in favor of the report of the committee, and it strikes me, if the friends of that report will hold to that a little, the gentlemen who have presented various propositions, will finally abandon them, and agree on the report of this committee. The project of electing one judge is spoken of, and of bringing up the old system of the county court, which caused the magistrates once in a month to come up to the county seat. If there is any one part of the old order of things objectionable in my county it is the county court system. Not only the number of the county courts, but the manner of appointment, and the length of time they were held were strong objections to it. If the people imagine that the old form or shape of the court is again to exist in my county, it will induce



many to vote against the constitution. On what ground is it that we shall resort partially to the old system? Is it on the score of economy? Let us see how it will stand.

Is it to be supposed the magistrates will come up and hold courts, and transact business for the county without pay? That they will be so generous as to give their services without any compensation? Why was it, that under the old system, men of ordinary intelligence could be induced to ride up to the county seat in heat and cold, summer and winter, in dry and wet weather, without compensation? It was because they held on to the office with the hope of one day becoming sheriff. That feature of the system will be cut off. Suppose the favorite proposition of some gentlemen succeeds, and we incorporate in the constitution a provision, which requires twelve or fifteen magistrates to come up periodically, to transact the business of the county. If they are paid one dollar per day and meet one day in a month, there will be an annual expense to the state of \$14,400. Suppose we adopt the report of the committee and appoint three persons under the dignified term of judges, giving to the presiding judge, and associate judges two dollars per day; we shall thereby save to the state, \$7,200 annually, and do away with the prejudice which has heretofore existed against the county court.

It has not been the court of appeals nor the circuit court, which has induced the people to rise *en masse* and call a convention. It has been the court before their eyes, the ignorance of the magistracy, and the tenure by which they held their office. It has been their constables and other officers of the county, and not the higher officers about whom the people knew little, and cared less.

If we wish to add strength to this new constitution, we must set about suiting it to the prejudices of the people at home, and on the county court rests much with respect to the favor with which the new constitution will be received. If gentlemen wish to save money, the adoption of the report of the committee will be the means of doing it, as contrasted with the other proposition; for in the one case we propose to pay three judges instead of twelve.

It has been said, that if three judges are placed on the bench, certain sections of the county may be overlooked. In order to obviate that, the county may be districted, and the judge may be instructed by the people to execute their wishes. The original convention men, when they raised their voice for the measure, attacked most zealously the county court, and from this subject drew their weapons and their ammunition, and if it is suffered to appear again with some of the former obnoxious features it will destroy the constitution.

There is another reason why the long courts should not be permitted to appear again. Where there are many men engaged in the same cases, every man is disposed to throw the responsibility on his neighbor. The act which the people condemn, cannot be settled and fixed on any one in particular. Each fixes it on his neighbor; but if there are three only you can tell who is responsible, and there will be a unity of action,

and the people will be better satisfied, for their business will be better done.

I say then to the friends of the report of the committee of thirty, that after a little more breath has been spent, they will be able to carry it; because I believe the great body of the delegates know it is nearest the thing which the people want.

Mr. G. W. JOHNSTON. I have been somewhat surprised at the debate on this report. Gentlemen seem, in their anxiety to make a county court, to have forgotten that we are to have a body of magistracy, to whom is to be given an important jurisdiction. I look on that office as next in importance to that of the county court. They have jurisdiction to the amount of \$50. It is important that they should be qualified for this office. Do gentlemen suppose they will get men to discharge the duties of this office, if you say they are unfit to sit on the bench of the county court? I want this court kept up by men as well qualified to sit on the bench of the county court, as they have been heretofore. How it may be in other counties, I do not know, but in Shelby they are as well qualified as any county court in Kentucky. I do not expect to find persons better qualified for the office than the justices of the peace in Shelby. There is not a man on the bench who is not well qualified to discharge all the duties which will be imposed on this court.

The plan of the committee was to dispense with the services of the magistracy, and substitute three judges. I have been all the time opposed to that plan. The amendment which I proposed and the vote of the convention cuts off the three judges, and I believe, taking that vote as the sense of the majority of the convention, it is intended to substitute the magistrates of the county for the three judges. The proposition of the gentleman from Madison goes to that extent, and further, and I like it better on that account. It proposes to have a presiding judge, as a sort of head to this court, and to have the magistrates assist him. But it goes further, and gives the legislature the power to confer on the presiding judge, the probate jurisdiction in each county. That, I know, is a favorite project of many on this floor. They will be able to accomplish their wishes through the legislature. This goes further and designates what number of magistrates, with the presiding judge, shall have jurisdiction in the county, giving power to the legislature to call in the whole or a part of the magistrates, when business of importance is to come before them, covering my proposition, and going further. I prefer it, and in giving my vote, I shall do it to reach the proposition or the gentleman from Madison. I have no idea it will suit those who still hold on to the three judges and the report of the committee, but it seems to me to cover all the ground taken by the different delegates, and I believe will meet the wishes of the majority.

Mr. KAVANAUGH. I ask the indulgence of the convention, to offer a remark or two only, on the subject under consideration. To my mind, the mode of organizing a county court system, is of more importance to the people generally, than the subjects either of the circuit courts, or of the court of appeals. True, the subject of county

courts is not one on which such high sounding speeches may be made, as on that of these other courts; yet the people feel much more deeply interested in it. The county court has heretofore possessed multifarious and extensive powers, and this must be the case with that court hereafter, whatever its form may be. Of this the convention is fully sensible; hence the interest I am gratified to see manifested relative to the proper organization of this court.

One of the most important powers which it has heretofore possessed, and which it will hereafter possess, is the right of taxation. This power, when exercised by the legislature, has ever been closely and jealously watched, and much has been said in this state concerning it, while the power of these courts on this subject, has been exercised without attracting as much of the attention of the people as it should have done. I would therefore remind the convention, that the county courts of this state, taken altogether, have annually levied and collected, in the form of county revenue, nearly as much money from the people as the legislature itself; and we are now to organize a tribunal for the exercise of the same power. The report of the committee, and the several amendments which have been offered, present the question, whether this right of taxation shall be given to a county judge and two associates, or whether it shall be given to all the magistrates, each elected by a separate district, and thus representing every part of the county. The vote already taken, by which the two associate justices have been stricken out, is something indicative of the sense of the convention in favor of the latter mode. That mode it seems to me, would be most apt to give satisfaction to the people. Every part of the county would then be represented by a justice, elected by the people themselves, in all matters relative to raising and appropriating county revenue.

The amendment first offered by the gentleman from Madison, (Mr. Turner,) contemplates associating the justices of a county with the presiding judge, at such terms as may be prescribed by law, for the purpose of laying and appropriating the county levy, and of establishing and altering roads. This amendment meets my approbation. In the first place, these are perhaps, the only cases in which a popular or representative court is necessary.

The other duties conferred on the court, are of a character which can be performed more expeditiously, more conveniently, and more satisfactorily, by a single judge, than by any multitudinous assembly of justices which can be brought together. Why require more than one in any other case? Is there any other case where more than one is necessary? What will be the jurisdiction of the court, besides such as it may have over roads and county levies? It will, in the first place, have such jurisdiction as usually appertains to a court of probate, as admitting wills to record, granting letters of administration, appointing guardians, settling with administrators, executors, guardians, and the like. It may also appoint commissioners to assign, dower, divide lands, &c., and it may hear and determine appeals from justices of the peace in certain cases. Is more than one judge required for the discharge of all these duties?

For myself, I would always prefer a single justice of the peace in such cases. One acting by himself, in these cases, will always get on better than all the magistrates of a county taken together. I would greatly prefer risking his decisions alone. Bring them altogether for such purposes, and it usually results in "confusion worse confounded." I agree with the gentleman from Campbell, (Mr. Root,) that the complaints of the people were long and loud against our county court system. If any one thing was more complained of than another, it was that. If any one thing more than another accelerated the call of the convention, it was that. And I verily believe that we, to-day, would not have been here forming a constitution, but for the universal dissatisfaction felt against our county courts. I am not making these remarks to throw odium on that body. The very nature of its organization, no matter who its members might be, was such as to bring it down in the estimation of the country. Its mode of appointment was not its only objectionable feature. It was too numerous—a sort of multitudinous assembly, totally unfit for the discharge of its duties. Any other court, of like numbers, will fail to give satisfaction. The people desire a change in this feature of the court; and unless it be made, they will, in my humble opinion, be disappointed in their expectations at the hands of the convention. But while I am in favor of the convention. But while I am in favor of a single judge for the transaction of county court business, yet when it comes to levying, collecting, and appropriating taxes, I am for associating the justices with the county judge, that every part of the county may be represented; nor would I permit magistrates to be multiplied at pleasure as formerly; and I take this occasion to call the attention of the convention to this point, for I have been much gratified to see special legislation taken away in a number of cases. I hope the convention will apply the same rule to this thing of increasing justices by special acts, and will provide that each county shall be districted, and be entitled to justices according to its population. Each district would then have a fair and equal voice in laying a county levy, and applying the money.

Mr. President, I regretted to hear gentlemen in favor of three judges, announce the one judge plan as a lawyer project. I imagine, however, that this will have no influence here, nor before the people. They further insist that the associate judges are necessary to represent the farming interest. But sir, this court is not a representative body, except in the cases already alluded to. In those cases, I would have the farming interests represented by all the justices, coming from every part of the county. If, however, they are to form the court in all cases, as well as on all occasions, when the question of taxation is not involved, as when it is, then I am against it, and in preference, will go for the report of the committee. The gentleman from Campbell invokes this committee of thirty, to come to the rescue; I was sorry to hear it, for that power has already been often enough appealed to. It was called up in aid of putting four judges on the court of appeals bench, and succeeded when I believe a majority of the convention was originally against it. I hope then, that hereafter every

question will stand or fall on its own merits, and not according to compromises in committee rooms; and that this will be the case with the report now before the house.

It is further insisted that this county judge plan, will be expensive. I think not. Sir, why is it that your county courts now appoint commissioners to settle with guardians, executors, &c. It is because the court itself is too multitudinous and unwieldy for the transaction of such business. This would not be so of a single judge. These commissioners might then be dispensed with, and their fees go towards paying a county judge. I only mention this as one item among many.

MR. CHAMBERS. The views and sentiments of the distinguished gentleman from Bourbon, (Mr. Davis,) as indicated by the amendment which he has offered, and the remarks which he has made upon the subject of the county courts, are those which I entertained and expressed during my canvass for a seat in this body, and up to the time of my arrival here. I went further—before my constituents I opposed the establishment of any court by constitutional provision—except the supreme appellate court, supposing that it would be sufficient and best to delegate the power for the creation of all others, to the legislature. The uncertainty whether these institutions would work well in practice, and the difficulty of altering them if they should not, were sufficient reasons, if no others existed, to induce such a course; but in addition to these, experience in the case of the county courts, had already taught us the impropriety of making these inferior tribunals, constitutional fixtures. But, sir, I had not been here long, before I ascertained to my entire satisfaction—or rather dissatisfaction—that such was not the pleasure of this convention, and that not only the circuit but the county courts were to become creatures of the constitution. I then, in common with the other members of the committee to whom this subject was referred, labored to present the best system that we could devise, and the report now before the house is the result of our counsels. I regret that it should have been met at the very threshold, by the onset of the gentleman from Green, and that its success should be jeopardized by the accidental junction of those who favor one justice, and those who go for the whole body of the magistracy. But with the gentleman from Campbell, I do not regard this vote as a true indication of the intentions of this house; it is the meeting of two extremes which can never be made to harmonize, except upon the middle ground of this report.

Sir, let us examine this subject with some care and attention, and let us find our true course, as judges sometimes find out the meaning of a penal statute—that is by considering the old law, the mischief, and the remedy. The old law, constitutional—provides, that “there shall be established within each county, now or which may hereafter be erected within this commonwealth, a county court,” it also provides that “a competent number of justices of the peace shall be appointed in each county,” and lodges the power of appointment in their own hands, making them a self-perpetuating body. The old law statutory declares, that these justices of the

peace shall compose the county court; and confers upon it, jurisdiction over very important and multifarious subjects. The mischief, or mischiefs growing out of this organization of our county courts, and out of its administration of the matters committed to it, are almost as numerous as the subjects of its jurisdiction. Gentlemen need not tell me that the only things complained of were the mode of appointment and tenure of office. These it is true were seriously objected to, but so were others—its numbers are too great for a judicial body; it is an unwieldy, inconvenient, and disorderly court. It is frequently a difficult matter to get the justices upon the bench, and keep them there throughout the hearing of a cause. Instances are known of those justices who had heard the evidence on the one side having left the bench, and the cause being decided by those who had heard but a part of the evidence. Many subjects now require a majority of the justices in commission to be present at the time of their adjudication. This is a source of much trouble and disappointment, and I am inclined to think, that these laws requiring a majority, should all be repealed. They were not enacted because a majority would do the business any better than three, but as a kind of restraint on that kind of business, and their only effect is to put the party wanting this kind of business attended to, to a great deal of very unnecessary trouble.

There is no one who would not prefer applying to the court, in any kind of case whatever, when three or four of the most intelligent members are present, to an application when the bench is full, and consisting of from twelve to twenty members. But the most objectionable thing about the county court, is its politico judicial character. Many of the duties of this court, are of an executive and ministerial, rather than judicial nature, and if you would see a strict adherence to political party, go into your county courts when engaged in these executive or ministerial duties.

Sir, political bias should never be permitted to enter our courts of justice. But organized as these county courts now are, or as they will be if the whole elected magistracy forms the court, it can never be kept out. No, it will be vastly increased by electing the magistrates until your county courts will become nothing but political arenas. Do gentlemen expect that the quality of the magistracy will be improved by electing them. If they do, they will find themselves mistaken—it will, unless I am deceived, be greatly deteriorated. The chance of becoming sheriff is taken away, and no inducements to take so troublesome an office is left. Many of the districts will have no one residing within them, qualified to make a good justice, and men will not be voted for on account of their qualifications, to act as judge, or justice of the county court, but because of some personal or political predilection. Besides sir, it is rather singular that we should choose men because of their qualifications to make good country justices, and then throw upon them as an incident and adjunct of their office, the far more important and responsible duties of county court judge. In this way the responsibility of the judge is too

indirect and too much divided even to operate well.

We shall take away from the county courts most of their executive and ministerial duties, and we ought to create a court purely judicial, and with practical responsibility. This never can be the case, so long as all the justices in commission are, *ex officio*, members of the court. Now sir, I have spoken of the old law, and of a part—but a very small part—of the mischiefs arising out of the organization and administration of our county courts; and what is the remedy proposed? So far as the appointment and tenure of office are concerned our duty is plain. We give one to the people, and limit the other to a term of years, and this will perhaps stop complaints upon these two subjects; but it will not correct the evils, nor redress the grievances of a badly constructed court. This can only be done by electing suitable persons directly into the office of county court judge, and making them immediately responsible for the faithful discharge of its duties. Then the question comes up, of how many members should this court be made to consist. This question was fully debated and considered, both in the committee on county courts, and in the committee of thirty. The single judge, the whole body of the county magistracy, and the three judge system, each had its advocate, and the last was adopted as uniting in itself, all the benefits, and being free from the objections of both the others.

I have already shown some of the reasons why the whole corps of justices of the peace should not come upon the bench of the county; it would not be hard to state many others, and good ones; but one is sufficient, and I think ought to be conclusive. The people have demanded an entire change in this court. I came here the mere agent of my constituents, and I intend to try to conform to their behest. They required something more than a mere change in the mode of appointment, and the tenure of office; they want a radical, thorough change in the organization of this court. They do not object to its retaining its name, and jurisdiction; but they want new incumbents, chosen with a view to the duties of this office, and nothing else. It will not be hard to show that three judges, any two of whom shall hold the court, will do better than one. The remarks of my friend from Mason (Mr. Taylor) on this subject, are entitled to great weight. The county courts in this commonwealth have a very extensive jurisdiction; it embraces a great variety and number of interesting subjects, and creates such an amount of responsibility, that no one man would like to incur it. Part of its business affects the whole county, and every individual in it; such, for instance, as laying the levy, altering, establishing, and working the roads, the administration of the poor laws, and appointing officers of elections. Another portion of its business, and a very large one, concerns individuals directly, and the public incidentally; such, for instance, as the probate of wills, and administration of estates, guardians and wards, apprentices, approving securities and taking bonds from all the officers of the county, establishing ferries, tav-

erns, and fixing their rates, bastardy, settlements with sheriffs, commissioners, division and partition of lands and slaves, assignment of dower, awarding writs of *ad quod damnum*, and levying the damages assessed, which involves the power of taking private property for public use, with a thousand other important duties and responsibilities; too much to be incurred by any one man. Moreover, this is to be a monthly court, and to insure its regular sitting, it is better to have three judges. One might have business before the court that would make it improper that he should act, or he might be absent or sick. It is not intended to have a presiding judge and two stuffed paddies, as some have supposed. No, the judges will be equal in power and authority, and for aught I know, the associate may often be superior in capacity to the president; but it is necessary to have one of them designated as presiding justice, for the certification of records, deeds, and powers of attorney, under the requirements of the acts of congress and the laws of sister states. Nor is it intended, as some have suggested, that the office of judge of the county court is to be filled by the little pettifogging lawyers of our villages and county towns. I know not how it may be in the counties of those who urge such an objection; but in my county it will be any body else. This is the only judgeship which is not exclusively appropriated to the lawyers by the provisions of the article on the judiciary, and in my county we have experienced and intelligent farmers, men who have already been presiding justices and sheriffs, intelligent and well qualified mechanics, retired lawyers, clerks, and others well qualified to become county judges, and who would accept of that office, but who could not be induced to be elected a justice of the peace.

Next, sir, we will consider the expense and economy of this court, and here my friend from Green rushes upon us with the startling cry of three hundred new salaried officers. But what does he propose as a substitute? Why, sir, a plan offering us at least one thousand or twelve hundred new salaried officers. That gentleman should reflect that we have taken from the justices of the peace the little bonus of expectancy upon the sheriffalty which they formerly had; and however inferior and indifferent their qualifications for and services upon the bench may be, we cannot expect and should not want them for nothing. Allowing then, that each justice of the peace is to have one dollar per day for his services as county court judge, and supposing there are one hundred counties, averaging twelve justices to the county, and that only half these justices attend to hold the monthly courts, then we shall have to pay for the services of one half of the magistrates, as county court judges, the sum of seven thousand two hundred dollars per annum to have our business very badly done, whilst if we elect three county court judges in each county and suppose that all three attend each court at a per diem pay of two dollars each, it would cost but six thousand dollars to the state, and the business would be well done. These county judges, it is expected, will be paid out of the county revenue, and they will not cost each county over one hundred dollars. And in my opinion it is destined to become the most

popular, useful, cheap, and convenient court in our state.

To meet the wishes of those who wish the justices from all parts of the county occasionally to come upon the bench, we have added a section allowing the justices of the peace to attend the court of claims and assist in making appropriations and laying the levy.

If this court be established as reported, I verily believe its jurisdiction, now great, will be vastly increased in a few years. There are many subjects now given to our circuit courts that could be more conveniently attended to by the county courts; and as we have (as I think very unwisely) limited the number of circuits to twelve, and are about to try the working facilities of our judges to their utmost extent, the transfer of such matters to the county courts is still more desirable.

Mr. President, in what I have said, I am actuated by no personal considerations. I have no grievances of that kind to complain of. The justices of the peace in my county will compare very advantageously with those of any other county. They are all men of good character, fair capacity, and sound integrity, and some of them will no doubt be found upon the county court bench, if this report be adopted. But I have objections to the existing county court system, arising from its inherent defects, which can only be obviated by the election of suitable persons for the express purpose of holding these courts.

And then the convention adjourned.

#### FRIDAY, NOVEMBER 30, 1849.

Prayer by the Rev. Mr. WARDER.

##### LEGISLATIVE EXPENSES.

On the motion of Mr. JAMES, the report of the second auditor in answer to a resolution adopted on the motion of the gentleman from Bullitt, (Mr. Thompson) showing the expenses of a series of sessions of the legislature, was ordered to be printed.

##### AMENDMENT OF THE RULES.

On the motion of Mr. TRIPLETT, the rules were so amended as to provide that a motion to strike out, and insert, is indivisible.

##### COUNTY COURTS.

The convention resumed the consideration of the article concerning county courts.

The first section was under consideration in these words:

"SEC. 1. There shall be established in each county now, or which may hereafter be erected within this commonwealth, a county court, to consist of a presiding judge, and two associate judges, any two of whom shall constitute a court for the transaction of business."

To this, Mr. G. W. JOHNSTON, on Wednesday, moved the following amendment:

Strike out all after the words "presiding judge," and insert "and the justices of the peace in commission in each county. The presiding

judge, and two justices of the peace, or any three of the justices of the peace, shall constitute a court for the transaction of business, except at the court of claims, or when debts are contracted, when the presiding judge and a majority of the justices shall be required to constitute the court."

A division of the question was called for, and the convention agreed to strike out.

Mr. TURNER then moved to amend the portion proposed to be inserted, by substituting the following:

"And all the justices of the peace in each county: *Provided*, That the general assembly shall have the power, from time to time, to provide by law what part of the business of said court shall be transacted by the presiding judge, and what portion, by said judge and one or more of the justices of the peace, and what justice shall act as presiding judge during a vacancy in that office, or in the absence of the presiding judge."

In this state the question stood at the last adjournment, and the question now came up on the adoption of the substitute of the gentleman from Madison.

The question was taken and the substitute rejected.

The question then recurred on the amendment of Mr. G. W. JOHNSTON.

Mr. JOHNSTON, by general consent, modified his substitute, by inserting the words, "or when debts are contracted"—which form part of the amendment as given above.

Mr. GRAY moved, as a substitute for the amendment of the gentleman from Shelby, the following, which was offered on Wednesday, and afterwards withdrawn, by Mr. TURNER:

"Which court shall be holden by said judge, except at such times as may be prescribed by law, at which the county levy is to be laid, debts upon the county contracted, or roads opened or established, altered or discontinued, in which case a majority of the justices in commission in each county, shall be associated with the presiding judge, for the transaction of such business, under such rules and regulations as the general assembly may direct."

Mr. JAMES called for the yeas and nays on the adoption of the substitute, and they were taken, and were—yeas 26, nays 51.

YEAS—Mr. President, (Guthrie) John L. Ballinger, Charles Chambers, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Edward Curd, Garrett Davis, Milford Elliott, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Thomas J. Hood, George W. Kavanaugh, James M. Lackey, Elijah F. Nuttall, Johnson Price, Larkin J. Proctor, William R. Thompson, John J. Thurman, Squire Turner, John L. Waller, Henry Washington, John Wheeler, George W. Williams—26.

NAYS—Richard Apperson, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William Chenault, Beverly L. Clarke, Benjamin Copelin, William Cowper, Archibald Dixon, James Dudley, Green Forrest, James H. Garrard, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, James W. Irwin, Alfred M. Jackson, Thomas James, Wil-

liam Johnson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, William Preston, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—51.

So the amendment was rejected.

The question again recurred on the amendment of the gentleman from Shelby.

Mr. McHENRY called for the yeas and nays, and being taken, they were yeas 18, nays 63.

YEAS—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Chenault, Jesse Coffey, Henry R. D. Coleman, Milford Elliott, Nathan Gaither, James P. Hamilton, James W. Irwin, William Johnson, George W. Johnston, Peter Lashbrooke, Johnson Price, John T. Rogers, Michael L. Stoner, Wesley J. Wright—18.

NAYS—Mr. President (Guthrie,) Richard Apperson, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, James S. Chrisman, Beverly L. Clarke, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Green Forrest, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Alfred M. Jackson, Thomas James, Geo. W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Procter, John T. Robinson, Thos. Rockhold, James Rudd, Ign. A. Spalding, Jas. W. Stone, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, George W. Williams, Silas Woodson—63.

So the amendment was rejected.

Mr. BROWN moved a reconsideration of the vote by which the convention had stricken out that portion of the section relating to the associate justices.

Mr. GARRARD moved that the rule be dispensed with, which requires a motion to reconsider to lie over.

The motion was agreed to, and the rule was dispensed with.

The question recurred on the motion to reconsider.

Mr. GARRARD. I think it has been fully determined by the action of the convention, that there is no one proposition which has been before it, that can command a majority in favor of it, except the report of the committee. I am of opinion the report of the committee is better than anything else we can possibly adopt. My residence is in that portion of the commonwealth where the hope of the office of sheriff has been

the sole inducement to those who hold the office of magistrate, and it will be recollected that according to the report of the committee, no gentleman will have that inducement before him as a reason for holding the office of a justice of the peace. I am satisfied that the office will not be filled by men of so much experience, whose judgment and character will have so much weight in the community, as if they were elected solely for the purpose of performing the duties of the county court. On this subject we must make some compromise, and endeavor to obtain that which comes nearest to our united opinions. During the canvass in my county, last summer, I proposed to my constituents, that the magistrates should be paid out of the county levies, and not a single individual objected to the adoption of that course. I hope the house will agree to the motion to reconsider. And if it agrees to do so, I am sure we can get through the report in a few hours.

Mr. HARDIN. The gentleman has said what I was about to say. The bill as reported, I thought was the best we could get, and I did not anticipate any trouble in carrying it through. We took away from the magistracy the office of sheriff, and allow the people to select whom they please. Heretofore we could not get one magistrate to sit long enough to finish one appeal, and that made me abjure the county court system forty three years ago. The old court of quartersessions did a great deal of small business, and sat about three days at a term. I want this court so organized that it may take the small business, the trash, as we call the last hogshead, in separating the different sorts of tobacco. With regard to expense, I do not think the salary of each magistrate will amount to more than thirty six dollars, which will make the whole expense \$10,800. I can go for the report, with a small alteration respecting indictment for wilful neglect of duty.

Mr. ROGERS. I have had little to say on this subject, and would not now say anything if the county court had not been made the scapegoat for others' sins. It seems to me the great reason for opposition to this court was because the judges held their office during good behavior, and because there was no responsibility. My people thought, if we could make them responsible by appointing them for a term of years, they would do well. There was as much objection to the circuit as to the county court. To be sure, in legal ability this court was not equal to the higher court. They lay the taxes and disburse the money, and I would be glad to have the magistrates act in this business with the presiding judge. I should be unwilling to have three men do the whole. You might as well appoint three men to lay the tax for the state. If they are expected to be the "trash hogshead," according to the gentleman from Nelson, and to do the "trash business," I presume they will take the "trash" fees also. I think it will be better to have one judge, to act with the justices, and then give the legislature the power to say what business shall be given to the judge and what to the justices. I have an abiding faith that those who come after us will have as much patriotism if not as much ability as we have. If we constitute all the patriotism, when we are gone, woe



will come on the country. I would be willing to adopt the proposition of the gentleman from Bourbon—just say there shall be a county court and leave the whole arrangement of it to the legislature, or I would take the proposition of the gentleman from Green.

Mr. TAYLOR. It is said that to win the world's esteem we must walk side by side with it, and yield to its caprices. I am willing to yield to the report of the committee, but I cannot help thinking of the case of a witness, who was called to swear to the identity of a hog after it was dressed. He saw the hog hanging up with a cob in its mouth, and its bristles off; and, said he, "I cannot swear to it, but I'll be cust if its face is not mighty familiar." This court, I think, will look mighty familiar to the people. All the difference will be as in the case of the hog; the one had the bristles on, and the other had them off, and a cob in its mouth.

Mr. RUDD. There seems to be great objection on the part of some gentlemen, to the bill reported by the committee, chiefly on account of the great expense they suppose will be entailed on the people, by the organization of the county courts, on the plan proposed. I do not entertain that opinion. I think the expense of the system will not be so great as gentlemen imagine, inasmuch as power is conferred upon the legislature to regulate the duties of the judges and magistrates, elected in the several counties, and to fix their fees. I believe the legislature will do what is right and just in the matter, and not lose sight of the fact that the magistracy will have no chance for the sheriffalty under the proposed new system. They will, no doubt, raise the fees from twelve and a half cents to twenty five, and upwards.

No difficulty will be found in obtaining good and competent men to fill the office, by raising the fees to double what the county commissioners now receive. Looking to all the propositions that have been introduced, and some of them are very excellent, still I think, as a whole, that the bill reported by the committee is preferable to any of them.

Mr. BRISTOW. Much of the discussion that has arisen on this subject, has been in consequence of the desire of a few men to amend some of the sections. I desire that the result of our labors on this subject should go to the people recommended by the fact that it is not only the best but the cheapest system we could adopt. It is a simple proposition if we could divest ourselves of the prejudice we may have in regard to the justices of the peace. I heard this remark from some one: "I am not willing to cut off so large and respectable a body of men as the magistracy." Does that apply to what we are doing? Surely not. We cut off all alike. All will have to obtain their offices under the new constitution, and all offices will be open to be contended for.

The simple inquiry is, how shall we provide a tribunal to do the business of the county; and the proposition in the report is, that the county may select three men to do it. Some say, let there be one man. I am utterly opposed to that. Can one man settle all the questions which may come up? Surely not. Three is a compromise between extremes. Gentlemen say three is not

enough to lay the levy. We provide that the legislature may call a court to do this. As to the expense, I think three men can be found in each county who will serve in this court for nothing. There are men who would serve voluntarily in transacting the business of the county court, who would not act as magistrates. There are men on this floor who will do the business, and do it well, without compensation.

It is said by some, that the nomination will be made by a clique about the towns for the purpose of securing the offices. Their compensation will not be very high, if they are paid at all, and of course there will be little inducement held out to such men as would compose the cliques referred to. If there is danger that the towns will have all the offices, let the county be divided into districts, and require that no two shall be from the same district. We shall save money to the counties by the organization of the court, as recommended by the committee. Heretofore individuals of the magistracy looked forward to the sheriffalty as a compensation for their services, and often paid \$500 for the office. If he could afford to give that to get the office, he can afford to do the work for that amount less than heretofore. We shall save then, upon an average \$500 to each county. That being the case, can we be complained of for establishing a costly tribunal?

The people will not complain if the number we fix upon is right, while we leave the selection of the men to them. The number three is the one to which they are accustomed, and the election of that number will not add to the expense. The county will simply say what three persons shall do the business.

I will take occasion to say that the magistrates court is one that cannot be improved, but that they should necessarily form a court for the county, is very strange. The bill provides for the appointment of magistrates in different districts in the county. We do not limit the number, and that has been a cause of complaint. It is difficult to do it. There is so much difference in the population and territory of the different counties. If the number of districts in a county is limited, there will be some inducement to be a magistrate. I have examined this subject with much attention, and can come to no other conclusion than that which I have given. I cannot agree to say that a hundred men in the legislature shall appoint these officers. We know that the legislature is composed of young men. Would it be right to leave this subject with the boys who may come up here to the legislature because we cannot get just what we want? I hope we shall go on and get through with all our business before christmas.

After a few words from Mr. COFFEY, Mr. HARDIN moved the previous question, and the main question was ordered. The yeas and nays were called for, on the motion to reconsider, and being taken they were yeas 49, nays 34.

YEAS—Mr. President, (Guthrie), Richard Apperson, John L. Ballinger, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, Henry R. D. Coleman, William Cowper, Archibald Dixon, Chas-teen T. Dunavan, Milford Elliott, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben.

Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, Thomas James, Geo. W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Willis B. Machen, William C. Marshall, Richard L. Mayes, John H. McHenry, Thomas P. Moore, John D. Morris, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Procter, James Rudd, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Howard Todd, Philip Triplett, John L. Waller, Henry Washington, John Wheeler, Chas. A. Wickliffe, Silas Woodson, Wesley J. Wright—49.

**NAYS**—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, Edward Curd, Garrett Davis, James Dudley, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Charles C. Kelly, Thomas W. Lisle, George W. Mansfield, Nathan McClure, Jonathan Newcum, Hugh Newell, Johnson Price, John T. Robinson, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, John J. Thurman, Squire Turner, George W. Williams—34.

So the motion was reconsidered.

The question recurred on striking out, and it was not agreed to.

Mr. HAMILTON then moved to amend the section by striking out all after the words "county court," and insert the following:

"The legislature shall regulate by law, the number of judges, their duty and salary."

The amendment was rejected.

Mr. T. J. HOOD moved to amend by adding the following by way of compromise:

"Provided, the general assembly may, at any time, abolish the office of associate judges whenever it shall be deemed expedient, and may also associate with said court any or all of the justices of the peace for the transaction of any business."

Mr. WOODSON moved the previous question, and the main question was ordered.

The amendment of the gentleman from Carter was then adopted.

Mr. TALBOTT desired to offer the following as a substitute for the entire section:

"There shall be established in each county now, or which hereafter may be erected in this commonwealth, a county court, to consist of all the magistrates in each county, any three of whom may constitute a court for the transaction of business, subject to such modifications and regulations as the general assembly may, from time to time, deem necessary."

The President ruled it out of order, the main question having been ordered.

The section, as amended, was then adopted, yeas 63, nays 22.

**YEAS**—Mr. President (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, Henry R. D. Coleman, Edward Curd, Garrett Davis, Archibald Dixon, James Dudley, Milford Elliott, Jas. H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, James W. Ir-

win, Alfred M. Jackson, Thomas James, Wm. Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Wm. C. Marshall, Richard L. Mayes, John H. McHenry, Thomas P. Moore, John D. Morris, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, L. J. Procter, John T. Rogers, Ira Root, Jas. Rudd, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Phillip Triplett, Squire Turner, John L. Waller, Henry Washington, Jno. Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—63.

**NAYS**—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, William Cowper, Chasteen T. Dunavan, Green Forrest, Nathan Gaither, Richard D. Gholson, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Nathan McClure, Jonathan Newcum, Hugh Newell, John T. Robinson, Thomas Rockhold, Silas Woodson—22.

The second, third, fourth, and fifth sections were adopted without amendment, as follows:

"SEC. 2. The judges of the county court shall be elected by the qualified voters in each county, for the term of four years, and shall continue in office until their successors shall be duly qualified, and shall receive such compensation for their services as may be provided by law."

"SEC. 3. At the first election after the adoption of this constitution, the three judges shall be elected at the same time, but the associate judges, first elected, shall hold their offices for only two years, so that, thereafter, the election of the presiding judge, and that of the associate judges, will not occur at the same time."

"SEC. 4. No person shall be eligible to the office of presiding or associate judge of the county court, unless he be a citizen of the United States, over twenty one years of age, and a resident of the county in which he shall be chosen, one year next preceding the election."

"SEC. 5. The jurisdiction of the county court shall be regulated by law; and, until changed, shall be the same now vested in the county courts of this state."

The sixth section was read as follows:

"SEC. 6. The several counties in the state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Two justices of the peace shall be elected in each district, by the qualified voters therein, for the term of four years each, whose jurisdiction shall be co-extensive with the county; no person shall be eligible as a justice of the peace unless he be a citizen of the United States, twenty one years of age, and a resident of the district in which he may be a candidate."

Mr. IRWIN moved to strike out "four" and insert "two," as the number of years for which the justices of the peace shall be elected.

The amendment was rejected.

Mr. KAVANAUGH moved to amend the section by inserting the following proviso:

"Provided, That no county shall have less than six, nor more than twelve justices, exclusive of cities."

After a few words in explanation from Messrs. KAVANAUGH, McHENRY, C. A. WICKLIFFE, WOODSON, and CHAMBERS—

Mr. PROCTOR moved the previous question, under the operation of which the amendment was rejected, and the section adopted.

The seventh section was adopted as follows, without amendment:

"Sec. 7. Judges of the county court, and justices of the peace, shall be conservators of the peace. They shall be commissioned by the governor. County and district officers shall vacate their offices by removal from the district or county in which they shall be appointed. The legislature shall provide, by law, the mode and manner of conducting and making due returns of all elections of judges of the county court and justices of the peace, and for determining contested elections, and provide the mode of filling vacancies in these offices."

The eighth section was read as follows:

"Sec. 8. Judges of the county courts and justices of the peace shall be subject to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant."

Mr. HARDIN moved to amend by inserting after "misfeasance," in the third line, "or wilful neglect in the discharge of their official duties."

After a brief explanation, in which Messrs. HARDIN, BRISTOW, DAVIS, and C. A. WICKLIFFE, took part, the amendment was adopted.

Mr. GHOLSON moved to strike out the words "to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to appeal to the court of appeals; and, upon conviction, their offices shall become vacant," and insert the following: "To be removed from office by a resolution of the general assembly, passed by two thirds of each house. The cause or causes for such removal shall be entered at large upon the journal of each house."

He said the section as it now stood created unjust and invidious distinctions between the circuit and county judges, and he for one would never tolerate it by his vote.

The judges of the county courts and justices of the peace, he presumed, would be as high-minded and as honorable gentlemen as the circuit judges. Their characters, at least, it would be admitted, were as dear to them as that of the circuit judges or any other men. It was argued that the circuit judges were subject to indictment—that they would be liable to petty annoyances from malevolent persons. If this was an argument against allowing the circuit judge to be indicted at home, did it not operate with tenfold force against the indictment of an ignorant justice of the peace? A provision had just been adopted allowing them, in effect, to be indicted for their ignorance. He regarded the sending of a circuit judge off to Frankfort, away from both the witnesses and the injured party to be tried, while the humble individual, as a justice of the peace, was forced into a trial within the reach, perhaps at the door, of both. It is an outrageous and invidious distinction.

Again, he repeated, he wanted all to stand upon a level; and in behalf of his constituents, he protested against unjust, unreasonable, and anti-republican distinctions between the judicial officers of the country.

Mr. THOMPSON said he would vote against the amendment of the gentleman from Ballard, because he thought the judges of the court of appeals and the circuit court ought to be removed in the same way as the report of the committee recommended in reference to the county court judges, for dereliction of duty. He would be even willing to extend the report of the committee so as to cover the whole ground.

Mr. C. A. WICKLIFFE would vote for the amendment to save the judges of the county courts from the annoyance to which they would otherwise be subjected.

Mr. MAYES said he would vote against the amendment, because he did not like the idea of having a judge brought all the way to Frankfort, to answer for any dereliction of duty that he might be charged with.

Mr. DUNAVAN moved the previous question, and the main question was ordered.

The yeas and nays were called for on the adoption of the amendment, and being taken were, yeas 25, nays 55.

YEAS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, Wm. K. Bowling, Wm. Bradley, Luther Brawner, Benjamin Copelin, Milford Elliott, James H. Garrard, Richard D. Gholson, James M. Lackey, John H. McHenry, Thos. P. Moore, Elijah F. Nuttall, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, Albert G. Talbott, John D. Taylor, Squire Turner, Jno. L. Waller, Jno. Wheeler, C. A. Wickliffe, Robt. N. Wickliffe, Wesley J. Wright—25.

NAYS—Richard Apperson, Alfred Boyd, Thos. D. Brown, Charles Chambers, Wm. Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Edward Curd, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Green Forrest, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thos. J. Hood, James W. Irwin, Alfred M. Jackson, Wm. Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Wm. Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, Ira Root, James Rudd, James W. Stone, Michael L. Stoner, Wm. R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Henry Washington, George W. Williams, Silas Woodson—55.

So the amendment was rejected.

The section was then adopted.

The ninth section was read and adopted as follows:

"Sec. 9. The general assembly may provide, by law, that the justices of the peace in each county shall sit at the court of claims and assist in laying the county levy and making appropriations only."

Mr. RUDD offered the following as an additional section:

"Sec. 10. When any city or town shall have a separate representation, such city or town, and the county in which it is located, may have such separate municipal courts, and executive and ministerial officers, as the general assembly may, from time to time, provide."

After a few words from Mr. PRESTON, the amendment was agreed to.

Mr. LISLE now offered his substitute for the entire article as follows:

"ARTICLE —.

"Sec. 1 There shall be established in each county which now is, or may hereafter be erected within this commonwealth, a county court, which shall consist of justices of the peace, until otherwise directed by law."

"Sec. 2. The several counties in this state shall be laid off into districts of convenient size, as the general assembly may, from time to time, direct. Justices of the peace shall be elected in each district, by the qualified voters therein, for the term of four years, whose jurisdiction shall be co-extensive with the county."

"Sec. 3. Justices of the peace shall be conservators of the peace. They shall be commissioned by the governor. The legislature shall provide, by law, the mode and manner of conducting and making due returns of all elections of justices of the peace, and for determining contested elections, and for filling vacancies in their offices."

"Sec. 4. The jurisdiction of the county court, and of justices of the peace, shall be regulated by law, and until changed, shall remain the same that it now is."

"Sec. 5. Justices of the peace shall be subject to indictment or presentment for malfeasance or misfeasance in office, in such mode as may be prescribed by law, subject to an appeal to the court of appeals, and upon conviction, their offices shall become vacant."

Mr. McCLURE called for the yeas and nays, and being taken they were, yeas 33, nays 49.

YEAS.—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, Edward Curd, James Dudley, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Charles C. Kelly, Thomas W. Lisle, Nathan McClure, Jonathan Mewcum, Hugh Newell, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, Michael, L. Stoner, Albert G. Talbott, Robert N. Wickliffe—33.

NAYS.—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Francis M. Bristow, Thomas D. Brown, Charles Chambers, Henry R. D. Coleman, William Cowper, Archibald Dixon, Chasteen T. Dunavan, Milford Elliott, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, Thomas James, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Willis B. Machen, William C. Marshall, Richard L. Mayes, John H. McHenry, John D. Morris, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin

J. Procter, Ira Root, James Rudd, John W. Stevenson, James W. Stone, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—49.

So the substitute was rejected.

LOUISVILLE CHANCERY COURT.

On the motion of Mr. HARDIN, the convention resumed the consideration of the section in relation to the Louisville chancery court.

When this section was last before the convention it was amended by the insertion of a proviso to render the marshal ineligible for a succeeding term. It now, therefore, stood as follows:

"Sec. —. The Louisville chancery court shall exist under this constitution, subject to repeal, and its jurisdiction to enlargement and modification by the legislature. The chancellor shall have the same qualifications as a circuit court judge, and the clerk of said court as a clerk of a circuit court, and the marshal of said court as a sheriff; and the legislature shall provide for the election of the chancellor, clerk, and marshal of said court, at the same time that the judge and clerk of the circuit court are elected for the county of Jefferson, and they shall hold their offices for the same time: *Provided*, That the marshal of said court shall be ineligible for a succeeding term."

Mr. KELLY withdrew a pending amendment which he offered, when the section was last under consideration.

The section was amended on the motion of Mr. THOMPSON, by the insertion of the words "by the qualified voters within its jurisdiction," after the word "election," and before the words "of the chancellor, clerk, and marshal."

The section was adopted without further amendment.

Mr. PRESTON offered an additional section, as follows:

Sec. —. That the city court of Louisville, the Lexington city court, and all other police courts established in any city or town, shall remain until otherwise directed by law, with their present powers and jurisdictions, and the judges, clerks, and marshals of such courts, shall have the same qualifications, and shall be elected by the qualified voters of such cities or towns, at the same time, and in the same manner, and hold their offices for the same term as county judges, clerks, and marshals, respectively, and shall be liable to removal in the same manner.

Mr. C. A. WICKLIFFE moved to amend by adding the following:

"The general assembly may vest judicial powers for police purposes in the mayors of cities and towns."

The amendment was agreed to, and the section, as amended, was adopted.

The articles on the court of appeals, the circuit courts, the county courts, and the Louisville chancery court, were then referred to the committee on revision and arrangement.

COMMITTEE ON APPORTIONMENT.

The President announced the following as the committee on the apportionment, under the reso-

lution adopted a few days since, on the motion of Mr. C. A. WICKLIFFE:

Messrs. Apperson, Garrard, Dixon, Irwin, Desha, G. W. Johnston, Kelly, James, Waller, and Machen.

#### MORNING, EVENING, AND NIGHT SESSIONS.

Mr. MAYES submitted the following resolution:

*Resolved*, That the convention will hereafter hold night sessions, commencing at seven and a half o'clock P. M.

After a brief conversation on the propriety of substituting night sessions for the present evening sessions,

Mr. MACHEN moved to lay the resolution on the table.

The yeas and nays were then called for, and were—yeas 42, nays 39.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Francis M. Bristow, Thomas D. Brown, James S. Crisman, Jesse Coffey, Benjamin Copelin, William Cowper, Chasteen T. Dunavan, Milford Elliott, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Grey, John Hargis, Vincent S. Hay, Thomas J. Hood, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Willis B. Machen, William C. Marshall, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Johnson Price, Thomas Rockhold, Ira Root, John W. Stevenson, Albert G. Talbott, John J. Thurman, Philip Triplett, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—42.

NAYS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Charles Chambers, William Chenault, Henry R. D. Coleman, Edward Curd, Garrett Davis, Archibald Dixon, James Dudley, Green Forrest, Richard D. Gholson, James P. Hamilton, Ben. Hardin, Andrew Hood, James W. Irwin, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, Richard L. Mayes, Nathan McClure, John H. McHenry, John D. Morris, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, George W. Williams—39.

So the resolution was laid on the table.

#### EVENING SESSION.

##### EXECUTIVE DEPARTMENT.

The convention proceeded to the consideration of the article concerning the executive department.

The first and second sections were adopted without amendment, as follows:

"SEC. 1. The supreme executive power of the commonwealth, shall be vested in a chief magistrate, who shall be styled the governor of the commonwealth of Kentucky.

"SEC. 2. The governor shall be elected for the term of four years, by the citizens entitled to suffrage, at the time and places where they shall respectively vote for representatives. The person having the highest number of votes shall be

governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the legislature may direct.

The third section was read as follows:

"SEC. 3. The governor, shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected."

Mr. KELLY. As the necessity for ineligibility does not now exist, inasmuch as we have stripped the executive of all patronage, I am willing to give him a chance for a re-election. I therefore move to strike out the section.

The question was taken by yeas and nays, on the call of Mr. PRICE, and the convention refused to strike out—yeas 27, nays 53, as follows:

YEAS—Alfred Boyd, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, William Cowper, Garrett Davis, James Dudley, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Hood, Charles C. Kelly, James M. Lackey, Willis B. Machen, Jonathan Newcum, Hugh Newell, Johnson Price, John T. Rogers, Ira Root, John W. Stevenson, John J. Thurman, Robert N. Wickliffe—27.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, William Bradley, Charles Chambers, William Chenault, James S. Crisman, Henry R. D. Coleman, Edward Curd, Archibald Dixon, Chasteen T. Dunavan, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, James W. Irwin, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Squire Turner, John L. Waller, Henry Washington, John Wheeler, George W. Williams, Silas Woodson, Wesley J. Wright—53.

The third section was then adopted.

The fourth section was read as follows:

"SEC. 4. He shall be at least thirty five years of age, and a citizen of the United States, and have been an inhabitant of this state at least six years next preceding his election."

Mr. BOYD moved to strike out the word "five" in the first line.

Mr. KELLY called for the yeas and nays.

Mr. GAITHER inquired if it would be in order to move "forty five" instead of "thirty five."

The PRESIDENT. Not until the motion to strike out is disposed of.

The question was then taken and the convention refused to strike out; yeas 16, nays 64, as follows:

YEAS—Alfred Boyd, William Bradley, Luther Brawner, Beverly L. Clarke, Jesse Coffey, William Cowper, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Thomas James, Charles C. Kelly, Willis B. Machen, Johnson Price,

Larkin J. Proctor, Ira Root, John W. Stevenson—16.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Francis M. Bristow, Thos. D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Milford Elliott, Green Forrest, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Polard, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—64.

The fourth section was then adopted.

The fifth section was adopted, as follows:

"Sec. 5. He shall commence the execution of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths, or affirmations, prescribed by this constitution."

The sixth section was read as follows:

"Sec. 6. No member of congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor."

Mr. PRICE moved to strike out the words "nor minister of any religious society."

Mr. WALLER asked that the section might be passed over until Monday. He did it at the request of gentlemen who desired to be heard on the subject.

This was agreed to, and the section was passed over.

The seventh, and eighth sections were read and adopted, as follows:

"Sec. 7. The governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he shall have been elected."

"Sec. 8. He shall be commander-in-chief of the army and navy of this commonwealth, and of the militia, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the general assembly."

The ninth section was read.

"Sec. 9. The governor shall have the power to fill vacancies that may happen by death, resignation, or otherwise, by granting commissions, which shall expire when such vacancies

have been filled according to the provisions of this constitution."

Mr. McHENRY moved to insert the word "have" after the word "vacancies" where it occurs for the second time.

This was agreed to and the section was then adopted.

The tenth section was read as follows:

"Sec. 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the general assembly, in which the power of pardoning shall be vested. That whenever the governor shall remit a fine or forfeiture, or grant a reprieve or pardon, he shall enter his reasons for doing so on the records of the secretary of state, in a separate book; and on the requisition of either house of the general assembly, the same shall be laid before them, and published if they deem proper."

Mr. T. J. HOOD. I offer the following amendments to this section.

"In the third line after the word 'impeachment,' insert, 'under such rules and regulations as may be prescribed by law, in relation to the manner of application.'"

"Also, strike out all after the word 'vested,' in the seventh line, and insert in lieu thereof the following: 'Whenever the governor shall grant a reprieve or pardon, he shall enter his reasons for doing so, on the record of the secretary of state, in a separate book; and shall lay the same before the next general assembly, thereafter, together with the name of the convict, the crime, the sentence, and its date; and such other matters connected with the same, as may be required by law.'"

Mr. T. J. HOOD. Some weeks ago I introduced a resolution before this convention, which was adopted, directing the committee on the executive for the state at large, to inquire into the expediency of imposing such checks and restrictions upon the exercise of the pardoning power, as to prevent its abuse by the governor, under partial or false representations to him, by the friends of the convict or otherwise. And I did so from a firm conviction in my own mind, that this power—this high attribute of sovereignty, which should exist in some form or other, in every civilized government, has, under the general provision of our old constitution, been shamefully imposed upon and abused. That instead of having been a mantle in the hands of the executive, to be thrown over the innocent or unfortunate, to shield and protect them from unmerited suffering, it has too frequently been instrumental in rescuing the guilty murderer from that punishment which the malignity of his crime so richly deserved; that instead of operating in particular cases in mitigation of the rigid rules of law, which must be general in its provisions, and may therefore sometimes be oppressive; it has been instrumental in turning lawless felons loose again upon society, to commit even more daring outrages. And thus, as I conceive, this most important power has been shockingly perverted and abused.

Now, I would not be understood, in any remarks I shall make, as designing to cast any im-



putation upon the distinguished individual who at present occupies the executive chair in Kentucky—nor indeed upon his predecessors. For I know very well, that the present governor of Kentucky, is incapable of knowingly abusing this, or any other delegated power, through any deliberate design of doing wrong. And I am persuaded that its exercise, not only while in his hands, but also of those who have preceded him, has always sprung from the best feelings of our nature; that it has been prompted by the warm and active sympathies of generous and noble hearts, keenly alive to the sufferings of a fellow man; and perhaps in most instances, the facts and circumstances connected with the case, as laid before the governor, would seem to have warranted his interposition. But while I am ready to concede this much, no gentleman upon this floor I presume, will deny that this high power has been most egregiously imposed upon and abused. And how has this been done? Every delegate here is familiar with the manner in which pardons are procured. No sooner is the sentence of the law pronounced upon an individual—it matters not how horrible may have been the crime—how conclusive the testimony—how honest the jury, or how just the sentence—than we see petitions, with long *ex parte* statements of the case, circulated by the friends of the convict, for subscribers. This is almost universally the case; unless, indeed, the person be some poor miserable creature, whose poverty or obscurity in life, have drawn around him no prominent or influential friends. And how are signatures to these petitions, filled with exaggerated, and sometimes false statements, procured. One signs it to accommodate a friend; a second, after continued importunity; a third through sympathy; a fourth carelessly, because forsooth, it costs nothing; and others have signed it, a fifth—the wily and desining politician or demagogue—for the purpose of attaching to himself the friends and relations of the convict, for future political purposes, and so on another and another, and often times too, without so much as reading the statements they certify—until a long list of names are procured. These are all then paraded before the governor, as so many worthy and orderly citizens, living in the very community in which the outrage was committed—yet begging for mercy upon the convict, and representing him in the petition they have signed, more in the light of a persecuted saint, than of a guilty felon. And thus the governor is imposed upon, and seduced into the belief that the penalty is severe and ought not to be executed.

But this is not all. In aid of these partial and highly colored statements, the tears and prayers of disconsolate relatives, of bereaved wives and children, begging the life or liberty of a father, a brother, a husband, or a son; in a word, every manifestation of grief or distress that can awaken the sympathies of a generous heart, are called into requisition. Under the accumulated weight of these favorable representations and absorbing influences, what can a governor do? Sir, the man who can resist the soft entreaties and gentle solicitations of a woman, even with a smile upon her lips, must be made of the sternest material; and the man who can

refuse the prayers and importunities of a woman in tears, whose heart is wrung with the deepest anguish, and feel no kind sympathy for the sufferer, must be almost a monster. No wonder then that the governor so often yields to these overwhelming influences, and justified by the representations in the petition, turns the felon loose again, and thus robs justice, and the violated laws of the country, of a most appropriate victim. And all this is done too, sir, frequently, without any information on the part of the friends and relatives of those who have so deeply suffered from the crime, and without any knowledge on the part of the governor of those aggravating facts and circumstances connected with the case, which have induced twelve honest jurors, under the solemn obligations of an oath, to consign the guilty wretch to the penitentiary or the scaffold. Such, sir, have been the operations of this high power under the unrestricted provisions of the old constitution; such have been the delusive representations, and the bewildering influences which, though they in no wise expiate the crime, have yet hurried the governor into an abuse of this power; and such must continue to be the case, unless some wholesome checks and restrictions be thrown around its exercise. But I do not desire wholly to destroy this power, nor indeed to embarrass its just and legitimate exercise; for I regard it as a necessary and important power appertaining to all sovereignty, and one which must be confided to some one department of the government or other; and it cannot, in my opinion, be more safely or appropriately entrusted to any other than to the chief magistrate of the state. The necessity of such a power, in all governments, grows out of the imperfections of all human laws, which, as before remarked, must be general, and cannot be so framed as to meet special or unforeseen cases. Besides, it is founded on principles of justice, as well as humanity. For although its exercise may be in some instances a mere act of mercy to the convict; yet cases may arise in which its interposition would be a matter of right and justice, not only to the individual himself, but also to the community in which he lives; and I need but instance the case where an innocent man is about to become the victim of perjury and corruption. In such a case, justice demands that there should be a strong arm somewhere to rescue the unfortunate sufferer. That power I would not destroy or trammel so as to prevent its healthy, vigorous operation. But I would throw about it those checks and guards that would most effectually prevent its abuse, without impairing its usefulness. This end I conceive will be, in some measure, attained by adopting some such provisions as are indicated in my amendments. But if any gentleman will suggest how this may be more certainly accomplished, I will cheerfully abandon these and acquiesce in his propositions.

By my first amendment, I propose inserting after the word "impeachment," in the second line, these words, viz: "under such rules and regulations as may be prescribed by law, in relation to the manner of application." My object in this is to empower the legislature, by some general laws, to provide means for giving notice of the application, to the citizens of the

county in which the trial was had; and also of securing to the governor the most perfect information in reference to the facts of the case, as developed upon the trial, that can be obtained; and thus guarding, as far as possible, the executive from imposition; and the community from surprise.

In my second amendment, I depart somewhat from the provision, as reported by the committee, in making it incumbent upon the executive, whenever a reprieve or pardon shall have been granted, to lay his reasons therefor, together with the name of the convict, the crime, sentence, &c., before the next legislature. The object of this provision is to guard against any wilful or capricious exercise of this power, should any governor be so disposed, and to restrict it to those cases in which some good and sufficient reason could be assigned for the interposition. Besides, sir, I believe the propriety of requiring the governor to assign his reasons, in such cases, is well founded in principle. What is this power? It is a virtual veto on the adjudications of our criminal courts. It is the right to say to these courts, when they are about inflicting the penalty of the law upon one found guilty of its violation, *I forbid*. If upon the passage of any law by the general assembly, the governor shall interpose his veto, he is required to render a reason for his dissent. Is it requiring too much then of him, when he assumes the right to dispense with established laws, and defeat their enforcement, to require of him to render a reason? I think not. Under the last clause of this amendment, the legislature may require other matters connected with each case, than those already indicated, to be laid before them. The object of this is to deter men from carelessly and inconsiderately signing false or exaggerated statements to the governor, with the view of procuring a pardon. Let men once understand that their names may be published to the country, as certifying the statements contained in such a petition, and they will be much more cautious how they sign them. The result will be that applications will be less frequent, and the governor himself will not be liable to be imposed upon or misled by them.

Mr. DIXON. When the proposition requiring that the governor should keep a book upon which he should spread his reasons for all the pardons that he might grant, was first presented in the committee, it struck me with much force, and I believe we were unanimous in favor of its adoption. Subsequently, however, our action presented a difference of opinion, and I confess I was among those who came to the conclusion that it was improper to engraft such a requisition upon the executive, in the constitution. I think it would subject the governor to a great deal of inconvenience, and that perhaps it would go very far to defeat the exercise of what was intended to be vested in him, the pardoning power itself. Various descriptions of men, it is to be expected, will be chosen governors of the commonwealth, and some will be weak, vacillating, and timid, and some will not. I desire the governor, in granting pardons, to exercise his discretion with an eye single to the real interests of the country, and the justice of the application, and I do not believe all executives we may have will so exer-

cise it, if they shall be required to spread out on a book, in each case, the reasons which influenced their action. This, it will be seen, is required even where the pardon is for the most trivial offences. In almost every instance where a man is convicted of crime, there are two parties, one for, and the other against him, and in the case of a pardon, the party favoring a conviction are always certain to censure the executive for his exercise of that power. The mere spreading out in a book of his reasons therefor, would never satisfy the party in favor of conviction. That there are cases also, where an executive should interpose his clemency, and where he could give no good reason therefor, I am fully satisfied. Without undertaking to designate such a case, I can well understand how one might arise, where the law exacted the full execution of the penalties upon the unfortunate man, and yet which strongly and deservedly appealed to the clemency of the executive, and of the whole country for mercy. Are such unfortunate men to be sacrificed, or the governor to come before the legislature and perhaps have his motives impugned, and his feelings outraged? Is that the intention of my young friend from Carter.

Mr. T. J. HOOD. The gentleman misunderstands me. I do not propose that the authority to exercise this power shall be subject to the control of the legislature. My amendment has reference only to the mode of making applications for pardon, to the governor, and merely authorizes the legislature to call on him, to lay before them the names of the applicants, and the criminal.

Mr. DIXON. Well, then it is in relation to the manner of making the application. By whom is it to be provided that the application shall be made? I know of but one source to whom it should be left, and that is to those who feel an interest in the unfortunate man for whom the pardon is required. If it was to be left to the judge or the jury with their minds prejudiced against him, or to those who desired to see him sacrificed, then the application would never be made. Would the gentleman debar the unfortunate wife, or the still more unfortunate children, from appealing to the executive clemency in behalf of a husband or a father? And if a governor should yield to such solicitations, would he not find a response in the hearts of the whole people of Kentucky? It was for this, among other purposes, that this power of mercy was vested in the governor, and so long as it is exercised, independent of bribery, corruption, or any improper influences, the people will never complain of it. And to prevent anything of that kind, I am willing to go as far as any gentleman. Yet I have never heard of any complaint on the part of the people in that particular. But when the tears of women and children are brought to operate on an executive, let him have the privilege of bearing himself, at least, as a man should do. For my own part, I do not know how I should act, were I an executive, but I agree with my young friend. I do not know that I could withstand the tears of woman or resist her gentle, but all controlling influence, however exerted: for God knows that when they should appeal to me in behalf of an unfortunate husband, or son, or brother, or any

other near and dear relative, I do not know whether I could resist them. I might, or I might not. But whether I did or not, I might be reproached for my want of firmness, but never condemned for a lack of those noble and generous feelings of the heart, which give man his elevation above the brute, and approximate him in his nature to the gods. If the pardoning power is to be exercised at all, and it must be, leave it to the discretion of the executive. Let him exercise it in mercy—uncontrolled and unrestrained by anything save his obligations to his country, to himself, and to the unfortunate victim.

"The quality of mercy is not strained,  
It droppeth as the gentle rain from heaven  
Upon the place beneath; it is twice blessed—  
It blesseth him that gives, and him that takes,  
'Tis mightiest in the mightiest,  
It is an attribute to God himself—  
And earthly power doth then show likest God's,  
When mercy seasons justice."

Mr. DAVIS. When the subject was in committee, I, myself, was in favor of making this provision a little stronger than it is, if we could have done so with proper respect to the chief executive officer of the government. I will read, before I set down, a proposition which I will offer as an amendment to the section under consideration, whether the amendment proposed by my young friend from Carter, (Mr. T. J. Hood,) be adopted or not. The power we are about to regulate is one of the highest exercised in the government. It is no less than the power to dispense with the criminal and penal laws of the country by the governor. We know—at least I have heard such complaints ever since my boyhood—that the exercise of this power under our constitution, has been subject to some abuse, and some considerable abuse too. I do not know how the present executive has exercised this power to remit fines and forfeitures and to grant pardons, but in a single instance, and that through publications in the newspapers; but for twenty five years I have heard frequent and constant complaints of the abuse of this power, and especially in regard to the remission of fines and forfeitures; and I imagine that no gentleman will contend that in that respect, at least, the power has not been abused and considerably so, within the last twenty five years, in the commonwealth of Kentucky. I suppose it is the business and the duty of every gentleman here to reflect the wishes and feelings of his constituents in relation to constitutional reforms, so far as he can consistently do it. Well, I do know that in my section of country this has been a subject of frequent complaint, and I even heard charges made against successive executives for the free and unnecessary use of this function of remitting fines and forfeitures. I have heard a very strong desire for a remedy that will be efficient in itself, and, at the same time, proper and respectful to the executive; if such an one can be devised, and I consider it the duty of the convention to interpose such a remedy. Now it is the business and the duty of the inferior courts to execute the criminal and penal laws, and when they are in the course of executing these laws, the executive interposes, and of his own will arrests their functions and prevents them. This is a high power, important to the

public welfare, and in the proper exercise of which the executive ought to be held to a perfect responsibility. He ought never to interpose this power, in my judgment, without a reason, and a sufficient one; and I think that when he does exercise it, he ought to be required to give his reasons to the court with whose functions he interferes. I propose to add to the end of the section these words:

Amend the tenth section by adding these words: "and the said governor shall state, specifically, and cause to be certified to the court rendering judgment for any fine, forfeiture, or conviction of crime, for which any remission, reprieve, or pardon, the reasons upon which he may have granted such remission, reprieve, or pardon."

When the governor, by the exercise of this constitutional function, interferes, and in fact, says to the inferior court, you shall not execute the criminal law, it seems to me he ought to have a good reason for doing so. And it would be but respectful to the co-ordinate branch of the government, the judiciary, that he should give to them the reasons which induced him so to interpose. Now, my amendment would require the executive to state these reasons at length, and to communicate them to the court. What would be the effect? I take it for granted that no executive of this state, having a due regard to his own self-respect, the high dignity of the station he fills, and the interest of the community, would ever interpose and arrest a judgment, under such circumstances, without sufficient reason, and without being willing to give it to the public. It seems to me, that such a requirement would act as a check upon the free and negligent use of this power. I do not believe it has ever been corruptly exercised in this state, but it has been certainly with great frequency, and without due examination of the facts of the case, by the executive. I think this mode of exercising that power, will be prevented, in some degree at least, if the executive should be required to assign to the courts the reasons for his interposing this extraordinary power. I am not myself opposed to the amendments offered by my talented young friend from Carter, (Mr. T. J. Hood.) I will vote for them, but whether they are adopted or not, it seems to me there ought to be some check at least, upon the power to remit fines and forfeitures, and that the governor ought to be held to some responsibility which would make him more chary in its exercise. I should be gratified if some amendment should be offered, more perfect in itself, and more respectful to the officer, than the one I have indicated.

Mr. HARDIN. I am against the amendment of the gentleman from Carter, as well as against the larger portion of the section itself. What is meant by "such rules and regulations as may be prescribed by law, in relation to the manner of application?" The gentleman (Mr. Hood) says, it means only that the legislature shall prescribe that the names of the men who sign the petition shall be published, and he says further, that the governor is frequently imposed upon by the statement of things in those petitions that are not true. The objection I have to the amendment is, that it gives to the legislature the pow-

er to take away the right of pardoning entirely, if they choose. Suppose they were to prescribe that the governor never should grant a pardon unless upon the application of the judge who convicted the man, and suppose, by chance, we should get a Jeffries on the bench, who delights in blood; or suppose they should pass a law, that the governor never should pardon a man, unless both the judge and the jury who convicted him, should unanimously sign the petition. Would it not be taking away, to a great extent, the pardoning power? A thousand instances may be enumerated, where circumstances, in the case of a convicted person, address themselves strongly to the clemency and mercy of the executive, which are not and cannot be presented before a court and jury. A youth, for instance, of from twelve to fifteen years of age is persuaded by some one else to commit a crime. Well, you cannot get the evidence of that fact in before a jury, and yet you could before the governor, and it would be a strong appeal to his mercy. Should not the friends of the convicted, in such a case, be permitted to sign a petition for the executive clemency? Suppose a judge and jury are about to hang a man, or send him to the penitentiary, in open and manifest violation of law and fact; is there to be no pardoning power any where? Clearly there should be. Are we not all agreed, that the governor should have this power? Yes. Why then say that the legislature may take it away from him?

My friend, (Mr. Davis,) says in relation to remitting fines and forfeitures, that the governor, out of courtesy, should assign reasons therefor to the court below. A magistrate imposes a fine of one dollar, and the governor, choosing to remit it, must, out of courtesy to that magistrate, lost his dignity should be offended, give him the reasons why! A petty court martial fines a man improperly, and the governor remitting it, why he must certify to them the reasons therefor! What is to grow out of this? Can any action be taken on the subject by the court when they have got the reasons? No. The governor then is to be obliged to write out and furnish them with his reasons, merely as an act of courtesy to the magistrate, and to be put into his pocket, I suppose. I concur with my friend that the governor is too often misled in the exercise of this power, but we must vest this pardoning power somewhere. In the government of the United States it is vested in the president; in the government of each and every state of this Union it is vested in the executive of the state government; in Great Britain, in the king; and in every power in Europe it is in the hands of the executive department of the government. We have left it to the governor from the formation of our constitution down to the present day, and we do not intend to take it away from him. Why then subject him to the humiliation of sending to a little petty court the reasons why he has remitted a fine? A man is fined, for swearing, five shillings an oath, or for any other of the hundred little offences, and the reasons are to be gravely spread out in a book for public inspection or the satisfaction of the courts! I am against such a requirement. What is to grow out of it? Nothing that I can conceive of, except it will, as said by the gentleman from

Carter, expose the man who signs the petitions and certifies to a false statement of facts. I acknowledge there is a great deal of sense in that suggestion, but at the same time no good can grow out of it. I am for leaving the power as it existed under the present constitution. And rather than deprive the friends of the convicted of the right to petition, I prefer to submit to occasional abuses of the power, not intentional, on the part of the governor. It is better to submit to that than to degrade and humble that elevated officer.

Mr. NUTTALL. This report is from the committee of which I have the honor to be a member, and I wish to place myself in a proper attitude before the house, having pledged myself to support the reports of committees unless there should be an obvious necessity for departing from them. On the present occasion, however, I shall be prepared to vote against this requirement, that the reasons of the governor shall be spread out in a book. I shall not make any motion to strike out myself, but if it should be made I shall vote for it most cheerfully.

Mr. W. C. MARSHALL. I move to strike out the whole of the latter part of the section.

The PRESIDENT. It is not in order until the pending amendments are disposed of.

Mr. DAVIS. The reason which induced me to suggest the amendment, was not as a matter of courtesy to the petty tribunals which are authorized by the laws of the land, to impose fines, but that the governor should not exercise the power of remitting fines and forfeitures or pardon without a reason. Now, he may do it with or without a reason. Well, if we require him to assign a reason to the court which has exercised jurisdiction, he must have one upon which he is to act. It is for the purpose of having the security of a reason for his important action in matters of this kind, that I would require him to assign a reason for the act. And I would require it to be transmitted to the court which imposed the fine, or exercised their functions of judicial power, in order that his act of remission or pardon, and reprieve, shall be made public, and not only that, but made public too that he had a reason, and a sufficient one so to act. The effect would be, in my judgment, to make the governor amenable to public opinion and sentiment. I merely want some provision that will require him to act upon a reason, and that a sufficient one. This then would be some restraint upon the abuses of power. The gentleman from Nelson, (Mr. Hardin,) admits that the power has been abused, and if so, I desire a remedy so far as one can be devised which is proper in itself, and the only one I can think of interposing would be to make the governor amenable to public opinion, by having the reason for his action spread before the community. And I think that would be effected by the proposition I have suggested, that he be required to give to the court, the reasons upon which he has acted. Now, I ask my friend from Nelson, if there is not a great difference between a man's doing an act and being clothed with power upon which he may act without reason, and a case where he is required to state the reasons which influenced him? In the latter case would he not be more likely to

act upon wise, good, and sufficient reasons than in the former?

Mr. NEWELL. As a member of the committee who made this report, it may be proper for me to say a few words. I am in favor of the report of the committee. I would be as far as any other gentleman in this house from calling upon the executive to do any thing that would be degrading to his station; and I am yet to be convinced that merely calling upon him to give a reason for his action would be degrading him. Now this is a veto power above all vetoes, that you now place in the hands of your executive. It is a veto power over all your courts and their decisions, to be exercised without a why or wherefore. I am willing to confer the power in all its strength, as now, but I have always believed that every man in power ought to be willing to give a reason for his action. It is said that every man ought to be able to give a reason for the hope that is within him. And is it degrading to the executive then, to ask him to give a reason why he reverses the decisions of the courts? I think it would be neither inconvenient nor degrading to that high functionary to give such a reason. And I think it would be a restraint upon the improper or negligent exercise of the power. He would feel it incumbent on him to reflect and to examine, unless there were good reasons to justify him, before he granted a pardon. My friend from Henderson said, if he was an executive, he could not resist a woman any how. I apprehend it would be perfectly satisfactory to the country if he would give that as a reason for his action, and I have no doubt he would be willing to give it. I am for the report just as it stands.

Mr. DIXON. I will say to my friend that I should be very happy to leave it to the community, if I had any such reasons. I repeat, I do not see how I could resist a woman beseeching me and pouring out her tears in behalf of some near and dear relative, unless I had a heart of stone and was less than a man. I might turn away and refuse the pardon if the necessities of justice required it, still I should feel for the unfortunate woman as a man should.

Mr. NEWELL. I do not doubt what the gentleman says, and I think he would be able to justify himself by offering it as a good reason for the exercise of the executive clemency.

Mr. DIXON. If so, then there appears to be no difference between us.

Mr. C. A. WICKLIFFE. If either of these gentlemen should be governor, from what they have said, we may expect that no married man will be hung or punished in Kentucky, during their continuance in office. I am against the amendment and the whole of the latter clause of the section. The exercise of the pardoning power is a high exercise of sovereignty, for I suppose that all will admit that it is an exercise of sovereign power delegated to the chief magistracy representing the whole state. It is not usual in government to ask the sovereign people to give a reason for their acts. If I could see anything that was to grow out of the requisition that these reasons shall be recorded in the executive office, or reported to the legislature, by which the error the governor had committed was to be corrected, and the man pardoned was to be

returned to punishment, then I might be induced, under the apprehensions of abuses that have been or might be practiced, to acquiesce in the necessity of requiring this provision. No such purpose, however, is intended or expected. We delegate to the executive this high sovereign power of pardoning offences, and the very term itself presupposes guilt in the individual pardoned, and the exercise of mercy towards the offender for the violation of the law. And being thus an exercise of mercy, delegated by the sovereign people to their agent, the executive, what better reasons could be given by a governor than to say he exercised it out of mercy to the offender and violator of the law. Suppose a man condemned to be hung, and though his guilt has been admitted, and there is no doubt that the man has forfeited his life under the laws, the executive should say, I pardon him because I think him a fit subject of mercy. Is that not a good reason for the exercise of the pardoning power? What good is there then to result from requiring these reasons to be entered upon an executive journal? What are these reasons, generally speaking? Why, that a man has been justly convicted, but that he has borne a good character, and it is his first offence, or that the collection of the fine would distress his family and ruin him, and that the governor, therefore, believing it to be a case for the exercise of mercy, pardons the offender or remits the fine. I admit there have been some complaints against the exercise of this power.

I have never heard much complaint against any executive for pardoning men condemned to the forfeiture of their lives, or for turning men out of the penitentiary, except recently. That was a case of which I know nothing, of some man who was convicted of negro stealing. We have heard complaints that our penal laws have been somewhat nullified by the executive pardons. If it is wrong, then take away the power altogether; but as an independent co-ordinate branch of the government, if you give him the power at all, leave him to its free exercise, without attempting to alarm him like a scared child, with threats of the influence of public opinion on his acts. Do not deter a man from the exercise of this high and merciful prerogative—yes I call it the heavenly prerogative of government—where his judgment and feeling would prompt him so to do, lest he should be called up by a resolution of a member of the legislature, and his motives arraigned and his feelings insulted. During the short time I was called upon to administer this government as lieutenant governor, I found, I admit, the exercise of this power to be no pleasant task. I know something of the mode and manner in which it is exercised. The most numerous instances of its exercise by myself, was in the case of men just before the expiration of their term of service in the penitentiary, who had given high evidence of reformation. And I have had several instances given to me where such a restoration to the rights of citizenship has proved beneficial to society and to the man himself, and where he has gone home and become a reformed man. If we intend to give to the governor this pardoning power, let him exercise it on the high responsibility he owes to his God and to his country. Do not alarm him

by requiring the reasons for his action, to be dragged before the public. I know but two instances where I was called upon to exercise this power, that would have produced any difficulty in my mind. One was a man who was sentenced to be hung for murder, and inasmuch as I believed that the sentence was a harsh one, and that the highest offence for which he ought to have been convicted was manslaughter, I pardoned him. And I only deprived the grave of its victim for a few months, for he died within that time of consumption. The other was the case of a man from the southern part of the state who was sentenced to ten years imprisonment. He served for three or four years, and was lingering with disease, and on a full investigation of the case, being satisfied that the offence was atoned for, even if it was of the degree charged, I pardoned him. These are individual cases. What I object to is, that when you clothe a department of the government with power to act, that there should be any interference with the free exercise of that power. We might just as well require the legislature to spread out upon their journals the reasons for every law that they enact, as to require the executive to spread out the reasons for his action upon his record.

Mr. T. J. HOOD. I do not wish to protract this debate, but it seems to me that both the gentleman from Henderson and the senior gentleman from Nelson, have misconstrued my amendments, and misunderstood my remarks. Those amendments do not contemplate an abridgement of the right of petition as to any one; nor did I advocate any such abridgement in my remarks. For I venture to say that neither of those gentlemen more thoroughly recognizes the sacredness of that right than I do, and I trust it will be guaranteed to every citizen in the country, in a peaceable way, to meet together with his neighbors, and petition for the redress of any grievances. I would not impair that right, but perfect it by subjecting men at the bar of public opinion for its abuse. But the gentleman from Henderson treats the amendment as though every application for a pardon under it, would have to be made in conformity to a special act of the legislature in relation to that particular case. If he will but examine the amendment, he will perceive that nothing of the kind is contemplated, but that it merely confers upon the legislature the power to provide general laws upon the subject, which may be altered or amended from time to time, so as to meet and remedy the evils complained of. Again, both of these gentlemen speak of the amendments as though they contained provisions new and unprecedented in constitutions. If they will but examine the fifth section of the fourth article of the constitution of New York, they will see that the governor's power to grant pardons, &c., is "subject to such regulations as may be provided by law relative to the manner of applying for pardons." Also, that "he shall annually communicate to the legislature each case of reprieve, commutation, or pardon granted, &c." The sixth section of the fifth article of the constitution of Wisconsin authorizes the governor, "to grant reprieves, commutations, and pardons, subject to such regulations as may be provided by law, relative to the manner of applying for pardons."

Also "he shall annually communicate to the legislature, such cases of reprieve, commutation, or pardon granted, &c." The thirty third section of the constitution of Maryland, authorizes the governor to grant pardons, &c., "for any crime, except in such cases where the law shall otherwise direct." This is more general, and goes much further than even my amendment. The fourth section of the fourth article of the constitution of Virginia, gives him the same power, except where "the law shall otherwise particularly direct." The eleventh section of the fourth article of the constitution of Alabama qualifies the power by these words: "under such rules and regulations as shall be prescribed by law." The eleventh section of the third article of the constitution of Florida, qualifies it in the very same words, and the eleventh section of the fifth article of the constitution of Arkansas, also uses the same restrictive words. And it may be that the constitutions of other states use some such qualifications upon the exercise of this power. So, sir, my amendments are neither new in themselves nor unprecedented. And I have yet to learn of any of those hardships or extreme cases, which the gentleman's imagination has conjured up, having actually occurred in any of the above named states.

Mr. BROWN asked for a division of the question on the two amendments.

The question was then taken by yeas and nays on the call of Mr. STEVENSON, on the first amendment of Mr. Hood, and it was rejected, yeas 8, nays 73, as follows:

YEAS—Richard Apperson, Jesse Coffey, Garrett Davis, Richard D. Gholson, Andrew Hood, Thomas J. Hood, Johnson Price, George W. Williams—8.

NAYS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Milford Elliott, Green Forrest, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelley, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbot, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—73.

The question was taken on the second amendment of Mr. Hood, and it also was rejected.

Mr. W. C. MARSHALL moved to strike out the last clause of the section as follows:



"That whenever the governor shall remit a fine or forfeiture, or grant a reprieve or pardon, he shall enter his reasons for doing so on the records of the secretary of state, in a separate book; and on the requisition of either house of the general assembly, the same shall be laid before them, and published if they deem proper."

Mr. TRIPLET. I introduced that resolution, and I will give my reasons for doing so; but at the same time I will remark that I do not feel the slightest interest in it. Having been induced to believe, from conversation I had with some elderly gentlemen, that it was important, I proposed it. But while I do not now think it very important, still it ought not to be mutilated. Gentlemen seem to think it was intended as a reflection on the governors. The real object is entirely the reverse. It is for the purpose of giving the governor an opportunity to disabuse himself by giving his reasons. I know an instance now, so far as a man can know what is within the breast of another, where the world is now uninformed, and where if they could be informed, the reasons would be perfectly satisfactory. I understood the gentleman from Nelson, (Mr. Wickliffe,) to base his argument upon the ground that the pardoning power was a prerogative of the executive.

Mr. C. A. WICKLIFFE. I said the pardoning power was an attribute of sovereignty, not a prerogative of the governor, for he has none. I deny to the executive any prerogative. Sovereignty is seldom called on for reasons.

Mr. TRIPLET. That is it precisely. Sovereignty is not to be called on for reasons. It is the attribute of the sovereignty of the people in the person of the governor. But sovereignty itself ought to have reasons for its acts. It is a plain proposition, that the pardoning power in the governor is an act of mercy. There is this difference between an act of mercy when exercised by a human being, and the supreme God. The Deity may exercise that mercy, without giving his reasons to man, but tell me what possible reason can be given why the governor, who depends on the public for his office, and who is responsible to them, when a wife kneels to him and asks him to spare the life of a husband, should not state the reason why he exercises mercy, if he does so. Suppose a case comes before him, like the one stated by the gentleman from Nelson, where evidently there has been a hasty or harsh sentence, if the reason is truly made known to the people of Kentucky, will they not sanction his conduct? Is it not placing it on the ground that the governor is more merciful in his conduct than the people are in their feelings? Let the governor enter his true reasons, and the people will not censure him. But it is not necessary that the reason should be printed. They are not universally to be laid before the legislature. It is only when they are called for. It is fair to be presumed the legislature will not call for them, except on extraordinary occasions, and that they will not publish them unless they think them so bad that the people will not approve them. If they are so bad, the people ought to know them.

Mr. HARDIN. I am glad the gentleman from Bracken introduced this amendment. If he had not done it I should. I understand that in a

monarchy the power is all in the king, and the people have none except what is ceded, and hence there are frequent controversies. The people claim power as conceded, which the king denies. The king claims his power as a prerogative, for he is the fountain of power, and the people have what he grants and no more. In a republic, the fountain of all power is in the people, and the officers have as much power as the people grant, and no more. What would be a prerogative in the king, is power in the people. The people have chosen to grant the power of mercy to the governor. That prerogative must be some where, either in the legislature, the judiciary, or the executive department. If the people could meet as they did in Athens, when they banished a man, the same power that met to ostracise him could meet and recall him again. But the people cannot meet here. They are obliged to delegate to some one department of the government. The United States government delegates to the executive, and the state governments all do the same. It must be there. Well, if it is there, I want to know why in the name of God you call on a man for reasons when it amounts to nothing. It is enough that he feels he ought to grant it.

My friend, (Mr. Davis,) says the Stuart family, when on the throne of Great Britain, rendered themselves odious by the too frequent use of the pardoning power. That became an abuse in their hands. That is not the fact. James the first, incurred great odium for not pardoning Sir Walter Raleigh. Charles the first was detested for signing the death warrant of his minister, the Earl of Strafford. Charles the second was equally detested because he let Lord Stafford suffer death by the perjuries of Titus Oates, and James the second was equally abhorred because he did not save the life of his deluded nephew, the Duke of Monmouth. The real history of those monarchs is, they were tyrants—unfeeling monsters. Charles the first brought his head to the block because, under the pretence of ship-money, he attempted to dispense with parliament and levy a tax on the people without their consent. James the second was compelled to abdicate his throne and fly his kingdom because he attempted to dispense with acts of parliament.

There was a case of a man who was a moulder in a furnace in Bullitt, charged with robbery. Both the parties were drunk, and the story was, that one knocked down the other and robbed him. My colleague was sitting by and I acted for the defence, and he was satisfied the story was a drunken lie from beginning to end. The judge did not view the case as I did, and he sentenced him to prison.

Mr. C. A. WICKLIFFE. I recollect that case. The trial and conviction took place a few weeks before I was called upon to administer the government. I saw, and was satisfied, that the offence of which he was charged was the result of a drunken frolic, and the testimony upon which he was convicted was false; he was a poor devil and had no friends, and I exercised an act of mercy in pardoning him. I was not concerned in the cause.

Mr. PROCTOR moved the previous question, and it was ordered.

The yeas and nays being demanded on striking out, they were—yeas 52, nays 30.

YEAS—Mr. President, (Guthrie) John L. Ballinger, William K. Bowling, Alfred Boyd, Wm. Bradley, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Archibald Dixon, James Dudley, Chas-teen T. Dunavan, Green Forrest, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Andrew Hood, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Thomas W. Lisle, Willis B. Machen, William C. Marshall, Richard L. Mayes, John H. McHenry, Thomas P. Moore, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, Albert G. Talbott, William R. Thompson, John J. Thurman, Howard Todd, John L. Waller, Henry Washington, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—52.

NAYS—Richard Apperson, John S. Barlow, Luther Brawner, Beverly L. Clarke, Jesse Coffey, William Cowper, Garrett Davis, Milford Elliott, James H. Garrard, Richard D. Gholson, James P. Hamilton, John Hargis, Vincent S. Hay, Thos. J. Hood, Peter Lashbrooke, George W. Mansfield, Nathan McClure, Hugh Newell, Johnson Price, Thomas Rockhold, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, John D. Taylor, Philip Triplett, Squire Turner, John Wheeler, Robert N. Wickliffe, George W. Williams—30.

So the amendment was adopted.

The tenth section, as amended, was then adopted.

The convention then adjourned.

#### COUNTY COURTS.

Mr. Triplett's remarks on his amendment to the report on the county courts, delivered on Tuesday, the 27th ult., contained some inaccuracies, which we correct, and republish them in their corrected form, as follows:

MR. TRIPLETT. I believe when the house adjourned yesterday evening, I had just offered the following amendment as an additional section:

"Whenever the circuit court judge, before whom a criminal or penal prosecution is had, shall entertain doubts on any point of law which shall be decided by him during such trial, he shall have the power of adjourning over such doubtful points of law, to be decided by the court of appeals, and in the meantime may delay the execution of the sentence in such case, until the court of appeals have decided such doubtful points of law; or the accused may apply to a judge of the court of appeals for a writ of error, (in any criminal or penal prosecution,) which may be granted by him, and shall act as a *supersedeas* to the judgment of the court in which the trial was had, until the opinion of the court of appeals, on the questions involved, shall be entered in the circuit court, which shall be governed thereby."

I was somewhat surprised to find, after the adjournment of the house last evening, that a misapprehension prevailed among members, in reference to the character of my amendment. It contains two propositions, that are perfectly simple in their character. The first is, that when a judge of a circuit court tries a case, and entertains a doubt on a point of law, he may carry the point of law to the court of appeals. Now, what will be the result of that proposition? Where a point of law is such that a judge entertains serious doubts, and is unwilling that the life or liberty of the accused shall be lost, without first having the decision of the court of appeals, he may adjourn the case to that tribunal. One answers, it very seldom happens. If so, then the remedy for the evil is not frequently called into operation. What is the next point? It will immediately strike the mind of every thinking man in this house, that there is a possibility that the counsel for the accused may be satisfied that there ought to be a doubt raised—that the point of law is not well settled. Take, for instance, the case stated here a day or two ago, of one judge having decided that a negro was entitled to benefit of clergy, whilst another judge decided, in a similar case, that he was not. Now, one of them was wrong, and the other right. A case as strong as this I met with myself.

In 1825-6, the legislature of Kentucky passed a law as important as ever was enacted by them. That it should be no cause of challenge or exception to a venire man, that he had formed or expressed an opinion as to the guilt or innocence of the accused, on mere rumor, without having conversed with the parties, or the witnesses. I know, and I so stated at the time, that in two adjoining districts, one circuit judge decided this law to be constitutional, and it was our duty to obey it, while in the other the circuit judge pronounced the law to be unconstitutional, and he would disobey it, and compel us to do so. Is that law important or not? Nothing can be more important than that a man shall be tried by an impartial jury, and the question arises, what constitutes impartiality in a venire man, before he is sworn on the jury? And one circuit court judge decides the question one way, and another a different and directly opposite way. If the court of appeals were once to decide this controverted question, under the plan proposed in my amendment, their decision would be obligatory on all the circuit courts, and we should have uniformity of decision on this vital question throughout the state.

I could go on and give instances innumerable of the uncertainty of the law in criminal cases, in this state, but those that I have enumerated are sufficient to answer my purpose, and show forth the evil I wish to remedy, by obtaining uniformity of decision in criminal cases, as well as correct and legal decisions. We who are now in this hall may not derive any benefit from it, as it must take some years before the present existing evils can be remedied, but our children and our children's children may. At the present time there is no settled criminal jurisprudence in Kentucky; but if my amendment is adopted, it will go far to secure that desirable object. There will grow up by degrees a settled, perma-

nent criminal jurisprudence, arising from the decisions of the court of appeals in this state, on all the important points of criminal law, that will be sent up or carried up, either by the circuit court judges themselves, or the accused—until by and by, we shall have here what has been the glory and honor of England throughout her whole land, a permanent and intelligible criminal code of laws. How did her criminal code grow up? All of her acts of parliament in relation to crimes, now in force, may be condensed in one volume; while the decisions of her courts expounding and explaining these acts of parliament, which form in reality her criminal code, are contained in volume on volume. The criminal law of England, previous to 1776, has been rendered obligatory in this state by acts of assembly, but for a time the decisions of her courts, on criminal as well as civil questions of law, could not be read here.

But legislation, like everything else, is progressive and improving; and five or six years ago the Legislature agreed that they might be read in our courts, but should not be authoritative. Now that is a very nice distinction, I confess; I am anxious that all the controverted and difficult points of criminal law, which from time to time may arise, shall be settled by the court of appeals, and thus be obligatory upon our circuit courts; and compel the judges to decide alike in the different circuits, in all criminal cases; and it will then be some consolation to a criminal to know, if he suffers, that all who commit similar crimes, will suffer a similar punishment.

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SATURDAY, DECEMBER 1, 1849.

Prayer by the Rev. Mr. WARDER.

ADDRESS TO THE PEOPLE.

Mr. CLARKE offered the following resolution, with the expression of a wish that he would not be one of the committee to be appointed under it.

*Resolved*, That a committee of five be appointed by the President to prepare an address to the people, to accompany the new constitution."

The resolution was adopted.

COUNTY COURTS.

Mr. JAMES asked and obtained leave to record his vote on the question taken yesterday on the impeachment of county court officers. He voted against the proposed change.

COMMITTEE OF CLAIMS.

Mr. HARDIN offered the following resolution:

*Resolved*, That a committee of five delegates be appointed, styled the committee on claims, against the commonwealth, incurred by the present convention."

In support of his resolution, he said the act of the general assembly had made no provision for certain necessary incidental expenses. There were some expenses incurred in taking care of

the room in which they met and lighting the fires; also, in connection with the contested election from Henry county, and as they were likely to adjourn in about ten days, a committee should now be appointed to ascertain the amount of claims, that some provision might be made for their payment.

The resolution was adopted, and the President appointed the following delegates the committee: Messrs. Hardin, Lisle, Chambers, Boyd, and Brawner.

EXECUTIVE DEPARTMENT.

The convention resumed the consideration of the report of the committee on the executive department.

The eleventh, twelfth, thirteenth, fourteenth, fifteenth, and sixteenth sections were read and adopted, without amendment, as follows:

"SEC. 11. He may require information in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

"SEC. 12. He shall, from time to time, give to the general assembly, information of the state of the commonwealth, and recommend to their consideration such measures as he may deem expedient.

"SEC. 13. He may, on extraordinary occasions, convene the general assembly at the seat of government, or at a different place, if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

"SEC. 14. He shall take care that the laws be faithfully executed.

"SEC. 15. A lieutenant governor shall be chosen at every election for a governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for governor and lieutenant governor, the electors shall distinguish whom they vote for as governor, and whom as lieutenant governor.

"SEC. 16. He shall, by virtue of his office, be speaker of the senate, have a right when in committee of the whole, to debate and vote on all subjects, and when the senate are equally divided, to give the casting vote.

The seventeenth section was read as follows:

"SEC. 17. Whenever the office of governor shall become vacant, the lieutenant governor shall discharge the duties of governor until his successor shall have been duly elected; but no new election shall take place to fill such vacancy, unless the same shall have occurred before the first two years of the time shall have expired for which the governor was elected; and if, during the time the lieutenant governor shall fill such vacancy, he shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the senate shall, in like manner, administer the government for the balance of the term."

Mr. MANSFIELD moved to strike out the word "two" and insert "three," so that the new election should not be called, unless the vacancy to be filled occurred during the first three years of the term for which the governor was elected.

Mr. C. A. WICKLIFFE said he saw no necessity for changing from the present article in the old constitution. It had been well settled that upon the death of the governor, or his removal, the lieutenant governor should serve out his term. The people had acquiesced in it.

Mr. NUTTALL stated that a majority of the committee thought it necessary to make this subject plain, in order to prevent any such excitement on the question whether a new election should take place or not, as had occurred in Kentucky. They thought it best to provide that if a governor died before half of his term expired, a new election should be called. He thought two years long enough for any officer.

Mr. DAVIS remarked that he was present at the second meeting of the committee, when this subject was considered, and was in favor of retaining the provision of the present constitution. It was true, that some years ago there was an excitement on this subject, and the provision was considered rather ambiguous, but it was now settled in the minds of the people. He thought the election of the lieutenant governor was made with a view to the succession to the office of governor, in the event of the governor's death. He was of opinion that the lieutenant governor was a proper and safe depository of the powers of the governor in such an event. He did not believe it necessary to put the whole people to the trouble of a general election, to fill such a vacancy. Under the new constitution the duties of the governor would be confined pretty much to filling up militia commissions, remitting fines and forfeitures, and other duties which might be as well performed by the one who should succeed by his death, as by a new officer elected for the purpose. There were already too many elections. The business of life should consist in something besides elections and electioneering.

Mr. C. A. WICKLIFFE would be glad to move to strike out the whole of the section, and insert the sections in the old constitution which relate to the same subject, if an opportunity presented itself.

Mr. NEWELL believed it would be right, in case of the death of the governor in the first two years for which he was elected, that his place should be filled by an election. One consideration that influenced him so to vote in committee was, that in case of a vacancy by any cause, in the offices of governor and lieutenant governor, the speaker of the senate would be called on to fill the office. He did not believe the people of Kentucky would be willing to have an individual, chosen by a bare majority of the senate, exercise the office of governor. The people would desire an opportunity to choose for themselves. All the other offices are to be filled by the people, why was this to be made an exception? As to the time spent in elections, they would all be on one day under the new constitution, and the objection on that account was not a good one.

Mr. GAITHER considered it important in the election of the lieutenant governor, to have an eye to the contingency of his succeeding the governor; and without any provision in the constitution to that effect, it had been done, and on one occasion the duty thus devolved had been performed faithfully and ably. He desired to

avoid frequent elections, if possible. He would move to strike out the following words:

"But no new election shall take place to fill such vacancy, unless the same shall have occurred before the first two years of the term shall have expired for which the governor was elected."

Mr. MANSFIELD desired to have the vote taken on his motion to strike out "two" and insert "three." He believed such a change would be agreeable to his constituents.

Mr. McCLURE stated that he had offered a resolution early in the session, which required that a new election should be had in case of a vacancy in the office of governor. He was opposed to having the office filled by one who was chosen as lieutenant governor, and still more opposed to having a person chosen by the senate preside as governor.

Mr. NUTTALL cared little about the matter, but he was opposed to having the senate converted into a political electioneering arena. When a governor was about to be appointed to a high office abroad, this had been the case. He agreed in the opinion that the senate should not have the power of making the chief executive officer of the state. He would not vote for a man for one office, with a view to his filling another, in any event. The office of governor it was true, was stripped of much of its importance by the new constitution, but there were still important duties to perform, and he would have the person who filled the office appointed by the people for that special purpose.

Mr. NEWELL called the attention of the house to a case where one lieutenant had been made a captain, in consequence of the provision that when a president leaves his seat vacant the vice president succeeds. They might perhaps remember there was a case not long since, when a president died, and there was a great cry that the vice president was not the choice of the people.

Mr. ANDREW HOOD moved the previous question, and the main question was ordered to be now put.

The motion of the gentleman from Allen to strike out "two" and insert "three" was rejected.

The question was then stated to be on the amendment of the gentleman from Adair, to strike out a portion of the section.

The yeas and nays were called for, and being taken, they were yeas 39, nays 41, as follows:

YEAS—Mr. President, (Guthrie,) John L. Ballinger, Francis M. Bristow, Thos. D. Brown, Charles Chambers, William Chenault, Beverly L. Clarke, Garrett Davis, Nathan Gaither, James H. Garrard, Thos. J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, J. W. Irwin, Alfred M. Jackson, Wm. Johnson, George W. Johnston, George W. Kavanaugh, William C. Marshall, John H. McHenry, John D. Morris, Jonathan Newcum, William Preston, Larkin J. Proctor, John T. Robinson, Ira Root, James Rudd, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—39.

NAYS—John S. Barlow, William K. Bowling,

Alfred Boyd, William Bradley, Luther Brawner, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Richard D. Gholson, Jas. P. Hamilton, John Hargis, Andrew Hood, Tho. J. Hood, Thos. James, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Tho. W. Lisle, Willis B. Machen, Geo. W. Mansfield, Richard L. Mayes, Nathan McClure, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Thomas Rockhold, Ignatius A. Spalding, John D. Taylor, William R. Thompson, Philip Triplett, Henry Washington, John Wheeler—41.

So the convention refused to strike out.

The question then recurred on the adoption of the section.

Mr. NUTTALL called for the yeas and nays, and being taken they were yeas 37, nays 40.

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Archibald Dixon, James Dudley, Milford Elliott, Green Forrest, Richard D. Gholson, James P. Hamilton, John Hargis, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Nathan McClure, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Ignatius A. Spalding, John W. Stevenson, John D. Taylor, Philip Triplett, George W. Williams.—37.

NAYS—Mr. President, (Guthrie,) John L. Balingier, William K. Bowling, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, Garrett Davis, Chasteen T. Dunavan, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, William C. Marshall, Richard L. Mayes, John H. McHenry, John D. Morris, Jonathan Newcum, William Preston, Larkin J. Proctor, John T. Robinson, Ira Root, James Rudd, James W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, Henry Washington, John Wheeler, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—40.

So the section was rejected.

Mr. C. A. WICKLIFFE then moved to supply the place of the section stricken out, with the eighteenth section of the present constitution, as follows:

"In case of the impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until another be duly qualified, or the governor absent or impeached shall return or be acquitted."

On the motion of Mr. TRIPLETT, the words "elected and" were inserted after the words "until another be duly" and before the word "qualified."

The amendment was agreed to, and the section was adopted.

The eighteenth section was then read as follows:

"Sec. 18 Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for the occasion."

Mr. DIXON moved as a substitute for that section, the following:

"Whenever the government shall be administered by the lieutenant governor, or he shall be unable to attend as speaker of the senate, the senators shall elect one of their own members as speaker for that occasion, and if, during the vacancy of the office of governor, the lieutenant governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the state, the speaker of the senate shall in like manner administer the government."

He thought there should be some provision to meet the case of a vacancy during the impeachment of a governor.

Mr. CHAMBERS thought it would be sufficient if they adopted the practice in the United States Senate of electing a president *pro tempore*, and thus they would avoid the expense of a special session of the senate, to elect a speaker in the event of the lieutenant governor becoming the acting governor.

Mr. C. A. WICKLIFFE thought the matter had better be left as it now stands. The contingency which was to be provided for, was too remote to make it necessary to take it into consideration. The senate would elect their presiding officer with a view to his becoming the governor in case of such vacancies as would require it. If it was made a duty to elect a speaker *pro tem.* they might be brought into the same difficulty, into which the sister state of Ohio was once brought. They had a practice in Ohio of making the governor a senator in congress. The governor would, therefore, abdicate his office soon after his election, and the lieutenant governor would come in, and after a short time he too would resign. For amusement the senate elected an old gentleman by the name of Kirtland, who was chosen to fill a vacancy, and he was called to fill the office of the governor for three weeks. At the time his term expired he was asked to be again a candidate for the office; to which he replied, that he "had become chagrinated with the office, and had determined to go into a state of retracy among the Abrogans." (Laughter.)

It was not desirable to have such a state of things in Kentucky, and he preferred that in such an emergency the senate should be left to call a special session for the purpose of electing one of their own body to fill the chair for the residue of the term.

Mr. BROWN moved to amend the amendment, by adding the following proviso, and he asked the yeas and nays thereon.

*Provided*, That whenever a vacancy shall occur in the office of governor, before the first two years of the term shall have expired, a new election for governor shall take place.

Mr. GHOLSON hoped the convention had not deliberately determined to give to a person having one-thirty-eighth part of the power of the senate, the right to administer the government

for a great part of a term for which a governor was chosen. The last man whom the people would choose for governor might thus get into the office, and he wanted to provide against the possibility of such an event.

A conversation ensued in which Mr. BROWN, Mr. C. A. WICKLIFFE, Mr. DIXON, Mr. TALBOTT, and Mr. MACHEN took part, on the question of the admissibility of Mr. Brown's amendment.

Mr. RUDD, to bring the convention to the business before them, moved the previous question.

Mr. TALBOTT remarked that the attendance in the house was not very full, and therefore he desired the roll to be called.

The roll was called accordingly.

The main question was then ordered, and the question was taken on the amendment to the amendment by yeas and nays, and they were, yeas 45 nays 34.

YEAS—John S. Barlow, Alfred Boyd, Wm. Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, Jas. S. Chrisman, B. L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Wm. Cowper, Edward Curd, Archibald Dixon, Milford Elliott, Green Forrest, Richard D. Gholson, James P. Hamilton, John Hargis, T. J. Hood, Thomas James, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, Jonathan Neweum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Thos. Rockhold, Ignatius A. Spalding, Michael L. Stoner, John D. Taylor, William R. Thompson, Philip Triplett, Henry Washington, John Wheeler—45.

NAYS—Mr. President, (Guthrie,) John L. Balinger, William K. Bowling, Charles Chambers, Wm. Chenault, Garrett Davis, James Dudley, Chasteen T. Dunavan, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, William C. Marshall, John D. Morris, William Preston, Larkin J. Proctor, John T. Robinson, Ira Root, Jas. Rudd, James W. Stone, Albert G. Talbott, John J. Thurman Howard Todd, Squire Turner, Charles A. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—34.

So the amendment to the amendment was adopted.

The substitute for the section stricken out, as amended was also adopted.

The nineteenth and twentieth sections were next read and adopted, without amendment as follows:

SEC. 19. The lieutenant governor, while he acts as speaker of the senate, shall receive for his services, the same compensation which shall, for the same period, be allowed to the speaker of the house of representatives, and no more; and during the time he administers the government, as governor, shall receive the same compensation which the governor would have received, and been entitled to, had he been employed in the duties of his office.

SEC. 20. The speaker *pro tempore* of the senate, during the time he administers the government,

shall receive, in like manner, the same compensation which the governor would have received had he been employed in the duties of his office.

The twenty first section was read as follows:

SEC. 21. If the lieutenant governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the state during the recess of the general assembly, it shall be the duty of the secretary for the time being, to convene the senate for the purpose of choosing a speaker.

Mr. CHAMBERS moved the following as a substitute for the section:

"At the close of each regular session of the general assembly, a speaker *pro tempore* of the senate, shall be elected by the senators, who shall continue in office until the next regular biennial meeting of the legislature, unless sooner called upon to administer the government."

Mr. CHAMBERS. This is a point in the executive report, where we may exercise a little saving foresight. If our senate should be required to conform to the practice of the United States senate, and elect a speaker *pro tempore*, at each session, it would anticipate the contingency upon the happening of which he might be called upon to administer the government, and would save the trouble and expence of convening the senate. Prospectively, in view of the happening of such contingency, an officer may be selected to meet them, as well as after they have occurred, and with considerable saving to the treasury.

Mr. DIXON. But suppose the speaker *pro tempore* should himself die, what then?

Mr. CHAMBERS. That is another contingency, and too remote to require any precautionary action at our hands.

The amendment was rejected, and the section was adopted.

The twenty second section was read as follows:

"SEC. 22. The governor shall nominate and, by and with the advice and consent of the senate, appoint a secretary of state, who shall be commissioned during the term for which the governor shall have been elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts of the governor, and shall, when required, lay the same, and all papers, minutes and vouchers, relative thereto, before either house of the general assembly; and shall perform such other duties as may be enjoined on him by law."

Mr. BOYD moved to strike out the words, "the governor shall nominate and, by and with the advice and consent of the senate, appoint a secretary of state, who shall be commissioned," and substitute the following: "A secretary of state shall be elected by the qualified voters of this commonwealth, who shall hold his office."

Mr. THOMPSON moved the following as a substitute for the amendment proposed to be inserted: "a secretary of state shall be elected for four years, by the citizens entitled to suffrage, at the times and places where they shall respectively vote for governor, who shall be commissioned."

Mr. DIXON stated that the committee were unanimous in the opinion that the governor should have the right to appoint his own secretary. That was considered necessary, as the



secretary would be the confidential adviser of the governor. Otherwise the committee thought it possible that the people might select a man who was hostile in feeling to the governor, and the interests of the state would suffer in consequence.

Mr. DUDLEY moved the previous question, and the main question was ordered to be now put.

Mr. THOMPSON withdrew his amendment to the amendment.

Mr. KELLY called for the yeas and nays on the amendment of Mr. BOYD, and being taken, they were yeas 38 and nays 41.

YEAS—Alfred Boyd, William Bradley, Luther Brawner, Charles Chambers, William Chenault, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Milford Elliott, Green Forrest, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Thomas J. Hood, Thomas James, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, George W. Mansfield, Richard L. Mayes, Nathan McClure, Henry B. Pollard, Johnson Price, Thomas Rockhold, Ira Root, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, Silas Woodson, Wesley J. Wright—38.

NAYS—Mr. President, (Guthrie,) John L. Balinger, John S. Barlow, William K. Bowling, Francis M. Bristow, Thomas D. Brown, James S. Chrisman, Jesse Coffey, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Nathan Gaither, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, William C. Marshall, John H. McHenry, Thomas P. Moore, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Wm. Preston, Larkin J. Proctor, John T. Robinson, James Rudd, John W. Stevenson, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, John Wheeler, Charles A. Wickliffe, George W. Williams,—41.

So the amendment was rejected.

The section was then adopted.

The twenty third, twenty fourth, and twenty fifth sections were read and adopted without amendment as follows:

"SEC. 23. Every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent with the objections to the other house, by which it shall likewise be reconsidered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journals of each house respectively. If any bill shall not be returned by the governor, within ten days (Sundays ex-

cepted,) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the general assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

"SEC. 24. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the governor, and before it shall take effect, be approved by him; or being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

"SEC. 25. Contested elections for governor and lieutenant governor shall be determined by both houses of the general assembly, according to such regulations as may be established by law."

The twenty sixth section was next read:

"SEC. 26. The legislature shall provide for a term not exceeding two years, for the appointment of treasurer, auditor of public accounts, register of the land office, and such other officers of a public nature as may become necessary, and shall prescribe their duties and responsibilities, and, until otherwise directed by law, such officers shall be elected by the qualified voters of this commonwealth.

Mr. C. A. WICKLIFFE was opposed to leaving this section so that the legislature might prescribe a different mode of appointing the officers named in it. He moved to strike out the words "until otherwise directed by law." His object was to secure the election of these officers by the people.

Mr. DIXON said they would be elected by the people as the section now stood. The object of inserting those words, was to provide for any difficulty that might arise from the election of these officers by the people.

Mr. MANSFIELD hoped the house would sustain the amendment.

Mr. C. A. WICKLIFFE. I do not think I am mistaken in the effect of this section. If it remains as it is the people will now elect these officers. But it will be in the power of the legislature to prescribe a different mode. Suppose we apply the same expression to all the officers whose election is provided for, they will be elected by the people "until otherwise directed by law." You thereby give the legislative department the power of taking the elections of these officers from the people. I am opposed to that. I think if any should be elected, it is the treasurer. I need not state the reasons why I think the appointing of that officer has not been heretofore beneficial to the state.

Mr. TRIPLETT. It is said that this section gives the people the right to elect their officers. That is true, but this question arises whether the legislature shall have the right to alter that mode of election. I object to their altering the mode of electing the treasurer. That is one of the most important and responsible offices in the state, and one in which the people have felt the greatest interest for a number of years.

Mr. W. JOHNSON. I think the people have the undoubted right to elect all their officers. But while they have this right, there may be certain officers who can be better appointed by an

agent than by themselves. If the people think their agents can do the business they desire to have done, or if it is inconvenient for them to meet and do it, I want them to have the right of transferring this power to others to do it for them.

Mr. BRADLEY offered the following as a substitute for the amendment of the gentleman from Nelson:

"There shall be elected for four years by the qualified voters of the state, an auditor of public accounts, register of the land office, attorney general, and such other officers of a public nature as may be necessary, and the general assembly shall prescribe their duties and responsibilities."

Mr. C. A. WICKLIFFE. I made the motion which I did to test the sense of the convention upon the question whether the house think these officers should be elected by the people at large. If the vote is taken to strike out the words I have named, it will be in order to insert the amendment of the gentleman from Hopkins. If gentlemen wish to leave the choice of these officers to the legislature they will vote against my amendment; but I ask if when we have made the appellate court elective, and other mere ministerial offices, we shall refuse to the people the power of electing these important officers. No officers are more important than those of the treasurer and auditor of public accounts. If this is left so that the legislature may change the mode, it may be thrown back upon the executive, or the joint vote of the two houses, which is the worst possible appointing power that I can conceive of. I am opposed to leaving so important a duty as the selection of these officers to depend upon the will, the whim, or the caprice of any future legislature.

Mr. NEWELL. I am in favor of this section, and yet I am thought by some to be very radical on that subject; but I should have been glad to see some other provisions of the constitution left as this is. I desire to fix as few subjects in the constitution as the nature of the case will admit of, for it is to be for the present, like the laws of the Medes and Persians, unalterable. I am for trusting generations that may come after us. We have given the power of electing these officers, and then we have given them the power, if a majority of the people wish it, to change the mode of appointment. This will give the constitution stability, if some of these sections are left so that they may be changed; but if we fix all these subjects there will be complaint, and no alteration can be made without calling another convention.

Mr. BRADLEY. I know the section, as it stands, gives to the people the right to elect their officers; but it also gives the legislature the power to take away that right, and to vest it in the executive, or any other branch of the government. I differ from my friend from Harrison, and also with the gentleman from Scott. I desire that all the officers of this government—these as well as others—shall be elected by the people. Suppose we had said the judges may be elected, but that the legislature may change that mode if they think proper, and give the appointing power to the executive, would that have met the public expectation on this subject? I hope the power will not be given to the

legislature to change the mode of electing by the people.

Mr. NEWELL. If one legislature changes it, the next can change it back.

Mr. BRADLEY. Yes, and then we might never have a settled system.

Mr. CLARKE. I am inclined to doubt my judgment when I differ with my friend from Harrison in the sentiments he has expressed; but I concur in the amendment of the gentleman from Hopkins. If there were such a provision in every section of the constitution as is proposed to be inserted in this section, we should have no constitution at all. All the power would get into the hands of the legislature, and at one election it would be regarded as constitutional for the people to elect a treasurer, and at the next unconstitutional, and so on, *ad infinitum*. If we intend to carry out the expectations of the people, we will give the people the right to elect their officers. And, if they do not choose to exercise it, we can, after the constitution shall have been submitted to the people, make such alteration in it as will meet their wishes. This is the very worst possible shape in which these specific amendments can be made. You have said, in so many words, the people shall not elect their treasurer. Why, then, confer upon them the power of electing their judges? Why do you not say to them that they shall not elect their clerks? Why do you, in this particular instance, refuse the people this right? Does any man doubt that they are as anxious to vote for a treasurer as for the judges, or any other officer? I believe it was the universal sentiment of the people, from one end of the state to the other, last summer that the right should not depend upon the whims and caprices of the legislature. There is no more responsible office in Kentucky than that of treasurer, for he holds the purse of the people of the state. I hope the section will be struck out, and that the amendment of the gentleman from Hopkins will be adopted.

Mr. NUTTALL. I see nothing objectionable in this section. These officers are to be elected, "until otherwise directed by law," by the qualified voters of the commonwealth. The qualified voters are the commonwealth, as I understand it. No other persons have a right to control this government, but the qualified voters, through their agents or representatives. I have no idea that when the people once commence electing these officers they will ever change the mode. I think there is no danger in leaving it as it is.

Mr. MAYES. It strikes me we should say that these officers shall be elected, or they shall not. It is true, the power of electing the treasurer and other officers is given for the time being, but the legislature have the power to take away this right. The people of one county may favor the appointment of the treasurer by their representatives, and those of another may choose to vote directly. This will create an interminable confusion in the legislature, and lead to great expense and loss of time in that body.

Mr. HARDIN. The explanation of this section as given by the chairman of the committee (Mr. Dixon) is, that the treasurer and other officers shall be elected by the people, subject to the power of the legislature to change the mode of election. I am opposed to that altogether. I

know very well that if you bring a parcel of young men here, many of them smuggled in under the constitutional age, they will take the power into their own hands. Power is uncommonly sweet, and it will be a rich treat to them. We see how much our best governors are in favor of power. If they have to appoint a judge of the court of appeals, they will take him from the bench of the circuit court, and that will make another vacancy to be filled. This power is so sweet, as sure as the Lord lives and our souls live, they will find out some reasons for changing this mode of appointing these officers. I want to have all the officers appointed by the people. The treasurer and auditor are very important officers. Let them all be elected, and let the men throughout Kentucky have a fair chance of the election. If the legislature do it, you will never get to South Frankfort for any of them; they will all be taken from North Frankfort. I am against having the legislature assume the power in any case.

Mr. NEWELL. I hope the house do not understand me as opposing the election of these officers. If any gentleman goes further than I, in favoring the election by the people, he goes a great way. My object in leaving this as it is, is to give the people the right to accomplish a certain thing in either of two ways. I have not so little confidence in the legislature as some gentlemen express. There are eighty-five gentlemen here who have been in the legislature, and when they tell you that the legislature is not to be trusted, they only tell you that they themselves have been unworthy to be trusted.

Mr. CLARKE. The gentleman from Harrison says this is leaving to the people the power of changing the mode of appointment. I cannot agree with him, for I do not recognize the legislature as the people. If he is right, you might as well say the legislature have the right to alter the whole constitution.

Mr. NEWELL. I said it was better to give the people the right to elect their judges and some other officers. But I believe it is best to leave the people to elect some officers, and at the same time give the legislature power to change the mode if it should be found necessary to do it.

Mr. DIXON. I think my friend from Nelson, (Mr. Hardin,) is mistaken in saying there is an obscurity in this section. I think it plain and easily to be understood. It provides in the first place, that the officers shall be elected by the people until the people themselves shall direct otherwise. That is the sum and substance of it. Now, I understand the younger gentleman from Nelson to be utterly opposed to taking from the people the power to elect their own officers. Does this section take from the people the power to elect their own officers? In the first place, it gives the power, and in the second, it authorizes the people, when they think proper, to change the mode of appointment. If you give the people a mode of appointment, does it necessarily take away their right of election? Surely it does not. It is said that this is abridging the rights of the people. Now, what is the constitution itself but an abridgment of the natural rights of the people? It is the very object of your organic law to restrain the people lest they should run riot in the exercise of

their natural rights. I do not propose to restrain them. I only propose to give them the power which some gentlemen think it would be unsafe to entrust them with. We are not the people; we are but their organs through which they speak in this convention. It is true, we are not under restraints as the legislature is, but we owe obligations to our constituents for the powers we have, which are more unlimited than those vested in the legislature. The power of the people, as spoken through their representatives in the legislature, is limited by the constitution. We propose to reserve to the people the right to speak their will on a particular question; but the gentleman says it is wrong to entrust the people to speak their will. Does the gentleman mean to say that those who come here as representatives of the people, have a right to disregard the wishes of their constituents? The representative is supposed to speak the voice, and feelings, and wishes of those whom he represents. The gentleman asks: why we did not give this right as to all other officers of the government. We did not think any body would be in favor of it, but we thought they might be in favor of electing these particular officers. These are the reasons that influenced us in making our report. If the people think it better to let the legislature act on the subject, they will require them to do it. My friend from Nelson, (Mr. Hardin,) thinks that the young members of the legislature will come here and legislate in relation to these officers, right or wrong, regardless of the wishes of the people. I will tell him that they are not apt to do things which the people do not desire, nor are the old representatives. When an important question like this comes up, members will not be found taking ground in opposition to the views and sentiments of their constituents. And, certainly if any man did, he would bring about his own destruction.

Mr. HARDIN. It seems that these officers are to be elected by the people, but the legislature may prescribe another mode if they please. I deny that the legislature is the people. The law making power is the house of representatives, the senate and the governor. The legislature represent the people; they are only one branch of the government. Why was this convention called? It was to prescribe how the officers of this government shall be elected, and when that is done, the legislature cannot touch it. What does the gentleman from Henderson say? That the legislature are the people, and whenever the people choose to act, they can do so in despite of all constitutions. That is exactly the amount of it. Why not say, that since the legislature is the people, they shall prescribe all appointments?

Mr. DIXON. I took the ground that this convention was the representative of the sovereignty of the people of Kentucky. I took the ground that the constitution of Kentucky imposed restraints on the legislature, and that all the powers they exercised are derived from the people and are limited by the constitution.

Mr. HARDIN. There is no great misunderstanding on my part. We know very well that all power is in the people as a reserved power, unless it is delegated to the law-making power,

and the legislature may do any thing and every thing that has not been delegated to congress. But that is not the question; and I ask the gentleman, since the legislature is the sovereign people, why not say to them, you may change the mode of electing the governor when you please? Why not give them power to change all the departments of the government? Why, we do not intend to confide to them such important powers. Why not say to them that they shall have all the power of the government—that they shall have power to say how the judges of the court of appeals shall be elected whenever they please, or the judges of the circuit court? Because we will not confide that power to them. And I ask my friend if he will confide to them the power to elect the most important officers for the state at large, when he will take away from them the power to appoint the judge of a district or a justice of a little magistrate's district? If you take away from the legislature the power to appoint a justice of the peace, or as Austin Hubbard used to say, "a piece of a justice," why not take away from them the power to elect a treasurer, an auditor, or a register? I am in favor of the elections remaining with the people, and I wish it to be part of the organic law of Kentucky that the governor and every other officer shall be elected by the people.

As to the secretary of state, I have not said a word about that; for God knows I care nothing about that. I do not care to hear that word again. (Laughter.) I would be the last man in the world to say a word about it.

The effect of the doctrine of the gentleman would be to give the legislature power to alter the mode of appointment entirely with reference to these important officers. Why not say the legislature may have power to set our negroes free? Just because we are unwilling to trust them. And I am as unwilling to trust them with reference to one power as to the other.

I hope that as we came here to change the appointing power, and separate it from every other department of this government, we shall give the power back to the people. The appointing power originally belonged to the people, and to delegate it any where else would be wrong. I came here to give it back where it originally belonged, being unwilling to trust it to any department. I know a little about how things are managed here. We are not made of such stern, obstinate stuff that we cannot be operated upon here. We can be softened down, sometimes, forty ways. There are a great many ways in which a young man may be softened down. I will not enumerate them all. Why was it the seat of government was taken away from New Orleans? It was because the local power was too influential for the people. It was, in consequence, taken to Baton Rouge. Why was it taken from Philadelphia? It was because the local power of Philadelphia was too great for the balance of the people to trust it there. Why was it removed from the city of New York? For the same reason. We know there is a local power at the seat of government which will operate more or less on the members of the legislature. The gentleman says it may operate on us. Well, it may; but I do not think it as likely to operate upon us as on a parcel of boys. You may go

over the list of members and you will find one half of them do not exceed thirty years of age. I am unwilling to trust four or five of the most important offices in this government to be disposed of by them.

Mr. TURNER. I rise to move the previous question, but before I do so, I wish to say a few words. I shall vote with the gentleman from Henderson and the gentleman from Harrison, because I am in favor of giving the people the right to say whether the legislature shall appoint these officers, if they do not wish to elect them. I am an elective man, but I have had very great doubts as to the executive officers, and in consequence of those doubts, I am inclined to leave this provision as it has been reported by the committee. Some gentlemen have expressed their fears of entrusting the legislature in relation to this matter. In the report of the committee of thirty, there was a provision leaving to the legislature the branching of the court of appeals, should it hereafter be demanded by the people. And why not? Is there any more danger to be apprehended than there will be in the present instance? Not at all; and I conceive there will be none. Did we not adopt the same course in regard to the election of magistrates in the several counties? And we have, in some other respects, left the people, through their representatives, to carry out the principles we have laid down in the constitution. My friend from Nelson, (Mr. Hardin,) in the love he has expressed for the people, reminds me of Governor Letcher, who has gone to Mexico, where he will represent this country very ably, who said that if he had any fault in the world, it was that he was too candid. Now if the gentleman from Nelson has any fault in his old age, it is that he is so excessively in love with the people. Now, I do not think that the boys that are to come to the legislature will be more in love with the sweet things here than the gentleman is.

With regard to the proposition offered by the gentleman from Nelson, (Mr. C. A. Wickliffe,) I am opposed to it, for the reason that I would not put a man in office for so long a period as four years, and permit him to handle large amounts of the public money, without more security being required of him than is now given. There is great danger in doing so. Why there is not a treasurer under the sun who would be so independent, and to whom so much power would be entrusted, as the treasurer which the gentleman from Nelson would create. Suppose he were to abuse his trust, how are we to reach him? Before you could impeach him, he could go on embezzling the public money, and in short ruin the commonwealth. I hope if we do not make any provision on the subject, the legislature will, and elect the treasurer for one or two years, or provide some other mode of appointment. As to the present treasurer, I believe him a faithful officer. The second auditor and the register of the land office, are also good officers, and they were, I understand, born here. However, I care not where a man is born, provided he attends to his duties faithfully and promptly. I say then, in conclusion, I would give the power to the people to say in what manner these officers shall hereafter be ap-

pointed. I will now move the previous question.

Mr. C. A. WICKLIFFE If the gentleman will permit me to say a word or two, by way of explanation, I shall be obliged to him, and I will then call the previous question.

Mr. TURNER then withdrew the motion.

Mr. C. A. WICKLIFFE. The committee proposed to elect a treasurer for two years, but my amendment proposes to elect him for four. The gentleman, who has just taken his seat, says it is dangerous to leave so much money in the hands of the treasurer. He should recollect that that officer is subject to the impeaching power, and has to give bonds in a large amount for the faithful performance of his duty. And these bonds are put into the hands of the executive, according to law. It is made the duty of the governor to examine into and see that he keeps his accounts safe and accurately, as well during the time the legislature is in session as afterwards. The governor does not discharge his duty properly, if he does not look into the treasurer's accounts and ascertain how they stand. I trust we shall provide for the supervision of the books of the treasurer, by requiring a rigid and close examination of his accounts from time to time, so that if there shall be an abstraction of a single dollar, he shall be immediately suspended. I know the house is impatient to take the question, therefore I shall say nothing further. I move the previous question.

Mr. PRICE said as this was an important proposition, it should be voted upon by a full house; and as the house was not now full, he moved an adjournment.

The vote upon the motion to adjourn was a tie, 31 in the affirmative, 31 in the negative.

The PRESIDENT announced the motion to adjourn to be decided in the negative.

Mr. C. A. WICKLIFFE asked for the yeas and nays upon the proposition.

A recess was moved and negatived.

The main question was then ordered to be now put.

Mr. BRADLEY, by consent, on the suggestion of Mr. C. A. WICKLIFFE, modified his proposition by separating the treasurer therefrom, so that that officer might be embraced in another and separate section, with a different term of office.

The question was then taken by yeas and nays, on Mr. BRADLEY'S amendment, and they were—yeas 56, nays 20.

YEAS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, Thomas James, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, John H. McHenry, Thomas P. Moore, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Ira Root, Ignatius A.

Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Philip Triplett, Henry Washington, John Wheeler, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—56.

NAYS—Mr. President, (Guthrie) John L. Ballinger, Charles Chambers, Archibald Dixon, James Dudley, James H. Garrard, Ninian E. Gray, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, William C. Marshall, Nathan McClure, John D. Morris, Hugh Newell, Elijah F. Nuttall, Thomas Rockhold, James Rudd, Howard Todd, Squire Turner—20.

So the amendment was agreed to.

The section, as amended, was then adopted.

The twenty seventh section was read as follows:

"SEC. 27. A board of commissioners shall be appointed every two years by the judges of the court of appeals, one from each appellate district, whose duty it shall be to make an examination every two years, of the accounts of the receiving and disbursing officers of the state at large, and report to the legislature."

Mr. JAMES moved to strike out the entire section.

Mr. HARDIN concurred in that motion. To retain it would be to incur an expense of \$1,000 biennially for no apparent possible good.

The motion to strike out was agreed to.

Mr. GARRARD expressed the hope that the convention would dispose of this report before adjourning. He therefore moved to take up the sixth section which was passed over yesterday, at the request of the gentleman from Woodford, (Mr. Waller,) who then expressed a desire to give his views upon the principle which that section embraced. He, however, had now the authority of that gentleman for stating that he could accomplish his object on another report, and consequently, he did not wish the action of the convention upon this section to be further delayed.

The sixth section was accordingly taken up and passed without amendment as follows:

"SEC. 6. No member of congress, or person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of governor."

Mr. KELLY offered the following as an additional section, which was adopted after being modified on the suggestion of Mr. PRICE:

"SEC. —. There shall be elected biennially, by the qualified voters of this commonwealth, a treasurer, whose duties and responsibilities shall be defined by law."

There being no further amendments, the article on the executive department was disposed of.

The convention then adjourned.

MONDAY, DECEMBER, 3, 1849.

Prayer by the Rev. Mr. LANCASTER.

LEGISLATIVE DEPARTMENT.

On the motion of Mr. C. A. WICKLIFFE, the convention resumed the consideration of the report of the committee on the legislative department.

When last under consideration, the twenty fifth section was postponed at the request of Mr. WALLER. It was now taken up, as follows:

"Sec. 25. No person, while he continues to exercise the functions of clergyman, priest, or teacher of any religious persuasion, society, or sect, nor while he holds or exercises any office of profit under this commonwealth, or under the government of the United States, shall be eligible to the general assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, That attorneys for the commonwealth, who receive a fixed annual salary, shall be ineligible.

Mr. BOYD moved to amend the section by striking out the words "continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, nor while he."

Mr. WALLER. Mr. President: I arise under circumstances of considerable embarrassment. The fact that several days ago I requested the postponement of this subject, in order that myself and others might be heard in relation to it, has created an expectation which I am sure I cannot meet. I have had other and, in my estimation, more important matters claiming my time, and have bestowed very little reflection on the question now before the convention.

I have another serious cause of embarrassment: I am liable to be charged with a want of delicacy. Some may suppose that owing to the relations I sustain to the matter in debate, I ought to have been silent, and left this cause in the hands of others. I, however, throw myself upon the magnanimity of the convention to relieve me of this imputation. I but walk in the foot-steps of other delegates. My course has the sanction of the custom here. The other day when the delegate from Jessamine (Mr. A. K. Marshall) incidentally and playfully alluded to the lawyers, the members of that profession in all parts of the house arose in reply and retort. When restrictions were attempted to be placed upon the representation of cities, their delegates, in emphatic and indignant tones, denounced what they believed to be an infringement of their rights. And so it would be if any other profession or interest having a representative here, were assailed. Why, then, should it be thought indelicate in me, standing almost solitary and alone, of a profession it is proposed to proscribe from civil office, that I should arise in remonstrance.

Those who know me will not suspect, that I have any selfish ends to attain. My habits of life and my pursuits have been such as to preclude the supposition that I seek either the offices or emoluments of civil government. I have ever preferred the silence and solitude of the closet. I have mingled but little with the great world. I have held more communion with the sentiments of the dead than of the living. I have

lived almost a hermit among my neighbors. I have never been a political partizan. I have had but little to do or to say on political subjects except quietly to vote. While I have looked upon the masses of both the great political parties into which our country is divided, as seeking honestly and earnestly the welfare of the nation; I very frankly confess, I have long suspected that with the leaders, it was but a contest between the *ins* and the *outs*—that they were mainly influenced by the seven principles of John Randolph—"the *five* loaves and the *two* fishes."

But there is still another source of embarrassment. I am told, and I suppose truly, that this question is settled in the minds of an overwhelming majority of this convention; that it is contemplated not only to exclude ministers of the gospel from the offices created by this constitution, but that some even wish to exclude them from any future convention, thereby virtually declaring them out of the social compact! Well, if we are again to be put under the ban of government—if the axe of proscription is again to fall, I may at least exclaim with the old Greek, "strike, but hear me!" I want, however, to bear my testimony against this measure—and if fail we must, ere we fold up our arms to die, I wish to look at you, Mr. President, and at each member of this convention, the elect and eloquent champion of equal rights, and say, "*et tu Brute!*" Are you, the guardians of republican principles, about to proscribe any portion of Kentucky's freemen and American citizens from the offices of this government?

This restriction, making ministers ineligible to civil office, is contrary to the great American principle of equal rights and privileges. I call this an American principle, because in other countries of the civilized world the right to hold office has been guarantied to a favored class, who, by birth or fortune, are considered superior to the mass of their fellow men. Some are born to office. Angels in the form of kings—so the sentiment runs—are commissioned of Heaven to sit on thrones, wear crowns, and wield sceptres! And in the most free of other nations besides this, the doctrine prevails, that no individual must be chosen to office, unless by birth or by wealth he is elevated into a favored and privileged class. Thus monarchs and aristocrats have usurped authority over the million.

It is the brightest gem in the diadem of our nation's glory, that the United States have abolished this principle—that here we have no privileged classes, to whom belong, exclusively, the offices and emoluments of the government—that here the high, the low, the rich and the poor, the learned and the rude—every free white male citizen who is not a convict or a traitor—is eligible to the highest office in the gift of the people. Even to the persecuted exiles of other lands, who immigrate to enjoy the blessings of freedom, if they shall become citizens, is presented the boon of eligibility to the chief places under government.

And this is considered an invaluable and inestimable right and privilege, of which, under our national government and most of our state governments, the humblest citizen is never deprived, except for the highest crimes.



And this great American principle has worked well, and is esteemed the noblest and the proudest birthright of our citizens. Under its operations, we have seen the "mill-boy of the slashes" of Hanover county, Virginia, rising through all the various grades of office, and now in the senate of the United States—we have seen a son of a poor "exile of Erin," left to poverty and orphanage in early life, become the hero of New Orleans, and then elevated, by the voice of this mighty nation, to the chief executive chair. And we now see the son of an humble farmer on Beargrass, unaided by the pride of birth or the charms of wealth, holding the governmental reins of this great republic. Of our country in truth it may be said, that

"Honor and shame from no condition rise;  
Act well your part, there all the honor lies."

Under this system, our country has been raised to the proud eminence it now occupies; and this system, judging by the speeches of gentlemen, has been very precious in the eyes of this convention. Upon no sentence have more changes been rung, than that of "equal rights to all, and exclusive privileges to none." And how are the doctrines of this darling political maxim to be maintained inviolate, while you deny to the ministers of religion, rights which you guaranty to every voter in the commonwealth? Can you declare them ineligible to seats in the general assembly according to the republican principle of equal rights and privileges? Is not their right to be candidates for office as perfect and complete as that of any other class of citizens whatever? If nature and the social compact did not give them this privilege, why this prohibition? Does not its very existence prove incontestably their right to seek civil office?—a right of which only the strong arm of constitutional law could deprive them? You take from a large and respectable class of your fellow citizens, a great and inestimable right; and all to manifest your profound reverence for equality of rights.

Nor is this the most remarkable exhibiton of this favorite political maxim with which it is proposed to illustrate and adorn the constitution now in process of formation. Not content with the manifestation of your love for equal rights by depriving the ministers of religion of one of the most precious rights known to our political institutions, you intend to show your fond affection for "exclusive privileges to none," by declaring that none except a lawyer of a specified character shall be eligible for the office of circuit or appellate judge, or for county, commonwealth, or attorney general! Aye, you not only give to this worthy and patriotic class of our citizens, (for I entertain the highest respect for them,) the exclusive benefit of the chief offices created by this constitution, (and in this respect the new will be a vast improvement upon the old constitution,) but you restrain executive clemency when it would interpose to lift a burden from some poor wretch who has been mulct in damages for a petty offence—so far at least as the attorney's fees are concerned! The governor may remit so much of the fine as goes into the pockets of the people; but not that part which goes into the pockets of the attorney! That worthy functionary must not be hindered in his work of coining into fees the crimes of the people!

This all may be right. At least I now enter no objections to it. It may even be in accordance with the maxim of Holy writ, which declares, that "he who will not provide for his own, and especially for those of his own house, has denied the faith, and is worse than an infidel." I should certainly never think of voting for any but a lawyer for judge or attorney: and am sincerely sorry that by a constitutional presumption, we lead the world to believe, that the electors of Kentucky would be so simple as to vote otherwise, except for this conservative restriction.

I have alluded to these regulations merely to show the picture which we propose to hold up to the admiration and wonder of our constituents—a picture *here* representing the poor ministers of the gospel under the ban of the constitution, denied access to all the civil offices; and *there* representing the lawyer occupying, solitary and alone, almost all the high places, and reveling and luxuriating in all the fat salaries of the state. And underneath, by way of explanation and illustration, written in glaring capitals, the sentence, "EQUAL RIGHTS TO ALL, AND EXCLUSIVE PRIVILEGES TO NONE!"

Well may you smile. The pencil of a Cruikshanks never perpetrated a more grotesque caricature.

Sir, the great mistake in this whole matter consists in not making the distinction between eligibility to office, and the actual election of the man to office. No delegate here is more opposed than myself to electing ministers of the gospel to seats in the legislature. They have other, nobler, and holier duties to discharge. Their time and their talents can be more profitably employed. But their eligibility is one thing, and whether they should be elected is quite another. The true principle of our government is, as I have demonstrated, to throw open its offices to every voter—to declare none ineligible except for high crimes and misdemeanors. Every citizen born, when he arrives at a certain age, is eligible for the presidency of the United States; and yet who would think of electing any and every one to that high office? To refuse to elect a man to office is to deprive him of no right. He asks us for our votes, and we have the perfect right to withhold or bestow them; and we give no just cause of offence and inflict no wrong: but when we declare him ineligible, we violate a great principle of republicanism, and deprive him of a sacred right—we inflict upon him that which, according to the genius of our government, ought to be inflicted only upon the worst of criminals. There are many men I would not vote for to fill any office in the state, but there is no man, I care not how mean and groveling, unless convicted of some heinous offence, whom I would declare ineligible.

This I believe to be the principle which should guide us in our action upon the section now under consideration; this I am sure is the principle which governed the patriots and statesmen who formed the constitution of the United States.

This restriction is a violation of the rights of conscience—it is depriving a man of a great political and natural right for serving his God in the way that his judgment and conscience dictate. The true policy of every civil government

is, to let religion alone—to let the church with all its concerns take care of itself. The Redeemer declared that his kingdom was not of this world. Its ends, its aims, its hopes, all have reference to the spirit land. The great mistake of the ancient politicians was, that they assumed to regulate the affairs of a kingdom in which the Great God himself claimed to be the sole and sovereign ruler and law-giver. The ministers belong to that kingdom. They are its accredited officers. They derive their commissions from God and not from man. For the faithful discharge of the duties of their office they are responsible to God and not to man. As ministers they should be unknown to the state. The government should recognize them as citizens and not as ministers. Over their conduct as citizens human legislation is sovereign and supreme; over them as ministers every action of human government is a usurpation and a wrong.

They present themselves here simply as citizens, proposing to share the burdens and asking to partake of the privileges of the government we may form.

Now if you assume a guardianship of their ministerial functions, are you not directly interfering with matters belonging exclusively to the church? And if you may legislate on the officers of the church, may you not legislate on the ordinances and the doctrines of the church? And what is this but that monstrous union of church and state, concerning which so much horror has been expressed?

One of the dearest privileges of an American citizen, is to worship God according to the dictates of his conscience. No matter whether this may lead him—whether to bend before an idol, to offer incense to Baal, to worship Mahomet, or to recognize the only true living God and his Son our Saviour—his adoration should never be hindered, nor his conscience be fettered by law. And the mode of serving his God acceptably should never be disturbed by state interference. One may choose to serve his God in a quiet way and only in his family. There he may erect his altar and present his offering. Another may choose to retire to the mountain cave, or to the desert and the wilderness, and in the stillness of a solitude where no human voice but his own is heard, worship and serve his Maker. And still another may choose to hymn his praises; or to preach the way of life and salvation in the congregation of the people. Now all of these, performing what they believe to be acceptable service to God, according to the principle contained in the bill of rights of all the states, have but done what they had a perfect right to do; and to subject them to any penalty in consequence, is unjust and tyrannical. And what does the minister more than exercise this undisputed right? He is serving God according to the dictates of his own conscience. He believes that he is under obligations to his Creator to teach and preach his religion. And because he thus worships his Maker according to the dictates of his conscience, you put him under the ban of the constitution—you deprive him of a political privilege dear to every freeman, and the birth-right of every American citizen!

And how does this restriction comport with the liberty of speech? This is regarded as an-

other of our dearest privileges. Man may speak freely of any and every other subject except religion, and it would be thought monstrous indeed to declare him ineligible for office! But let him speak in behalf of his religion and publicly plead the cause of his Redeemer, and he becomes not only unfit for office, but wholly unworthy of being even a candidate! A politician on the stump may vindicate the principles of his party, the lawyer at the bar may speak for hours for or against truth and justice, and this only renders him more worthy of office; but the minister who pleads for the good of souls is rendered thereby unworthy of seeking civil office! This is consistency with a witness—this is liberty of speech!

The exclusion of the gospel ministry from office, as in this section, makes a very invidious and odious distinction—such a one as I think wholly unworthy of the character and the constitution of this renowned commonwealth.

The exclusion applies, you perceive, to any preacher, teacher, or priest of *religion*. A man may preach anything else, deism or atheism, and the restriction does not apply. He may teach the grossest immorality—he may inculcate robbery under the specious name of gambling, or murder baptized dueling; he may be the high priest of Fourierism, abolitionism, or any other of the thousand and one humbugs of the day, and by this section he is still eligible for any and all offices in the gift of the people. He may even teach the doctrines of devils, and still be eminently qualified for office. It is only the man who teaches that life and immortality are brought to light by the gospel—who seeks to diffuse the benign influences of christianity—that is to be proscribed from all direct participation in the affairs of legislation!

Any man distinguished for his patriotism—who has rendered eminent service to his country—by becoming a teacher of religion, forfeits the great right of a freeman—becomes ineligible to office! But he may deny the faith and become an infidel, be profligate and abandoned, and thus once more be eligible—be worthy to receive the people's votes!

Here is a miserable gambler, and drunkard, and debauchee. He is now eligible to office. He reforms, however, and unites with the church. He dedicates his talents and influence to the cause of religion. He teaches religion, and for that offence, forfeits the birth-right of an American citizen—renders himself ineligible to office! What a distinction to constitute a part of the fundamental law of a christian state!

See the poor wretch staggering along your streets or wallowing in the gutters. He is polluted with every vice. He has reduced his wife and children to beggary and starvation. He has spent his all in the grog shop. He is reduced almost to the level of the brute. Still he is eligible for the office of governor! But behold that other man, eminent for every virtue that dignifies and ennobles humanity. Gifted, good, learned, and eloquent. Known and loved by all for the splendor of his genius, and the extent of his erudition. But he is ineligible even to a seat in your house of representatives; and simply because he is a minister of the gospel! I have drawn no fancy sketch. This is a veritable re-

ality—a fair, practical illustration of the doctrine of this section. I ask emphatically, if such policy comports with the dignity and character of the state?

This restriction applies only while the individual continues to be a teacher or preacher or priest of religion. Eligibility—the fascinations of political honors, and especially the charms of the salaries—are held up as temptations to induce him to resign his office in the church of God. This, to good ministers, would be no temptation. Before he entered his work, he made up his mind to undergo privation and the world's scorn. But this shows, that the restriction would be no restraint upon the minister ambitious of such honors, and covetous of filthy lucre. He could easily surrender his ministerial credentials; or else he could become a drunkard, a liar, a gambler, or in some other way disregard the requisitions of religion, and trample upon the mandates of the decalogue, and be expelled from the church, and then he would walk the highway to the offices and emoluments within the gift of Kentuckians! You declare him then to be worthy to receive the suffrages of the free and virtuous electors of our state.

Yes, sir, the bog trotter of Ireland, the boor of Germany, the serf of Russia, the inhabitant of any country or clime, the hue of whose skin has not been tinged by an Indian or an African sun, who may become a citizen of the state, is eligible to all its offices; while you deny eligibility to a virtuous and intelligent class of native born citizens, simply because they serve God according to the dictates of their conscience. I do not condemn your course in the first instance; on the contrary, it meets my hearty approval; but I ask, when you contrast it with the second, how can you vindicate your justice or your consistency?

I remark again, sir, that this restriction is wholly unnecessary and uncalled for.

There was some show of an excuse for it, but not the shadow of reason in its justification, when it was first introduced into an American constitution—in that of Virginia, adopted in 1776. That state was then influenced by peculiar circumstances. Previous to that time, under colonial regulations, the episcopal church was established there by law. To support the clergy of that church, certain lands, called glebe lands, were appropriated; besides a large stipend in tobacco was annually paid them. This became oppressive. Other denominations of religionists sprang up, who felt unwilling to support a church to which they did not belong and to whose doctrines they did not subscribe. The law was appealed to by the friends of the establishment. Persecution ensued. My own ancestors suffered severely—were whipped and cast into prison. This odious and persecuting establishment was put down, the year that the first Virginia constitution was ordained. The ministers of all other denominations submitted to it quietly, because it debarred their persecutors from office.

But there was another and a more controlling reason for this restriction. The great statesman who drafted that constitution was no friend to religion. He had tasted and felt the influence of the French philosophy, which just then be-

gan to lower upon the brow of the moral firmament, and soon after shrouded in darkest gloom the moral heavens of the civilized world. The great men of the earth, and many of our own statesmen, were enveloped in its darkness. This philosophy subsequently led its disciples to declare there was no God, and that death was an eternal sleep. It was, I say, the promptings in part of this philosophy which first gave birth to this proscription of gospel ministers.

No matter, however, what the cause prompting its first introduction; there is no reason for its existence now. We have no established church to put down. The dark cloud of infidelity and atheism has nearly all been brushed away. We live under happier auspices; and can survey the premises with other and more unbiassed vision.

This prohibition is unnecessary, because even if their admission into the offices of state were dangerous, it is evident they do not covet those offices. This I prove from their course in those states where no such restriction exists. In the constitution of twenty one of the states of this union, there is no such prohibition. By the constitution of the United States, ministers of the gospel are eligible to all the national offices. I appeal to the candor of delegates, and I ask them if, in those twenty one states, or under the government of the United States, they ever saw or heard of ministers, to any extent worthy of note, seeking political preferment? Do those twenty one states, or our nation, suffer any evil or incur any danger by not having this restriction? They do not. It is wholly useless and unnecessary—condemned by the experience of more than two thirds of the American people.

Ministers, generally, have chosen their calling in full view of the consequences. They know it is not the road to wealth and fame—they know they subject themselves to the world's hatred and scorn, on account of their profession—they might have sought other pursuits—they might have been lawyers, or physicians, or farmers, or something else, where wealth and honor would have smiled upon their pathway. The life of the ministry is one of toil, privation, and penury. Much of their time they are necessarily from their families, and when sickness or the pestilence prevails, they are around the beds of the diseased and the dying, administering the consolations of religion.

The ministers in the states where this restriction is not, possess as much of the confidence of the people, and are in every respect as accomplished and as able as here, or in any state. There is nothing to prevent their seeking office, and obtaining it too, but their settled disinclination. I think I may safely claim as much for the ministers of this state. Why this stigma, then? Why do you thus subject them to the suspicion, that the safety of their country requires their exclusion from civil office? Why furnish an occasion to the pert infidel, and the pot-house politician, to point derisively at them, as persons who, like criminals, negroes, and Indians, are ostracised from the offices of the state?

To place this restriction upon ministers, is to doubt the capacity of the people for self-government. Ought we not to presume that the people, at the polls, are competent to settle this

question? Are they not to be trusted in the selection of their own representatives? Are they likely to be so recreant to their interests, and so blind to their safety, as to choose men who are unworthy and unsafe, to manage the affairs of state? If so, our government is based upon a foundation of sand—it is but a superstructure of vapor, to be blown away by the slightest breath of air. I entertain no such doubts of the people, and hence believe that this restriction should not exist. And, if ministers of the gospel must be proscribed, why not proscribe all professors of religion? If there is danger in the gospel ministry, it is made dangerous by the religion they profess. That is what gives them their distinguishing peculiarity. It is their religion then, and not their mere talking about it, which should be placed under the ban of the government. Ministers make no pretension to that exclusive sanctity and elect righteousness which gentlemen seem to assign them. They are but men—but common citizens of the state, with no other civil interests than those possessed by their neighbors. This supposed peculiar sanctity of the ministerial profession is a figment of the dark ages, and is worthy only of the dark ages. I had supposed, that in this boasted age of light and science—of steam engines and magnetic telegraphs—that the doctrine that ministers were a class separate from the people, of different instincts and interests, would be treated as but a school boy's dream.

I admit that under certain circumstances, an individual should be deprived of his natural rights. When the safety of the government and the security of the community demand it, it is right and proper. Hence persons guilty of high crimes, the thief, the robber, the man-slayer, the traitor, forfeit their political birthright by their outrages upon society, and ought to be put under the ban of the government. The question arises, then—does the good of the state absolutely demand the exclusion of ministers from civil office? Why should they be declared ineligible to seats in the general assembly?

It is said, in justification of this restriction, that to make ministers eligible for civil office will corrupt them—that they have a high and holy calling, and ought not to be permitted to forsake it for the polluting contests of political life—that it will impair their usefulness and sully their purity!

Now, this is a very good reason to present to the minister himself, why he should not be a candidate, but surely it is no state reason why the constitution should deprive him of a great right—a right of which only criminals, for high crimes, are deprived. Suppose all that is said be true, and I will not call it in question, does he thereby commit an offence against the state? Does he subject himself to criminal prosecution? Do you proceed with equal rigor towards other citizens who may lapse into vice and sully their purity? Why not be equally careful of the morals of others?

And if you must assume to direct the business of citizens, and see that they do not neglect it, extend your guardianship further. Say to the physician, that he has the health of men's bodies to see to—that if he mingles in politics and goes to the legislature, he will neglect his patients

and injure his practice—and therefore he must be ineligible. Let the lawyer be told that his vocation is a vastly important one—that no man can be a good lawyer without giving his whole energies to his profession—that he must neglect his clients and injure his legal reputation by engaging in politics—and therefore he must be ineligible. Declare the farmer and mechanic ineligible, because they cannot successfully and properly carry on their business when away from it, and engaged in legislation! Consistency will carry you at least thus far—will lead you to bring ruin upon the state, by driving every person worthy to fill them from its offices.

But this tender and kind regard for the morals of the clergy is rather oppressive. Such terms of compliment and such fond expressions of solicitude sound rather syren-like. It is the voice of the enchanter alluring to destruction. It is decorating the victim with garlands as it is led to the sacrifice. It is the executioner asking pardon of the criminal for cutting off his head. This is loving us most too much. Like the bear, gentlemen would hug us to death. The gentleman engaged in this amiable decapitation but proves himself

“as mild a mannered man  
As ever cut a throat or scuttled ship.”

And when or where, let me ask, were you appointed the guardian angels of the ministers? When did you become the refiner's fire and the fuller's soap to purify the clerical profession? And if you have assumed guardianship over our manners and morals, why stop here? Why not insert a constitutional provision that we must not get drunk, or gamble, or blaspheme? Or do you suppose that like other citizens we can be left to our own judgment and to our own sense of propriety, in all such matters? That only in politics do you esteem it necessary to throw your aegis around us? In relation to the corruptions of civil office only, do you profess to have superior moral perception. You perhaps speak experimentally. “You speak what you do know and testify to that which you have seen!” Very well; I hesitate not to say that the ministers will receive your testimony; and doubtless their good sense and their religion will lead them to avoid that pool of pollution in which you have so long bathed. I think that if they will not of their own accord avoid this contamination, that a virtuous and sagacious people will very cheerfully take your wards off your hands, and see that they suffer no evil. You need not, I am sure, think the preachers and the people, like the blind leading the blind, will both fall into the ditch. All moral perception and all sense of propriety are not garnered in this convention. The people are not demented, nor are the ministers all knaves and simpletons.

I remember that even in the times of the Savior's incarnation, there was a certain class of gentlemen—the lawyers and doctors—who assumed the guardianship of the morals of the Son of God. They were apprehensive that his manners might be corrupted by consorting with publicans and sinners—they feared lest he might become gluttonous and a wine-bibber! If they did these things in the green tree, what may we not expect they will do in the dry? If these things were done to our divine Master, what

can we, his servants, expect, but to be classed with thieves and traitors by such exemplary guardians of our morals?

The Redeemer of men was crucified between two thieves, and the recollection of that event can well be perpetuated, by classifying his ministers, constitutionally, with thieves and robbers.

It is argued, that to make ministers eligible, is a virtual union of church and state.

And here, sir, the note is changed. Just now this restriction was justified on the ground that ministers were too good to mingle in legislation; now, however, gentlemen veer round, tack to another breeze, and tell us that they are too bad! Those who awhile ago were so holy and so pure, have doffed their robes of righteousness—are now like ministers of hell, seeking to subvert the liberties of their country! Well, if this be so, I confess it furnishes a good reason for excluding them from office. But even then, I do not think you sufficiently provide against the evil. They might obtain some disinterested individual, who for a fee, would undertake their cause for them; and thus accomplish their unhallowed purposes. You had better then banish them from the state. Every consideration of self-defence would justify such a course.

But, sir, this apprehension of the union of church and state is but the phantom of a diseased imagination—but “gorgeous hydras and chimeras dire,” seen in the same way that Hamlet perceived his father’s ghost, by “the mind’s eye!” Do you behold any tendency to the union of church and state in Georgia, Alabama, Mississippi and Arkansas?—or in any of the states north?—or in the government of the United States? And yet, in all these, ministers are eligible to office. There is no danger of the sort apprehended there; then why should there be in Kentucky? Are we more timid—more liable to be alarmed by mere creations of the brain than our neighbors?

Such a union belongs to the things that were. Every where it is falling into disrepute and being overthrown. In Europe it is being consumed by the fires of freedom. There is not a man in all this country who is in favor of such a union. The ministers of this country are as deadly hostile to it as any other class of citizens whatever. And how could such a union be brought about? If the thing can be done, let gentlemen demonstrate how it is to be done? Of course, some one sect would have to control the majority of the voters in the state. They would either by force of arms or else by convention called for the purpose, make another constitution. They would, to be secure, have to destroy the press, banish or burn the ministers and members of all other persuasions, and throw a wall of adamant around Kentucky, to keep out the indignant expression of opinion which would else deluge them from her sister states!

No man of reflection can believe for a moment that the slightest danger is to be apprehended from any such source. The resort to such a subterfuge but betrays the weakness of the cause sought to be defended.

But it is urged that it would endanger the liberties of the people to permit ministers to hold or even to seek political office. Have gentle-

men examined the history of their country? Can they find in this broad land a class of men more patriotic—who have done more for the interests and glory of their country, than the ministers? Why, sir, they presided over the foundation of this great republic. They induced “the pilgrim fathers” to settle in the wilds of America. The first constitution in christendom which guaranteed to all men the right to worship God according to the dictates of conscience, was drawn by Roger Williams, a minister of the gospel.

Sir, the old Continental congress did not think that ministers of the gospel were the enemies of liberty. In those days which tried men’s souls—when the assembled patriotism of America took council together, ministers were not excluded from their deliberations.

They were not proscribed by the congress of 1776—that noble assembly of patriots who pledged their lives, their fortunes, and their sacred honors, to maintain the independence of the United States. In that august body, who more eloquent for liberty and who more firm and undaunted in its maintenance than Dr. Witherpoon? His name stands subscribed to the Declaration of Independence.

The convention which formed the federal constitution—over which presided the great Washington—in the deliberations of which mingled Franklin, and Madison, and Hamilton, and Randolph, and others the most gifted and the best of revolutionary heroes and patriots—that convention, I say, did not esteem ministers of the gospel dangerous men. They did not put them under the ban of government. They threw open to them all the offices of the nation. Are we afraid to walk in the foot-steps of these men?

No class of men, in the war of the revolution, were more patriotic, were more consistent and undeviating friends of liberty, than the ministers of the gospel.

But it has been said in certain quarters, that almost all the ministers of Kentucky are emancipationists.

Granting this even to be so, if we are to infer hence that the ministry and emancipation are synonymous, and if emancipation must be put down by this constitution, then you cannot accomplish your work without saying that no man shall be a minister! But might not the matter be more easily, certainly more fairly reached, by simply declaring all the emancipationists ineligible? This would lay the axe at the root of the tree.

It is not true, however, that nearly all the ministers of this state favor emancipation. I have taken considerable pains to obtain the exact truth of the case, and I speak understandingly when I declare that an overwhelming majority of them were opposed to emancipation—that a greater proportion of lawyers than preachers were emancipationists. But who would think of assigning that as a reason for declaring that patriotic portion of our fellow-citizens ineligible?

C. M. Clay, and chancellor Nicholas, and the Hon. Henry Clay, and others, the prime movers of emancipation in Kentucky, are no ministers; nor are Garrison, and Birney, and Hale, and Giddings, the great northern lights of abolitionism.

Gentlemen are here treading upon enchanted ground. I am not of those who are haunted by the spectre of emancipation. It is not a name that I invoke to frighten children and nervous persons. No man ought to make emancipation a cause for declaring a citizen ineligible to office.

It is said that ministers have an influence in community; and that if eligible, they would, in some way or other, by using it, endanger the country.

Why, you, Mr. President, have an influence, or you would not now fill that chair; and all the delegates here have an influence, or they would not be here. Gen. Washington was a man of influence, and so is Gen. Taylor, and so is every man who is worth anything at all. But is the influence ascribed to the minister of the gospel, dangerous of itself? This is the true question; and on it I am prepared to meet any gentleman who will take issue. I utterly deny that preaching the gospel gives to any man a dangerous influence. There is nothing whatever in the office of the ministry which necessarily works injury to any one. That bad men have worn the name of ministers as they have of every profession, I do not deny. But these bad men in ministerial garb are the very men whom this section benefits—the man who has “stole the livery of heaven to serve the devil in,” can, with all imaginable facility, accommodate himself to the letter and spirit of your restriction, and revel in the offices and honors of the state.

We have been referred to history, and told that its voice warns to beware of the eligibility of ministers. The blood and carnage of by gone ages, under the outraged name of christianity, have been summoned to testify of the enormities that must be expected, if ministers be allowed to become candidates for office.

Infidelity is wont to refer to this page of history, not to prove that ministers, but christianity itself is the greatest curse and scourge ever inflicted upon an abused world. But all this is the result of not taking a proper view of the subject. It is the confounding of things wholly distinct. Neither christianity nor its ministers were the authors of these things. The genius of the one, and the commission borne by the other emphatically condemn them. That they were perpetrated under the name of christianity is true; but there is not a syllable in the Bible to justify them. They were all anti-christian. You might as well condemn the good coin for the counterfeit, as ascribe that to christianity which it condemns though performed in her name—as to condemn indiscriminately all ministers of the gospel because some bad men have assumed their vocation.

But even admitting the worst aspect of the case—go to the darkest night of the dark ages—and then I maintain that almost the only lights which gilded the moral sky were emitted by the ministers:—that then as not now, they were far in advance of their age and generation. They were called clergy because they alone could write. They possessed almost exclusively the learning and philosophy of the times.

If, however, appeals must be made to history, let all her testimony be taken; let her tell the whole of her story. If we must hear the bad

deeds of ministers, let us not forget the good they have done. I am willing to plant myself upon history and let its records be my vindication.

Let us go back to the beginning of the christian era, and what was the state of the world then, in morals, in religion, in science, and in civilization? “Darkness covered the earth and gross darkness the people.” Before what light was this darkness driven away? It was the light of that religion for the diffusion of which you propose to make men ineligible to civil office.

Why are we not idolaters like the ancient law makers of Greece and Rome? How happens it, that we are emancipated from the superstition which beclouded their minds? We have been raised in a christian land. Religion has dispelled from our minds the folly which envelopes those sitting in the regions of heathenism. Stand back in the darkness where our religion has never prevailed, and cast your eyes to christendom, and how bright and glorious she appears! What is it that has made her nations and people so much superior to other nations of the earth?—has so elevated them intellectually and morally? It is the christian religion, whose ministers you now seek to proscribe from civil office!

I appeal to woman. Let her, as she contrasts herself with her sister in heathen lands, tell you what has redeemed her from bondage and degradation? Ask her by what means she has been elevated to that proud, almost angelic position she now occupies? And with sparkling eye and beaming countenance she will respond, it was that religion whose ministers you declare unworthy to fill office under this government!

Sir, no class of citizens have done more for the real and enduring good of this country, than those very men whom you are about to class with its worst enemies. They have built most of our institutions of learning. They preside over the most important of our colleges and our universities. They are our principal teachers not only in religion and morals, but in all the useful arts and sciences. They have to a greater extent than any others, formed and fashioned the mind and manners of the people of this country. Are these considerations which should induce you to drive them from all participation in legislation!

But I will press this subject no further. I have already detained the convention longer than I intended. I thank you, Mr. President, and all the delegates, for the very polite attention with which you have listened to me. I felt called upon to say thus much. I have now discharged my duty. If this system still remains in our constitution, and I suppose it will, I shall bow submissively. Persecution is the lot of the minister's inheritance. The world, said our divine Master, will hate you, for it hated me. You shall be hated of all men for my name's sake. But, sir, be assured we will return good for evil. And no matter how hated or how proscribed, you will still have our best wishes. Our country and our countrymen will ever lie near our hearts. Is not “this our own, our native land?” Whatever position civilly you may assign us, under every privation we may experience, we will ever



earnestly and fervently ejaculate, "God save the commonwealth! God save the commonwealth!"

Mr. TAYLOR. I desire to submit a few remarks to the consideration of the convention, not so much in reply to the gentleman from Woodford, as to a paper which has been introduced into the journals and records of this house, remonstrating against the exclusion of clergymen from the legislature of this commonwealth. Permit me to remark that there is not a man in this house who has a higher regard for religion than myself, although I admit I have never taken upon me that yoke which is said to be easy, and that burden which is light.

I beg leave to read the following preamble which I desire to have adopted as prefatory to the section now under consideration:

"Whereas the history of modern nations teaches that it behooves freemen to watch with jealousy any interference of the church with state, and fearing that, from the slightest beginning, the precedent shall grow till designing and ambitious churchmen corrupt the purity of the church and render it a fit instrument of tyrants: and, whereas, ministers of the gospel are by their profession dedicated to God and the care of souls, and ought not to be diverted from the great duties of their calling, therefore no minister of the gospel, priest, or teacher, of any denomination whatever, shall be eligible to a seat in either house of the general assembly."

I do not claim the parentage of this preamble. The latter portion of it is taken from the constitution of the state of Tennessee, and exhibits a just and proper appreciation of the duties, character, and avocations of the christian ministry; the first part is drawn from the remonstrance (against the exclusion of the clergy from a seat as legislators in the general assembly of this commonwealth) presented some days ago by the gentleman from Bourbon (Mr. Davis.) In this remonstrance they argue the right of the clergy to the office of representative of the people, and they use this language: "The history of modern nations teaches that it behooves freemen to watch with jealousy any interference of the state with the church; seeing that from the slightest beginning the precedent shall grow till designing and ambitious politicians corrupt the purity of the church, and thereby render her a fit instrument for the purposes of tyrants."

It will be perceived by reading the preamble, that I have changed, in some respects, the phraseology of the above quotation from the remonstrance, and so altered it as to make it declare a great truth, and one which I hope to see adopted by this convention, to-wit: "That fearing that from the slightest beginning the precedent shall grow till designing and ambitious churchmen corrupt the purity of the church and of the elective franchise, and thereby render both (the church and the elective franchise) fit instruments of tyranny." Then follows the corollary taken from the constitution of Tennessee, that those who are dedicated to the service of God ought not to be diverted from their duties as his ministers.

Why has congress, by the constitution of the United States, been forbidden to pass any law authorizing the establishment of any religion? Why is it that in many states of this Union min-

isters of the gospel are prohibited from holding a seat in the legislature?

Mr. WALLER. Will the gentleman allow me to say twenty states never had any such provision in their constitutions, and twenty one have none at the present time.

Mr. TAYLOR. I admit that many of the states have not, in the reconstruction of their organic law, excluded from office the clergy; but I ask again why it is that in any of them the right of holding civil or political office has been denied them? It is a question easily answered, sir. Let your memory run back into the long vista of the past and it will return laden with convictions that there is danger in permitting priests and ministers to have any participation in the political and civil administration of government. It is because all history is fraught with startling instances of that danger.

Look, sir, at the spirit of this remonstrance; as Hamlet said of the ghost of his father, "it comes in such a questionable shape, I dare speak to it," and of it. The book of life informs us that it is the duty of every man "to work out his own salvation with fear and trembling." It is because it is the office of these gentlemen (ministers) to aid the penitent sinner to perform this great duty of working out his personal "salvation with fear and trembling," that the framers of the constitution of Tennessee inserted the clause prohibiting them from holding political offices and thereby diverting them from the care of souls, and from the service of the living God. I believe it is a sufficient reason for their exclusion, one which will withstand alike "the scrutiny of human talents and of time," as it will be acceptable to the great governor and judge of all men, and of him who has said "take up your cross and follow me."

Let us read a little more from this clerical remonstrance:

"If this, therefore, be the implied ground of the restriction reported by your committee—and we can conceive of no other ground sufficient to justify a manifest departure from the general law of equal rights to all—then we feel bound, solemnly to protest against any such provision, as in conflict with one great principle of free government—which it is the peculiar glory of the American states to recognise—the principle of non-interference of civil government with matters of religion."

What does the past teach us all on this subject; it is this, that wherever or whenever ministers of the gospel have acquired civil or political power, they have almost uniformly interfered with matters of religion, and made that power subservient to some peculiar creed or system of morals.

Wherever the doctrine of non-interference with the civil government by the priests and teachers of religion has prevailed, the safety and peace of the country has been promoted. I appeal to all history to prove, that wherever the clergy have been clothed with civil power, that human liberty and human rights have been unsafe.

Say the memorialists, "we deny the competency of the civil government to define the character and functions of the gospel ministry." You do. "Admitting the truth of the general sentiment above quoted, still we protest against such

a declaration as a portion of constitutional law. It is solely the duty of the church to declare the functions of her ministers." Who denies the right of the church to declare the duties of its ministers? No one here or elsewhere I presume. This convention has assumed no such power.

Again—we are told by the memorialists, "that the tastes, the views, and the habits of those composing the bodies which frame state constitutions are not necessarily, nor always such as to qualify them (meaning us,) for deciding justly in regard to the proper character and duties of the gospel ministry."

In view of this clerical denunciation of our unfitness, I am almost inclined to say with the poor publican, "Lord be merciful unto me a sinner." What man among us all has pretended to judge of or define the character or declare the functions of the minister of the gospel? No one. They have been defined and declared by the supreme legislator, by him "who spoke and 'twas done, who commanded and it stood fast." All we ask of them is non-interference with our civil institutions—that they shall indeed be non-combatants upon the political arena. The charge that this convention, in the adoption of the section excluding ministers from the possession and exercise of legislative powers, are arrogating the right to judge of the duties of the gospel ministry is untrue, and this clerical denunciation of our capacity and fitness for such purpose is to alarm us—it is to tell us in the language of Burns:

"If there's a hole in a' your coats,  
I rede ye tent it;  
A chiel's amang you takin' notes,  
And, faith, he'll prent it."

We are told, however, in this petition, "that the ministry are not any more than all other christians by their profession dedicated to the service of God." Sir, I had always thought they were indexes to point the way to heaven, and that they were "burning and shining lights" to indicate to us the true way. Strange is it not, that while they deny that the ministry are not more than other christians dedicated to the service of God," that they should yet assert that "protestant churches have for their ministers teachers called of God as they believe, and chosen by the people to instruct the people and administer ordinances established to be signs and seals of spiritual blessing."

So, sir, in one sentence they deny that they are more dedicated to God than other christians, and in another, as just quoted above, they assert that they are called of God.

The memorialists tell us, however, in this state paper of theirs which I am now analyzing, that "their chief objection, however, and that which has led your memorialists to obtrude themselves upon your honorable body, is, that while this provision is advocated most warmly, by those who are peculiarly jealous, as all men ought to be, of any interference between the church and state; yet, the insertion of such a clause in the constitution, on such grounds as we have shown to have been expressed, and as are necessarily implied in so doing, is a decision by civil authority of the great theological question of the age."

Why sir, we must shrink back, we must hesi-

tate, because we are about to decide "the great theological question of the age." What is this great theological question, which the exclusion of the christian ministry from political preferment will decide? Let us read what it is. These reverend gentlemen say—

"The great point in dispute between the church of Rome and those who sympathise with her on the one hand, and the churches of the Reformation on the other, is involved in the question—Is the minister of religion a priest? Is he a peculiar sacred person—standing to mediate between God and his offending creatures, by the offering of sacrifice? Or is he chiefly a teacher—an expounder of the truth, and administrator of sealing ordinances in the church? The church of Rome, if we understand aright her teachings, holds the former view; and consistently with that view, has for her ministers *priests*, ministering at an altar—offering the sacrifice of the mass—absolving the penitent on confession and penance, and constituting the channel of mysterious grace to the faithful. Protestant churches, on the other hand, have for their ministers *teachers*, called of God as they believe, and chosen by the people to instruct the people, and administer ordinances established to be signs and seals of spiritual blessing. Of course the ministry of the latter has not that sort of sacredness of character, which necessarily separates them from the mass of christian people—nor that spiritual power and that control over the conscience, which the officers of a priesthood in its very nature confers.

"Now if the minister of religion be a *priest*—a man apart from the mass of christian people, by the mysterious sacredness of his office, and if in virtue of his office, he have a spiritual power which can be shown to be incompatible with the free suffrage of the people in any way—there might then be some good reason for debarring him from civil office. But if the ministers of religion be merely one of the people, set apart to the duty in the church of expounding the truth and dispensing ordinances, with no other influence and power than that, which the faithful discharge of his duty confers upon him, then clearly there is no reason for making any distinction between him and other citizens in regard to the privileges of citizenship.

"If this statement of the question be correct—and we have no motive to misstate it—or do we think any one, whichever view of the question he takes, will be disposed to controvert its main features, then it follows that to decide by the constitution, that ministers of the gospel shall be ineligible to political preferment, is, in so far, to decide this great theological controversy against Protestants. Our complaint, however, is not that it is decided against us—but that it is decided at all by such authority."

So we see that 'tis the church of Rome, they are after, that whore of Babylon. If they can only persuade us that in excluding ministers of the gospel from political preferment, we are deciding the great theological controversy against protestants, they flatter themselves that we will open the door of the legislative halls to the aspirations of the ambitious minister of the new covenant.

Mr. President, I want no better evidence of

the propriety of their exclusion from interfering in the politics of the country, than is to be found in this very sentence just quoted by me. When they are knocking at the door, and demanding admittance, they are saying to one of their roman catholic brethren "stand back, for I am holier than thou—there is no danger in my admission, but beware of a *priest*, for he claims a spiritual power and control over the conscience," and therefore be jealous of him; but we claim no such mysterious sacredness of office, and wield no power incompatible with the free suffrage of the people.

Mr. WALLER. Will the gentleman allow me to interfere again. I do it because the gentlemen cannot do it themselves. They do not intend to cast any reflection on the catholic religion. There is a notorious controversy between catholics and protestants, in relation to their ministry. I am sure they intend no reflection against the catholic priesthood; they only say they do not want this convention to interfere with, and settle the question against the catholics. They do not desire the catholics should be kept out. They think, according to the American doctrine of the independence of the church from the state, that the clergy ought not to be excluded from civil office—that is their argument. I know they believe as firmly as I do, that the catholic priests have as much right to be regarded as eligible as any other teacher of religion.

Mr. TAYLOR resumed, and observed (that when he gave way to his friend Mr. Waller,) he was attempting to show that the tendency of the remarks of the memorialists was to convince us that there was a denomination of clergy in this country, of whom we should be especially jealous. Mr. President, I am for excluding them all, as well those who do not, as those who do wear the cowl and gown; as well he who bows to the cardinal's cap, as him who does not. As to this matter, they are all alike to me; they are all teachers of religion, and the experience of the past, and the admonitions of history teach me, that 'tis safe policy to exclude all, and hence I am in favor of the clause reported by the committee. The language of the report is "no person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society, or sect, shall be eligible to the general assembly." This includes all denominations, embracing mormons. Tell me not sir, that in voting for this clause, that I am deciding "the great theological controversy of the age," and that too against protestants. No sir, I am placing all upon an equality, making no distinction among the sects—I am prompted neither by inclination or duty to do so.

I do not know enough of the peculiar tenets of the catholic church at present, to speak of the power of the priest over the layman; but I understand there is an alliance existing in the country called "the protestant alliance," the object of which is to prevent as far as possible the propagation of the catholic faith here. I am no roman catholic; I am, however, a firm believer in the divinity of our savior. I have many relatives and friends who are members of the various protestant churches; those whom I have most loved and cherished on earth, and whom I desire

to meet in heaven, belonged to the protestant church. I exclude all catholics and all protestants. They may form alliances among themselves, but so far as my vote can go in this convention, none of their ministers or priests shall form any alliance or connection with the political power of this commonwealth, as that power is displayed in the legislative halls.

I drew the preamble read by me when I first rose to address the convention. I am not solicitous for its adoption, but it contains reasons sufficient in my estimation to justify the exclusion of the clergy as reported in the clause by the committee on the legislative department. *Obsta principiis*—resist things in the beginning. In obedience to this maxim, I have determined never to vote for a man who was in favor of stopping the mail on Sunday. That was intended but as the beginning to still greater and more serious attempts upon the liberty of the citizen. It is the dictate of prudence therefore to exclude all and every attempt upon the part of teachers of any and every religious denomination whatever, to place themselves where either their interest or their mistaken and misdirected zeal for the cause of their master would induce them to exercise power and forget right. The spirit manifested in this very memorial convinces me of the propriety of the vote I am about to cast.

Mr. GARFIELD. Personally, I feel no interest in the question of eligibility of ministers of the gospel to a seat in the legislature, for two or three very good reasons. I could not come to the legislature from my county if I would, and I would not if I could, and if I both could and would, the restriction contained in the report of the committee on the legislative department would not act as a barrier to prevent me.

It is very singular that the able committee who made this report, and the very critical gentleman who has just preceded me, have not observed one point in the report on this subject. It says: "No person, while he exercises the functions of a clergyman, priest, &c." Notice the sentence, "while he exercises the functions." The mere cessation of the functions of a clergyman renders a man eligible to a seat in the legislature of the state. This amounts, in reality, to no disqualification. The preacher with his license in his pocket, may be elected to the legislature and take his seat, simply by ceasing to preach during the session of the legislature. This prohibition amounts then to a shadow without a substance, a name without a reality, and simply proves the sentiments of the committee who originated the clause, and the gentlemen who support it without accomplishing the object intended.

It does however, accomplish one thing, and that is, it permits those who wear their clerical robes loosely, to come to the legislature, while the more conscientious are restrained; thereby aggravating the very evil which is sought to be remedied. But I leave this matter to be perfected by the friends and supporters of the measure. I possess neither the eloquence nor the power to handle this subject as it should be; I shall therefore say but little, leaving the advocacy of the great principles contained in it to wiser heads and more eloquent tongues.

There are, however, one or two thoughts

which are as yet untouched, and which I will present to the consideration of the convention. So far as this memorial is concerned, which the last gentleman on the floor has dissected, I had nothing to do with it, neither am I responsible for the arguments contained in it; still I will take occasion to say that it is an able document, unanswered, and, to my mind, unanswerable—full of sound reason, and appeals to the love of liberty and equal rights which is the choicest inheritance derived from our revolutionary ancestry.

I have felt this morning, more than ever before, the great necessity of every legislator being a lawyer. And the reason why every legislator should be a lawyer is this: that he may the better understand the hackneyed phrases a thousand times used, which the fraternity bring in when short of argument. If a proposition is driven home with a force of reason and power of argument wholly unanswerable, the cry of "special pleading" is raised, and behind this terrible phrase gentlemen strive to conceal the weakness of their own positions. Now I must confess I do not know the meaning of the phrase as used here. I do not know whether it means in common parlance, "I acknowledge the corn," (laughter,) or that the arguments of the special pleader are unsound. I sincerely trust that if this argument goes much further, gentlemen will be so good as to enlighten us upon this very essential point. (Laughter.) One thing is certain, when gentlemen are unable to meet argument with argument, fact with fact, and reason with reason, they shield themselves under legal technicalities, and from behind this screen cry "special pleading" to the home thrusts of their adversaries.

I have been somewhat amused at the course this discussion has taken. We are very gravely informed by the very pious gentleman from Mason (Mr. Taylor) that ministers of the gospel should not be eligible to a seat in the legislature because they have the care of souls under their charge; and he raises his hands in holy horror at the bare idea of one of these children of the church becoming corrupted. It is somewhat strange to me, I must confess, that gentlemen should take so great interest in the spiritual welfare of others to the neglect of their own salvation. I hope the gentleman will pardon me, but if it devolves upon me to work out my own salvation with fear and trembling, does not the same obligation reach every fallen son of Adam? And will not this category per possibility reach the gentleman from Mason? Still we are told that if preachers become members of the legislature, it will constitute the first step towards the union of church and state. The danger is just as imminent if you admit laymen; and according to this doctrine, if a legislator join the church his seat should be vacated for fear the church will exercise some undue influence over him. What is the difference between electing a minister and a layman? If the designs of the church are evil, you incur the same danger in the one case as in the other. The principle carried out works the exclusion of all professors of religion. I repeat, sir, you must proscribe all church members and leave the helm of state in the hands of non-professors for fear Christians will abuse

their power and effect the union of church and state. This is the legitimate tendency of the arguments of the opposition.

Again, we are told that great wickedness has been perpetrated under the name and sanction of the church. Grant that such has been the case. Is that a fair argument for excluding ministers from your legislative halls? Is that a reason for prohibiting the people from electing the men of their choice when that choice happens to be a preacher of the gospel? If the only wickedness committed on earth had been perpetrated in the church, by the church, and under the sanction of the church, then indeed there would be some force in the argument. But we have a lesson from high authority on this subject. We have been wisely exhorted to take the beam out of our own eye and then we can the more clearly discern the mote in our brother's eye. If then the church has gone astray, the world has always been astray. And it must first be proven that the church of Christ is the peculiar seat and habitation of sin, vice, and immorality, and that holiness, purity, and uprightness dwell entirely with non-professors, before we urge the deviations of the church as an argument against the eligibility of either ministers or laymen.

Sir, we find hypocrites everywhere, we find designing, crafty, wicked men everywhere. In all places and in all conditions we find a class of individuals who are disposed to hide their selfish and iniquitous purposes under any cloak which will best conceal them. But are clergymen the only designing men in the world? Are preachers of the gospel the peculiar depositories of vice and corruption? Does their calling peculiarly qualify them for the basest acts of which human nature can be guilty? Are they the only men who will sell their own and their fellow citizen's birthright for a mess of pottage? Do they above all other men abhor a republican form of government, and would they seek every means to subvert it? Are they the only traitors in the world? Such, indeed, would gentlemen induce us to believe them. This is the high estimate placed upon men who sacrifice wealth, honor, and fame for the benefit of their fellows, and such is the high meed of praise which they receive. The gentleman from Mason forms no better estimate of the body politic and politicians. He says the politician is corrupt, the legislator is corrupt, the body politic is corrupt, from the crown of the head to the sole of the foot. Has he not told you gentlemen, that it is his kind, benevolent design to save the sleek coats of the clergy from the quagmire of political corruption in which you all are floundering? This is a keen thrust at your political characters which I leave you to ward off.

I know but little of that political mire and filth which he says is so thickly spread over the face of this commonwealth. I know but little of the quagmires of political degradation which have been depicted to you in such disgusting but unnatural colors, and in which the gentleman would make you believe he had floundered all his life. But, sir, I have learned one thing which, in me, has plumed the pinions of hope, which has made me rejoice for my country, and which has given me a new supply of political courage. I have learned that the people are not

so corrupt, so bespattered with the mire of political corruption as is represented. I have learned that the people of Kentucky can appreciate political truth, and that they are prepared to stamp upon any man's forehead the brand of demagogue who is disposed to pander to the political views of the age. I have learned that they are qualified to distinguish between the vile demagogue and the honest man. I have learned that they are unprepared to recognize any man as their representative, whether churchman or worldling, who bows at the shrine of self-aggrandizement alone; who worships no deity but self, and who labors to build his own personal elevation upon the ruins of his country.

But sir, it is designed to accomplish some good by this restriction. It is intended either to keep the preachers pure, or to preserve the state from some supposed danger. In regard to the first design, the protection of the clergy, it is not legitimately within the province of constitutional provision. The state has a right to preserve itself and to legislate upon all matters purely political. But it has no right to legislate for the church. The purity of the gospel ministry is a question belonging solely to the church to settle. If we have a right to legislate for the purity of the ministers, then we have the right to deprive them of their offices when they violate our rules of clerical decorum; and this would, in effect, prostitute the church. It would be compelled to receive its faith and rules of practice from legislative enactment, instead of the pure fountain of divine revelation. But I apprehend, that upon reflection, this argument of the purity of the clergy will not be seriously entertained by any member present. It devolves upon the church to regulate the conduct of its public teachers, and I have no doubt the same feeling would obtain here which exists in the states where there is no constitutional prohibition, and that we should rarely see a preacher in the legislature. I have no doubt that the great majority of the churches in this state would deprive those ministers of their offices who would so far forget the sacredness of their calling as to engage regularly in political strife. Such a course does not become the station of a minister. His duties are as much higher as heaven is above earth. The effect of his labors are as much more enduring as eternity is more enduring than time, and the relative station of clergyman and politician, according to the doctrine of the gentleman from Mason, are as far asunder as heaven and hell.

I think sir, that the other argument, the preservation of the state, is inapplicable to the case, for, if necessary, it might be proven that the preachers of this country are as patriotic, honest and upright as any other class of citizens, and the opposite opinion is but the conclusion of a prejudiced mind. Priests and people in different ages have participated in the corruptions of our nature; but that the priests of any age have been more corrupt than the political powers of the same age is a proposition which yet lacks demonstration.

This question of prohibition involves a great principle, and for the principle only do I contend. What induced the citizens of Boston to dress as Mohawks and overturn the tea in the

Boston harbor? What induced our forefathers to resist the stamp act? Was it the paltry pittance required of them on stamped paper? No sir. It was the great principle involved. It was for that principle they resisted the enactments of parliament, and when it became necessary poured out their blood freely in maintaining their rights. We, their descendants, are this day re-enacting the injustice of the British parliament in drawing this invidious distinction between ministers of the gospel and other members of community.

But, it is thought that by excluding preachers from the legislature, we protect the government from an undue religious influence. This theory is idle. "It is wrought of such stuff as dreams are, and baseless as the fantastic visions of the evening." Before adopting any great principle of exclusion, we should be certain that it will accomplish the object intended. Why was the doctrine of ministerial disqualification originally incorporated into our constitution? It was because our fathers had formerly fled from an intolerant church. But the state was as intolerant as the church; and he who deduces from our early history the idea that all the evils of the institutions of our mother country were to be found in the clergy, has studied history to little purpose. But admit for a moment all the imaginary evils which a diseased brain can invent, will the prohibition remove them? No sir. Evil priests produce evil members, and you must exclude the follower as well as the leader or you have accomplished nothing. The line of demarcation between the dangerous and useful citizen is a moral line which cannot be traced by the avocations of men, but must be regulated by the conduct. If you wish to exclude a given influence you must proscribe all under that influence. If therefore you wish to exclude undue religious influence, you must exclude all members of the church, for the most dangerous power is that which has a concealed origin and manifests itself through a third person. Such would be the influence of the clergy through lay members.

It is urged that ministers of religion shall not be eligible to the legislature because they have the care of souls. For the same reason lawyers should be ineligible because they have the care of estates, and physicians because they have the care of the body; (which, by the way, many believe to be of much more importance than the soul;) thus the three professions, by the same reasoning, would be excluded. How much more anxious men often are, when fever is preying upon their vitals, to cure the body than the soul; and yet these very men tell us that as preachers are appointed to cure the soul, therefore they should not be eligible to the legislature. Consistency, thou art a jewel.

The man who does not intrude himself upon public notice, who pursues the even tenor of his way, who leads the peaceful and quiet life, and who is not a political brawler, has rights which, although unexercised, are dear to him; and it is the exercise of might unaccompanied by right, when those rights are taken from him. It is sir, trampling upon the rights of an honorable, gentlemanly, useful, and learned class of Kentucky citizens, to incorporate this prohibition in the

constitution. As has been justly observed, in other states where there is no prohibition, you will but seldom see a preacher in the legislature. On the other hand, where restrictions exist as in this state, you will frequently find preachers in the legislature. Viewing the subject in all its attitudes, the conclusion is forced upon my mind that we are violating a great fundamental principle without deriving the least possible benefit from that violation.

I have been induced, sir, to offer these remarks, not from any personal motives, but because I wished to see that old relic of the dark ages removed from our organic law, and every freeman placed upon a level, making character, integrity and qualification the only prerequisites to office.

Mr. TAYLOR. I am told that "pure and undefiled religion consists in visiting the widows and the fatherless, and keeping oneself unspotted from the world." I will substitute the above quotation as a preamble to the clause, if it will suit my friend from Fleming any better. I cannot see how a man can keep himself pure and unspotted from the world, if he mingles in the ardent and bitter political conflicts of the day. When I was first up, I spoke of the turmoil, confusion and strife engendered by political excitement, the retaliation, recrimination and fanaticism of party. There are men engaged on either side who answer Philips' description of a bigot, "one who has no head and cannot think, and no heart and cannot feel." The gentleman from Fleming (Mr. Garfield) made one true remark; "that it was not becoming in a minister of the gospel, nor was it his duty to mingle in the political strifes of the country, that his calling was elevated as far above this, as the heavens are above hell." It is to keep him above these influences and to preserve his character pure; it is that he may stand like Moses on Mount Pisgah and point us on to the promised land; it is to prevent him from coming down to the base of the mountain to mingle in the beggarly elements and pollutions of the world, participation in which unfits him for the great vocation to which he is called by his divine master. These are some of the reasons which induce me to vote for their exclusion from political life. I desire that they may indeed be "burning and shining lights," and so desiring, I intend to vote for the prohibitory clause reported by the committee.

Mr. WALLER. I cannot see from all I have heard from my friend from Mason, (Mr. Taylor,) but what his argument applies as pointedly and as powerfully against all professors of religion, as against preachers. His preamble last read certainly applies to all christians indiscriminately. But I appeal to the candor of this house, if the position he assumes, and especially the amendment which he read, does not strike at the foundation of the very principle he opposes, and favor the union of church and state. If government may regulate any of the offices of the church, it has a right to regulate all, and if you say a man who speaks in favor of religion shall not be eligible to office, you restrict the freedom of speech, and you strike a fatal stab at the right of man's speaking on the most important of all subjects to himself. I think you should not attempt to interfere with religion in any way.

The gentleman has read history to little purpose if he has failed to learn this lesson, that it was an effort of politicians to regulate the church, and not of the church to regulate the state, which brought about that union he now so justly condemns. But for regarding the ministers as a distinct class by the Justinian code, to subvert the purposes of state, there would have been no union of church and state. It is the right of the state to interfere in matters of religion, against which I most emphatically protest. The gentleman's modern history is at fault likewise in another respect. He alluded to the "blue laws" of Connecticut. I supposed every reading man had long since learnt that these laws are mere fictions, and that no such code ever existed in any state upon earth. If the gentleman's history is of the same kind, it is of little consequence. I remember one record however given in sacred history to which I may refer. The prophet was once rebuked by an animal not accustomed to speak; but it seems a slightly different fate has been my portion on this occasion.

Mr. HARDIN. I expect I shall have to give a vote against a majority of the convention, and I shall make only a few remarks before doing so. I have, for the last forty years, from time to time, noted the exclusion from the legislative halls of Kentucky, of the ministers of the gospel; and I could never see any good reason for it. I recollect when there were efforts made to force the president of the United States into a recognition of the independence of Spanish America. In some remarks I made in congress on that subject, I said I did not believe they could establish a republic there. They were all of one religious denomination. And it turned out to be true. Our government is very happily balanced. All our foreign relations, all our matters and things belonging to the nation, the army and the navy, are managed by the government of the United States; and that government is divided into three departments—the legislative, the executive and the judicial. They check and balance each other. But it would soon become a consolidated government and a despotism, were it not the municipal regulations of the country belong to the state government, and they are divided into three departments—the legislative, executive and judicial. They check and balance each other. The state governments balance the general government, and the general government balances the state governments. And the state governments check and balance each other. But the great check is this: we have in the United States, and in all the states and territories, religion, and a great many religious denominations have sprung up. They are all worshipping God and their Savior in the manner their conscience points out to them. And it is fortunate for the United States that no one sect has, perhaps, one twentieth part of the people. I have some statistics of the different religious denominations in Kentucky, which I think correct, which were taken about three years ago. Of methodists, there are about one hundred and fifty ministers, thirty thousand white members; united baptists about fifty thousand; reformers, from forty to fifty thousand, white and black; old school presbyterians, ninety ministers, and ten thousand members;



new school presbyterians, twenty one ministers and twelve hundred members, episcopal, twenty seven ministers, and about twelve hundred members; and of roman catholics, fifty to sixty ministers, and a white population of forty thousand. The whole together of the religious denominations will not amount to more than thirty thousand voters. We have now about one hundred and fifty thousand voters in the state. What danger then is there of a unity of church and state? There is a gentleman over the way, I do not know whether he is a minister of the gospel or not. Well, if he says he belongs to the church and he has two hundred and fifty voters; here is my worthy friend before us, (Mr. Waller,) who has eight thousand two hundred and fifty voters. Will there be any combination of the methodists and baptists? Will the catholics and presbyterians confederate? No; you might as well expect oil and water to mix. There can be no collusion, and there will be no conspiracy, especially when out of one hundred and fifty two thousand, there are only thirty thousand members of the church. I do not vouch for my information being correct, but a gentleman connected with the church has furnished me with the statistics I have read. What class of men are the clergy? They are moral, virtuous and intelligent men, and as a body, are the most learned men in Kentucky; and I say this without fear of contradiction. Some to be sure, start out on the ground that they have a calling that way. They say Christ made preachers out of fishermen, and that learning is calculated to spoil the preachers. The catholic clergy are learned men, we know. The father of the gentleman who prayed this morning, sent him four years to Rome that he might be educated. All denominations are trying to give their clergy an education.

We know that the presbyterians are doing every thing to instruct their clergy. So are the methodists, so are the baptists, and so is every religious denomination. And it must be confessed that they are a learned body of men—much more learned and intelligent, generally, than the doctors and lawyers. I will not say that there is more virtue, but I say there is as much. I will not say they possess more natural gifts. Well, what harm have they done? Here is my friend near me, (Mr. Waller,) one of the best informed men in the house; he has been here nine weeks, and he has not troubled the house but once, and that was to-day. There is the gentleman from Mason, who has not spoken much, but when he does speak, speaks well. We all expect to die in a few days, [laughter,] he goes off so much like—

"Hark! from the tombs, a doleful sound,  
Mine ears attend the cry:  
Ye living men come view the ground,  
Where you must shortly lie." [Laughter.]

I am in favor of the admission of the clergy. There is no exclusion in congress. I have never seen less than from ten to twenty there, and they are as praiseworthy a body of men, and as good members as you can find any where. I see nothing in any of these men to exclude them, whether they be presbyterians or baptists; and there is not a man whom I would more willingly meet than my worthy catholic friend, the

priest who prays for us here every few days. These men have a right to go to the legislature. They pay their taxes as we do—they submit to the laws, and help to sustain the government. And if there is a war, do you not see them at the head of your regiments, volunteering to pray to the Almighty for the success of our arms? I know the idea of the danger of mixing up church and state has come to us from the British government. But there we see the church having a representation in the house of lords. I did not intend to make an argument, but I rose merely to give the information I hold in my hand. But, I repeat, that there is no reason why we should exclude them. They have the same rights that we have—they are of an age required by law—they are native Americans, or if not, naturalized citizens—they submit cheerfully to the law—they are a virtuous body, and they contribute to the support of the government, and what is more, to the educational part of the country they have contributed more than any other class. Why is it we call gentlemen to pray for us every day? It is to address the Throne of Grace. "But," says the gentleman from Mason, "there is danger to the country, and therefore we must have the preamble which has been offered, and the exclusion of the clergy." I am utterly against the preamble, and against the exclusion.

Mr. M. P. MARSHALL. It is not my intention to detain the convention. My mind is fully made up to exclude ministers of religion from the political arena. We have been engaged here several weeks in amending the constitution of the state, and a considerable portion of that time has been spent in devising what restrictions shall be put on those who may become candidates for public office. We have said that no man shall be a judge of the court of appeals unless he is qualified by having practiced eight years at the bar. We have also said he shall be thirty years of age, and a resident for a certain time in the district in which he may be a candidate. These are the requirements we have made in regard to judges of the court of appeals. Now we are called upon to consider what shall be the qualifications of a candidate for the legislature. That is a question which I think should be fairly and dispassionately considered. We are asked by a most respectable portion of the people, by the clergy, by men whose minds and pursuits are elevated beyond human concerns, to remove the restrictions which are placed upon them, and to open to them the arena of politics. They have asked us in a most respectful and eloquent manner to admit them to occupy seats in our legislative halls. I object to complying with their request on account of their utter disqualification for the office of a legislator. I voted that a lawyer should have served eight years at the bar in order to qualify him for a judgeship. I object to a preacher being brought upon this floor, because he is sworn by his ordination vows to relinquish the pomps and vanities of the world. He has sworn that henceforth he will have nothing to do with the world and its vanities; that he will be ignorant of all the great concerns of man that relate to this earth and confine himself entirely to the consideration of those tendencies which lead to heaven above.

He has sworn to this; and that oath—that ordination vow—expressly disqualifies him, because either he has sworn to the truth, or he has not. If he has not sworn to the truth, then he is perjured; if he has sworn to the truth, and abandons it, still he is perjured. On either horn of this dilemma, therefore, he is disqualified in my estimation. One objection I have to their coming here is, that from my acquaintance with the clergy—which is but limited—I have met among them more interesting, more educated, more highly cultivated, more innocent minded men, than among any other class of men, whether professors of religion or not. Looking to the position in which our state is placed, it would be wrong in this body to give them a voice in our legislative halls. I shall vote against them, because I deem it impolitic that they should interfere with matters of a civil and political character. I shall vote against them because they have sworn that they are disqualified for any other office; and if we are to have disqualified men, then you incorporate into your new constitution that which your old constitution repudiates.

Mr. BULLITT. I have no hesitation in voting against the admission of the clergy into our legislative assemblies, and I will now give my reasons for so doing. They are the ambassadors of God on earth. For three hundred years after the crucifixion of Christ, they were considered the purest men on earth. From the establishment of the government of the United States, the clergy have possessed the same character, and I wish to keep them in that state of purity. The first account we have, is in Tacitus, contained in a letter from Pliny to Trajan, who was then the Emperor of Rome. The officer stated that several christians had been brought forward, who had refused to worship according to the laws of the land; and Pliny enquired what should be done with them. The officer stated it had been proved that they were pure men, and had not interfered with the government, nor been found guilty of any crime. Trajan replied, that Pliny, as governor of the province must, whenever a christian was brought before him, and proven to be guilty, enforce the laws against him; but he did not wish him to encourage informers on the subject. This purity remained with them up the time of Constantine the Great, who placed the church by the side of the throne. It cannot be questioned that for long after that fatal association of the church with the state, the greatest crimes were committed, the greatest outrages perpetrated upon the liberties and morals of society, under the sanction of state religion, that have ever disgraced the annals of the history of mankind. Witness the massacre of "Saint Bartholomew"—the history of which is familiar to you all—having a woman at its head. In order more effectually to accomplish the object of destruction, a royal wedding was proclaimed, to which all the most distinguished protestants of both sexes, in the kingdom of France were invited, and by this means a wholesale massacre was accomplished. In this general rising, 70,000 persons were murdered in one night. In making allusion to this particular instance of criminality, I do not intend to throw out any insinuations against the Roman catholics as a sect. There is little doubt that any other sect, had

they been subject to the same influences, would have acted precisely in the same manner.

The government of the United State is the first that has ever established full and fair toleration. The best writers on the subject of the connection between church and state—the best writers of England, and many of the ablest of ancient times, have considered it impossible for any government to stand for any period, without an established religion; but the history of the United States has fully proved, that all religions are harmless to the safety of a state so long as they are not incorporated with state institutions—nay, that in many respects they have been productive of much benefit when let alone.

Let us bring about a union of church and state, and that union will destroy this or any other government that ever was, or ever can be framed. I should therefore, be inclined to adopt the principle and the practice of Andrew Jackson, who was applied to by a minister of the Gospel for an office, under his administration. His reply to the applicant was, "you hold already an office much higher than any I can bestow upon you; I would advise you to go home and attend to the duties of that office."

Now, I shall vote against the admission of clergymen into the legislature for two controlling reasons: one is, that the connection of the clergy with the legislature will have a tendency to corrupt the church itself; and the other is, that such a connection would have an equal tendency to corrupt the state. We all know that the preachers, from their very vocation, have a controlling influence in their particular circles. It is true, that like all other men, when they come before the public, they ought to stand upon their own merits. And would not the Catholic priest have the same influence?

But we are told that the church is specially represented in other countries. Yes; how is she represented in Rome? By absolute authority. How is she represented in Spain? By the inquisition. How is she represented in Prussia? By cringing to the requirements of the Czar, who is the high priest. And how is she represented in England? Why, the people are all tythed one tenth of all their produce for her maintenance—the bishops and archbishops receiving enormous sums—the two archbishops get each over £50,000 sterling, and perhaps the poor curate, who does all the duty, and who attends most assiduously to the care of the flock, receives the pittance of twenty pounds a year. I hope gentlemen hardly expect we shall ever get as high as the archbishop of England.

No man ought to be eligible to the legislature, who can bring to bear in the canvass an official influence to elevate him to a post which he has not individual merit to reach without such influence. A preacher of talent and merit always possesses a controlling influence over his congregation, which would be used for his own aggrandizement. It is contended that the virtuous preacher ought not, and would not, forsake the duties of the church, and intermingle in politics, if he was eligible. To this I reply, that they possess all the ambition common to our nature, which was fully evinced in the late canvass for the convention. As soon as the restriction was removed, we found the preachers in

different parts of the state actively engaged in the elections—many of them engaged in stump speaking—whilst others became candidates. We have now in this body two or three preachers of eminent talents and worth, and as good members as any we have. I should be sorry to exclude them; but the public good requires a general exclusion, and we can make no exceptions.

As evidence of the great influence of the preachers, I would state that I have found, as far as my knowledge extends, that the politicians of the country generally, stand in great awe of them, and would be afraid to meet them on the stump, in the same manner, and with the same freedom, with which they would meet other men.

It was not my intention to make any remarks on this section, or on the resolution offered as an amendment; but as the debate has run somewhat high, I have thrown out these suggestions, which will be taken for what they are worth.

Mr. GARRARD. Mr. President: So far as I can ascertain the opinions of the delegates on this floor, I am satisfied that they desire to get through with the business before them, and to adjourn by the 20th of this month; and so far as I know anything about the business of this convention, I am disposed on all occasions to hear as much discussion as will do the subject any good; but I will say to that portion of the convention, who like myself have been chained down to our duties for the last two months, that it is time we should take the power into our own hands, especially after the example of this morning, when we have had speeches from gentlemen who have just returned from their own homes on a subject on which two thirds of the convention have no difference of opinion. I regret that it should be necessary on any occasion to apply the previous question; but from what I have heard this morning I am satisfied that this is a necessary occasion. I call for the previous question.

The main question was now ordered to be put.

Mr. C. A. WICKLIFFE called for the yeas and nays on the motion to strike out, and they were taken, and were—yeas 17, nays 74.

YEAS—Richard Apperson, John L. Ballinger, William K. Bowling, Alfred Boyd, Charles Chambers, James Dudley, Nathan Gaither, Selucius Garfield, Ben. Hardin, Andrew Hood, William Johnson, Alexander K. Marshall, Johnson Price, Ira Root, John W. Stevenson, John L. Waller, Silas Woodson—17.

NAYS—Mr. President, (Guthrie,) John S. Barlow, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, John Hargis, Vincent S. Hay, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, George W. Johnston, George W. Kavanaugh,

Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—74.

So the convention refused to strike out.

The section was then adopted.

Mr. GHOLSON, for the purpose of obtaining an opportunity to state the reasons for the vote which he had just given, moved a reconsideration of the vote by which the section was adopted. He said he had given his vote in obedience to the instructions of his constituents, but against the conclusions of his own judgment. He then withdrew the motion to reconsider.

On the motion of Mr. C. A. WICKLIFFE, the convention proceeded to the consideration of the thirty second section, as follows:

"SEC. 32. The general assembly may contract debts to meet casual deficits or failures in the revenue, or for expenses not provided for, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars; and the moneys, arising from loans creating such debts, shall be applied to the purposes for which they were obtained, or to repay such debts: *Provided*, That the state may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defence."

Mr. C. A. WICKLIFFE. If this section is designed, as I suppose it was by the committee, to enable the legislature to provide for any possible deficit of revenue, I am prepared to vote for it; but I am not prepared to vote for extending the permission to contract a loan for half a million of dollars annually. I move to strike out "five hundred;" and I do it with the view of offering to insert a smaller sum.

Mr. HARDIN. That subject was referred to the committee of which I was chairman. The reason why I did not call them together on this subject, was, I discovered that another committee had reported on the same subject. I will read some papers which I have in relation to it. The State of Kentucky is now indebted \$4,497,152 81. Her bank stock is \$1,270,500, and it is fair to presume these banks will pay the whole, dollar for dollar. Besides that, we are indebted to public schools the following sum, in which interest is included: \$1,299,268 42. This indebtedness we are bound to pay. I do not desire, therefore, to give the legislature unlimited power to increase that indebtedness. I should prefer that, instead of being allowed to incur a debt of \$500,000, they should be restricted to \$50,000. I have got a statement here that will show the enormous amounts that have been expended, and through which this debt has been

incurred. The Green river improvement cost \$859,126 79—the Kentucky river \$901,932 70—the Licking river \$372,520 70; and from this last named improvement we have never derived a cent. Besides this, we have expended the following sums on turnpike roads:

Maysville, Washington, Paris and Lexington road, -	\$213,200 00
Franklin county, road to Louisville, -	20,000 00
Shelby co., road to Louisville, -	45,000 00
Muldrow's Hill road, -	55,145 46
Mercer co., Crab Orchard road, -	71,800 00
Frankfort, Lexington and Versailles road, -	78,122 00
Danville, Lancaster and Nicholasville road, -	151,382 00
Scott county, road to Frankfort, -	43,325 00
Franklin co., road to Frankfort, -	15,400 00
Winchester and Lexington road, -	45,100 00
Lincoln co., Crab Orchard road, -	51,299 00
Covington and Georgetown road, -	170,135 77
Richmond and Lexington road, -	75,383 00
Georgetown and Lexington road, -	30,270 00
Anderson county, Crab Orchard road, -	42,950 00
Louisville to mouth Salt river, -	65,340 99
Mouth Salt river to Elizabethtown, -	84,581 16
Elizabethtown to Bell's tavern, -	118,778 24
Bell's tavern to Bowlinggreen, -	85,488 70
Bowlinggreen to Tennessee line, -	87,194 16
Franklin county, Crab Orchard road, -	17,064 00
Bardstown and Springfield road, -	65,190 60
Lexington, Harrodsburg and Perryville road, -	109,646 00
Bardstown and Louisville road, -	100,000 00
Bardstown and Green river road, -	289,825 19
Glasgow and Scottsville road, -	110,385 38
Mount Sterling and Maysville road, -	88,072 59
Versailles to Kentucky river, -	20,000 00
Logan, Todd and Christian, -	149,428 91
Maysville and Bracken road, -	25,948 00
Total, on turnpike roads, -	\$2,525,456 15

And for railroads the following sums:	
Amount expended on Green river rail road, -	\$1,903
Amount expended on Lexington and Ohio railroad between Frankfort and Louisville, -	220,000
Amount expended on Lexington and Ohio railroad, between Frankfort and Lexington, -	100,650
Total expended for railroads, -	\$322,553

And from these works, the state does not receive any thing like a sum to pay the interest on the expenditure; or scarcely to keep those of them that are in operation, in repair. I hope, therefore, the \$500,000 will be stricken out.

Mr. PRESTON. I concur in the necessity of putting some restriction on the power of the legislature to involve the people in debt. And I ask the attention of the convention to the thirty-second section of the article, that they may see in what attitude it places the power of the legis-

lature on this subject, before they determine upon adopting the propositions of either of the gentlemen from Nelson. The legislature of this state have heretofore had an unlimited power to create debt, and nearly every state in this union has the same power. Those which are most democratic in their form of government, with the exception of New York, Louisiana, and one or two others, have not deemed it necessary to put any other check upon the power of their legislatures to create debt, than the responsibility of the members to their constituents. We, therefore, are about to tread on new ground, and the vote which delegates here are about to give is one probably for which they will be called to a stricter account than any other which they may, or have, given, during the session. Every one must have been struck with the evils which have been alluded to by the elder gentleman from Nelson, (Mr. Hardin); the quantity of money we have spent, the indebtedness in which we are involved as a state, and the amount of taxation necessary to pay the interest and principal of that indebtedness. In view of these facts, what then do the committee who reported this article propose to do, to check this debt-creating power? In the thirty-third section, they say that the legislature of Kentucky, from this time henceforward, shall never have the right to contract debt, except by the consent of the people to whom the act creating the debt, with a provision incorporated in it for the liquidation of it, shall first be submitted for their assent or dissent. Let me ask them if it is desirable that we should proceed further, and declare that the legislature shall be shorn of all power, and not even have the miserable privilege of creating a debt to the extent of one year's income, and that whatever may be the failure in the revenue, they shall not have power to supply the deficiency? What have the committee done in this particular? They have declared that the state legislature—notwithstanding the advance in wealth and population of the state—never shall increase the public indebtedness beyond a sum which the annual income will pay—say five hundred thousand dollars—inasmuch as difficulties might spring up, the effect of which would be to disgrace the state, unless this provision existed. Disastrous periods might occur, like that of 1840, when it was necessary to borrow money to save us from the disgrace of repudiation. You who have been claiming for the legislature such authority as to say that they should have the power to remove the whole judiciary, are now declaring, with most singular inconsistency, that they should not have the power of contracting a debt which, altogether, singly or in the aggregate, will not exceed the annual revenue of the state. I do not understand why it is that one moment you wish to repose a power so vast in the legislature, and in the next wish to deny them even this small privilege, when it may be necessary, perhaps, to save the state from disgrace. Suppose this capitol should burn—why, fifty thousand dollars would not be sufficient to restore the library or to supply the furniture even. This building, itself, cost more than one hundred thousand dollars. And would you leave the legislature of the state houseless for three or four intervening years, until an act

could be submitted to the people and passed by the legislature? I am utterly averse, also, to striking out five hundred thousand dollars and substituting therefor one hundred thousand dollars; and for the same reasons. Would it be improvident to say that a man may contract debts to an amount which his annual income would reimburse? Would it be improvident then to say the same thing of the state? Might it not hereafter lead to great evils in the conduct of the affairs of the state, to impose such a restriction? Now, here is the thirty-third section, and if it is not stringent enough in all conscience, to satisfy either of the gentlemen from Nelson, I cannot conceive what will answer that purpose. It provides:

"No act of the general assembly shall authorize any debt to be contracted, on behalf of the commonwealth, unless provision be made therein, to lay and collect an annual tax, sufficient to pay the interest stipulated, and to discharge the debt within                    years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it."

So that, in fact, the committee, by this clause, have declared that not only is the action of the legislature necessary to create a debt, but that the people themselves, at the general election following, shall sanction or disapprove of their act.

Now, at the time of the general bankruptcy in 1840, no state in the Union had such a restriction on its legislature. The then aggregate of the indebtedness of the several states amounted to about \$240,000,000, and nearly every one of them repudiated or were on the verge of that disgrace. The state of Kentucky at that time, under the general depreciation of property and great failures in the revenue, was only saved from the bankruptcy which threatened by plundering the school fund. The gentleman from Nelson (Mr. C. A. Wickliffe) says no, but so I understand the facts to be.

Mr. C. A. WICKLIFFE. The legislature set apart the sum of \$800,000, according to my recollection, from that portion of the surplus revenue of the United States allotted to the state of Kentucky. The remainder of the sum was subscribed in stock to the bank of Kentucky, if I collect aright. The law setting apart the \$800,000 for school purposes, provided, that it should be vested in profitable stocks. The then executive being authorized by a separate statute to borrow a million of money by the issue of the bonds of the state, bearing five per cent. interest, and unable to sell these bonds abroad, or thinking that these bonds were a good investment for the school fund, therefore, made those bonds payable to the school commissioners to the amount of \$800,000. That was the disposition of that fund, and its proceeds were applied to the object of internal improvements. Sometime during the administration of Governor Letcher the legislature, with a view of reducing, on paper, the state debt, ordered the bonds given to the school commissioners to be cancelled, and thus was blotted out the school fund. The public revenue and credit did not suffer in 1840, and the

income upon the sinking fund paid the interest upon the foreign debt.

Mr. PRESTON. Notwithstanding the explanation of the gentleman, which leaves me almost as much in the dark as I was at first, I still think that the main part of my facts are unanswered. The fact was, as I understood, that the part of the surplus revenue of the United States allotted to Kentucky, and set apart to be applied to school purposes, was applied to the liquidation of the internal improvement debt. Our bonds having sunk to seventy per cent. on the one hundred in the northern market, this school fund was then seized upon and applied for that purpose. These are the facts about it if my memory serves me aright. I will not allude further to that part of the subject. Every member here must see the necessity of allowing the legislature to remedy these casual deficiencies in the revenue, or expenses not provided for—such for instance, as the destruction of the public buildings—by the creation of indebtedness, but not to exceed singly or in the aggregate, the sum of \$500,000. Is the thirty-third section not sufficient guard against the abuses of legislative discretion in the creation of state debts? I think it is. I shall vote against the amendment reducing the amount, and I hope the convention will pause before they strip the legislature, and through it the people, of all power or discretion in this matter. At least allow them, when they are utterly restricted from the creation of debts for any other purpose, to provide for casual deficits in the revenue, or unforeseen expenses not provided for.

Mr. C. A. WICKLIFFE. If I thought there could probably arise, under a frugal and prudent administration of the government of Kentucky, the necessity for the exercise of this debt-contracting power, to the extent of half a million of dollars, like the gentleman from Louisville, I might go with him to retain the section. But retain it as it is, and my word for it no future legislature will ever have occasion to resort to the loan prescribed in the following section. What is this thirty-second section? Why that you may borrow \$500,000, annually, to meet the contingencies of deficits in your annual revenues. Stop there, and perhaps there would be no dangerous or improvident exercise of this power; but there are also in this clause, expressions and words I do not understand, or else they ambiguously confer a power that may be improvidently exercised—"to meet casual deficiencies in the revenue, or to meet expenses not provided for." What does the committee mean by "expenses not provided for?" The legislature may run the state into debt upon this old system of internal improvement, to the amount of \$500,000, and the next year may borrow \$500,000 more to meet that indebtedness not provided for by law, and which the revenue is not equal to pay. That is my reading of the section, and it is nothing more or less than authorizing the legislature to borrow at pleasure, if they can create a necessity therefor by any system of expenditure, however provident or improvident.

Mr. PRESTON. The section provides that they shall not at any time, singly or in the aggregate, exceed \$500,000.

Mr. C. A. WICKLIFFE. Does the gentleman

mean in all time to come, or as long as the constitution shall be in force?

Mr. PRESTON. Yes sir.

Mr. C. A. WICKLIFFE. I do not so read the section, but if that is the intent, then it ought to be amended, because in the course of fifty years we may be under the necessity of borrowing an amount largely beyond that. Now we provide for the raising, every year, by our system of taxation, the money necessary to defray the expenses of government. There may be occasions in which deficits of 40, 50, or \$100,000 may occur, from the failure of the collecting offices, or the depreciation of property; but I do not see that there can be a failure arising from these causes, to the amount of half a million at any one time, and thus creating the necessity for the borrowing of that amount of money.

In relation to the school fund, of which I spoke, I mistook the amount by \$50,000. It was \$350,000, not \$300,000; and the facts in regard to it are as I have stated them. But so far as paying the interest on the state debt, and the demands which fell on the sinking fund, even during the crash of 1840, alluded to by the gentleman, when the banks stopped specie payments, and when credit at home and abroad was made to falter and to sink, this state was able to maintain her credit, by the prompt payment of her *coupons* for every dollar, the day it became due. A bill of exchange was drawn by our banks on New Orleans, which was negotiated at New York. The debt fell due on the same day the bank dividend fell due, and in order to meet the payment in New York, the sinking fund commissioners had always to anticipate its payment by a bill of exchange drawn through the bank, and based on the debt the bank would owe to the fund on the first of January. That is the way in which the debt was met in 1840.

My object is to strike out \$500,000, and to fill the blank with such sum as may be likely to be needed in case of a deficit of the revenue. In relation to the other section, authorizing the borrowing of money, with proper guards, I am prepared to go with the gentleman as far as is prudent and proper.

Mr. HARDIN. The government of the United States, after the national debt was paid, had a surplus of about \$28,000,000, and its annual income being amply sufficient for the ordinary expenses of government, an act of congress was passed, dividing this money among the states, according to their representation in congress. Kentucky having ten representatives and two senators, was entitled to twelve parts, according to the whole representation in congress. Several of the states, Virginia, I think, and one of the Carolinas, refused to receive their shares. Kentucky received \$1,433,756 29, and became responsible, whenever the necessities of the general government should demand it, to return the money; and I presume this will never be, unless we should get into some war of several years duration, and entirely exhaust our means. When that money was received, Kentucky, by some act of legislation, set apart \$850,000 of it, for common school purposes. Previous to that time, there was no common school fund at all; and that act is just as binding and obligatory on the state, as are those passed providing for slack

water navigation. The school fund, as a fund, is based merely on a promise of the state to herself, that she will set apart, and hold sacred \$850,000 for common school purposes. She gave to the trustees of the school fund the following bonds:

On 18th January, 1840, one bond,	\$500,000
On 22d January, 1840, one bond,	170,000
On 22d January, 1840, one bond,	180,000

\$850,000

These bonds drew five per cent. interest. The interest accumulated, and continued to accumulate, until the whole amount due by the state to the school fund, comprising interest and principal was \$1,299,268 42. Since then, and down to January 1, 1850, interest has accumulated, and not included in that sum, to the amount of \$51,223 29.

The gentleman from Louisville, (Mr. Preston,) says that our stock fell in the market to about sixty eight on the hundred. I think he is in error there; and that our six per cent. stocks, never fell below par. The five per cents. perhaps did. A report made to the legislature in 1845-6, exhibits the terms and conditions of every loan in the state; and it shows that the five per cent. stocks were never sold at less than at par, except in one instance, and then ninety eight for one hundred, while the six per cents. never fell below it. There was some railroad and turnpike bonds that fell below par; but the actual loans were never obtained at that disadvantage. We now owe, taking it altogether, upwards of \$7,000,000; and we pay \$271,289 35 interest. There is an annual drain upon us for interest, to that amount; and it now goes beyond the mountains. Our expenses have increased at a remarkable rate. I will read now a table, to show what a wonderful knack we had of getting up stairs, on this subject.

The whole amount of revenue collected by the sheriffs—

In 1829, was	- - -	\$61,396 05
In 1830, was	- - -	66,309 38
In 1831, was	- - -	62,351 44
In 1832, was	- - -	70,598 82
In 1833, was	- - -	64,758 58
In 1834, was	- - -	74,119 93
In 1835, was	- - -	124,518 80
In 1836, was	- - -	139,381 02
In 1837, was	- - -	169,864 35
In 1838, was	- - -	205,783 62
In 1839, was	- - -	218,363 53
In 1840, was	- - -	255,009 76
In 1841, was	- - -	261,898 98
In 1842, was	- - -	370,842 05
In 1843, was	- - -	325,413 88
In 1844, was	- - -	284,084 45
In 1845, was	- - -	315,413 35
In 1846, was	- - -	348,742 38
In 1847, was	- - -	350,838 39
In 1848, was	- - -	346,000 22
In 1849, was	- - -	415,002 20

The sum for 1849, refers to the tax levied for the year ending October 1, 1849. The levy for the coming year ending October 1, 1850, is \$562,000. If that increase is not enough to satisfy gentlemen, for God's sake what will? From \$74,000 in 1834—we have increased it up to this time to \$562,000. But says the gentleman, New



York has a larger debt, and so has Ohio. Yes—and I will tell the gentleman another secret; Great Britain has a larger debt. France has a larger debt; and all the great powers of Europe have a larger debt. But it does not follow that there is much comfort in owing about \$7,000,000 and paying \$271,000 per year interest, to go where? Is it paid out here? No. Where does it go then? It goes to New York, and is about as much loss to Kentucky as if it went to the East Indies, and was there worked up into images. Now what is the interest and duty of Kentucky? It is to provide a competent and active sinking fund to extinguish the debt as it shall become due; and that will be in about twenty-five years. My plan—if I had the power—would be, to keep the sinking fund up to what it now is, and by saving and economy, to withdraw from other purposes, money enough to pay the debt in twenty seven or twenty eight years. I was greatly in hopes that this convention would so construct the government that we should be able, to economise at least \$50,000 a year; but it has not done so; and I am for a tax to raise that sum; to be appropriated over and above what the sinking fund now is. The fund thus increased, the first year would pay \$50,000—the next \$53,000—the next \$56,180 and so on, until it will pay the debt in twenty-five years. I do not want the legislature to have the power to run us in debt any more. If the section means, that they never shall so long as this constitution may stand, incur more than \$500,000 indebtedness in the aggregate, then it improves the section; yet I should be unwilling thus to restrict the legislature, because in the course of fifty years, we may expect in a great state like this, to be obliged to borrow more than that sum.

The gentleman from Louisville, (Mr. Preston,) said, suppose the capitol should burn down. Well sir, if this miserable building, drawn after a Grecian Temple, and looking for all the world, when across the bridge, like the end of another bridge to the hill back here—and which is a disgrace to the state—if it should take fire; why in the name of God let it burn. We have had one or two capitols burned down, and a meeting house, or two; and I do not care how soon we get rid of this mean, contemptible, bridge-looking edifice. It is any thing but a capitol, in which to do business. Let the gentleman go to Mississippi, and see the magnificent capitol at Jackson; and as a Kentuckian, he will feel disgraced and humbled at the comparison. But our building cost 70 or \$80,000; and if it should burn, would it be necessary to borrow \$500,000 to re-build it? Will not two cents additional tax, provide the amount necessary? Certainly; and the same means should be resorted to, to meet any similar emergency. I am not against spending a thousand, or a million dollars, if it is necessary to the prosperity of the country. But I am unwilling to confer upon the legislature the power of getting us into debt. They have got us into debt enough already. The gentlemen who have argued here, do not seem to understand the condition of the common people of the country. It is a very hard task for a man now to pay his taxes; and yet gentlemen seem to regard it as a mere noth-

ing. Why in the name of God, what is half a million dollars—says one; and yet the people are called upon to pay nineteen cents, under the equalization law, and if a man's wife has to wear spectacles, or if she has got too old, or too fleshy to ride on horse-back, and has a buggy, he must also pay the specific tax on them. Gentlemen have a happy knack of saying all this is nothing; and yet out of these nothings, an enormous debt has been created. The Ohio river at its source is nothing, and yet when it gets to Louisville, it is a big river. How the state debt has been swollen to \$7,000,000 is fully exhibited in the tables to which I have referred. And I will say that, in traveling through the country, no reform have I heard so loudly called for, as that a restriction should be put on the power of the legislature to contract debts hereafter. I am not for repudiation. I am for paying every dollar we owe. There is no calamity that could fall on the country, that I believe would be equal to repudiation.

Mr. CLARKE. Early in the session of this convention, resolutions were offered by some two or three gentlemen, and my remembrance is, that some one or two were referred to the committee of which I have the honor to be chairman. These resolutions were on the subject of imposing some restriction upon the power of the legislature, in the contraction of public debt, and they were duly considered by the committee. I think I but express the sentiments of every member of that committee when I say, that they all concur in the opinion, that some restriction ought to be imposed. There were in the committee, those who believed that one restriction would be sufficient, while others believed a more rigid one would be necessary, but there were none who did not believe that some restriction should be imposed on the legislative action on the subject. The past history of the state has satisfied, not only them, but as I believe a large majority of the people of the state, that a wild and reckless system of running into debt, had pervaded the legislature in by-gone times, for a number of years, and that their heedless, headlong practice in this particular, should be restrained. This thirty-second section was incorporated into this report for that purpose.

There were those in the committee who believed that the legislature, for this purpose of supplying casual deficits in the revenue, should not go beyond \$50,000 in their power to borrow; others believed the limit should be \$100,000, others \$250,000, and others again \$500,000. But at the time that section was drafted in committee, it was not intended or supposed that a discretion was conferred on the legislature at any time, singly or in the aggregate, to create a debt exceeding \$500,000. No one of them supposed that the legislature, under this phraseology, "or for expenses not provided for," could at one session appropriate half a million, thus incurring expenses, and then at the next session, could levy a tax or issue state bonds for the purpose of defraying that expense; and so on from session to session running the state into debt. I am constrained to acknowledge that the section does not meet my entire approbation, because if there is any ambiguity in its language, I am well satisfied that the construction placed on it will be

to allow the legislature to borrow money. My experience and reading have taught me that legislative bodies in all countries are not disposed to give up any thing, but that on the contrary they are inclined to encroachment. If, therefore, the section is susceptible of any other than a plain, palpable and definite construction, I am in favor of making it so plain that none can mistake or misunderstand it. I am willing here to state, that I have not supposed that at any period in the future history of Kentucky, there will be a necessity to borrow more than \$50,000 or \$100,000 to meet the deficiencies of the revenue. It was urged in the committee, as it has been urged here to-day, that if our capital should be destroyed, then it might be necessary to contract a larger debt. That is a very good argument, and might furnish an exception to the general principle laid down in the thirty second section. I do not feel disinclined to say or allow that if an accident of that sort should happen in our state, some provision might be made to meet the emergency. But I declare that my purpose, as one of the committee, is to restrict the debt contracting power of the legislature. If the section, as it is reported, does not do it, to the fullest and utmost extent, I hope that one or the other of the gentlemen from Nelson, will so perfect it as to bring it up to the expectations of the people of the state. For if I know the past history of the state, it has wrung from the people an expression of dissatisfaction at the wild and reckless system of legislation that has characterized the last fifteen or twenty years.

The convention then took a recess.

#### EVENING SESSION.

Mr. C. A. WICKLIFFE withdrew his motion to strike out \$500,000 and insert \$100,000, and in lieu thereof moved to strike out the words "or for expenses not provided for," with a view of obviating any difficulty as to the construction of the section. He then moved that the convention resolve itself into committee of the whole, on the article under consideration, as the President expressed a wish to be heard.

This was agreed to.

The convention then resolved itself into committee of the whole, Mr. BOYD in the chair.

Mr. GHOLSON. I desire to make a very few remarks upon this subject. The whole matter at issue is this: does this convention intend to leave in the legislature unlimited power to contract debts? If it allows them to go to the extent of \$500,000 per annum, it might as well do it; for they would seldom wish to borrow a greater amount than that at one time, and thus they could go on from year to year, and run the state in debt as much as they please. I am as much opposed to repudiation as any man; and with the whole taxing power left unlimited, as it will be, to the legislature, no apprehension need be entertained of such a misfortune. My object, in wishing to restrain the legislature, is to prevent repudiation; for if they go on running the state in debt as they please, the people might refuse to submit to it, and declare that repudiation was preferable to inordinate taxation. And if actual deficits should occur, the governor has the power to convene the legislature at any time; and they possess the power of taxing

the people to raise the money to meet such deficit. There is no necessity, therefore, for this provision granting them the power to borrow \$500,000. There is no one subject, on which the people are so universally agreed, as the propriety of limiting the debt-contracting power of the legislature, and no reform was more loudly called for. All know that our taxes have been largely increased in consequence of the state debt; and I do not want any thing done by the legislature to increase that taxation, unless the question shall have been first submitted to the people for their assent or dissent. This is what the people of my section of the country at least, expect at the hands of this convention. There can be no necessity then for this proposition; and if I understand the force and meaning of language at all, the gentleman is entirely mistaken, in construing this section, as preventing the increase of the debt at any time beyond \$500,000. They might create that amount of indebtedness in any given year, and so on, year after year; for the section does not say, that for all time to come the whole indebtedness shall amount to \$500,000 and no more. It is one of those adroitly worded propositions that will admit of any construction emergency may call for.

The PRESIDENT. I wish to offer an additional section, to precede the thirty second section of this report, in the following words:

"The general assembly that shall first convene under this constitution, shall set apart an annual sum of at least \$50,000 of the public money, which shall be the first to be paid; and provide that the same shall be faithfully applied to the purchase and withdrawal of the evidences of the debt of this commonwealth, until the whole of the said debt shall be discharged: *Provided*, If the annual sum so appropriated shall not be sufficient to discharge the debt as it becomes due, the general assembly shall have authority to create additional loans for the punctual payment of said debt: *And provided further*, That the general assembly shall have authority, except as hereinafter provided, to contract other loans."

I was a member of the legislature when the original state debt was contracted. I voted for that system of internal improvements, which gentlemen take occasion now to denounce as wild, reckless, and extravagant. The men who were the members of the legislature at that time, instituted and carried out that system of internal improvements, did it with the sanction of their constituents. From year to year they returned to their constituents, who had a full knowledge of what they had done; and these men were again and again elected, for the purpose, and with the view, of fully carrying out that system. And in the part which I bore in that matter, I acted in accordance with the wishes of those I represented; and under the same circumstances, I would so act again. To hear gentlemen speak now, in regard to this subject, it would appear there were none left of those who gave their sanction to the system of internal improvements as it has been carried out; and that they are wiser than the generation which has passed, and had no hand in contracting this debt. I will not go back to the record and refer

to the yeas and nays, to show who sustained by their votes this system of internal improvements and the contraction of this debt. It is sufficient for me to know that there was a majority of the representatives of the people who voted for it; and that those men have never forfeited the confidence of their constituents for their participation in the creation and carrying on of that system. Some of them have been elevated to high and distinguished stations, notwithstanding those votes. And it is a matter of some pride and some credit to Kentucky, that notwithstanding she contracted these debts, in carrying on these internal improvements, she carried on that system, so far as it went, with much more prudence, and with greater economy, than many of her sister states; and that whilst they were driven to repudiate their debts, either from inability to pay, or unwillingness to sustain the burden of taxation, Kentucky has always been able to pay the interest, and as I believe, is now able and willing to provide for the payment of the principal of her indebtedness. I do not know of but one gentleman now on this floor—the honorable gentleman from Henderson, (Mr. Dixon,)—who is entirely guiltless upon this subject. He was uniform and consistent in his opposition to the system of internal improvements. But if I recollect aright, though there are a great many others who voted against it, still, whenever they could draw any little bonus to their section of the state, they always accepted it. Why, the lands west of the Tennessee river were given up to that section of the country, to be there expended for internal improvements; and the statutes show that they received and used them. To the mountain region we gave but little; but we gave them the unappropriated public domain; and they received and used it. A pitiful gift it certainly was, yet they took it.

The first appropriation that was made for slackwater navigation, was for the benefit of the Green river country—to lock and dam Green river. Now those who will look back to the early stages of this country, will find that the lands south of Green river—except the military surveys—belonged to the commonwealth of Kentucky. They were sold out to the citizens who settled there, under “head-right claims,” as they were called, to be paid into the treasury of the commonwealth by instalments. Thus the settlers in that portion of the country were indebted to the commonwealth for the lands on which they lived; and the interest on that indebtedness, for a long period of years, drew from that country into the treasury considerable sums of money, although the legislature granted them, from time to time, indulgences. That money was placed in the old Bank of the commonwealth, and constituted its capital stock, and amounted at last to upwards of \$500,000. In relief of the taxation of the richer portion of the state, we took the dividends, drawn from a part of those public lands, and assigned them to the government, together with the revenue drawn from the southern portion of the state. Then we made the commonwealth’s bank, a mere paper machine. We provided to turn into that bank the proceeds of our stock in the bank of Kentucky; and we loaned the credit of the state, in the shape of bank notes on the common-

wealth’s bank, to the amount of upwards of \$2,100,000, and we sustained the government by the interest upon our credit added to our taxes. Thus we drew from the necessities of the people, by loaning our credit, the means of sustaining the government; and from the Green river country, that portion of our lands, in relief of the taxation of the richer portion of the state. And when they came and said that they were shut out from all the advantages of navigation, by the interior location of their country, and could only get to market with their produce when the river was high—and year after year, for want of a freshet, their produce was rotting in their barns and on their plantations, and asked for an appropriation to lock and dam Green river, the representatives of the people of Kentucky voted for it, and designed and intended by the accomplishment of that work, to give them the advantages of navigation, as well as to give to that section of country some equivalent for the immense sums drawn from it, in relief of the balance of the state. And although the work does not now yield any thing like an interest on the sum expended—and perhaps this year will not pay expenses, on account of the extraordinary repairs that have been made—still I believe that the sum expended there was wisely and beneficially expended; and that that section of the country draws an adequate compensation from it; and that the state of Kentucky, by the increased value of the lands, draws a sum in increased taxation equal to interest on the expenditure. Next we undertook to lock and dam Kentucky river, and that worked—so far as we have proceeded with it—well, and has effected and accomplished the object had in view. It has made Kentucky river, so far as improved, a better navigation than that of the Ohio; and it has given to the section of country, within reach of it, the benefit and advantage of steamboat navigation, which, without it, they never could have enjoyed. And though it does not yield a revenue to the state a sum equal to the interest on the sum expended, it yields a benefit to the people of the state more than equal to the amount of money appropriated to the improvement. True it does not yield what was calculated and expected, because it is a work not accomplished. Kentucky was paying from \$500,000 to \$600,000, annually, to other states for lumber and fuel—for the lumber of New York and the coal of Pennsylvania—and it was the design and intention of those who undertook to lock and dam Kentucky river, to reach the coal, iron, and lumber region of the state, and thus to save to Kentucky the annual sums we were giving for the products of the mines and forests of other states, and with those sums to stimulate the industry, prosperity and wealth of our own commonwealth. If that work should be accomplished—as I hope and trust in time it will be—it will save this half million of dollars annually to the people, and by that sum paid out to the industry and enterprise of our own citizens, will increase the prosperity of all. I have nothing, therefore, to regret in the votes I gave for that work, nor the debts which are the consequence of it. I believe that the increased value of the lands in all the neighborhood around it, Kentucky, in her revenue, does now, and will

in all time to come, derive a fair and full equivalent for the expenditure.

The project to lock and dam Licking river was undertaken for the same principles and with the same views; and it must be acknowledged that the work is a total failure; and the money there invested a total loss. The difficulty was clearly perceived by those engaged in the enterprises of that day; and the effect of the distraction of the efforts of the state in the accomplishment of these works, by being engaged in the prosecution of three of them at one and the same time, was then apprehended as of dangerous consequences, and now we see that it was fatal to the system. If we had combined all our purpose, all our money, and all our energies upon one of them, we would have effected our object; and the benefits and advantages flowing from it, would have enabled us in time to have accomplished the others. The change of times—the bursting of the bubble—brought a period to the labors of Kentucky upon the system of internal improvements. And although we did not sell our bonds below par, to meet the balances against us, we gave them to contractors at par, in payment of what was due to them, when we knew they would have to sell them at a discount; and in many instances they did sell them at a discount of from ten to fifteen per cent. That was just as much repudiation on the part of the state, inasmuch as it took that sum from men who were fairly entitled to it, as was the refusal of other states to pay their debts; and we need not claim that we are entirely free from it. I felt it my duty to say this much in relation to this matter.

The system of turnpike roads has been referred to. When we commenced that system, there was but one turnpike road in the commonwealth, and that was an old road leading from Louisville to Middletown, not exceeding eleven miles in length. Through the enterprise of individuals and by the assistance of the state, considerable was done upon that subject. And here let me add, I differ with the elder gentleman from Nelson, (Mr. Hardin.) I believe that there has been as much, or even greater loss, upon the sums expended for turnpike roads, than on the amounts expended for the improvement of rivers. In the progress of internal improvements, I believe that since the adaptation of railroads to the wants of the commercial and traveling community, that both turnpike roads and river navigation will yield measurably to railroads. I have had occasion to review the system of internal improvements—its effects and its consequences—and I am free to confess, that so far as I am concerned, I greatly prefer that it should be done by private enterprise, than for the public to have anything to do with it. I believe that a system of internal improvements by the general government, where immense sums of money are paid out through commissioners and officers, bestowed on one section of the country, in order to increase the power and influence of the government in that section; and denied to other portions, in order to punish them for political opinions, or any other thing, is one of the most dangerous powers that can be exercised by the general government. I favor that strict construction which yields to it nothing but conceded powers.

Looking over the acts of the state, the records,

I find that I differed with a large portion of my own political friends; and was there found voting generally, in the ranks of our opponents, and often have I met the charge, that in authorizing that expenditure, under their management, as it generally was, I had aided and assisted them in procuring the means to strengthen and perpetuate their power in the state. I believed that great advantages were to be derived by the state, from that system of internal improvements. My constituents wanted this system; and I find that they sustained me from time to time, in the votes that I gave; and I am content. The public mind has changed; and public sentiment is for leaving this thing to private enterprise. The people now desire to provide for the payment of this debt, and to limit the power of the legislature to contract debts; and I am willing to go with them. But I see in the report of this committee, nothing that provides for the payment of the present debt, and only a restriction as to borrowing money. If we do not provide for the payment of the present debt; and we restrict the legislature in the power of borrowing, when the debt falls due, how is it to be paid? Is it to be met immediately and directly by taxation? Or is the loan to be extended? In the section that I offer, I propose, that the first general assembly which shall meet, under the new constitution, shall set apart from the revenue of the commonwealth, \$50,000 annually; to be appropriated to the withdrawal of the evidences of this debt; and if that is not sufficient to meet those debts, as they fall due, that then the legislature shall have power to contract loans to fulfil the faith of the state. And this \$50,000, appropriated annually, will in time pay off, and discharge the whole debt. I believe the sentiment of the people is ripe for it; that they desire, and will sustain it—that our duty to the commonwealth, is thus to provide for it. Then I will go with gentlemen to restrict the legislature beyond what may be considered a fair sum, for deficiencies that may arise in the annual revenue; also to restrict them in the power to contract debts for internal improvements, unless it shall be submitted to the whole people.

In reviewing this matter, I will say, that the benefits and advantages from the sums that we have laid out, fall immediately and directly to particular sections of country; and although it has increased the general wealth, prosperity, and revenue of the state, yet all sections are obliged to bear the burden of taxation, to pay the interest, and will have to bear it, to pay the principal of these debts. Thus, to some extent, the benefits and advantages of these improvements, carried on by the state, as they were, or as any other will be, fall particularly on the sections where the works are located; while the whole state must equally contribute to defraying their costs. Therefore there will be very little likelihood of public debt being contracted for such works, unless they shall be of such general importance as to interest a large portion of the commonwealth.

All the revenue that goes to the sinking fund, is not derived from direct taxation on the country. We have a tax of fifty cents on the hundred dollars, on \$1,250,000 stock in the Bank of Louisville; on \$3,700,000 stock in the Bank of

Kentucky, and on \$2,250,000 in the Northern Bank; and these sums constitute a part of the revenue of the state. In addition to that, we have the dividends on—I do not know the exact sum belonging to the state—I believe about \$1,250,000 bank stock—the greater portion in the Northern Bank, paying eight or nine per cent., in the Bank of Louisville, paying eight per cent., and in the Bank of Kentucky, paying eight per cent., and which will pay an extraordinary per cent., when they get in the proceeds of recovery from the Schuylkill Bank, exceeding \$500,000—to aid and assist the sinking fund, or to assist in paying the interest on the internal improvement debt. The capital stock of the Bank of Kentucky, was recently increased to \$5,000,000—\$3,000,000 of which was to be subscribed by individuals, and \$2,000,000 by the commonwealth, which she was to pay in by bonds bearing five per cent. interest; and in consideration of that, she was to draw a tax of half per cent., and in addition to that, the increase of the dividends. The same thing was done in relation to the Northern Bank. Thus, a sum exceeding \$100,000 annually, was derived through these institutions, in aid of the revenue of the commonwealth of Kentucky, and more than that sum is now derived to the sinking fund, from the stock in, and the tax on these banks. It was hoped, that with these additional aids, and the profits that might be derived from the public works, that we should be able to provide for the payment of the interest of the debt, without resorting to taxation. But the fraud upon the Schuylkill Bank, and the change of times, made it necessary to resort to taxation. And the predictions of those engaged in the system of internal improvements, of being able to carry it on without taxation, by these means, were rendered as are the calculations of many men, futile. But since that time, with an improvidence that is remarkable, upon the mere boon that the Northern Bank and the Bank of Kentucky should loan to the people at six per cent.—to be divided among the counties—of some \$500,000 or \$600,000, to be paid back on small calls—and I believe every dollar of it was paid back in about eighteen months—the state cancelled the obligations of those banks, and thus was lost the annual sum to the sinking fund formerly derived from those sources, and which has now to be supplied by taxation. It was not a very wise or prudent system of financiering, and it was based on a mere desire to induce the banks to loan; which they would have done, because they must loan their money to make a profit. They are very keen at making good bargains, and they made an immense bargain out of the state on that occasion. I desire to throw no imputation on any man, or set of men, in regard to this matter; for I believe the sentiments of the people are changed in regard to it. But there is no reason that we should brand as profligate or extravagant, a system of internal improvement, that has the sanction and support of the people, and which was carried on in accordance with their wishes and sentiments. I believe the action of those who participated in that system was in accordance with the wishes of their constituents; and I think that when we have changed our opinions in relation to it, it is useless to stigmatise them.

In changing our opinions, let us not put our condemnation upon the system, without honestly and fairly providing for the payment of the debt to the last dollar, and it can be certainly, and easily paid by an annual sum appropriated for that purpose. I believe that was the object of the elder gentleman from Nelson, (Mr. Hardin,) when he asked for a committee on this subject; and I hope and trust we shall have his aid and assistance, in passing this provision, or something like it, that will provide for the payment of this debt. This is all I have to say on the subject.

Mr. BRADLEY. I desire to make a statement, which the remarks of the president has rendered somewhat necessary on my part. I never had the honor of serving in the legislature with him; but I did have the honor of a seat in the legislature the year after the system of internal improvements was commenced, and I served here for four years successively. The president of this convention was, I think, a member of the senate at that time; and I presume he is not well informed touching the votes I then gave. I hope he had no allusion to me when he referred to the gentlemen from Henderson, (Mr. Dixon,) as being the only gentleman on this floor who had been consistent upon this subject. I was against the system from the beginning; and I believe my votes stand recorded upon the journals against borrowing about \$4,000,000 of this debt. The gentleman from Henderson then represented the county in which I live, in the senate; and we had frequent conference upon this subject, and understood the course that each other pursued at that time. I have made this explanation, as due to myself, after the remarks of the president on this subject.

With regard to the effect of these internal improvements on the portion of country where I reside, I differ with the president. I do not think they have been beneficial or advantageous to that particular region, except to a very small portion of the country lying on the margin of the river. And these improvements generally have been more or less local in their effects. I have not arraigned the course of any gentleman in this matter. I have differed in opinion with them in regard to the policy of these measures, and I still differ with them in regard to its results. I am, to come to the question more directly, in favor of restricting the power of the legislature hereafter to contract debts; and I believe such to be now, almost unanimously, the public sentiment of Kentucky. I came here under pledges, so far as my vote would go, to place a restriction in the constitution on the power of the legislature to contract debts in the future, except to a very limited extent. I agree in sentiment with the president with regard to the payment of the debt already contracted; and I shall be in favor of taking some mild step, that looks to the accomplishment of that end.

Mr. MAYES. I was in the lower house of the legislature at the session of '36, '37, when the question of internal improvement was in full blast. I do not suppose it is a matter of consequence, whether I voted for or against it; if it is, gentlemen can ascertain the fact by a reference to the journals of that session. I therefore move

that the committee rise, and report the bill to the house.

The motion was withdrawn, by general request, in order that the question might be taken on the amendment.

Mr. CLARKE. When I explained the motives which influenced the committee in adopting this section of the report, I took occasion to remark, that I thought a large majority of the people of the state concurred in the opinion, that the legislature should be restricted in contracting debts, and in the wild and extravagant use of the public money and public credit exhibited in its history for the last twenty years. In making the statement I did, I denounced that species of legislation as wild and reckless. I have not arraigned, and I see no reason now to arraign, the votes or motives which were given by, or influenced any gentleman in his participation in bygone legislation. I have no doubt that every gentleman, in voting for the adoption of that system, honestly and fairly represented his constituents. But while I concede this much, I will add that I well remember—though I was but a boy at the time—that the people were told in both branches of the legislature that all the money they were borrowing for those internal improvements would be re-paid by the profits of those works, and that the people would never be called upon to pay a dollar of it. They were told that these improvements would yield a dividend sufficient to pay not only the accruing interest, but the principal of the debt, and also aid in lessening the taxes of the people. Well the people, by sad experience, have found out that these gentlemen were mistaken upon the subject? Not only that, but they find saddled upon them a debt between 5 and \$7,000,000, and that the taxes have been increased to a burdensome extent, to meet the interest upon that debt. And they find now, and I think properly and correctly, a proposition made to meet the principal. Hence it was, that with a knowledge of these facts, that the people in almost every county in the state called upon the candidates for seats here to declare whether they were or were not in favor of restricting the debt-creating power of the legislature. The people have been deceived in the accumulation of a mighty and ponderous debt, that is now weighing down the energies of the state, and abstracting from the proceeds of their labor and property large amounts annually in taxation to pay the interest on that debt. These evils have all been brought upon them by legislation, and now we are called upon in this convention to throw shackles upon the power of the legislature to subject the labor of the country to the payment of debts thus contracted. In speaking of that legislation, I characterized it as wild and reckless, and its sequel proves that it is so. Take, as an instance of it, the two turnpike roads running from Louisville to the state line in the direction of Nashville. There they run, scarcely separating for forty miles, and at some points coming so close together as almost to enable a man to stand in one and jump on to the other. Was it remarkable then, that works thus carried out should not yield a dividend on the amount expended in their construction, much less to extinguish the principal on the debt incurred? Then, even if the people

were led on to send representatives to the legislative halls to make an appropriation, and did do it in obedience to the will of the people, I still feel authorized to say that these appropriations were wild and reckless, because they never have, and never will, carry out the expectations of those in favor of the improvements. Hence, the people now denounce that system of internal improvements, and of pledging the labor of the state to the payment of large debts incurred in making these sectional improvements. Having denounced it, they have sent us to this convention to frame a constitution that will withhold such power from the legislature in future.

Mr. HARDIN. I comprehend what the President means, and his amendment, with a slight addition, will do exactly. That is, I suppose he intends that the sinking fund shall be kept up to what it now is, and then this other \$50,000 shall be added to it.

The PRESIDENT. Yes sir.

Mr. HARDIN. Then it will do exactly, and will provide for the payment of every dollar of the debt. I have a table, showing how this debt was created, which may be interesting to the convention. Three or four years since it was correct, and is nearly so now. It is as follows:

5 per cent. bonds, payable 35 years after date,	-	\$165,000 00
5 per cent. bonds, payable 30 years after date,	-	450,000 00
6 per cent. bonds, payable 30 years after date,	-	3,579,000 00
6 per cent. bonds, payable 6 years after date,	-	100,000 00
6 per cent. bonds, for repair of railroad, payable 6 years after date,	-	54,000 00
Money borrowed from the Bank of Louisville,	-	30,000 00
Due to United States government,	1,433,757	39
Due School Fund,	-	1,115,430 00
To Northern Bank of Kentucky,	-	250,000 00
Craddock Fund,	-	3,000 00
Total,	-	<u>\$7,210,157 39</u>

The amount of the debt has been somewhat changed since this report was made out. While I am up, I will read, for the information of the house, a paper I could not before find:

There has been paid, on the Kentucky river navigation, for the building of locks and dams, &c.,	-	\$901,932 70
There has been paid for the same purpose, on the Licking river navigation,	-	372,520 70
There has been paid for the same purpose, on Green and Barren river navigation,	-	859,126 79
Total expended for navigation,	-	<u>\$2,133,580 19</u>

There has been expended for railroads, as follows:

Amount expended on Green river railroad,	-	\$1,903
Amount carried forward,	-	<u>\$1,903</u>



Amount brought forward, - - -	\$1,903	Deduct from this, the expenses of this slack-	
Amount expended on Lexington and		water navigation, as follows:	
Ohio railroad, between Frankfort		Kentucky river navigation, - - -	\$26,600 00
and Louisville, - - -	220,000	Green and Barren river navigation, -	12,532 06
Amount expended on Lexington and			<u>\$39,132 06</u>
Ohio railroad, between Frankfort			
and Lexington, - - -	100,650		
Total expended for railroads, -	<u>\$322,553</u>	And thus, there is left a balance of \$10,969 38,	
There has also been paid for turnpike roads,		which is all these improvements contribute to	
as follows:		pay the interest on the public debt, amounting	
Maysville, Washington, Paris,		to \$271,287 35.	
and Lexington road, - - -	\$213,200 00	Here, also, is a statement of the amount of	
Franklin county, road to Louis-		bank stock we own, or did own, in 1846:	
ville, - - -	20,000 00	7,000 shares of stock in Bank Ky.,	\$700,000
Shelby co., road to Louisville, -	45,000 00	2,000 shares of stock in Northern	
Muldrow's Hill road, - - -	55,145 46	Bank Kentucky, - - -	250,000
Mercer co., Crab Orchard road, -	71,800 00	In the name of the commissioners	
Frankfort, Lexington, and Ver-		of the sinking fund 406 shares	
sailles road, - - -	78,122 00	stock in Bank of Louisville, -	40,600
Danville, Lancaster, and Nicho-		2,399 shares stock in Bank Ky., -	239,900
lasville road, - - -	151,382 00	400 shares stock in Northern Bank	
Scott co., road to Frankfort, -	42,325 00	Kentucky, - - -	40,000
Franklin co., road to Frankfort, -	15,400 00	Total, - - -	<u>\$1,270,500</u>
Winchester and Lexington road, -	45,100 00	In relation to the lands west of the Tennessee	
Lincoln co., Crab Orchard road, -	51,299 00	river, to which reference has been made here, I	
Covington and Georgetown road, -	170,135 77	will only say, that it was the paper of the Com-	
Richmond and Lexington road, -	75,383 00	monwealth Bank that was received in payment	
Georgetown and Lexington road, -	31,270 00	of them, and as fast as it was received, it was	
Anderson county, Crab Orchard		burned. Very little of the proceeds were ex-	
road, - - -	42,950 00	pended for the expense of government, and a	
Louisville to mouth Salt river, -	65,340 99	great deal of it was taken to cover bad debts. I	
Mouth Salt river to Elizabeth-		will further remark, that I have not voted for	
town, - - -	84,581 16	any part of this system of internal improve-	
Elizabethtown to Bell's tavern, -	118,778 24	ments. I was chairman of the committee on	
Bell's tavern to Bowlinggreen, -	85,488 70	finance of the state senate for six years, and I	
Bowlinggreen to Tennessee line, -	87,194 16	checked the system up to the time I left that	
Franklin county, Crab Orchard		body, the eighth day of February, 1833, the last	
road, - - -	17,064 00	time I served in the legislature. What has taken	
Bardstown and Springfield road, -	65,190 60	place there since that time, I know not particu-	
Lexington, Harrodsburg and Per-		larly, but I doubt not that every gentleman acted	
ryville road, - - -	109,646 00	honestly and for the interests of the state. But	
Bardstown and Louisville road, -	100,000 00	one thing is certain, and that is, the system of	
Bardstown and Green river road, -	289,825 19	slackwater navigation has failed entirely. The	
Glasgow and Scottsville road, -	110,385 38	system of turnpike roads does not yield so much	
Mount Sterling and Maysville		as was expected, but they have been of great	
road, - - -	88,072 59	benefit to the country. The whole amount they	
Versailles to Kentucky river, -	20,000 00	yielded during the past year, is \$34,095 67—	
Logan, Todd, and Christian, -	149,428 91	while the whole amount expended on them is	
Maysville and Bracken road, -	25,948 00	\$2,525,456 15.	
Total, on turnpike roads, -	<u>\$2,525,456 15</u>	I regret, extremely, that I have not made a	
RECAPITULATION.		regular report on this subject, as chairman of the	
Amount expended for slack-wa-		committee on the subject of state debts, but other	
ter navigation, - - -	\$2,133,580 19	committees had reported on the same subject,	
Amount expended for railroads, -	322,553 00	and I had no desire to aid in bringing before the	
Amount expended for turnpike		convention two reports on the same subject.	
roads, - - -	2,525,456 15	There is a table in the report of the secretary of	
Total am't. paid for Int. Imp., -	<u>\$4,981,589 34</u>	state, four years ago, showing how our state	
The whole amount the slackwater now yields,		debt can be paid off. It was prepared by Mr.	
is this.—		John Sharpe, Austin P. Cox, and myself, as fol-	
Kentucky river tolls, gross, - -	\$41,688 38	lows:	
Green and Barren river tolls, gross,	7,932 06	1st Jan. '47, invested, \$50,000 00	
Rent of water power on Ky. river,	480 00	1st year's interest, 3,000 00	
	<u>\$50,101 44</u>	2nd year's investment, 50,000 00	
			103,000 00 Jan. 1, 1848
		2nd year's interest, 6,180 00	
		3rd year's investment, 50,000 00	
			159,180 00 Jan. 1, 1849

	159,180 00			1,839,255 48	
3rd year's interest,	9,550 80			20th year's interest,	110,355 32
4th year's investment,	50,000 00			21st year's investment,	50,000 00
	218,730 80	Jan. 1, 1850			1,999,610 80 Jan. 1, 1867
4th year's interest,	13,123 84			21st year's interest,	119,976 64
5th year's investment,	50,000 00			22nd year's investment,	50,000 00
	281,854 60	Jan. 1, 1851			2,169,587 44 Jan. 1, 1868
5th year's interest,	16,911 27			22nd year's interest,	130,175 24
6th year's investment,	50,000 00			23rd year's investment,	50,000 00
	348,765 87	Jan. 1, 1852			2,349,762 68 Jan. 1, 1869
6th year's interest,	20,925 95			23rd year's interest,	140,985 75
7th year's investment,	50,000 00			24th year's investment,	50,000 00
	419,691 82	Jan. 1, 1853			2,540,748 43 Jan. 1, 1870
7th year's interest,	25,181 50			24th year's interest,	152,444 90
8th year's investment,	50,000 00			25th year's investment,	50,000 00
	494,873 32	Jan. 1, 1854			2,743,193 33 Jan. 1, 1871
8th year's interest,	29,692 39			25th year's interest,	164,591 59
9th year's investment,	50,000 00			26th year's investment,	50,000 00
	574,565 71	Jan. 1, 1855			2,957,784 92 Jan. 1, 1872
9th year's interest,	34,473 94			26th year's interest,	177,467 09
10th year's investment,	50,000 00			27th year's investment,	50,000 00
	659,039 65	Jan. 1, 1856			3,185,252 01 Jan. 1, 1873
10th year's interest,	39,542 37			27th year's interest,	191,115 12
11th year's investment,	50,000 00			28th year's investment,	50,000 00
	748,582 02	Jan. 1, 1857			3,426,367 13 Jan. 1, 1874
11th year's interest,	44,914 92			28th year's interest,	205,582 02
12th year's investment,	50,000 00			29th year's investment,	50,000 00
	843,496 94	Jan. 1, 1858			3,681,949 15 Jan. 1, 1875
12th year's interest,	50,609 81			29th year's interest,	220,916 94
13th year's investment,	50,000 00			30th year's investment,	50,000 00
	944,106 75	Jan. 1, 1859			3,952,866 09 Jan. 1, 1876
13th year's interest,	56,646 40			30th year's interest,	237,171 96
14th year's investment,	50,000 00				\$4,190,038 05
	1,050,753 15	Jan. 1, 1860		<p>Mr. PRESTON. The proposition of the President is one that will afford me great pleasure to vote for. The gentleman from Nelson seems to misunderstand me in regard to the price obtained for our state bonds. I referred to the current prices of our stocks in the northern markets, and they in common with others sunk in the years '40 and '41, to about seventy cents on the dollar. The contractors to whom those stocks were paid were compelled, I know, to sell them at a heavy loss. The other gentleman from Nelson, (Mr. C. A. Wickliffe,) seems to think that there is some ambiguity in the language of the thirty second section. It was not the intention of the committee to leave the least ambiguity in that section, and if it does exist it is not the fault of their intention. They intended not that the legislature each year should contract a debt amounting to \$500,000, but that they should never in all time to come, contract a debt exceeding that amount, so as to make it a charge on the state. They intended that the legislature, meeting for instance next year, might contract a debt to the amount of \$500,000 and pay it five years hence, if they chose, and then there would be left them a margin of \$500,000 again to contract debts as the public emergencies</p>	
14th year's interest,	63,045 18				
15th year's investment,	50,000 00				
	1,163,798 33	Jan. 1, 1861			
15th year's interest,	69,827 89				
16th year's investment,	50,000 00				
	1,283,626 22	Jan. 1, 1862			
16th year's interest,	76,997 57				
17th year's investment,	50,000 00				
	1,410,623 79	Jan. 1, 1863			
17th year's interest,	84,637 42				
18th year's investment,	50,000 00				
	1,545,261 21	Jan. 1, 1864			
18th year's interest,	92,715 67				
19th year's investment,	50,000 00				
	1,637,926 88	Jan. 1, 1865			
19th year's interest,	101,278 60				
20th year's investment,	50,000 00				
	1,839,255 48	Jan. 1, 1866			

might require, but declaring in the constitution that they should not go beyond that unless they first submitted it to the people for their sanction. Such was the intention of the committee, and it strikes me that the language is not at all ambiguous, but if it is, the committee of revision can correct it. It is in the language of the constitution of New York; we only altered two words in it, which was to insert the words five hundred thousand instead of one million. We looked to the growing wealth of Kentucky, to the time when she would have three millions of people living under this constitution on her soil, and to the necessities that might arise in the progress of many years, and thought certainly we were not giving to the legislature too much power. We give this as a safety valve, through which when the state was in difficulty they might exercise this power. It was not our desire to clothe them with the power of creating a debt of \$500,000 at each session, as the gentleman from Nelson supposes. If that is not the signification of the section, then I do not understand the force of language, and if it should be the opinion of the convention that the language is susceptible of a different interpretation—then it can be corrected by the committee of revision.

Mr. BARLOW. It meets not only my approbation, but that of the people of my county, to restrict the legislature in its power to involve the state in debt, and if I am instructed on any one point in this convention, it is on that. And these instructions were given me by my constituents from the fact that the system of internal improvements have created the debts which now exist and hang over them. I was a member of the legislature about the time the system was commenced, and I invariably voted against it, and took the occasion to speak against it when at home. I never voted for but one of these works, except on one occasion, and that was in obedience to what I conceived to be the will of my constituents, though my own feelings were well known to be in opposition to the system. It was an appropriation to that beautiful stream, the Cumberland river, of some \$200,000, of which not a cent, if my recollection serves me, was ever expended. And yet my constituents were willing to contribute their part to paying the debt, and are not willing that it shall be repudiated. But at the same time, as a safeguard for the future, they desire that the legislature shall be restricted in its power of again involving the people in debt.

Mr. TURNER. I never was a member of the legislature but once, during the time the system of internal improvements was agitated, and then I voted for it. I believe that system to have been beneficial and profitable to the country, and I never intend to give up anything because every body is abandoning it, or because it becomes unpopular. I was for it in its popularity, and I am for it still. I believe it to be a good system, and that the country will never get along unless it shall be fully carried out. Why, what is this system? I would rather pay my share of the tax for one year, than be obliged in going home to be three or four days floundering along on horseback through the mud. Gentlemen view this system only as to the amount of money it brings into the treasury, but that is not the way to judge of

the benefits it has conferred on the people. It is the fine roads, the improved navigation, and means of getting to and from market. That is the way in which it is profitable to the people, and if there was not a cent of revenue derived from it, still it is a beneficial system to the country, so far as it develops its resources and increases its wealth and prosperity. That at least is my view of it. Before this turnpike system was entered upon, and the country was sparsely settled, we could not travel in those sections of the country where the soils are rich, until the middle of May. And are we then to have no more turnpike roads? To this it will be answered that they may be built by individual subscription. In that case the expense will fall on a few generous men, and those who use it most will pay the least. I desire that the legislature shall have the power to compel the miserly to bear their share in the burdens of the country, and not leave them to be borne by the more generous and liberal men.

As regards the proposition of the president, I am in favor of it. I want to pay the debt, although I am ready to admit that a great deal of it was imprudently contracted. Ten years ago, when I attempted to point out some of the defects of the system, such was its popularity that the people were almost ready to hiss me from the lobby. I found about here, some half a dozen little engineers with salaries of \$600 to \$1,000, and with nothing to do except to wait on the great engineer, or to carry an order from one lock to another. And in some cases, the state itself engaged in cutting off timber by the river, instead of letting it out by contract, and there were instances where it cost \$600 or \$800 per acre to do it, when the land and all would not have sold for one hundredth part of the money. I attempted to point out these extravagancies at the time, but I could not be heard, such was the blaze of glory in which the system was surrounded. But still I desired that the system should be carried on, and I believe that even under these disadvantages it has been beneficial and prosperous to the people. There is the Green river, once dried up for whole seasons, and where a steamboat was a rarity, the convenience afforded to the inhabitants amply repays all the expense incurred there. There are the fine turnpike roads, through the land, enabling people to get about, and improving the means of business and social intercourse, and which have taken the place of the miserable, and almost impassable dirt roads of former times. The same beneficial results have been the consequence of the Kentucky river improvement. Why, the very reduction in the price of groceries alone, to say nothing of the reduced price of transportation and the increased facilities of travel, would fully repay to the people, the increased taxation these works have imposed on them. These are the advantages we derive, and they are worth double to the people, the money it cost to obtain them. I raise my voice against this wholesale denunciation of that system, which now seems to be so popular in this convention, and shall continue to advocate it, for the reasons I have given, if every other man in the country opposes it. I am for paying this debt, and for the amendment of the president, but I shall vote against the sections

now under consideration. Not that I want the legislature to go into extravagances, but I hope that in fifty years time we shall have on our soil 3,000,000 of inhabitants, and are we to put a straight jacket upon their energies, so that they can do nothing in the way of improvement when the great emergencies of the country shall require it? Besides, the time may come when, as has been the fate of almost every land, we shall be visited with famine and disease, and to such an extent that the people will not be able to pay their taxes, and yet gentlemen talk about preventing the legislature from borrowing money to supply the deficiency. There are many emergencies which may arise to produce a deficiency in the revenue, and the legislature should have the power of supplying that deficiency. I suppose that the legislature will have some little discretion, and that we in this convention do not possess all the wisdom of the world.

The gentleman from Nelson (Mr. Hardin) has said that we are a great body of wisemen, but that is all soft soap, and we know it. We do not, at any rate, stand so high in the estimation of those out of this convention, if one may judge from the newspapers. It is all a mistake about our being greater men than any who are to come after us. A week or two ago, when the question of fixing salaries was under consideration, gentlemen urged that the legislature was an illiberal body, and now we have the same gentlemen contending that it is a great deal too liberal. I think the legislature can be trusted upon this subject, and I hope the section will not be adopted. With regard to submitting the question to the people, before incurring large indebtedness, I see no objection. I have no objection to consult the people on this subject, and I believe they will not withhold their approval from any work of internal improvement that is calculated to enhance their convenience, their prosperity, or their wealth. I am not surprised that gentlemen from portions of the commonwealth where this system has never reached, should oppose it; but as for gentlemen who have fine turnpike roads running through their county and in their neighborhood, like the gentlemen from Nelson, that they should turn against and repudiate the system, I confess I am a little astonished. The elder gentleman, I know, stood here and warred against it for a good while, but if the junior gentleman (Mr. C. A. Wickliffe) did not sustain it, then my memory has failed me. Nor did I ever hear of the elder gentleman (Mr. Hardin) making war on him for so doing. I think when a man has derived all the benefit possible from it to his county, he ought to be willing to extend the same benefits to the people of the whole state. A contrary course is hardly generous or proper.

Mr. C. A. WICKLIFFE. The amendment I have proposed, is to make the section perform the office I understand the committee to desire it should—that is, to limit the right of the legislature to borrow money to provide for deficits in the revenue—whether to \$50,000 or \$100,000, is a matter of total indifference to me. I therefore moved to strike out the words “to meet expenses not provided for.” I do not wish to leave to the legislature the power to create debts not expected by the people to meet the ordinary expenses

of the government, and then to borrow money to pay that debt; but should there be a deficit in the ordinary revenue of the country, then I am willing that the legislature shall borrow money to meet that emergency.

Upon the subject of internal improvements, gentlemen are defining their positions, as if it was a matter of necessity to do so on the present occasion. I believe between the years '33 and '37 there was not an internal improvement appropriation that I did not vote for, and I do not regret a vote that I then gave. I believe I voted right, and I think so now. But I believe it is right now to meet the public sentiment of the country, that we should impose on future legislation a restriction against the borrowing and appropriation of money for internal improvements. The gentleman from Madison has spoken about turnpike roads in my county, and I should like to know how much stock he owns in them.

Mr. TURNER. My stock is all in Madison county.

Mr. C. A. WICKLIFFE. How much do you own?

Mr. TURNER. About one thousand dollars of it.

Mr. C. A. WICKLIFFE. Well, we are about in the same condition—I have unfortunately about twice as much as he.

The PRESIDENT here modified his amendment to read as follows:

“The general assembly that shall first convene under this constitution, shall set apart an annual sum of at least \$50,000, of the public revenue; which shall be the first to be paid, and provide that the same and the surplus of the sinking fund after paying the interest on the public debt, shall be faithfully applied to the purchase and withdrawal of the evidences of the debt of this commonwealth, until the whole of said debt shall be discharged: *Provided*, If the annual sum so appropriated, shall not be sufficient to discharge the debt as it shall become due, the general assembly shall have authority to create additional loans for the punctual payment of said debt: *And, provided further*, That the general assembly shall have authority, except as hereinafter provided, to contract other loans.”

Mr. JAMES. Many having availed themselves of this occasion to define their position in relation to the system of internal improvements, I shall take this opportunity to define mine. I have come here prepared to restrict the power of the legislature to run the state in debt, to the least possible amount. The safest criterion to judge of the future, is to look to the past history of the country; and acting upon this rule, I think there is no one but will concur in the propriety of imposing some stringent restriction on the debt-creating power of the legislature. I was in the legislature when the system of internal improvements was originated, and even some years before. I first had the honor of a seat in that body in the session of 1825-'26, and was returned again in 1828. I continued four years in the house, and was then elected to the senate, where I continued until the year 1848. The first internal improvement project was made in the years 1828 and '29. There was then a surplus in the treasury, realized from the profits of the Bank of the Com-

monwealth and the Bank of Kentucky, and a proposition was made to distribute \$200,000 of this surplus among the several counties, in proportion to the number of voters, for internal improvement purposes. I thought it a fair and equitable distribution. I was representing a section of country in which the Indian title had just been extinguished, and which is comprised of the territory west of the Tennessee river, known as "the purchase." The Indian title was extinguished in 1818, under what is known as Jackson's treaty, and after an examination of that location, 1821, concluding that it offered a fair opening for a young man to make a living, I removed thither with my family, in the year succeeding. Then, the only roads through that section of the country, were a few Indian trails; and down to 1828 and 1829 there were but few roads, and the country was still thinly settled. The first settlers, for the want of bridges, were obliged to cross the streams on logs, or to swim their horses. No part of the commonwealth was more in need of aid and assistance in these respects, than that region of country. The bill of 1829, however, did not pass. In 1834, a proposition originated in the house for the borrowing of a million of dollars. I was then representing my district in the senate, and two representatives came to consult me at my room in relation to it. They told me that the committee had agreed to set apart for our section, the proceeds of the vacant lands then remaining there. I made some further enquiries as to the purpose and provisions of the bill, and they informed me, as well as they could. I told them I would take the matter into consideration, and give them an answer during the next day. When I came to examine it, I discovered that the bill proposed an equitable and just distribution of the money between the three grand divisions of the state, and with a view of satisfying the committee on that subject, allow me to read the fourteenth section of that bill:

"Sec. 14. That the board of internal improvement, in subscribing for stock under this act, in the several turnpike roads now chartered, or which may be hereafter chartered, shall not subscribe more than one-third of the sum hereby authorized to be borrowed, for the purpose of making such roads on the north side of Kentucky river; and in like manner, not more than one-third of the sum aforesaid, on roads, between the Kentucky and Green rivers; and in like manner, not more than one-third of the aforesaid sums on roads on the south side of Green river: *Provided*, That if the said board of internal improvement should not be called on, according to the provisions of this act, to subscribe the full amount of money authorized to be borrowed under this act, for making turnpike roads, within one year; then, and in that event, the aforesaid board of internal improvement may subscribe the sum which may remain unsubscribed, in turnpike roads in any part of this commonwealth where individuals or corporate bodies may have subscribed and paid in the like amount which the said board of internal improvement may be required to subscribe."

I determined, upon due reflection, to give the bill my vote; but if I could have supposed that it was to lay the foundation for involving the

state in an enormous debt, however anxious my section of country might have been to secure a small pittance, I should most certainly have voted against it. What was done at the succeeding session of the legislature? Why, the restriction requiring the appropriation of this money in fair proportions to the three grand divisions of the country, was repealed. But first let me call the attention of the convention to the twenty-seventh section of this bill:

"Sec. 27. That not exceeding two hundred thousand dollars of the scrip authorized to be sold, shall be sold before the first day of January next; and not exceeding one-third of the residue shall be sold in each of the three following years; nor shall the governor subscribe for more stock annually, than he is hereby authorized to issue scrip for, as restricted by this act."

Gentlemen will see how well this act was guarded. Of this million that was proposed to be borrowed, not more than \$200,000 could be borrowed before the next session of the legislature, and not exceeding one-third of the residue could be borrowed in each of the three succeeding years, and the governor could not go on and subscribe for stock, so that not more than \$200,000 could be borrowed prior to 1836.

This is the extent of my sinning, if any I have committed, on the subject of internal improvements. I have stated the circumstances under which I was induced to go for this measure, and I confess that even then, I had some misgivings as to the consequences that were to grow out of it.

Well, after this restriction was taken off, what was the proposition made to the legislature? I will read from the act of 1836, the twenty-seventh section:

"Sec. 27. That the sum of five thousand dollars be appropriated to the improvement of Bayou du Chien; five thousand dollars be appropriated to the improvement of Clark's river; one thousand five hundred dollars be appropriated to the improvement of Little Obion and Mayfield's creek in the county of Hickman; one thousand dollars be appropriated to the improvement of Little Barren river: *Provided*, That the board of internal improvement shall believe that the said improvements are expedient, and will be of public benefit, and that the said sums of money are necessary for those purposes; and the sum of two thousand five hundred dollars be appropriated out of the sales of the scrip of the state, shall be applied, under the direction of said board, to the improvement of the navigation of Panther creek: *Provided further*, That it shall be the duty of the board of internal improvement to have surveyed by a competent engineer or engineers, all of the streams which this act proposes improving, west of the Tennessee river, within the months of May and June next, and it shall be the duty of said engineer or engineers to make a report to the board of internal improvement, by the first day of September next, or as soon as practicable thereafter; and if it shall appear from said report, that all or a part of said streams can be beneficially improved, the engineer shall report the plan and probable cost; upon which report said board of internal improvement shall proceed to lay the same under contract, and have said stream improved as

speedily as practicable, until the whole of the before several amounts shall be expended: *And, provided further*, That it shall be the duty of the board of internal improvement to cause the snags, drifts, and other obstructions in Panther creek to be removed before the same are submerged by the erection of the dams in Green river; and the amount appropriated to said stream by the act of the last session, shall not be absolute, but may be withheld by the board of internal improvement, if they deem its expenditure inexpedient, and not of sufficient public importance."

The system had now fully developed itself to me, and I became satisfied that it was not to be carried out in good faith. I therefore voted against the bill, notwithstanding the representatives from my section took strong ground in favor of it, and denounced me for my course on my return home. I was satisfied that the design was to give to the centre and wealthy portions of the state the benefits of the appropriation, and that the promises held out to my section of the country were merely to secure their votes. If it was intended to give my county this \$11,500, in good faith, why was not the appropriation at once made positive and specific, as in the case of the grant of \$200,000 to the Lexington and Ohio railroad.

Well, as I have stated, I entered the senate in 1832, and I was a candidate for re-election in 1836. On one occasion while addressing the people at Clark's river, I heard that the engineer was traveling up Clark's river for the purpose of surveying it, and intended to go on towards bayou du Chien. I went to him and he told me that he had examined that stream and thought well of it. He said nothing more to me, but he placed in the hands of my competitor, an official report showing that \$3000 was to be expended on that stream. It was not used publicly, but generally in a private and secret manner. And I took the occasion then to tell the people that they would never get a dollar, and though I am no prophet or the son of a prophet, yet the prediction has been fully verified. I do believe that engineer was sent there on that occasion for the purpose of engineering Tom James out of the senate.

Mr. HARDIN. Name the engineer.

Mr. JAMES. His name is Buford, and I believed it then and I believe it at this day. I had discovered the workings of the system, and was opposing its being carried out. Though I live between two of the streams that were to be improved, yet I was not to be bought up, and I had the nerve to vote against it. And thank God my constituency sustained me for it, although they never knew that they would not get the appropriation until after the election was over. I can only account for being thus sustained in the face of the opposition against me, from the fact that my constituency had an abiding confidence in the honesty and purity of my motives, and believed, deeply identified as my interests were with theirs, that I was governed solely in my action by a sincere regard for the public good.

I do not charge improper motives on any body, for the whole country was inflamed with the internal improvement fever, and men in my coun-

ty declared that if my competitor was elected, property would go up, but if Tom James was returned, it would have a disastrous fall. If the system was carried on, men were told that the country would be chequered over with rail-roads and turnpikes, and that they would only have to roll their produce out of their barns, and in a moment it would be on its way to market.

From that day I washed my hands of the internal improvement system, and I voted against every appropriation that came up. A good many have given in their experience as to the operations in regard to the education fund, and the manner in which it was set apart and disposed of. My recollection is, that after the distribution of the United States surplus revenue and the reception by Kentucky of her share, there were two parties in the legislature—the internal improvement, and the education parties. I belonged then, and do still, to the education party, and I am opposed to improving the face of the country, at the expense of the minds and education of the children of the state. Finally the sum of \$850,000 was set apart out of the United States deposit fund and pledged to the object of education, and the balance was appropriated to internal improvements. The system of internal improvements went on swallowing up million after million—not in Kentucky alone, but in all of the states of the Union, until the several states were indebted to the extent of some \$200,000,000, the interest on which is \$12,000,000, all of which went, not to our own citizens, but to the foreign capitalists. Those capitalists had their agents in Wall street, New York, buying our stocks, the interest on which was to be paid in gold and silver, to be transported across the water for the support of the nabobs and aristocracy there. Well, in 1838, the credit of Kentucky was good at home and abroad, but in 1839 our bonds could not be sold, we never having authorized their sale at less than their par value. Then it was that provision was made that the contractors should take them at their par value. They received them, but were unable to hold them, owing to the demands upon them for compensation to their laborers and for their materials. What was the result? Why they had to go to the brokers and sell our bonds at from fifteen to twenty-five per cent. discount. It was not right, but the contractors were forced to take those bonds or nothing, and though they have been knocking at the door of your legislature for relief, the relief has never been extended to them. The banks were appealed to for relief, and they loaned to the board of internal improvement several hundred thousand dollars, and thereby greatly increased their circulation. These contractors and laborers were mostly foreigners, and not wanting Kentucky money, they sold it to brokers, who made a rush on the banks, and thus forced those institutions to suspend. Kentucky was engaged in an unfortunate and wasteful system of internal improvements, and the school moneys were invested in the bonds for the construction of those works, most of them bearing five per cent interest.

Mr. C. A. WICKLIFFE. The education fund was invested before 1839 and 1840, in the second or third loan made.



Mr. JAMES. I may not be precisely correct as to dates, not having had time to look into them, but I am as to the facts. What then was the prospect for the diffusion of education? Their funds were exhausted. The bonds given that fund have not been paid, and it is reported to us that the state has not even the means to pay the interest on them. I will not say this is repudiation, but it is certainly postponing the payment of a debt justly due.

This system of internal improvements never should have been carried on unless each work could have been able to sustain itself, and thus justify and obtain the support of the whole state. Its friends saw that it would not do that, and with a view of securing its adoption, held out promises to various portions of the state, that never were complied with. They acted on the theory of the quack doctor, who said that because a little medicine was good, more was better, and he went on until he killed the patient. To show how inducements were held out and means resorted to, to secure the adoption of certain measures, I will call the attention of the convention to the two turnpike roads from Louisville to the Tennessee line, referred to by my friend from Simpson (Mr. Clarke.) One of them, by the way of Bowlinggreen, cost \$441,383 15; and the other, by the way of Glasgow, \$500,216 32; and for miles they run almost side by side, each about 140 miles in length. What was the necessity for these parallel roads? None whatever—at least in which the public were interested. If one was proper, or demanded by the public interest, certainly the other was not needed.

This is not all. Not satisfied with the turnpike from here to Louisville, costing I know not how much, and the Kentucky river improvement, which to a certain extent is a beneficial work, and which cost upwards of \$900,000, these very same men applied to the legislature for a railroad to run between the Kentucky river navigation and the turnpike road. The road will soon be completed, and if it succeeds, its success must be purchased at the expense of the state's interests in the turnpike road and river. What is to become of the profits from the river navigation and the turnpike? The greater portion of the travel and the transportation must go over the railroad, and then what is to supply the deficiency on the other improvements? Why it is to be done by taxation on the people.

I have always been for sustaining the credit of the state, and have ever stood opposed to repudiation, and when a debt has been contracted, whether I approved of its creation or not, I am for meeting it and paying it promptly. And with a view to prevent a recurrence of that species of legislation under which this system of internal improvements was originated and carried on, I desire to go to the utmost extent in restricting the debt-creating power of the legislature. A public debt is neither more nor less than a mortgage on the land of every man in the commonwealth, and he cannot escape from it. If he sells his land under such a liability, the purchaser will have an eye to that fact, and demand a reduction accordingly. It is precisely a lien on the sweat of the brow of the toiling millions of the country: and in proof of this, I

need but point this convention to the example afforded by our sister state—the young and once thriving state of Illinois. How her prospects have been blighted by the overpowering weight of a vast state debt. Her energies have been crushed, and her citizens have been driven almost to despair by the weight and burden of taxation. Purchasers of lands have been constrained to decline making investments there, because they knew they must buy, subject to the taxes charged and payable upon the lands of the state, and many holding lands there, have been driven by this system of taxation to forfeit their lands to the state.

I will go for any prudential measure that may be proposed here, to save my state from the possibility of such a calamity.

The amendment of the President was then adopted.

The committee then rose and reported the article to the convention.

And then the convention adjourned.

## TUESDAY, DECEMBER 4, 1849.

Prayer by the Rev. Mr. LANCASTER.

### LEGISLATIVE DEPARTMENT.

The convention resumed the consideration of the report of the committee on the legislative department.

The question pending was on concurring with the committee of the whole in the adoption of an additional section.

Mr. APPERSON. I do not feel inclined to vote for this amendment, and with the permission of the convention, I will give two or three reasons. And one of them is, that it will appear that we are setting ourselves up as the overseers of the people. We have come here to make an organic law which we hope will continue for many years. Every two years the people of Kentucky will assemble by their legislature. Debts have been contracted heretofore by the legislature according to the will of the people; and not a whisper of "repudiation" has been heard. And has it become necessary for us to read a lesson to the representatives of the people, and to tell them what is their duty? I cannot imagine for a moment but that the people, having determined that their public debt shall be paid, will, through the law-making power, in due and proper time, make provision for payment of that public debt. So far as I am concerned, sir, I was never instrumental in the creation of that debt; and unlike most of the members of this convention who have spoken on this subject, I regret that I was not. I believe, sir, that the expenditures for public improvements in Kentucky have been of vast benefit to Kentucky. I believe that the public improvements that have been made in consequence of that expenditure have increased the aggregate wealth in an almost immeasurable ratio over the expenditure. I believe, Mr. President, that the increased value of property, both to individ-

uals and the public, and the increased revenue which has accrued and is accruing to the state, in consequence of that increased value, has greatly exceeded the expenditure of the state; and whilst I hear gentlemen say that they deeply regret that so much should have been expended on works of internal improvement, some of those gentlemen too being the very men who voted for that expenditure—I, on the other side, regret that I never did vote for that expenditure. I believe the expenditures, take them in the aggregate, were wise, a portion of them unwise. I am, however, willing to acknowledge that those gentlemen who advocated those expenditures could see further ahead than I could. And, with regard to the further indebtedness of the state, I take it that the people will always speak their will; and whenever you adopt such a section as the thirty third, I can conceive no necessity for the adoption of any other upon the same subject. If the people will it to borrow money for public improvements let them do so—they can as well speak through the law-making power as through us. Shall we put an interdiction upon the people and say “you shall not have power to borrow money for public improvements?” According to one section in the constitution no indebtedness shall be created, no money shall be taken unless the people shall vote for the expenditure. And can it be possible that we want to trammel the people more than that? Can it be possible that we should set ourselves up as censors of the people and say you shall not have the opportunity of making public improvements if you find it necessary to do so? There are as wise heads to follow us as are now in this convention; and if we are to restrict the legislature in this way, and through the legislature, the people, from expending what they may deem necessary for the improvement of our public works, I do not see that this convention will gain much credit. The people are the proper judges of this matter; and whenever they shall speak through the law-making power, and it shall be submitted to them to say, do you approve of such appropriations, I hope the people will not be prevented from giving their assent, and from carrying that assent into effect. I hope the amendment will not be adopted.

Mr. LINDSEY. When the committee on the legislative department were acting upon the subjects embraced in the thirty-second and thirty-third sections of their report, the existing state debt would have occupied their attention, but for the fact that a special committee had been charged therewith.

Looking to the action of that special committee for an efficient plan to guide the general assembly in extinguishing the state debt, my mind has not been occupied with it, and now I would prefer passing by the proposition of the President for the present, unless the special committee do not intend reporting.

The subject is important, and should be deliberated upon with all the facts we can have before us.

The thirty-second section, it will be seen, embraces only two propositions: “casual deficits in the ordinary revenue,” and “expenses not provided for.” The sum for which we propose the

legislature may contract debts—\$500,000—is not larger, in my opinion, than it should be. A less sum might embarrass and discredit the state under circumstances that may happen frequently in the course of one life. Suppose the ordinary revenues should fall off by reason of a depression in the value of property, \$50,000, and a loan has to be contracted therefor, there should, before this \$50,000 was paid, be a suspension of the banks to which the sinking fund, as now arranged, looks for the means of paying a large proportion of the interest on the state debt, a \$100,000 might be required, temporarily, to preserve our credit in this way. Before these are paid, the falling off of receipts from the public works, by destruction of locks and dams, or other causes, might require \$50,000 more. Other causes might arise to increase the sum required to fill the limit fixed by that section. These views prompt me to oppose striking out \$500,000 and inserting a less sum.

The principle of imposing such restrictions on the legislature is somewhat questionable, as we cannot foresee the state of things that may come about in a series of years, making it the interest of the state to contract debts, temporarily, even to a much larger sum than that fixed by the committee.

The restriction in the thirty-third section is enough to prevent the dangers of any future internal improvements to be started or carried on by the legislature. No debts can be contracted without the assent of a majority of the people, for that or any other purpose, except those named in the thirty-second section.

Those gentlemen who have been explaining the reasons why they voted in the legislature for internal improvements, ought not to feel that they merited censure. They did much good in some of the works made, though they cost extravagant sums. But they, as legislators, have only done what individuals do often in their own private affairs. In endeavoring to better their condition they involve themselves in debt. For myself, I can say that no sins of omission or commission lie at my door, as I never held a seat in the legislature. Yet, I am free to say, if I had been there when the system of internal improvement was in progress, I would certainly have voted for many of them—perhaps would have gone almost, if not quite, as far as many gentlemen who have spoken on the subjects now before the convention.

I cast no reflections on any gentlemen for the debt now existing; on the contrary, appreciating the motive that prompted the legislature in contracting it, I am willing to vote for any provision thought best to compel the legislature to look continually to the gradual extinguishment of the present debt, and to prevent the creation of any other, without the assent of our sovereigns.

Mr. IRWIN. I understand that the first proposition before the house, is the section offered by the President, in the committee of the whole. As I understand that section, it proposes to increase the resources of the sinking fund \$50,000, and this is to be taken first from the ordinary revenue, before any other debt is paid. Now, sir, I incline to the opinion that this additional section will—as I am sure it ought—receive the

largest support of any proposition that has been presented to the consideration of the convention.

It is not a matter that ought to enter into the consideration of the payment of a debt, that that debt was improvidently created. It is sufficient for us to know that the debt is an honest obligation on the part of the state, which it is our bounden duty to make some provision to pay, and so far as I am concerned, I would pay it to the last dollar, although the representatives should have improvidently squandered the whole of it.

For one, sir, I do not believe that the present debt of the state was improperly created. It is true, that in carrying out the system of internal improvement some improvident expenditures, and some mistaken objects of public interest, were undertaken. This was the result of inexperience. What new system, sir, having such multifarious objects, could be perfect at first? In the organization of the board of internal improvement, they had no discretion in the application of the public money. It was made imperative on the board, that when the stock to be taken by individuals in any road company was subscribed, the state was bound to take her share of the stock. This produced misapplication, and some projects were undertaken which we greatly regret.

But, sir, that the system was wrong—that the state, throughout its length and breadth, did not demand it at the hands of her representatives, I deny. That our state has not been benefitted, improved, and her resources greatly augmented, no gentlemen will deny. Then why do gentlemen wish to show that they had no hand in creating this debt? Is it to prove that they better understood the real interests of the state? or to bring into disrepute those who voted for the system? Sir, I voted for it. I did so at the desire of an intelligent constituency, and the confidence they have uniformly reposed in me, proves that they believe I acted honestly. Sir, I acted as I conscientiously believed, for their best interest.

In relation to the section on the subject of restricting the legislature from the creation of a large debt, I shall be for it. I advocated it before the people, and shall perhaps vote for it. But, sir, I am not sure that I was right; and I am not sure that I ought not to retrace my steps and throw myself upon an intelligent constituency, for future agreement. Sir, it is well known that the bank capital of the state is mainly located in the northern and middle sections of the state; it is true, we have in the Green river country, that part so much lauded and loved by gentlemen here when they want support, two small branches of the Bank of Kentucky—one in Bowlinggreen and the other in Hopkinsville—but they have but little capital. I could almost use one of them myself, and when they come to supply the wants of all the country, they really are of no use; they are hardly known in the commercial relations of the country.

Now, sir, it is known that some time since, the legislature chartered a Southern Bank of Kentucky, and it seemed that it met the approbation of the country; and I am not advised but they

may hereafter desire some aid on the part of the state for that object.

But if we adopt the thirty-third section, the state can never, under any state of the case, increase the banking capital of the state.

Sir, we are a great and growing people, with vast resources; with a gallant and energetic population; with a most fertile soil and unequaled climate, and I much doubt the propriety of crippling the energies of the legislature by tying them down to so small a sum, that hereafter they will not be able to meet the wants of the country.

But, sir, as to the proposition immediately before the house, being the section presented by the honorable president and adopted by the committee of the whole, I sincerely hope it may be adopted because I see clearly, that by adding this amount of \$50,000 to the present sinking fund, the debt of the state, in about thirty years, will be paid off without the people ever feeling it. So small a sum annually, can surely be supplied out of the ordinary revenue.

Mr. MORRIS. I understood the gentleman from Nelson (Mr. Hardin) to state, that he was decidedly in favor of the additional section proposed by the honorable president. That gentleman is the chairman of the committee upon the public debt, and after a most mature deliberation has concluded that the scheme proposed in this additional section is the very best mode of extinguishing the heavy public debt by which we are oppressed. For my own part, I most heartily concur in the provisions of that section. Long explanations have been made by various gentlemen, as to their personal instrumentality in promoting these works of internal improvement, which have resulted in the accumulation of the heavy public debt under which the state is laboring. It seems to me, they are all foreign to the subject under consideration. The question is not, how the debt was contracted? but what means shall be devised for its liquidation. I have no doubt that the people of Kentucky are honest, and will cheerfully subscribe to any measure, which will tend gradually to extinguish their liabilities, provided it does not press too heavily upon them at once. I believe the proposition made by yourself, in the section now under consideration—that \$50,000 be annually set aside, for the gradual liquidation of this debt, and its ultimate extinction—will accomplish the end for which it is intended and will not be a heavier burden than they are willing to bear.

The thirty-second and thirty-third sections of the legislative report, which are now before us, were intended, in a measure, to provide against the recurrence of the reckless spirit of internal improvement which once pervaded the land—to prevent the further accumulation of the state liabilities, without the sanction of a direct vote of the people—and not, as some seem to apprehend, to place a full stop upon all internal improvements. At the commencement of this spirit for improvements, I have learned—I was not then a resident of the state—that nearly every county—the whole people of the state—were swept along with the current; and it was almost universally believed, that instead of being a hindrance and an incumbrance upon the

revenue, they would pay for themselves; and ultimately go far to relieve the people of the burdens of taxation. I was amused, in looking over the charter of the Maysville turnpike road, to see an express provision made, that whenever the revenue arising from tolls should exceed twelve per cent., the tolls should be reduced, so as to bring the receipts down to twelve per cent. This work, I believe, has never yielded an amount over two per cent. I merely mention this as an indication of the sentiment which then existed, with regard to the immense productiveness of these public works. Time wore on—the bubble burst—experience proved that not one of them could be made to pay the interest of the money expended in their construction—direct taxation had to be resorted to, to save the state from repudiation and disgrace—and now we find many gentlemen who were its most earnest advocates, are making excuses for the course they then pursued.

The gentleman from Madison said he had always been in favor of improvements—that he still is favorable to them—that though they had cost much, yet the benefits arising from them would much more than compensate for the cost—that the property in large sections of the country through which these improvements had passed, was largely improved in value—and that the convenience of the people had been greatly promoted. These are points which no doubt are true; and I am not surprised that he, and others who have been so largely benefited, do not complain. The complaints come from those large regions of country which have in no wise been benefited. The question is, whether these unimproved sections shall be equally responsible with those so much benefited—whether, in the improvements hereafter to be made, the expenses shall be borne by those immediately benefited, or by the state at large. In liquidation of the debts already contracted, when the tax-gatherer goes round to collect the revenue, he calls as surely at the door of the poorest man in the remotest part of the state, and collects his little mite, as at the palace of the rich man, whose fortune has been made by these very works. Is this right? Are not these burdens unequally distributed?

It seems to me, that no system of internal improvements should be gone into, where the profits arising from it will not pay a sufficiency to liquidate the interest of the money expended in its completion. In times like these, money can always be raised by individual and local companies, for the erection of any work, whenever it becomes manifest that such work will pay the interest, without the endorsement of the state. Whenever the necessity arises, the improvements will be made by those interested, independent of the state; and it strikes me that in this way, all works of a local character, should be carried on.

I am not one of those, who would put a stop to all internal improvements; but I think that the people who have to pay for them, should be allowed to say whether they will have them or not.

So far as relates to the banking capital in the Green river country, to which the gentleman from Logan has alluded, I question much if the people are not fortunate in being deprived of it.

Mr. BRADLEY. I have a substitute for the amendment which I think will accomplish the object. I desire now to offer it:

"The general assembly shall have no power to pass laws to diminish the resources of the sinking fund as now established by law, but may pass laws to increase it; and the whole resources of said fund, from year to year, shall be sacredly set apart and applied to the payment of the interest and principal of the state debt, and to no other use or purpose, until the whole debt of the state is fully paid and satisfied."

If I understand the amendment, it proposes to set apart \$50,000 annually, to be applied to sinking the debt of the state. Gentlemen with whom I have conversed, are of the opinion that this cannot be done without producing the necessity of a resort to immediate taxation. I think it may be done, and I am sure that if the substitute which I have offered shall prevail, the amount within the sinking fund will reduce the amount of the debt, and there will then be no need of taxation. I will read from the message of the governor in relation to the public debt:

"The public debt of the state on the first day of January, 1848, amounted to the sum of four millions, six hundred and eight thousand, three hundred and thirty nine dollars. The following changes have occurred:

State debt, as above, on January 1st, 1848,	\$4,608 339 00
January 26—Cash of Craddock Fund,	642 81
January 15—30 year six per cent. bond issued,	1,000 00
	<hr/>
	\$4,609,981 81

Since that time the debt has been reduced,	77,068 00
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Leaving the total debt of the state on the 20th December, 1848—this sum,	\$4,532,913 81
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From the above sum it has been usual to deduct the amount of bank stocks owned by the state, as the state is in possession of the means to pay this without imposing taxation on the people. The amount of bank stock thus owned by the state, is	\$1,270,500 00
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This deduction will make the actual debt of the state,	\$3,262,413 81
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To provide for the payment of the interest, and for the gradual extinction of this debt, the general assembly, at an early period, established a sinking fund.

That fund is composed of the following items:

1. Tax on the capital stock of the bank of Kentucky, and dividends on 9,399 shares of stock in the said bank, held by the state and by the commissioners of the sinking fund.

2. Tax on the capital stock of the Northern bank of Kentucky, and dividends on 2,900 shares of stock in said bank, held by the state and the commissioners of the sinking fund.

3. Tax on the capital stock of the bank of Louisville, and dividends on 406 shares of stock in said bank.

4. Profits of the commonwealth's bank.
5. Proceeds of the state stock in the old bank of Kentucky.
6. Five cents on every one hundred dollars worth of property liable to taxation.
7. One-third of the taxes collected on non-residents' lands.
8. Excess over five thousand dollars in the treasury at the end of each year, after deducting all demands.
9. Rent of the Lexington and Ohio railroad.
10. Tolls from slack water navigation on the Kentucky, Green and Barren rivers, and rent of water power.
11. Dividends on the state's stock in the various turnpike roads and bridges in the state.
12. Two-thirds of the profits of the penitentiary.
13. Taxes on brokers and insurance offices.
14. Premium on sale or exchange of state bonds.

A few of the least important of these resources have ceased, while the productiveness of others has been greatly enhanced.

For a detailed account of the management and operations of this ample fund, the general assembly is referred to the reports of the first and second auditors, and of the commissioners of the sinking fund. A brief abstract from the official statements will suffice for a general idea of what is the present condition of this fund.

Balance on hand 10th October, 1847, - - - - -	\$139,387 12
Receipts from that date to 10th October, 1848, - - - - -	328,265 61
Receipts from 10th Oct., 1848, to 20th Dec., 1848, - - - - -	40,022 17
Add amount due from revenue department, - - - - -	27,258 20
<b>Making, - - - - -</b>	<b>\$534,933 10</b>

## EXPENDITURES.

Warrants issued and paid same time, - - - - -	\$385,163 11
Necessary to pay interest due 1st Jan., 1849, - - - - -	131,807 41
<b>Making, - - - - -</b>	<b>516,970 52</b>

Leaving a balance of - - - - -	<u>\$17,962 58</u>
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## RESOURCES FOR 1849.

The resources, including the balance on hand as before stated, (1848,) - - - - -	\$373,486 39
Amount necessary to pay interest, - - - - -	\$263,614 82
Repairs on Kentucky river, - - - - -	15,000 00
Repairs on Green and Barren river, - - - - -	10,000 00
Contingent expenses, - - - - -	900 00
<b>Making, - - - - -</b>	<b>289,514 82</b>

Surplus for 1849, - - - - -	\$ 83,971 57
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It appears from the foregoing that the sinking fund has, in the course of the present year, not

only furnished the means of paying punctually the interest of the public debt, but also of extinguishing \$77,068 of the principal. And the estimates made for the year 1849, assure us of an equally favorable result, and exhibit a balance, after payment of interest, of \$83,971 57, applicable to a further reduction of the debt."

Now it will be seen that this substitute which I have had the honor to propose, requires that the legislature shall never reduce the resources of the sinking fund, but may increase them, and it requires that all the resources of that fund shall be faithfully and *bona fide* applied, till the whole debt is paid off. No additional taxes will be necessary, and the state of the fund is such that the sums named in the message, may be applied to that use. I do not wish to alarm gentlemen on that subject. I really desire to have the resources of this fund, applied to the extinguishment of the debt, and to no other purpose. I know many wish to take what is over and above the annual interest, and upon that borrow more money, and with the money thus borrowed go on to make additional appropriations for internal improvement, or complete those already begun. I wish to provide against that, and that nothing more shall be done in that way, at least out of the sinking fund. That fund was to be applied to the payment of the interest of the debt, and finally to the extinguishment of that debt. This may be done with the present resources of the sinking fund. I think if gentlemen bestow some attention to this matter they will find there is perfect safety in the plan I propose; that there is no danger of taxation, and that there is a certainty the debt will be reduced more by this mode than by the other plan proposed.

Mr. KAVANAUGH. The question now under consideration is one of the great questions to be settled by the convention. The manifesto published at Frankfort, two years successively by the convention party, proposed as one of the reforms in the constitution, some restriction on the legislature in contracting debts. This proposition, every where, met the sanction of the people. I remember having met with none, who were opposed to it. A heavy debt had been hastily contracted by the legislature, with which the people were dissatisfied. They hence determined to limit the power of that body, on this subject, in all the future. True, gentlemen tell us that by this limitation, we manifest a want of confidence in the legislature. The people themselves, have manifested this want of confidence; and have required the restriction, at our hands. Our work is to carry out their will. The debt has been contracted, and must be paid. The people of Kentucky are for paying it. They are a tax paying people—a debt paying people. They have heard much said among them, about the public debt of the state. And have long ardently desired to see the day of its extinguishment. They have looked to the legislature in vain. In vain they will look to it. One legislature may set apart a fund for this purpose. The next has the power to repeal, and undo all that may thus have been done. We have seen funds set apart by a legislature for given purposes, while subsequent legislatures have either squandered the money or diverted it to other

uses. This will ever be the case with our public debt. Of what avail is it, for a legislature this year to make provision for the gradual extinguishment of our public debt, if the next one which may assemble, can and will apply the money in a different way? We have tried the legislature, and failed, long enough to know, that the debt will never be paid as long as we trust to legislation. The country is consequently looking to this body for action on the subject. A fund set apart by the constitution itself for the gradual extinguishment of the interest and principal of the state debt will be beyond the reach of the legislature, and beyond the reach of any one, as long as the constitution shall last. Such a fund would be permanent and reliable, and would have the confidence of the people. Till such a step is taken, I believe the debt of the state will not be paid.

The report of the committee provides a limitation on the power of the legislature, in contracting debts. That some such limitation will be incorporated into the constitution, there seems to be no doubt. I, for one, am for it. My constituents are for it. Shall an efficient mode for paying the debt already contracted be also provided? That the people would hail with joy, such a provision in the constitution, I make no doubt. In my section of the state, they are anxious to see the debt discharged, and would sanction any proper mode which may be devised, for that purpose. The constitution, in fact, would, when submitted, gain strength by it. I am therefore for the most available mode for the payment of this debt, and the amendment submitted by the gentleman from Hopkins is, as I think, that mode. The proposition of the president of the convention, adopted in committee of the whole, and now also pending, requires the legislature to set apart annually, \$50,000, for the payment of the principal of the state debt. Now even though this provision be passed, still the legislature might disregard it. The old constitution required positively, that provision should be made by law, for suing the state, yet, in this respect it was disregarded. So the legislature might come here and appropriate all the revenue to other purposes, and then refuse to set apart the \$50,000, because they would not have it to set apart. This they might very well do, if it required a resort to taxation, against the will of the people. Nor is there any thing in the proposition, prohibiting the legislature from diverting the proceeds of the sinking fund from its legitimate objects. That fund, if held sacred to the payment of interest and principal of the state debt, will discharge the debt sooner than will \$50,000, annually applied to the payment of the principal of this debt. I have taken some pains in looking into the condition of the sinking fund, and am satisfied that it is so, and I believe that any gentleman who will take the trouble of an examination, will come to the same conclusion.

The state debt a year or two ago, was \$3,390,500  
It was, on the first day of January last 3,261,413

The sum of - - - - - \$129,087  
of the principal has recently been paid by this  
fund, besides discharging the interest. Some  
\$77,000 of this part of the principal was paid

last year, as will be seen by reference to the last annual message of his excellency governor Crittenden, and the report of the commissioners of the sinking fund. The same report, in estimating the receipts and disbursements of the sinking fund, for the present year, shows that after paying the interest on the whole state debt, there will remain, at the end of the year, \$97,485 18 to be applied in paying the principal of the debt. The receipts are however, estimated too low. That fact is now known, and may be ascertained by referring to the auditor's office. For example, the sum of \$129,807 17 is the estimated amount coming into the sinking fund this year, from the five cents on the hundred dollars worth of property, but the returns are now all in, and they show that the taxable property of the state has gone up to over \$285,000,000. In this single item then, the sinking fund will this year, receive some \$12,000 more than was supposed by the estimates already alluded to. It is thus shown, that the sinking fund is in a more flourishing condition than at any time before; that it is now, and has been for several years, gaining on the state debt, and if preserved for that purpose, as it should be, will ultimately discharge the whole of it. The proposition of the gentleman from Hopkins, (Mr. Bradley,) is to that effect. It is to hold the fund we already have—to put it beyond the reach of the legislature, and to set it apart in the constitution as it was originally designed, for the payment of our debts. If this is done, it will discharge the public debt much more rapidly than any plan yet proposed. Besides, it will create no necessity for additional taxation. It is only an application of the means already in our hands, and the question now is, will we hold this fund, and thus apply it, or leave it to be squandered at pleasure, by any legislature which may hereafter convene—and simply require them by a sort of mandate in the constitution, to provide a sum of \$50,000 annually, for the same purpose which they possibly might not regard, and thus leave the debt unpaid. I am for settling this question now—settling it in the constitution, and that in a manner the most available. Some gentlemen insist that by adopting a clause of this kind, we imply a want of confidence in the legislature—the representatives of the people. Why sir, we have the example, if we choose to follow it, of several other states in the Union.

The constitution of New York, and to that I am not ashamed to refer, and especially on a question of this sort, has this provision:

"ARTICLE 7. SEC. 1. After paying the expenses of collection, superintendence, and ordinary repairs, there shall be appropriated and set apart, in each fiscal year, out of the revenues of the state canals, commencing on the first day of June, one thousand eight hundred and forty six, the sum of one million and three hundred thousand dollars, until the first day of June, one thousand eight hundred and fifty five, and from that time, the sum of one million seven hundred thousand dollars in each fiscal year, as a sinking fund, to pay the interest and redeem the principal of that part of the state debt, called the canal debt, as it existed at the time first aforesaid, and including three hundred thousand dollars then to be borrowed, until the same shall



be wholly paid; and the principal and income, of said sinking fund, shall be sacredly applied to that purpose."

The second section has a similar provision for redemption of another, and different debt against the state. In a financial point of view, the state of New York may successfully challenge the world for a rival. She has expended on canals alone, more than thirty millions of money; and these canals are now yielding more than nine per cent. net, on the whole original cost. Her works of internal improvement were begun, and carried forward by her legislature. The result shows that, that body acted wisely and providently. The world perhaps can show nothing to equal the success of their internal improvements; yet the convention of that state, in remodeling their constitution, thought proper to provide a fund for the payment of the state debt, and to put it beyond the power of the legislature. This constitution was submitted to the people for their approval, and was adopted by an overwhelming majority. That state, well worthy of imitation in this respect, did not leave this subject to the legislature, but at once settled the question in the constitution itself. If New York did not think it an imputation on her legislature, which had acted providently in the premises, to lay this restriction, much less should we think it so of ours, when it has acted improvidently and hastily.

The convention of Illinois, which has just formed a constitution for that state, took the responsibility of providing for the payment of the state debt, by direct taxation, as will be seen by the following clause in the new constitution of that state:

"ARTICLE 15. There shall be annually assessed and collected, in the same manner as other state revenue may be assessed and collected, a tax of two mills upon each dollars worth of taxable property, in addition to all other taxes, to be applied as follows: The fund so created shall be kept separate, and shall annually, on the first day of January, be apportioned and paid over, *pro rata* upon all such state indebtedness, other than the canal and school indebtedness, as may for that purpose, be presented by the holders of the same, to be entered as credits upon, and to that extent in extinguishment of the principal of said indebtedness." Adopted August 31st, 1847.

This constitution providing direct taxation, for the state debt was, as I am informed, submitted to the people, and carried by a large majority. And so, whenever this constitution is submitted to the people, containing a provision for the payment of our state debt, such provision will meet their sanction, and instead of weakening, will greatly strengthen it, for they are not only willing, but anxious to make payment.

If we do not begin this work now, when will we? When will be a better time than the present? The state is now enjoying more solid prosperity than at any time before in our whole history. The condition of our revenue is flourishing. The amount of our taxable property has, for several years, been regularly going up. It is this year thirteen millions in value, higher than it was last year, and is in fact some millions

higher than ever at any time before. The proceeds of our sinking fund are going up, while our debt is going down. In respect to this debt, we now hold the vantage ground. My doctrine is to keep it, by taking the means already in our hands, and setting it apart, for the payment of our debts. This we can do without one cent of taxation. The people are expecting something at the hands of the convention, on the subject of this debt. I, for one, am for meeting these expectations; for if nothing is done here, in vain may we expect any thing hereafter.

In setting down the indebtedness of the state, I have of course omitted the amount owing for bank stock, for an equal amount of stock is owned by the state. These two amounts will, as admitted by all, liquidate and settle each other. Nor have I taken into the estimate the amount due by the state to the school fund. That fund is separate and apart from the other debts of the state, and has not been, and is not a charge upon the sinking fund. It is under the control and power of the state, and may be met as heretofore, and in such other manner as may be found right and proper. I had expected a report on this subject from the committee on the debt of the state, but the chairman of that committee has already explained why a report has not been made, and that none, as the subject is now under consideration, will be made. It may therefore be right to pass this question a day or two, to give more time for looking into the condition of the sinking fund. If so, I am sure gentlemen will come to the same conclusions to which I have arrived.

Mr. GRAY. This, sir, is a subject of great importance. The section which was proposed by the President, is neither more nor less in my estimation than directly imposing a tax upon the people of Kentucky by this convention, which you will do if this section forms part of the constitution. If I understand the proposition sir, it is to require that the legislature shall take out of the ordinary revenue of the state \$50,000 yearly, and appropriate it to the payment of the public debt of Kentucky. So far as I am concerned, I came here to pass no such law. There was no proposition before the people whom I represent for imposing taxation upon them; and I think this is a species of legislation which belongs entirely to the legislature. Sir, in this state the people will provide for the payment of their public debt as they have done heretofore, and I think we might trust the people's representatives, whom they may elect, who will hereafter look to it with sufficient cautiousness and wisdom. So far as I am concerned, therefore, I shall vote against the proposition.

I think the proposition of the gentleman from Hopkins is proper, and much more appropriate. I have much less objection to the plan which he proposes than to that of imposing a tax upon the people of \$50,000 yearly, for the payment of this debt. If this sinking fund is sufficient to pay the interest of the debt and to sustain the character of the people of Kentucky, let it be appropriated to that purpose. If it is not sufficient, let the legislature, when the proper time comes, make an appropriation; let them impose a tax, and sir, the people will justify them. There is, therefore, in my opinion, no

propriety in putting such a provision as this in the fundamental law.

Sir, in reference to the proposed restriction upon the legislature to create public debts, I would ask how far does that restriction go? Certainly the people of this state do not expect you to restrict them so that they never can borrow a dollar; so that they never can hereafter make any improvement, unless they have the means beforehand in the treasury of carrying such improvement to perfection. The restriction already provided, which prohibits an increase of debt or of borrowing money, ought to be sufficient; and if the people are of opinion that a further amount ought to be raised for the improvement of those works for which that debt was originally created, they ought to have the right of carrying out such a proposition.

But, in relation to this thirty second section, it appears that gentlemen do not understand it. Certainly it does not imply that any debt should be created under it for any purpose not necessary for the business of this state. It merely provides for casualties that may happen and that have heretofore happened. Unless those casualties do occur, certainly the legislature have no power to increase the debt and impose any greater burdens upon the people whatever.

Now, the gentleman from Nelson considers that the legislature would have power every two years to create a debt of half a million of dollars. Sir, there is nothing more plain to my mind than the language used here. If gentlemen will read this language and connect it together, they will readily discover that it deprives the legislature of the power of ever creating any debt beyond the sum of \$500,000. They may create a debt of \$100,000 one year; of \$200,000 the next; and of \$300,000 the next; but they never can exceed the amount of \$500,000, until that amount, when expended, is paid. There is no stepping beyond that.

It is as plain as language can make it. They never can create a debt—no matter what the exigencies of the state may be—beyond this \$500,000, without submitting it to the people. If I understand the proposition as it now stands, the gentleman from Nelson proposes to strike out the words, "expenses not provided for." I think there is no necessity for it. There are necessities that may befall the country. Here, for instance, is our bank stock. The taxes upon the stock of the bank are part of the sinking fund. Suppose sir, from any casualty that fund should fail entirely, as it has failed heretofore, would there not be a deficit which would come under "expenses not provided for." That, it seems to me, would not come under the head of "deficit," but under that of "expenses not provided for." Ought there not then to be a power somewhere to protect and guard the credit of the state? Certainly there ought. That is the only object of this provision; you cannot create any debt here, except for such casualties as may occur. Would any thing like "state improvements" come under such a head as that? Certainly they could not. Gentlemen should examine these things; they should consider them as they will be seen and considered by the country. Gentlemen should consider that our revenue might be reduced, and our buildings destroy-

ed, pestilence and famine might overspread the land, and in such emergency the credit of the state could not be sustained. In such cases, I am aware some gentlemen say "meet all these emergencies by taxes." The people sir, are willing to pay their debts, but are not always ready to pay taxes; they are not at all times in a condition to pay them, but if you can borrow money for a short period, and give the people a little time, they will come up to the work, and without any question at all. It is for that reason and on that supposition that this power should be granted. We should not go too far and say that there shall be no power vested anywhere to provide for casualties of this sort. These restrictions I regard as amply sufficient. Now sir, we propose to give to the legislature the power to borrow \$500,000. I do not think that sum is any too much; but if gentlemen think so, let them make what provision they may deem proper. We have some means in the sinking fund that cannot be classed with revenue at all. These may all fail as they have failed heretofore. Some gentlemen will say that the casualties I have spoken of cannot, or at least, may not occur; but they have occurred heretofore, and may occur again, and certainly, gentlemen, in a matter of such importance, ought to learn wisdom from the past.

Mr. C. A. WICKLIFFE. The sections to which the gentleman's remarks apply, are not now under consideration. I shall therefore say nothing in reply to those remarks. If I have seen any proposition which seemed to command a majority of the votes of this body, it is, that \$50,000 shall be sacredly applied to extinguish the state debt. I only desire to state now the reasons why I prefer the proposition of the committee to that of the gentleman from Hopkins, (Mr. Bradley.) He proposes to guard the sinking fund by making a constitutional provision which shall direct the surplus, after paying current expenses, to cancel the debt. I will go with him to provide that any unexpended balance shall go to extinguish this debt.

Gentlemen say this tends to tax the people to the amount of \$50,000. If that proposition was couched in the language of the constitution of Illinois, I would go for it, and should think I was discharging a debt to the people and to posterity. I should be willing to take upon myself the responsibility of setting apart a fund which no future legislature could touch or divert from the discharge of that debt resting on this community. It is admitted on all hands we shall save, by having our legislative sessions biennially, \$50,000 annually, if our revenue remains as it now stands. I wish to lay hold of that surplus by a constitutional provision and apply it to the extinguishment of the debt, and not leave it for the legislature to appropriate to some other purpose. This is the reason why I prefer the proposition of the committee to that of the gentleman.

Besides, there may be a necessity for the latter clause, the power to fund, or borrow and extend the time of payment when not able to meet a payment at the time it falls due. That I think should be left in the control of the legislature. If I recollect right, that power was asked of the legislature in 1838 or 1839, that they should set

apart a fund beyond the control of the commissioners of the sinking fund, to be applied to the gradual extinction of the debt independent of the interest accruing from the debt. It was not thought proper to set apart such a fund.

I will, therefore, move to add the words—

"The general assembly shall also set apart, annually, any overplus in the sinking fund, in addition to the \$50,000, which shall be applied to the payment of the principal of the state debt."

The meaning of the amendment is this—that besides the \$50,000 which the amendment of the President proposes to devote to the payment of the debt from the annual revenue, (about the sum to be saved by dispensing with the annual sessions of the legislature,) we should set apart the sinking fund also, and apply the whole to cancel the debt.

The PRESIDENT. The gentleman will see his amendment is unnecessary.

Mr. C. A. WICKLIFFE. You are right, sir; I had overlooked the interlineation made. I withdraw the amendment.

Mr. BRADLEY. I believe I have pretty much the same object in view as the gentleman from Nelson, and there is no great necessity for controversy between us. There is, however, one difference to which I wish to call the attention of the convention. He proposes by his amendment to set apart \$50,000 of the ordinary revenue of the state, in addition to the excess over and above what will pay the interest upon the state debt, remaining in the sinking fund. I wish to call that gentleman's attention and that of the convention, to this point. If the ordinary revenue does not furnish the sum of \$50,000, does not this constitution go to the people with an additional clog of taxation to that amount? Clearly it does. But when you secure the whole resources of the sinking fund, by authorizing the legislature to increase it, and by forbidding them to diminish it, you secure, for this year, \$83,000. The last year there would have been secured \$77,000, and the resources of the sinking fund will still be in no wise diminished. Besides, unless the object be to increase taxation, it must be remembered that the excess in the treasury, except \$5,000, goes to the sinking fund, and according to my amendment, will necessarily go to diminish our debt. It can be applied to nothing else. If we are required to draw from the revenue \$50,000 in addition to this, we go to the country with our constitution loaded with taxes. I am as anxious as any man to pay this debt. I had no hand in contracting it, but I am prepared to do my part towards paying it at the most convenient time, and in the best way. I think we should forbid the legislature to use the sinking fund for any other purpose.

Mr. DESHA. It strikes me all this discussion is out of order, for the previous question was moved before the adjournment yesterday, as the journal read here this morning shows.

The PRESIDENT. It was certainly called at the time of the adjournment, but as it was not renewed this morning, I have not interfered to stop the discussion.

Mr. TURNER. Well, sir, then I now call or the previous question.

The question was then put, "shall the main question be now taken?" which was decided in the negative.

The question then recurred on adopting the substitute of the gentleman from Hopkins for the section adopted by the committee of the whole.

Mr. BRADLEY called for the yeas and nays, and being taken, they were, yeas 56, nays 33:

YEAS—John L. Ballinger, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, William C. Bullitt, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, John Hargis, Thomas J. Hood, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, James M. Nesbitt, Hugh Newell, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, James W. Stone, Albert G. Talbott, William R. Thompson, John J. Thurman, Henry Washington, John Wheeler, Robert N. Wickliffe, Wesley J. Wright—56.

NAYS—Mr. President, (Guthrie,) John S. Barlow, Thomas D. Brown, William Chenault, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Selucius Garfield, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, James W. Irwin, Thomas James, Peter Lashbrooke, Martin P. Marshall, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, William Preston, James Rudd, John D. Taylor, Howard Todd, Squire Turner, Andrew S. White, Charles A. Wickliffe, George W. Williams, Silas Woodson—33.

So the substitute was adopted.

Mr. JAMES proposed to amend the section by adding the following:

"The legislature shall provide by law for collecting such a rate of tolls from the roads and rivers as have been or may hereafter be improved at the public expense, as will pay the interest on the sum so expended, including the repairs and expenses."

Mr. NUTTALL. I don't think there should be any constitutional legislation on this subject at all.

Mr. IRWIN. I hope certainly the house will not adopt that proposition. The interest on the public debt, it has been said, amounts to \$271,000 or near \$300,000 annually; and if you impose a rate of toll on the roads and rivers to meet that sum, there will never be another steamboat come up the river, or a private carriage on the turnpikes. I am sure the gentleman is mistaken.

Mr. HARDIN. If my friend proposes to pay the interest on all we have expended, it will put a stop to all vessels on the Kentucky river. The expenses on the Kentucky river have been \$901,-

900, and on the Green river they have been over \$800,000. The expenses have hitherto exceeded the receipts. If you attempt to raise the interest on this sum by tolls, there will not be even a canoe on the river. And the same may be said of the turnpike roads. But I cannot think that my friend is in earnest.

Mr. JAMES. Mr. President, I came here prepared to vote to deprive the legislature of the power to contract debts, or in any manner run the state further in debt, and I am prepared to go for the lowest possible restriction which may not be likely to endanger the public credit. I did not expect that we should be called upon to prescribe the mode and manner of liquidating the debt already contracted, but as that question has come up, I am prepared to meet it. I therefore submit for the consideration of the convention my plan, which is contained in the amendment that I have just offered. I propose to require the legislature to increase the tolls upon the roads and rivers, so as to raise a revenue sufficient to pay the interest upon the sum expended for their improvement, keeping them in repair, paying expenses, &c. This proposition will test the sincerity of the internal improvement party. What did they promise the country when they commenced this system? They said the profits arising from it would not only pay the interest, but yield a surplus which could be so invested as to produce a sum sufficient by the time the principal fell due, to pay that also, and that the people were never to be taxed to support or sustain it. Those who believed that, have been badly taken in. Let me call your attention to the condition of the country, when this system was commenced. Our taxes were, comparatively, light; six and a quarter cents on the hundred dollars worth of property, and then nothing was listed for taxation but land and slaves, horses and mules. This was soon found to be insufficient, and you resorted to a stratagem, to raise more revenue by increasing the subjects of taxation, cattle, bonds, or promissory notes, and money was taxed, in fact every thing that a man possessed, save one hundred dollars, and all this was not enough; you then increased the taxes to ten cents, and from that to fifteen cents, and now one third of all the taxes collected in the state goes into your sinking fund to pay the interest on the debt created for internal improvement purposes, and some fourteen or fifteen thousand dollars collected by specific taxation. Now I propose to tax those who are using and enjoying the benefits of these improvements to pay the interest on the sum expended. No object ever was entitled to public patronage unless such a tariff could be imposed as would support it. My constituents and many other portions of the state receive no benefit from these improvements, and I most solemnly protest against their being taxed to sustain them, or to speak more plainly, being made "hewers of wood and drawers of water" for another portion of the country. But I am told if the taxes are raised so as to pay the interest, the country cannot stand it, and the works must be abandoned and go down. This declaration does not alarm me. No, not at all.

What was transportation or the price of freight from Frankfort to Louisville, before the Ken-

tucky river was locked and damed? It was from forty to fifty cents. What is it now? Only fifteen cents. What an immense reduction besides the benefits and advantages of expedition and certainty, two grand desideratums in commerce. Ex-governor Metcalfe in his report to the legislature in 1847-48, in speaking of the Kentucky river navigation, and the benefits and advantages resulting to those who enjoy it, says: "It may be well to inquire whether the amount actually saved to the inhabitants who enjoy the immediate advantages of this navigation, does not exceed the whole amount of their taxes annually." In another part of the same report he estimates the amount saved by those using this navigation at more than \$170,000 annually. What is the interest on the money expended upon the Kentucky river? It is about \$56,000. You collect now by your tolls about \$30,000; raise the tolls a little higher and you would collect \$26,000 more, and you would then have enough to pay the interest. Gentlemen need not be afraid then, that by raising the tolls so as to make them pay the interest, it will drive every steamboat out of it. My venerable friend the senior gentleman from Nelson (Mr. Hardin,) says, he cannot think me in earnest, and that I certainly must be jesting. Well, he will know by waiting a while. This is no new notion of mine. A few years since when a member of the senate, I was foremost there, I believe, in advocating a law providing for increasing the tolls upon this river, and at one moment I was flattered with success, but a combination was formed and its provisions were made to apply to Green river, the improvements on which were in their infancy, scarcely completed, and this caused my efforts to prove abortive.

I desire now to call the attention of the convention and the country to the condition and management of our turnpike roads. I beg leave to read from a counter report made by G. W. Johnson of Scott county, a very prominent and distinguished man, the nephew, I believe, of the ex-vice president of the United States, Col. R. M. Johnson. This report was made to the house of representatives. See journal 1839-40, page 484.

"The state and individuals have improved 467.67 miles of road, and the amount of tolls collected at the gates, during the year 1839, is reported by the board of internal improvement at \$92,641 86; while it is stated by the commissioners of the sinking fund, that only \$7,576 37 have been received by them. Upon the supposition that the state is interested only one half in these improvements, it is evident that \$77,489 12, or nearly \$80,000 must have been expended, during the year 1839, in repairs, and the payment of presidents, treasurers, toll-gate keepers, and agents of the local boards, and incidental expenses.

"The expenditure of so large a sum, for such purposes, it is believed, results from mismanagement or fraud. If it be true, that neither mismanagement or frauds have had any agency in producing this result, it is evident that the system of borrowing, at five or six per cent. large sums at compound interest, to be invested in turnpike roads, must ultimately be ruinous in the extreme. The state has paid \$2,027,614 89 and individuals \$1,999,398 towards the comple-

tion of these roads. Six per cent. on \$2,000,000 amounts to \$120,000 annually. The state has received, as stated above, only \$7,576 37 during the year 1839, on its investment of \$2,027,614 89, or a fraction more than the one third of one per cent. per annum. Two millions of dollars, at six per cent. compound interest, will, in thirty two years, amount to the sum of sixteen millions, a sum so enormous as to be almost incredible, if figures did not establish its truth beyond contradiction. The most rigid economy is indispensable in a system involving such vast results, and a radical reform must be necessary."

Mr. President, does not the extract which I have just read, present our system of internal improvements in a most deplorable condition? It surely does; and in the language of the eloquent writer, "radical reform must be necessary." And what do I propose by the proposition which I have just submitted? It is to require the legislature to provide, by law, for laying such tariff on the travel and transportation on our roads and rivers as will raise a revenue sufficient to pay the interest, cost of repairs, expenses, &c. And surely those who have acted a conspicuous part in bringing about such a state of things cannot and will not refuse to come up and tax those who are in the enjoyment and possession of the grand and magnificent improvements, and those too whose property has been more than doubled in value by their construction. If you do this, and it should be onerous, the burden will but fall where it properly belongs.

Mr. DIXON. I can scarcely think my friend from Hickman is in earnest, but if he is, I think it will be well to look into the effect of that amendment. I understand the amendment is introduced to test the sincerity of the friends of internal improvement. If the amendment prevails, it will affect those who are not in favor of internal improvements as much, and perhaps more than those who are in favor of them. Those who live above slackwater navigation are deeply interested in the navigation of the rivers, and those who live below are interested in the transportation up and down the river. The gentleman proposes to lay a tax on the roads and rivers sufficient to pay the interest on the money expended in making roads and other public works. On what is that tax to be laid? On the produce of the country of course. It will fall directly on steamboats and other boats engaged in transporting up and down the rivers. But is it not a fact when you tax the vessels which carry the produce, you indirectly tax the produce which they carry to market? This cannot be denied. The tax falls on all the people on the banks of the rivers, but it will not fall on all the people of the state alike. Impose such a tax, and it would put a stop to navigation. The tax on the produce going out of Green river would absorb the whole value. The object of my friend I believe is good, but he cannot carry it out in this way without great injustice. Those who live at the head waters of the Kentucky and Green rivers will be compelled to pay the taxes on improvements below, as well as those who are in favor of the improvements. I cannot think my friend is in earnest, and I hope he will withdraw his amendment.

Mr. GHOLSON. I know not whether the gentleman from Hickman (Mr. James) is in earnest or not; but if he is not, he certainly ought to be. We have been told, indirectly, that we, in the extremes, are to pay the fiddler, while the people in the centre dance. In heaven's name, who should the expense fall upon, but those who derive the benefit of these improvements? But because they would be taxed, we are told the proposition will not do. I have been denounced and abused out of this house, and insulted in it, because I voted for restricting the city of Louisville. Why did I do it? Because I thought one thirty-eighth part of the senatorial representation was as much as any city should have. And now we are told these improvements shall go on, and the present rates of toll shall remain as they are. We must be taxed, it is intimated, in all time to come, instead of those who are benefited. We never have been benefited by the improvements. Gentlemen are only asked to pay the interest on the sums that have been expended for the advantage of particular sections of the state; but we are told by gentlemen that this will not do. I should have been glad to have heard from my friend from Madison, who glories so much in internal improvements. I would have been glad to hear from the honorable president, and from many other gentlemen on this subject. I ask gentlemen to say, if it will not do now, to tax these roads and other local objects, when will it? I ask gentlemen to name a time when we are to be relieved from taxation? I want to know when they are willing to take the burden upon their own shoulders, for it is properly their burden and not ours. My constituents want to know the time, and therefore I am desirous that gentlemen shall name a period which, I hope, may satisfy those whom I represent. I know there is an objection to this. We are told every day in this hall, if you put this in the constitution, or that in the constitution, it will induce many to vote against it. I have seen nothing yet that will induce me to vote against it. Sir, I should be willing to be ridden, booted, and spurred a little longer, rather than do that, as I have got accustomed to it. When the question is one of expediency merely, and not one of justice, I would, as a member of this convention, vote against it. But as a member of the legislature, as an act of justice to my constituents, I would vote for it.

I would suggest to my friend from Hopkins, (Mr. Bradley,) whether there is not danger in adopting the course he advocates. If the internal improvement men would be affected in their purses by this most just principle, and should turn against this proposition, we should lose our constitution.

Mr. DIXON. I have said nothing about my being for or against internal improvements, nor do I intend to say any thing about it now.

The gentleman thinks I am abandoning my principles here. Why? Because I will not go for laying a tax on the people on the banks of the rivers, to an extent that will pay the interest on the debt for improvements, and at the same time meet all the expenses for repairs. Has that gentleman inquired what effect it will have on the navigation of the rivers? Has he settled, in his own mind, that it will not stop navigation

entirely? And if it should, shall he tell me that I am acting inconsistently, if I will not go with him in his mad scheme of oppression? Let him show that the people are capable of bearing such a taxation—let him show that it would be just, so to tax them—let him show that it will not destroy the navigation of the rivers—and then he may come and say it is right and proper to lay such a tax exclusively on the people on the banks of the rivers. Let us, says he, tax those who have the benefit of the improvement. I told the gentleman, that if the section was adopted, many would be taxed who had not the benefit of it.

In 1841-2, I was a member of the legislature, and there came petitions to that body from the people near the source of the Kentucky river, that they might be relieved from the tax in passing through the locks and dams. The reason was, they could come down when the floods were high without the locks and dams, which were of no particular advantage to them, but subjected them to enormous taxes. The people on Green river are in the same condition. The tax on the locks is a tax on the produce as well as on those who live near the river. But if it falls on the people on the banks of these two rivers, it will put a stop to navigation, which every body will agree, should not be done. That it would do this, I have no doubt. The whole amount of taxes on the people on the banks of these rivers for a year, would be about \$150,000, or rather it would be on their produce. My friend from Ballard and McCracken surely cannot be in earnest. He is a gentleman of fine feelings, I have no doubt. He is opposed to taxation, to oppression. He startles, when we talk about taxing one portion of the community for the benefit of another, and yet he wishes to tax those on the banks of the rivers to an extent that would be the extreme of oppression.

Mr. GHOLSON. I have said that these works are wholly worthless—that they are, in fact, of no profit to the state. The gentleman says if you tax the people you will send their produce out some other way. That is what we have always contended for. We did not want the works made, nor do we want them sustained. But, I ask gentlemen to put a period to this burden, or to tell us how long we are to pay taxes to meet the interest on this money, and probably the principal, for the benefit of those who live on the various routes.

Mr. DIXON. I do not think we have any thing to do with that. I think it belongs to the legislature of the country.

Mr. GHOLSON. That is about as good an answer as I expected, and as good as any other gentleman will ever give in this hall. Why leave it to the legislature? Why does he not say what day we may expect it to come to an end? No man can tell when it will end, unless the proposition of the gentleman from Hickman should be adopted.

Mr. PROCTOR. I have, upon two or three occasions, moved the previous question; and, as this session should draw to a close—though I am willing to hear reasonable debate—I think this question has been sufficiently discussed, and I shall be under the necessity of demanding the previous question.

The main question was ordered.

Mr. STEVENSON called for the yeas and nays on the amendment.

The secretary commenced calling the roll, but before he got through

Mr. JAMES rose, and asked permission to withdraw his amendment.

Leave was granted.

The question recurred on the adoption of the section, as amended.

Mr. KAVANAUGH called for the yeas and nays, and they were—yeas 52, nays 42.

YEAS—John L. Ballinger, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Charles Chambers, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, John Hargis, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, George W. Mansfield, Richard L. Mayes, John H. McHenry, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, Wm. R. Thompson, Henry Washington, Jno. Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—52.

NAYS—Mr. President (Guthrie,) Richard Apperson, John S. Barlow, Thomas D. Brown, William C. Bullitt, William Chenault, Garrett Davis, James Dudley, Chasteen T. Dunavan, Selucius Garfield, James H. Garrard, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Thomas James, Wm. Johnson, Peter Lashbrooke, Alexander K. Marshall, Martin P. Marshall, William N. Marshall, Nathan McClure, David Meriwether, William D. Mitchell, Thos. P. Moore, John D. Morris, James M. Nesbitt, Elijah F. Nuttall, William Preston, Jas. Rudd, John W. Stevenson, Jas. W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Squire Turner, Andrew S. White, George W. Williams, Silas Woodson—42.

So the section was adopted.

Mr. C. A. WICKLIFFE. I desire to submit the following, as an additional clause to the section just adopted. It is to provide for an annual sum, of at least \$50,000, to be applied to the extinguishment of this debt. The reason why I preferred the original amendment of the President was this: there were too many contingencies upon which that fund depends. I wish, while we devote that fund to pay the state debt, to add also this clause:

"If there shall not be an annual surplus in the sinking fund, equal to \$50,000, to be devoted to the payment of the principal of the state debt, the deficiency shall be made up by an appropriation from the revenue of the state, so that at least the sum of \$50,000 shall be annually devoted to the extinguishment of said debt."

I barely wish to provide, that whenever it is ascertained that there will not be this surplus



from the sinking fund, the managers of that fund may make their arrangements to extinguish \$50,000 of this debt. And when there is not this amount, the legislature may provide for it, so that we may apply the principle of extinguishing this sum every year.

Mr. BROWN. It seems to me we are running too much into legislation. I am opposed to this amendment, by which, whenever there is not \$50,000 which can be applied from the sinking fund, we may take that sum from our ordinary revenue. It will accomplish nothing but to give the legislature the power to resort to taxation.

Mr. HARGIS. I will vote for no provision that provides for direct taxation of the people. Such a provision is legislation, and should not be engrafted on a constitution. Besides, this is a subject which was not discussed before the people in the late canvass. I am as willing as any gentleman to make provision to meet the obligations of the state to the last dollar, together with interest on the principal as it becomes due; but I am not willing, in the formation of an organic law for the state, to run into such details, and insert in this instrument that which should be the subject of legislative enactment. I am not willing in this way to make an imperative provision for all time to come, whereby the people will be taxed annually to the amount of \$50,000, in addition to the taxes which they now pay. Whether the internal improvement system was right or wrong, I will not now say; but I will go for paying all the debts we have incurred, and leave to the legislature the passage of such laws as will be a safeguard for the future.

Mr. C. A. WICKLIFE. I wish to be understood here and at home, that I came here for the purpose of providing some system by which the public debt can be relieved. I know the legislatures have been called upon from time to time, by the executives of this commonwealth to set apart a fund annually for the gradual liquidation of the public debt. That has not been done, though the people have always desired that the debt should be paid. It is believed the sinking fund will have an increase greater than \$50,000. I hope it may, but when we remember the fund is drawn principally from taxation on bank stock, from dividends of bank stock, from dividends of public roads, it is subject to casualties and loss. There may be and has been a surplus for the last two or three years. But if in consequence of breaking away of a dam, the income from the river should be stopped; there are not \$50,000, and this surplus fails, what does my proposition contemplate? That there shall be at least, the sum of \$50,000—to be appropriated to reduce the debt. That is what I want to secure. Gentlemen need not be apprehensive of telling the people of the state that they have secured an appropriation of \$50,000 annually—no matter how or in what manner it may be raised—that in the course of thirty years, will extinguish our state debt. This will meet the approval of the people. They will hail our act as one fitted to protect them against excessive taxation. I do not suppose that a provision of this kind will lead to the necessity for a tax to the amount of the forty-eighth part of a cent per cent. It may be the means of compelling some

future legislature, when making appropriations, to look to this constitutional demand upon the public treasury.

The yeas and nays were called for on the amendment, and being taken, were—yeas 34, nays 57:

YEAS—Mr. President, (Guthrie,) William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, William Chennault, Jesse Coffey, Archibald Dixon, Selucius Garfield, James P. Hamilton, Ben. Hardin, Vincent S. Hay, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Martin P. Marshall, John H. McHenry, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, William Preston, Larkin J. Proctor, John T. Robinson, James Rudd, Ignatius A. Spalding, John D. Taylor, Henry Washington, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—34.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Thomas D. Brown, William C. Bullitt, Charles Chambers, James S. Chrisman, Beverly L. Clarke, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Jas. H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, John Hargis, Andrew Hood, Alfred M. Jackson, Thos. James, William Johnson, Geo. W. Johnston, Charles C. Kelly, James M. Lackey, Thos. W. Lisle, Willis B. Machen, Geo. W. Mansfield, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, James M. Nesbitt, Henry B. Pollard, Johnson Price, Thomas Rockhold, John T. Rogers, Ira Root, John W. Stevenson, James W. Stone, Michael L. Stoner, Alber G. Talbott, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John Wheeler, Andrew S. White, Robert N. Wickliffe, George W. Williams—57.

So the section was rejected.

The thirty second section of the report, which is now the thirty third, was next read as follows:

"SEC. 32. The general assembly may contract debts to meet casual deficits or failures in the revenue, or for expenses not provided for, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars; and the moneys, arising from loans creating such debts, shall be applied to the purposes for which they were obtained, or to re-pay such debts: *Provided*, that the state may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defence."

To this section there was a pending amendment to strike out the words "or for expenses not provided for."

Mr. MACHEN. It seems to me sir, that there is no use in making this change in the section. I am as fully in favor of restricting the legislature in its powers of contracting debt, as any man on this floor; but it appears to me that there may be occasions when extraordinary revenue may be required, so that it would in my opinion be advisable to allow this section to remain as it is. Many gentlemen appear to think that \$50,-

000 would be a sufficient amount of extra taxation, with which to invest the legislature; others say \$100,000, and others more, as coming under the words "expenses not provided for." I am for as little as appears necessary to meet the case; but gentlemen will know that there are incidental expenses which spring up in governments which cannot be anticipated at all times. The small sum of \$50,000 may be thought sufficient by some, but if you go back into the history of Kentucky for a few years you will readily see how circumstances may spring up rendering it necessary to go to the amount of \$500,000.

From 1839 to 1843 the valuation of the property of the state was reduced by commercial convulsions seventy seven millions of dollars. Such an emergency may arise again, and be of such a character as to deprive the treasury of one half of its ordinary revenue. In what condition would the state be placed should this misfortune befall us, and the restriction be limited to meet the views of those who think \$50,000 would be as far as the legislature should go in borrowing? Repudiation is to be the result.

Some will say it is time enough to call the legislature to meet contingencies when they have arisen. There I differ; for in my opinion that is just the time when it may be too late—too late either to call the legislature or to levy a tax to meet these requirements. For these reasons, sir, I think there is no necessity for changing the section; but that we will best consult the interests of the state by permitting it to remain as it is.

Mr. PRESTON. I think the observation of the gentleman from Caldwell so good, that it needs no recommendation. The words are distinct—intelligible—there is no ambiguity about them—"expenses not provided for." You have now tied up the sinking fund by this morning's vote. Suppose the locks and dams of the river here were destroyed; you have no power to borrow money to relieve the embarrassment in which the state would, by such a casualty, find herself. Imagine the case of your capitol being burned down, a similar difficulty would occur. The words "or other expenses," were intended to give that very latitude which the gentleman must deem necessary to give the right to contract a debt of half a million of dollars if the popular necessities appear to demand it. That was the effect of that provision; if you strike it out you embarrass the state. If I had to vote either way, I would rather do without both the thirty-second and thirty-third sections, than omit the words suggested; for if you strike them out, you certainly destroy the effect of both of these sections. The city of Louisville alone has a revenue which amounts to nearly half a million of dollars annually; the city of New York pays nearly that amount for cleaning her streets; Boston expends more than half a million annually for her city expenses, and we are here to restrict the state of Kentucky, and we repose so little confidence in her legislature as to deny her the paltry power to contract a debt of half a million, or to repose that amount of confidence in her sovereign legislature. I hope these words will not be stricken out; if they are, you will mutilate the section so as to render it entirely inoperative. We have now not only taken the sink-

ing fund from under the control of the legislature, but we have decided that \$50,000 from the surplus revenue, shall annually be applied to the payment of the public debt. Casualties may arise, and in such case from three to four years must elapse before any provision can be made for their repair. In 1839, we were in such a state of embarrassment that we were compelled to borrow from the banks \$267,000. What would have been the effect if this feature had been in the constitution of 1799? Repudiation and disgrace. There are a hundred reasons why this margin should be left with the legislature; and I hope that no personal differences of opinion, no little spirit of parsimony will prevail on this floor, on such a subject as this. I hope by our vote on this question we will at least say that the people of the commonwealth of Kentucky can afford to repose discretion in their legislature, to redeem the honor of their state, as its emergencies might require. Impose this restriction, and you will find that in five or six years an impulse will have sprung up under the influence of wealth and growing prosperity that will call for another constitution. In five or six years the people under the influence of those hopes which always exist and expand with wealth, may require and induce us to embark in schemes of internal improvement; pass restrictions of an extreme character, and you may depend upon it that before five or six years have elapsed, you will be called upon to reconsider this work which you are here to perform to-day.

Look at Virginia. What did she do last year? At the last session of her legislature she was influenced by the prosperity of Kentucky and Georgia—two sister slave states—to contract a debt of some four millions to invest in the Parkersburgh railroad, and in perfecting the communication between the waters of the Kanawha and James rivers.

I merely mention this to show that there is an alteration in the public mind—an alteration which is certain to exist in the minds of the people of this state, as our wealth, resources, and population advance; and when it comes, woe be to this constitution, if we so cripple the will of the people that we cannot accomplish their wishes. Pass this restriction, and what do we say to the people of Kentucky? Why, that "we are making you a constitution for—how long?—five years to come?" No! A constitution, sir, is a thing that should be made for ages, if made as it ought to be. It is the embodiment of the great principles lying at the foundation of society, which should be disturbed as seldom as possible. We are making this constitution, as we hope, to continue not only when we are in our graves, but when many generations after us shall have followed us thither. Are we then to assume that this convention alone are the true representatives of the people—a better index of the wishes of a generation which will exist when we are all dead, than the representatives of their own choice—their own day, and their own generation? As well indeed might we say that the convention of 1799 was a convention that had a right to control our privileges in all time to come, and that they were the true representatives of the people, instead of ourselves or the legislature of the state.

I merely ask gentlemen to use some discretion; I ask them not to stigmatize the state by saying that they shall have no power in all time to come; I ask them not to deprive the state of that self-control which belongs to all truly and well organized bodies.

Sir, I am as anxious as any gentleman in this house to restrict, in a wholesome manner, the exercise of this debt-contracting power; but we may urge it too far; and I feel it my duty to warn you, as far as I am able, and to entreat that we should not be governed by a parsimony so odious. For fifty years we have enjoyed this right. The federal government has no check upon it. Most of the states have no check upon it; and now, when we propose to take away from the legislature of the state of Kentucky the power of contracting debt, and leave them the pittance of half a million as a maximum for which they may contract debt, we are told that it is an extravagant sum. One moment's reflection must convince every gentleman that it is not so.

I hope therefore, that as unforeseen difficulties may arise to depress the public business of my native state, the convention will leave to the legislature the exercise of such discretionary power as will in some measure seem likely to meet the case, and that, at all events, they will not attempt to lay any restriction on the amount proposed in this section. I have said thus much, but I of course feel bound to abide by the decision of the convention in the matter.

Mr. C. A. WICKLIFFE. Most of the remarks of the gentleman from Louisville, seem to be made in reference to his own work—the thirty third section. He proposes not to trust the future legislature with the power of borrowing money without consulting the people, before the contract is made.

If he has convinced himself that that section is wrong, I hope he will move to strike it from the article of the constitution. The amendment under consideration has been denounced by the honorable member, as being the result of parsimonious feelings and opinions. Whatever may be its form or its character, it does not change the nature or effect of the amendment. It is by speeches of the kind we have just heard, that the pride of members of the legislature is sometimes excited; and the immense appropriations of which we have recently heard in this and other states, have been inconsiderately obtained. The gentleman provides in this section, that the legislature may create a debt not exceeding \$500,000 without the provision of the condition annexed to the succeeding section, rendering it necessary to submit such a proposition to the people, for their approval. I for one, would be willing to leave the power of creating a debt in the hands of any future legislature, if you will just retain the section—or rather I would say, make a provision in the section, to the effect that in such case, the legislature shall provide the means of paying both principal and interest. That is as much guaranty as I want upon the subject of creating debt. The gentleman from Louisville, however goes further; he proposes in the thirty third section, that independent of that guaranty, a bill shall be submitted to the people at the regular elections to vote upon. Now, I will go

with him if he will adhere to his original proposition to give an additional guaranty, or I will vote for the section if that guaranty is stricken out and the one which I offer is retained. But what is this section? The gentleman tells us it is to meet the demands of the ordinary expenses of the government, arising from a deficit of the revenue. That is the language; and he proposes to borrow not exceeding \$500,000 to meet such deficit. Yesterday, when I moved to strike out \$500,000 and substitute a smaller sum, it was said that the thirty third section was an ample restriction; and upon looking at the section, and hearing the explanation, I find that the section means "you are not to exceed \$500,000 without consulting the people."

But there are, in that section, the words which I propose to strike out, the power given to the legislature to borrow or to create a debt of \$500,000 when the necessities of the country don't require it; and that is power I don't intend to grant, unless the gentleman will put into the section some guaranty that when they borrow money they will provide the means to pay both the principal and interest.

Now, I will put a case to the gentleman, and to the member from Logan. Under this section, would it not be in the power of the legislature to create a demand for \$500,000 in the Russellville Bank. Suppose this to be the case. We now see a spirit of enterprise going on in railroads and turnpike roads; suppose the legislature should think proper to create a demand for \$500,000 or even \$250,000, to aid a company in constructing one or other of such enterprises; would they not have the power, under this section, containing the words which I propose to strike out? Unquestionably in my view they would, and it is to avoid this concealed power, which is still left, and which I wish to destroy, that I propose to strike out these words. Without detaining this convention, therefore, I put it to the gentleman who has just addressed the convention—supposing I am understood—I put it to him to answer, whether—taking the section as it now stands—whether the legislature would not have power to take \$500,000 stock in the Ohio and Lexington railroad, and borrow the money on the faith of the state to pay for it? That is my question.

Mr. PRESTON. I certainly regard that, under the words "or for expenses not provided for," there is an absolute discretionary power given to the legislature to contract a debt, not at any time over \$500,000, and that when that debt is paid off, it has the power to re-contract another debt; and so on as emergencies may dictate; but the utmost extent to which the legislature can encumber the people of Kentucky is \$500,000.

Mr. C. A. WICKLIFFE. If I am correct, sir, it is proposed to invest the legislature with the power of appropriating half a million for any purpose they may deem expedient; it may be in bank stock, or railroad stock, or any other stock. Is it the intention of the convention to pass such a section as this without putting some restriction upon it, or to grant this power without any restriction at all?

Mr. CLARKE. I am satisfied, Mr. President, after an examination of the section, that the

words, "or for expenses not provided for," should be stricken out. So far as I know the sense of the committee, and those with whom I have conversed upon the subject, it never was intended that that power should be so construed as to confer upon the legislature the right to contract a debt even of \$100,000, much less of \$500,000, by taking stock in banks, or railroad companies, or for constructing locks or dams, which may be destroyed by casualty; and if it were the opinion of that committee that we were conferring any such power, I confess, for one, I did not understand it; and if that be its meaning, I am decidedly opposed to it. I would have gone for the resolution proposed this morning by the gentleman from Hopkins, but for two reasons. I would have voted for that resolution, except that the improvements referred to were made with the consent of the whole people of the state; and whether that consent was obtained by holding out false promises or not, they did consent to it, and I suppose each division of the state is willing to pay its proportionable part of the expenses. There was a second reason why I did not vote for the resolution, and it was this: if I were to vote for the resolution in its present shape, the improvements of the country might go to destruction; but I now state that, if the improvements upon the Green and Kentucky rivers are not sufficient to sustain themselves by the amount of dividends that accrue from the different locks and dams upon those rivers, and by those who are mainly benefitted by them—I say, in such case, I am opposed to sustaining these improvements at the expense of the people of the whole state. There are those in the house who would have voted for this resolution; but I for one could not, if it is intended to tax the whole people for these locks and dams, because the whole people are not benefitted by them.

Now, if there exists a power in this section to confer upon the legislature the power of borrowing money for the repairs of locks and dams on these rivers, I am opposed to it; and you may bring up the question at any future time, I shall still be opposed to it. Suppose, for instance, the locks or dams were destroyed within ten miles of this city, who is injured? Some nine or ten counties on the banks of the river; and if they who are reaping all the benefits of the river and its improvements, don't go to work and repair the injury, it shall not be with my consent that the whole people shall be taxed for that which is merely a local benefit; and, in stating this much, I am convinced that I state nothing but what is the universal feeling of the whole people I have the honor to represent.

Mr. TURNER moved the previous question, and the main question was ordered to be now put.

Mr. CLARKE called for the yeas and nays, and they were taken, and were yeas 51, nays 42:

YEAS—John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, Thomas D. Brown, Charles Chambers, James S. Crisman, Beverly L. Clarke, Benjamin Copelin, William Cowper, Edward Curd, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, John Hargis, Thomas James, Wil-

liam Johnson, Charles C. Kelly, Jas. M. Lackey, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, Alexander K. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—51.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Francis M. Bristow, William C. Bullitt, William Chenault, Jesse Coffey, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Selucius Garfield, James H. Garrard, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Thomas N. Lindsey, Willis B. Machen, Martin P. Marshall, William N. Marshall, John H. McHenry, David Meriwether, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, William Preston, Johnson Price, James Rudd, John W. Stevenson, Albert G. Talbott, John J. Thurman, Howard Todd, Squire Turner, Andrew S. White, George W. Williams—42.

So the amendment was adopted.

Mr. CHRISMAN enquired if it would now be in order to move to strike out \$500,000, and insert a smaller sum.

The PRESIDENT replied that it would not, as the main question had been ordered.

Mr. PRESTON called for the yeas and nays on the adoption of the section, and being taken, they were—yeas 63, nays 31.

YEAS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Charles Chambers, James S. Chrisman, Beverly L. Clarke, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Thomas J. Hood, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, Nathan McClure, John H. McHenry, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Henry Washington, John Wheeler, Chas. A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—62.

NAYS—Mr. President (Guthrie,) Richard Apperson, John L. Ballinger, Francis M. Bristow, William C. Bullitt, William Chenault, Jesse Coffey, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Selucius Garfield, James H. Garrard, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, George W. Johnston, Alexander K. Marshall

Martin P. Marshall, William N. Marshall, David Meriwether, Elijah F. Nuttall, William Preston, Johnson Price, James Rudd, John W. Stevenson, Albert G. Talbott, Squire Turner, Andrew S. White, George W. Williams—31.

So the section was adopted.

The thirty third section (now the thirty fourth) was next read, as follows:

"Sec. 33. No act of the general assembly shall authorize any debt to be contracted on behalf of the commonwealth, except for the purposes mentioned in the thirty second section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it."

Mr. TURNER moved to amend the section by adding the following proviso:

"Provided, That the general assembly may contract debts without submission to the people, by borrowing money to pay any part of the public debt of the state, and without making provision in the act authorizing the same, for a tax to discharge the debt so contracted, or the interest thereon."

Pending this amendment, on the motion of Mr. MITCHELL, the convention took a recess.

#### EVENING SESSION.

The question was then taken on the amendment of Mr. TURNER, by yeas and nays, and it was agreed to—yeas 51, nays 30.

YEAS—Mr. President, (Guthrie,) Richard Apperson, William K. Bowling, Francis M. Bristow, William C. Bullitt, Charles Chambers, William Chenault, Jesse Coffey, Garrett Davis, James Dudley, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Thomas N. Lindsey, Martin P. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, John D. Morris, Jonathan Mewcum, Elijah F. Nuttall, William Preston, Larkin J. Proctor, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—51.

NAYS—John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, Benjamin F. Edwards, Milford Elliott, Green Forrest, James H. Garrard, Richard D. Gholson, John Hargis, Thomas James, Charles C. Kelly, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Hugh Newell, Henry B. Pollard, John T. Robinson, John T. Rogers, John Wheeler—30.

The blank in the section was filled up with the word "thirty," as the number of years within which the debt should be discharged.

Mr. A. K. MARSHALL moved to amend the section by striking out the words "except for the purposes mentioned in the thirty second section of this article."

After a few words from Mr. PRESTON and Mr. A. K. MARSHALL, the amendment was rejected.

The question then recurred on the adoption of the section, as amended.

Mr. A. K. MARSHALL called for the yeas and nays, and they were, yeas 73, nays 15.

YEAS—John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, L. Brawner, Francis M. Bristow, Tho. D. Brown, Wm. C. Bullitt, Chas. Chambers, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Benjamin F. Edwards, Milford Elliott, Green Forrest, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Thos. James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, Richard L. Mayes, Nathan McClure, Jno. H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Henry Washington, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Wesley J. Wright—73.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William Chenault, James Dudley, Chasteen T. Dunavan, Alfred M. Jackson, Thomas W. Lisle, William C. Marshall, William N. Marshall, Elijah F. Nuttall, Squire Turner, John Wheeler, Andrew S. White, Silas Woodson—15.

So the section was adopted.

Mr. CLARKE and Mr. A. K. MARSHALL asked and obtained leave to record their votes on the amendment of Mr. TURNER, on which the question was taken in their absence.

Mr. DAVIS. I move to reconsider the vote just passed. If it should be reconsidered, I shall offer an amendment to the clause. I am opposed to this mode of saying whether any law shall become a law of the land or not. I believe it is not congenial with the genius of a representative government, that such proceedings should take place. I believe on that subject, and on all other subjects, that representatives ought to speak fairly and fully the wishes of those whom they represent. But the idea of a convention authorizing a law for any particular subject, to be submitted to the people, to be passed upon by them by their popular vote, is, to my mind, perfectly incompatible with representative government. Now, I am opposed to a bare majority of the legislature creating a public debt in the future. That power has been impropvidently exercised in this state, but not so

much as in some others. But I think we have had enough experience in our own commonwealth, and certainly know enough of that of others, to admonish us to guard that power with a little more care than it has existed under the present constitution. If this motion shall prevail, and the question be reconsidered, of which I have no expectation, I will then move to amend that clause so that it shall require the concurrence of two thirds of both houses of the legislature before any debt shall be created. I think that would be a sufficient guard. I believe that whenever two thirds of the legislature of Kentucky shall solemnly decide it is necessary to create a public debt, that the people will acquiesce. And I do not believe that two thirds of both branches would concur in creating a debt for the state unless the public interest and the public will imperiously demand it. It would be more congenial to our system and to the mode by which the popular will is to be expressed and carried out in the legislature, that that plan should be adopted, rather than that any law should be submitted directly to the people for their acceptance or rejection. I see no reason why this particular subject should be submitted any more than a hundred others of equal importance that I could name. But I do not think such a submission should be made. I know that the expression of such an opinion may be perverted and made to receive the popular disfavor. It is a step about which prejudice may be unjustly and untruthfully made to arise in relation to a man. But, humble as I am, I am willing to submit myself to that consequence, or any other consequence that may meet me in a proper and conscientious discharge of my duty on this floor. I do not believe that that mode of checking the legislature, ought to be introduced by the convention. I do not believe the people have demanded such a check. I do not believe that this convention has been instructed to depart from the great representative principle in our system of government. I believe that an ordinary investment of power is liable to abuse, and it should be guarded against. And I believe it would be more congenial with, and more consonant to their judgment, that two thirds should concur in a law for the creation of a debt before it should be passed. I moved to change my vote, in order to afford me an opportunity to express my sentiments, regretting I had not done it before.

The motion to reconsider was not agreed to—  
ayes 37, noes 40.

Mr. PRESTON offered the following as an additional section:

"The power of the cities and towns of this commonwealth, to contract debts, lend their credit, or impose taxes, shall be prescribed from time to time by general laws; and no special law authorizing cities or towns to contract debts, lend their credit, or impose additional taxes to those permitted by the general laws, shall hereafter be enacted, unless provision shall in the same act be made, to levy a tax sufficient to pay the interest stipulated, and extinguish the debt itself in such time as may be directed by law: nor shall such act take effect, until it shall have been submitted to the qualified voters of the city or town to be taxed, under such regulations

as the general assembly may prescribe, and shall have received three-fifths of the votes of the qualified voters of the city or town to be taxed: nor shall such tax be repealed until the debt is extinguished."

Mr. MERIWETHER. My friend has embraced the words taxing by counties. I doubt whether the taxes are the same for any two years in a county. I would suggest to strike out the word "special" and insert "but by a general law."

Mr. PRESTON. My object is to require any special law for the benefit of any city or town, which involves expense for internal improvements, to be first submitted to the people of those cities, towns, or counties. This requires that a majority of three-fifths of the people shall be obtained. This was thought the best restriction which we can place upon the power of special legislation in this case.

Mr. IRWIN. I have no objections, if that is made to apply to cities only, but it is a principle which would not be recognized by my constituents.

Mr. TURNER. The difficulty in my county has been to get the people to come up to a system of internal improvement. There is no desire and no necessity for such a restriction in my county. So far as it applies to Louisville I have no objection; but I want old Madison taken out from under this part of the constitution. You will have according to this, a general law passed requiring three-fifths to vote a tax, if I understand it.

Mr. PRESTON. On special taxes.

Mr. TURNER. There has been no complaint about special laws and special taxes; the great difficulty has been to get the people to come up and open their purses a little more. I think we are making restriction upon restriction, which appear not to be needed by the people in my section, and I move to strike out the word "counties."

Mr. PRESTON. I have no objection to the word counties being stricken out, though I think a moment's consideration will convince the house that it may be best to apply to them. Special legislation has been a growing evil upon the country. An inspection of the resolution will show that it does not prevent those works of improvement in counties which the gentleman wishes to see completed, but simply that whenever a law is made different from the general law of the state, where it prescribes a rule for one county and another for a different county, one for one city or town, and another for a different city or town, that such special law shall be submitted to the people upon whom it is to operate. Special laws are an abhorrence to legislation, and I believe we should insert "three-fifths," and make no exception to the general law without that majority. This does not prevent undertaking a work which may be for the benefit of the public, but authorizes a restriction against persons coming up here and log-rolling to obtain the passage of special laws, rather for individual than public benefit.

We wish to provide that where the tax affects only a single community, and not the whole state, this restriction shall operate, and not till then. The gentleman inquires respecting the



burdens and expenses of cities. I can tell him that in the city of Louisville, with a population of about fifty thousand, these public expenses are nearly as great as in the whole state besides. They amount to some \$400,000 annually. One half of this, it is true, is for special taxation for works which we have begun, and with which we are willing to go through; but we ask, that whenever a great debt is to be saddled on us and our posterity, we may have our attention called to it, instead of allowing two or three gentlemen to involve us in this great public debt without the people knowing any thing about it. I believe it will be equally wise, for a county, where it is to contract a debt. I believe it will be equally right and proper in such case to submit it to the people of the county first. That is the ground we go upon. If the gentleman moves to strike out the word "counties," it is a matter of indifference, so far as the constituency I have the honor to represent is concerned.

Mr. TURNER. At present no tax can be laid on a county, without a special act of legislation, and a special act is never applied for unless the representatives of the county consent to it; and they are skittish in doing this, unless they know the people demand it.

The county of Bourbon is attempting to get a road to run to the Kentucky river. If Bourbon petitions to levy a tax to do this, shall she not have the power to do so? Madison has never come up sufficiently to the work of internal improvement; but I hope the time will come when she will do so, and when we may get about upon improved roads, which are now often in a condition which renders traveling dangerous. The state is not going into county improvements, and if you require a majority of three-fifths you will be throwing the country back, and throwing us into the wind for generations to come; whereas, every enlightened man knows, that if these improvements are made, the value of property will be enhanced tenfold; and not only that, but all the enjoyments of social life will be greatly increased.

I appeal to any gentleman to tell me whether there has ever been an abuse of this power, and whether a tax has ever been laid upon a county, unless a majority desired it. We in the country do not create a great debt to bind our children and grand children. If we make a debt, we go about paying it at once.

Mr. DAVIS. I think laws of the character indicated by that provision can sometimes be passed with advantage to particular sections of the state. Such laws ought to have prudent and sufficient guards thrown around them, and I do not believe they ought to be passed without the concurrence, and the full and free consent of the people of the county whom they affect. There are laws of that kind in some of the counties. We have two in the county of Bourbon. Our county court has appropriated and expended upon two of our roads, \$5,000 each, to aid private companies in McAdamizing them. They have appropriated altogether, \$19,000 on account of roads which are in course of construction. And the section of the county through which these roads pass have it in contemplation to McAdamize them also, and they will expect the same assistance as the roads

to which I have referred have received. I do not think it would be just to the portions of the county of Bourbon, which have not yet undertaken this improvement, that a three-fifths vote of the people of the county should be required to authorize the county court, or any other tribunal, to subscribe to those roads which may hereafter be commenced.

In some form I think the question ought to be submitted to the people of each county, whether they are willing to submit to be taxed for the construction of McAdamised roads. I do not believe that in the interior of the state, particularly, three fifths should be required in order to determine whether such a tax should be imposed. On the contrary, I believe that a majority should be competent to decide that question and establish the policy of McAdamizing the great leading roads in any county. Situated as my county is, I believe the proposition of the gentleman from Louisville might work some injustice to a portion of my constituents, as it might the constituents of any member of this body, who are in the same condition as a portion of the people of Bourbon. Now, with a view to have justice done them, and at the same time prevent the abuse of power, I think the provision I have suggested, or something of the kind, would be quite sufficient.

The question was then taken, and the word "counties" was stricken out, so that the provision applies only to towns and cities.

Mr. DIXON. I wish to add the following words as a proviso "but the provision shall not apply to the town of Henderson."

After some conversation Mr. DIXON withdrew his amendment.

Mr. STEVENSON. If anything is going to defeat this constitution it is going so much into detail; and if we progress as we have for the last five days, I shall begin to loose all hopes that the people will approve our work. My people have derived as little benefit from the public treasury as any portion of the state, however much they may have contributed to it. We have lately attempted to do, what the state has been unwilling to do, for us—to open a railroad between the middle and northern portion of the state, which will tend to aggrandize the whole commonwealth. We have a law, by which, if the majority think proper, they may subscribe for a great railroad to connect Lexington and Covington. A principle is about to be engrafted upon the constitution that no law shall be passed here unless three fifths shall vote for it. It seems to me to be uncalled for. I can see no good to which it will lead, and I think I can see great harm.

Mr. A. K. MARSHALL. I move to strike out the word "towns."

Mr. PRESTON. It seems to me the convention are under the impression that this proposition is different in its tenor from what it is. The constitution asserts that taxation shall be equal and uniform in this commonwealth, and yet we violate the principle by permitting special taxation, and allowing municipalities unrestrained power when the state is restrained.

The gentleman from Kenton may be interested in internal improvements, but not more so than the city I have the honor to represent. I think

I understand as clearly as he can the necessity of placing some curb upon the cities and towns, to contract heavy debts, against the will of the people; some restriction, in order to prevent them from running into extravagance. Shall we say to the people of Kentucky, after the solemn act of this morning, you shall not go into debt beyond the amount of \$500,000, and yet give some great municipality the power to do so to the extent of millions. Is it unwise that three fifths shall act upon it, and if not three fifths, would it not be well to impose a check, such as is proposed by the gentleman from Bourbon? The power of taxation has been exercised in some cities to an enormous extent, and it will be in every growing city under the present system of internal improvements which are springing up. I believe the method proposed is a healthy way to get at public sentiment before taxes are laid. I know my friend and colleague, (Mr. Rudd,) who had the honor of originating this measure, and who has served ten or fifteen years in the councils of the city of Louisville, could give ample evidence, and is far more able than myself to show the necessity of engrafting this feature on the constitution.

Mr. RUDD next addressed the convention, and entered into a minute detail of the expenditures incurred by the city of Louisville, for many years past, on account of her numerous and costly public improvements, which had yearly entailed upon her a large debt which was still unpaid. He hoped the amendment of his colleague would prevail, as it was high time some restrictions should be placed upon the municipal authorities of our cities and towns to prevent them from involving the people in debt.

Mr. ROOT moved the previous question, which was sustained.

The motion to strike out the word towns was adopted, and the section was confined to cities.

Mr. PRESTON asked leave to withdraw his amendment, which was granted.

The convention then adjourned.

### WEDNESDAY, DECEMBER 5, 1849.

Prayer by the Rev. Mr. LANCASTER.

#### ADDRESS TO THE PEOPLE.

The PRESIDENT appointed the following as the committee to prepare an address to the people of Kentucky, under the resolution submitted a few days since by Mr. CLARKE: Messrs. Clarke, C. A. Wickliffe, Apperson, Dixon, and Taylor.

#### REPRINTING AMENDED ARTICLES.

Mr. McHENRY moved the following resolution, and it was adopted after a brief explanation of its necessity to enable the committee of revision and arrangement satisfactorily to discharge its duty:

"Resolved, That when changes are made in any report, and the same is adopted by the convention in a form different from the printed report, the same shall be reprinted as adopted by the

convention, and the usual number of copies furnished."

#### COMMITTEE ON APPORTIONMENT.

Mr. APPERSON offered the following resolution, and it was adopted:

"Resolved, That the committee on apportionment of representation have leave to sit during the sessions of the convention."

#### LEGISLATIVE DEPARTMENT.

Mr. KAVANAUGH moved a reconsideration of the vote by which the following was adopted as a section of the article on the legislative department:

"No law shall be revised or amended by reference to its title, but in such case, the act revised, or section amended, shall be re-enacted and published at length."

The motion was agreed to.

Mr. KAVANAUGH said he saw no good to be accomplished by retaining this section, whereas it would occasion a heavy expenditure to the government.

After a brief conversation in which Mr. BROWN, Mr. McHENRY, and others participated, the section was rejected.

#### THE WILMOT PROVISIO.

Mr. KELLY submitted the following preamble and resolutions, which he wished to be postponed and printed:

"Whereas, the rights of life and liberty are natural, inherent, and inalienable; and whereas, the right of property is intrinsically necessary to the full and complete enjoyment of them; and whereas, the right of property—being secondary only to those of life and liberty—exists prior to government and independent thereof, and government is only framed to protect and secure those rights, which a free people can never surrender without becoming slaves; and whereas, some of the northern states of this confederacy have, from the year 1816 up to the present time, made war, unjustifiably and unworthily, upon the rights of property, as secured by the laws, organic and legislative, of the United States and of the several southern states, and thereby have, to some extent, made the tenure of property in slaves insecure; and whereas, it is the deliberate sense of the people of Kentucky, expressed by this convention, that congress has no power to interfere with the slave institutions of the District of Columbia, or of the territories:

"1. *Resolved*, That the passage of the Wilmot proviso, by congress, as a part of any bill to organize a state or territory, would be a direct and flagrant invasion of the rights of the south—a violation of the true principles of the federal compact—a submission to which would dishonor the ancient fame of this great commonwealth, and be fruitful of disgrace to the national councils

"2. *Resolved*, That while, by the will of the free people of Kentucky, slavery exists within her borders, and while it exists in any other state of this union, the right of the citizen of this state to purchase in that, and bring to this, for his own use, slaves, can never rightly, and shall never, be abridged."

Mr. M. P. MARSHALL moved to lay them on the table, for the present.

Mr. CLARKE called for the yeas and nays, and they were—yeas 51, nays 38:

YEAS—Mr. President, (Guthrie) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Benjamin Copelin, Garrett Davis, Chasteen T. Dunavan, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thos. J. Hood, James W. Irwin, Alfred M. Jackson, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, William C. Marshall, Nathan McClure, John H. McHenry, David Meriwether, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, William Preston, Johnson Price, John T. Robinson, Ira Root, James Rudd, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, George W. Williams, Silas Woodson—51.

NAYS—Alfred Boyd, Wm. Bradley, William C. Bullitt, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Lucius Desha, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Wm. D. Mitchell, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, Michael L. Stoner, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe—38.

So the preamble and resolutions were laid on the table.

#### MEETING OF THE GENERAL ASSEMBLY.

Mr. C. A. WICKLIFFE moved a reconsideration of the vote adopting the following section of the report on the legislative department:

"SEC. 16. The general assembly shall convene on the first Monday in November, after the adoption of this constitution, and on the same day of every second year, unless a different day be appointed by law, and their session shall be held at the seat of government; but if the public welfare require, the governor may call a special session."

He stated his object to be, to move to amend the section by substituting the second Monday of January, for the day fixed in the section, as it now stands.

The rule which requires a motion to reconsider to lie over one day was dispensed with, and the motion to reconsider was agreed to.

Mr. C. A. WICKLIFFE then moved to amend as indicated.

Mr. JAMES moved to amend the amendment, by substituting the first Monday of January.

On these amendments a conversation ensued, in which Messrs. C. A. WICKLIFFE, JAMES, IRWIN, BARLOW, MACHEN, GARRARD, KAVANAUGH, and others, took part.

The motion to strike out the second and insert the first Monday of January, was negatived, by a majority of 39 to 33.

Mr. KAVANAUGH moved to postpone the further consideration of the subject, for the present.

The motion was not agreed to.

The amendment submitted by Mr. C. A. WICKLIFFE was also rejected, and the section was again adopted.

#### THE MILITIA.

The convention proceeded to the consideration of the report from the committee on the militia:

#### "ARTICLE —.

"SEC. 1. The militia of this commonwealth shall consist of all free, able-bodied male persons (negroes, mulattoes, and Indians excepted,) resident in the same, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this state; but those who belong to religious societies whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal services.

"SEC. 2. The governor shall appoint the adjutant general, and his other staff officers; the majors general, brigadiers general, and commandants of regiments, shall, respectively, appoint their staff officers; and commandants of companies shall appoint their non-commissioned officers.

"SEC. 3. All other militia officers shall be elected by persons subject to military duty, within the bounds of their respective companies, battalions, regiments, brigades, and divisions, under such rules and regulations as the legislature may, from time to time, direct and establish."

The first and second sections were considered and adopted, without amendment.

The third section was amended, on the motion of Mr. McHENRY, by inserting the words, "and for such term," after the word "regulations."

The section, as amended, was adopted.

#### IMPEACHMENTS.

The convention proceeded to the consideration of the report of the committee on miscellaneous provisions, concerning impeachments, as follows:

#### "ARTICLE —.

#### "CONCERNING IMPEACHMENTS.

"SEC. 1. The house of representatives shall have the sole power of impeachments.

"SEC. 2. All impeachments shall be tried by the senate. When sitting for that purpose, the senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

"SEC. 3. The governor, and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment, in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit, under this commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial, and punishment by law."

The sections were considered, *seriatim*, and

were adopted, with a mere verbal amendment of the third section.

#### GENERAL PROVISIONS.

The convention next proceeded to the consideration of another report of the same committee, on general provisions.

The first section was read as follows:

"SEC. 1. Members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: I do solemnly swear, (or affirm, as the case may be,) that I will be faithful and true to the Commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of \_\_\_\_\_ according to law, and that I have neither directly nor indirectly, given, accepted, or knowingly carried a challenge, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, since the adoption of the present constitution of Kentucky, and that I will neither directly nor indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, during my continuance in office."

On motion, the further consideration of this section was postponed for the present.

The second section was read and adopted, as follows:

"SEC. 2. Treason against the commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court."

The third section was read as follows:

"SEC. 3. Every person shall be disqualified from holding any office of trust and profit for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election."

Mr. A. K. MARSHALL moved to strike out the words "or treat."

Mr. McHENRY defended the section as it stood.

Mr. A. K. MARSHALL was unwilling to retain that in the section by the solemn adoption of this convention, which was contradicted by their uniform practice.

Mr. HARGIS was of opinion that the words ought to be stricken out.

Mr. MAYES called the attention of the gentleman to the fact that the section only applied to treating for a particular purpose.

Mr. GARFIELD called for the yeas and nays on striking out.

Mr. A. K. MARSHALL withdrew his amendment.

Mr. W. C. MARSHALL renewed it.

The yeas and nays were then taken, and were, yeas 18, nays 69.

YEAS—Alfred Boyd, William Bradley, William C. Bullitt, William Cowper, Nathan Gaither, Charles C. Kelly, Willis B. Machen, Alexander K. Marshall, William C. Marshall, William D. Mitchell, John D. Morris, Hugh Newell, Elijah

F. Nuttall, William Preston, Johnson Price, Michael L. Stoner, Howard Todd, John Wheeler—18.

NAYS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, William Johnson, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, George W. Mansfield, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—69.

So the convention refused to strike out.

Mr. HARGIS moved to strike out the entire section.

The motion was rejected.

On the motion of Mr. McHENRY, the section was verbally amended by substituting the word "or" for "and," between the words "trust" and "profit."

The section was then adopted.

The fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth and thirteenth sections were adopted without amendment, as follows:

"SEC. 4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes or misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices."

"SEC. 5. No money shall be drawn from the treasury but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published annually."

"SEC. 6. The general assembly may direct, by law, in what manner, and in what courts, suits may be brought against the commonwealth."

"SEC. 7. The manner of administering an oath or affirmation, shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the general assembly the most solemn appeal to God."

"SEC. 8. All laws which, on the first day of

June, one thousand seven hundred and ninety two, were in force in the State of Virginia, and which are of a general nature, and not local to that state, and not repugnant to this constitution, nor to the laws which have been enacted by the legislature of this commonwealth, shall be in force within this state, until they shall be altered or repealed by the general assembly.

"Sec. 9. The compact with the State of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this constitution.

"Sec. 10. It shall be the duty of the general assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

"Sec. 11. All civil officers for the commonwealth at large, shall reside within the state, and all district, county, or town officers, within their respective districts, counties, or towns, (trustees of towns excepted) and shall keep their respective offices at such places therein as may be required by law, and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

"Sec. 12. Absence on the business of this state, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this commonwealth, under the exceptions contained in this constitution.

"Sec. 13. It shall be the duty of the general assembly to regulate, by law, in what cases, and what deductions from the salaries of public officers shall be made, for neglect of duty in their official capacity."

The fourteenth section was then read as follows:

"Sec. 14. Returns of all elections by the people shall be made to the secretary of state for the time being, except in those cases otherwise provided for in this constitution."

Mr. MITCHELL thought it unnecessary to make returns of all elections of officers, down to magistrates and constables, to the secretary of state, and therefore he moved to strike out the section.

Mr. McHENRY had no expectation that the election of the officers mentioned by the gentleman from Oldham, would be returned to the office of the secretary of state; but if the section were stricken out, there would be no provision made for returning officially the result of the elections by the people at large.

Mr. MITCHELL said, if all the officers elected by the people were to be commissioned by the governor, there would be some propriety in the provision, but he saw none at present.

After a few words from Mr. STEVENSON and Mr. TURNER, the motion to strike out was rejected.

The section was then adopted.

The fifteenth section was next read as follows:

"Sec. 15. In all elections by the people, and also by the senate and house of representatives, jointly or separately, the votes shall be personally and publicly given, *viva voce*."

Mr. PRESTON moved to amend, by adding the words "or in such manner as may be prescribed by law." On this amendment he moved the previous question, and called for the yeas and nays.

The main question was ordered to be now put.

The yeas and nays were taken on the amendment, and were yeas 22, nays 68.

YEAS—Mr. President, (Guthrie,) Francis M. Bristow, James Dudley, Chasteen T. Dunavan, Selucius Garfield, Richard D. Gholson, Vincent S. Hay, Thomas N. Lindsey, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, William Preston, Ira Root, James Rudd, Howard Todd, John Wheeler, Chas. A. Wickliffe, Robert N. Wickliffe—22.

NAYS—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Archibald Dixon, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Andrew Hood, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, Geo. W. Johnston, Geo. W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, Johnson Price, Larkin J. Procter, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, George W. Williams, Silas Woodson, Wesley J. Wright—68.

So the amendment was rejected.

Mr. BOYD moved to amend by adding the following proviso:

"Provided, That dumb persons entitled to franchise may vote by ballot."

Mr. MITCHELL moved to amend the amendment, by adding the following:

"Provided further, That the legislature may, upon the petition of any city or county of this commonwealth, authorize the voters of such city or county to vote by ballot."

Mr. STEVENSON inquired how it would be possible to carry out such a provision in practice. How, he inquired, were the votes to be returned, if half or three fourths should vote by ballot, and the rest *viva voce*.

Mr. MITCHELL saw no difficulty; but the regulations that would be necessary he would leave to the legislature.

The vote on the amendment to the amendment was taken by yeas and nays, and were yeas 9, nays 83.

YEAS—Mr. President, (Guthrie,) William Cowper, Chasteen T. Dunavan, Richard D. Gholson, William D. Mitchell, Elijah F. Nuttall, William Preston, Ira Root, James Rudd—9.

Nars—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristol, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copein, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—83.

So the amendment to the amendment was rejected.

Mr. BOYD'S amendment was then agreed to, and the section as amended was adopted.

The sixteenth section was next read:

"Sec. 16. No member of congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the general assembly of this commonwealth, or hold or exercise any office of trust or profit under the same."

Mr. MERIWETHER moved to insert the word "appointment" for the purpose of including persons to whom the words "holding or exercising any office of trust or profit" would not apply. He said there were mail agents, pension agents, and others who should be embraced in the section.

Mr. HARDIN said if the amendment were agreed to, any person "appointed" to conduct a suit for the government in the United States courts, or to assess damages, would be excluded by it.

The amendment was rejected by a vote of 37 to 31.

The section was then adopted.

The seventeenth section was then read and adopted, as follows:

"Sec. 17. The general assembly shall direct, by law, how persons who now are, or may hereafter become, securities for public officers, may be relieved or discharged on account of such securityship."

The eighteenth section was next read:

"Sec. 18. Any person who shall, after the adoption of this constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person, or persons, to fight in

single combat, or otherwise, with any deadly weapon, either in or out of the state, shall be deprived of the right to hold any office of honor or profit in this commonwealth, and shall be punished otherwise in such manner as the legislature may prescribe by law."

Mr. BULLITT said, before that section was adopted, he wished to give the reasons which would influence his vote upon it.

Mr. NUTTALL said he had some notes on this subject which he desired to use in some brief remarks upon this section, but as he had them not at hand now, he moved that the section be passed over for the present.

The motion was agreed to.

Mr. GRAY moved to add to the article the following additional sections:

"Sec. 19. Taxation shall be equal and uniform throughout this state. All property, on which taxes may be levied, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of equal value: *Provided*, The general assembly shall have power to tax merchants, brokers, hawkers, pedlars, shows, theatrical performances, law process, seals, deeds, licenses, stocks, playing cards, corporations, and privileges, as may, from time to time, be prescribed by law."

"Sec. 20. The general assembly shall have power to authorize the several counties, and incorporated cities and towns, in this state, to impose taxes for county and corporate purposes, respectively; and all property shall be taxed upon the principles established in regard to state taxation: *Provided*, A poll tax may be assessed for county and corporate purposes."

Mr. NUTTALL moved the following as a substitute for the sections offered by Mr. GRAY:

"The general assembly shall have no power to pass laws compelling any citizen of this commonwealth to pay taxes upon more than he, she, or they, may be intrinsically worth."

Mr. PRESTON thought those sections would be in conflict with other sections which had been adopted, by which the sinking fund was declared to be forever intact. The legislature had no power over it. It would take twenty, thirty, or forty years under the present plan to extinguish the debt, and before that was accomplished, the tax on these articles was not repealable.

Mr. GRAY did not believe that the tax on some of the articles enumerated in his sections, was appropriated to the sinking fund; but if it were, he hoped the convention would reconsider what it had done, and make such a provision as would be consistent with the sections which he had offered.

Mr. HARDIN read from the auditor's report the following list of the sources of revenue:

Tax on valuation, - - -	\$409,271 59
Tax on carriages and barouches, - - -	3,207 00
Tax on buggies, - - -	1,542 50
Tax on pianos, - - -	1,540 00
Tax on gold spectacles, - - -	600 50
Tax on gold watches, - - -	5,934 00
Tax on silver levers, - - -	1,418 00
Tax on auditor's list, - - -	3,839 62
Tax on clerk's list, - - -	810 10
Total revenue, - - -	\$428,163 31



He said these were large items, and hence he hoped they would maturely consider before they did anything to affect them. It would be better to postpone the subject for further consideration.

Mr. A. K. MARSHALL moved that the subject be passed over, and that the proposed sections be printed.

The motion was agreed to.

#### THE SEAT OF GOVERNMENT.

The next article in the same report was read as follows:

#### ARTICLE —.

"The seat of government shall continue in the town of Frankfort, until it shall be removed by law: *Provided, however,* That two thirds of all members elected to each house of the general assembly, shall concur in the passage of such law."

Mr. HOOD moved to strike out all after the words "the seat of government shall continue in the town of Frankfort."

Mr. C. A. WICKLIFFE moved to strike out "two thirds" and insert "a majority," and on that he called for the yeas and nays.

Mr. C. A. WICKLIFFE said, I make this motion, Mr. President, upon principle. I will not, by my vote, refuse to a majority of the representatives of the people to pass a law. We leave the power with a majority of both houses of the legislature to pass laws to take away the life, liberty, and property of the citizen, for crime, and deny to the same majority the power to fix, by law, the seat of government. I am unwilling to say to the freemen of this state, that though a majority of them shall desire, some twenty or thirty or fifty years hence to change the location of their seat of government, that their power to do so shall be controlled by one third.

If the present seat of government, with all the advantages which nature has blessed it; with all that art has added; the influence which the public buildings and public expenditures have given it, cannot, in opposition to any other point, command a majority of the representatives of the people in all time to come, then it is wrong that it should remain where it is by the arbitrary and absurd power of one third.

Mr. GARRARD moved the previous question.

The question was stated to be, "shall the main question be now put."

Mr. WILLIAMS moved that the roll be called, and it was called accordingly.

On ordering the main question the yeas and nays were called for, and were yeas 48, nays 45.

YEAS—John L. Ballinger, John S. Barlow, Wm. K. Bowling, Luther Brawner, Francis M. Bristow, William C. Bullitt, Charles Chambers, Wm. Chenault, Beverly L. Clarke, Henry R. D. Coleman, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ben. Hardin, Andrew Hood, James W. Irwin, Wm. Johnson, George W. Johnston, George W. Kavanaugh, Thomas N. Lindsey, Thos. W. Lisle, Martin P. Marshall, John H. McHenry, David Meriwether, William D. Mitchill, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T.

Rogers, Ira Root, Howard Todd, Squire Turner, Henry Washington, Jno. Wheeler, Andrew S. White, Robt. N. Wickliffe, George W. Williams—48.

NAYS—Mr. President, (Guthrie,) Alfred Boyd, Wm. Bradley, Thos. D. Brown, James S. Chrisman, Jesse Coffey, Benjamin Copelin, William Cowper, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, Thos. J. Hood, Alfred M. Jackson, Thomas James, Charles C. Kelly, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Wm. C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, Thos. P. Moore, John D. Morris, James M. Nesbitt, Wm. Preston, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Jno. L. Waller, C. A. Wickliffe, Silas Woodson, Wesley J. Wright—45.

So the main question was ordered to be now put.

Before the vote was announced, Mr. CLARKE changed his vote, so that his name appeared with the majority. He did this for the purpose of moving a reconsideration, but it was ruled out of order by the chair.

The question was then taken on Mr. C. A. Wickliffe's amendment, and it was rejected, yeas 23, nays 70.

YEAS—Mr. President, (Guthrie,) Alfred Boyd, William Bradley, Benjamin Copelin, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Willis B. Machen, George W. Mansfield, William C. Marshall, Nathan McClure, David Meriwether, Hugh Newell, Henry B. Pollard, William Preston, James Rudd, Michael L. Stoner, William R. Thompson, John J. Thurman, Charles A. Wickliffe—23.

NAYS—John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Alexander K. Marshall, Martin P. Marshall, Wm. N. Marshall, Richard L. Mayes, John H. McHenry, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, Howard Todd, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Robert

N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—70.

The question was next taken on Mr. Hood's amendment and it was rejected, yeas 10 nays 84.

YEAS—William K. Bowling, Luther Brawner, Garrett Davis, James Dudley, Andrew Hood, James W. Irwin, John D. Morris, Johnson Price, John Wheeler, George W. Williams—10.

NAYS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Millford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelley, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—84.

The section was adopted.

Mr. GARRARD moved a reconsideration of the vote adopting that section, and he moved to lay his motion on the table.

Mr. CLARKE said that was a double motion, and as one was debateable, he called for a division.

The President replied that the question was on the motion to lay the motion to reconsider on the table, which was not a debatable motion.

The motion to lay on the table was agreed to.

The convention then took a recess.

#### EVENING SESSION.

##### BILL OF RIGHTS.

The convention resumed the consideration of the report of the committee on miscellaneous provisions.

The preamble of article —, or the bill of rights, was then read and adopted, as follows:

"That the general, great, and essential principles of liberty and free government may be recognized and established: WE DECLARE."

The first section was then read and adopted, as follows:

"SEC. 1. That all freemen, when they form a social compact, are equal, and that no man, or

set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services."

Mr. DIXON submitted the following as an additional section to the article, to come in as the second section:

"SEC. 2. That absolute, arbitrary power over the lives, liberty, and property of freemen, (except for crimes,) exists no where in a republic—not even in the largest majority."

Mr. APPERSON moved that the proposition be passed over, and printed, in order to afford time for an examination of it.

The motion to postpone and to print was agreed to.

The second, third, and fourth sections were read and adopted, as follows:

"SEC. 2. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and protection of their property. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform, or abolish, their government, in such manner as they may think proper.

"SEC. 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious societies or modes of worship.

"SEC. 4. That the civil rights, privileges, or capacities, of any citizen, shall in no wise be diminished or enlarged on account of his religion."

The fifth section was read as follows:

"SEC. 5. That all elections shall be free and equal."

Mr. ROOT enquired what was meant by free and equal elections.

Mr. STEVENSON explained that it was the language of the old constitution and was therefore adopted by the committee.

The section was adopted.

The sixth section was read, as follows:

"SEC. 6. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate."

Mr. LINDSEY. I move to add to the section the following: "But the general assembly may provide by law that juries, in civil cases, shall consist of less number than twelve, and that two thirds of a jury may find a verdict in any case either civil or criminal."

The proposition submitted for the consideration of the convention, in my judgment, ought to be adopted. It will be perceived it does not lessen or authorize the legislature to lessen the number of jurors now required in a criminal case, it only provides that a verdict may be rendered by two thirds of the jury, if the legislature shall so authorize by law.

My experience both in defence and in prosecution of criminal cases, though not very great, has satisfied me the commonwealth is not on

equality with an accused. The simple fact that he may challenge twenty jurors peremptorily, gives him so many chances of escape over any there are of improper conviction. Who that has ever attended an excited criminal trial, and seen a juror sworn to answer questions, and heard him say that he had conversed with witnesses, perhaps heard the whole examining trial, and yet had no opinion as to guilt or innocence—an occurrence continually witnessed in courts, that can deny the accused has the advantage I have named. A hung jury or acquittal, through the influence and voice of such jurors, is always the case. A hung jury, in a criminal case in Kentucky, is tantamount to a verdict of not guilty. For a second trial finds the horrors of the deed forgotten. A witness gone—all sympathy for the living, though in truth a guilty felon—verdict for the accused follows.

Why shall one man's opinion and judgment, in such cases, control those of eleven, or why shall three control nine? No argument can be given, that carries any weight, in requiring unanimity except that of doubt. If you doubt you must acquit, has gone very far to aid the escape of many who merited punishment. This doubting principle operates on the whole jury, generally, by the way the law is expounded to them; and my mind is, where two thirds or three fourths have no doubts, they should control the others, though they may be doubters.

When we take into consideration the judge with his control over the verdict, if improperly formed against the accused, and the advantage, as stated before, of the twenty challenges, without any reason assigned, it does seem to me that so large a proportion of the jury as suggested, ought to be trusted with the determination of the cause, though it might involve liberty or even life.

We leave the decision of the gravest and weightiest matters in legislation to a majority. We trust the decision of whole estates to the determination of one judge sitting as chancellor. We give the accused the advantages I have stated, and by requiring two thirds to find him guilty, we again give advantages nearly two to one over the prosecution.

Sir, the experience of all must admit that the criminal code of Kentucky needs alteration in some way to check the progress of crime and punish those who commit it. Give the legislature the opportunity of placing the state on something near equality in investigation and decision with any one accused of crime. If it should be found to operate to the injury of personal security, and not promote the ends desired, we can easily fall back to the existing plan.

In civil cases, my object is to allow the legislature to lessen the number of jurors to nine or even seven. Why twelve shall be required to decide a matter of account, for example, between parties, and shall be unanimous in their decision, is not seen by me. If a controversy about fifty dollars arises between parties, either matter of account or about property of that value, where three or five or seven could better and more readily examine into it than a larger number, there must be twelve, and if one dissents, there can be no decision. The commonwealth must pay twelve, perhaps fifty dollars, if one

disagrees with eleven to try such a case and then not have it decided.

To the single judge, as a chancellor, we commit the decisions of law and facts, involving thousands. To a majority of the court of appeals we commit the revision of the acts of a full jury and the circuit court or other inferior court, controlling all, and yet for some reason, not comprehended, we must have twelve jurors, and all must concur.

Sir, is there any delegate who would not rather leave a controversy, involving a complex account, to one than a dozen for certainty of correctness. To a half dozen, any number of disputed points, than to a dozen.

There is nothing to me very cabalistic in the number twelve, nor do I see any danger to the trial by jury, in allowing the legislature to lessen the number from twelve to seven.

In the saving of expenses to the state for paying jurors the sum would be very great, as they have to be paid out of the treasury. The expectation that the fines and forfeitures would compensate the juries, has been found fallacious. The fines are nearly all remitted, and the treasury has to pay.

If we had eighteen jurors instead of twenty four to make two full pannels, it would save six dollars per day in each circuit court of the state. If fourteen, ten dollars. The sum thus saved, would go very far towards helping to make up our sinking fund, and thereby contribute to pay the public debt. Nothing would be saved as regards criminal trials, as my proposition will not allow the legislature to lessen the number of jurors in such cases below twelve. It only contemplates that nine may find the verdict.

I have briefly suggested some of the reasons that induce me to present the proposition now before the convention. For one, I would be willing to see the experiment, if such it shall be called, fully tested. If it succeeded, much good would result; if not, we would but be as we now are by a repeal of any legislative enactment making the change.

Mr. CLARKE. The gentleman asks why it is that nine members of a jury in a criminal cause should not be allowed to bring in a verdict against the accused. The reason is just this: if twelve men shall be selected to try a citizen under a charge of committing a criminal offence, and three of them shall entertain doubts as to the guilt or innocence of the accused, it is manifest, if they are honest men—and we must presume they are—that there is some doubt, and the humane principle of the law is, that it is better that ninety nine guilty men should go unpunished, than that one innocent man should suffer. And just so long as there is a doubt in the breast of one, two, three, or five jurors, just so long is there a doubt as to the guilt or innocence of the accused, and just so long should his life be saved. I am opposed to giving to the majority of a jury—to eight, nine, or eleven members even, the right to decide upon the life or liberty of the citizen, when twelve men are required to try him. Let them all concur, for while there is one dissenting voice there must be doubt, and whilst there is doubt no man's life or liberty should be taken from him.

Mr. BOYD moved to amend, so that the proposition should not apply to criminal causes.

Mr. DIXON. I am against the whole proposition, and the amendment proposed by my friend from Trigg, (Mr. Boyd.) I venerate the old right of trial by jury, and I look upon it as affording above all things the greatest security to the life, liberty, and property of the citizen, and I cannot consent that it shall be impaired or interfered with either by this convention or by the legislature. It is one of those rights which I would never touch, and which I look upon as the most sacred, and the dearest enjoyed by any man who is sensible to the real blessings of liberty. I shall not attempt to go into the history of the right of trial by jury, or say how it originated, how it groped its way through the darkness of the middle ages, how it burst through the shackles which the despotism of the past had thrown around the liberties of men, and how it finally took its position above the storms and strifes of revolution, the safeguard and protection of the people and their rights against the evils of despotism or unbridled anarchy. It is a right that comes to us hallowed and sanctified by the blood of patriots and martyrs, and I would not interfere with it. Next to the bible, I regard it as most sacred, and I would no sooner raise my hand against the one than the other. Do gentlemen really pretend to stop to calculate the cost of trying a man by twelve jurymen? Do they pretend to say that the state of Kentucky is so anxious for the lives of her citizens that we must coolly and calmly sit down and make an estimate of how much it will cost to get a man hung—that life is of so little value in Kentucky that a few dollars thrown into the scale is to decide it against human life? This I understand to be the argument of the gentleman from Franklin, (Mr. Lindsey,) that it will cost less to try a man if you reduce the number of the jury to nine, or allow two thirds to say that he shall die.

Mr. LINDSEY. If the gentleman will examine he will see that my proposition provides for twelve jurors in criminal cases, and my remarks in reference to the expense therefore, do not apply particularly to such cases. I propose that twelve shall constitute the jury in such cases, but I allow nine of them to find the verdict.

Mr. DIXON. I understand the proposition then to be that you will allow nine men to take a man's life instead of twelve. Nine will cost less than twelve, and therefore they should have the power. That is the argument if it is not the proposition. Rather than to stand here calculating how much it would cost to take a man's life, I would prefer to estimate how much it would cost to save it. If a man is not guilty, I will go as far as possible to save his life, no matter how much it may cost. Life has become but a cheap thing in Kentucky, or money has become more potential than ever I could suppose it to be with the people, when drops of blood are to be weighed in the same scale with dollars and cents. To use an expression of my friend from Ballard and McCracken, (Mr. Gholson,) I say that I am astonished to hear such an argument. I trust that the sacred right of trial by jury will be let alone, and I do not think the people are prepared for any sort of innovation upon it. They will never consent that the legis-

lature shall have the power to interfere with the subject, and to give them that power is presupposing at once that they ought to exercise it. And this convention, without in fact doing it themselves, would thereby encourage the legislature to impair the right of trial by jury. I hope neither the proposition or the amendment offered to it will be adopted.

Mr. BOYD. The gentleman from Henderson seems to have mistaken the object of my amendment. I shall vote with him against the proposition, but if the convention intend to adopt it, I do not wish to extend the power to the legislature to permit less than twelve jurors to try a criminal case. I have not so much objection to less than twelve in civil cases, but still I am against the whole proposition.

Mr. C. A. WICKLIFFE moved the previous question.

The main question was ordered to be now put, and the amendment to the amendment was rejected.

Mr. C. A. WICKLIFFE asked for the yeas and nays on the proposition of Mr. LINDSEY.

Mr. LINDSEY. At the suggestion of friends around me, and for the purpose of allowing another to present a proposition, I will ask leave to withdraw the amendment offered by me.

Mr. DAVIS expressed a desire to offer an amendment, but

The PRESIDENT decided it to be cut off by the previous question.

The sixth section was then adopted.

Mr. A. K. MARSHALL moved a reconsideration of the vote just taken.

The motion was agreed to.

Mr. DAVIS. A few days ago the legislature was invested with discretionary power to give to the commonwealth the right of challenge to the amount of one fifth the number allowed the accused. There might be a conflict upon the subject, if the section is left as it now reads—"that the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate," and for the purpose of preventing any such result, I move to add to the section, the words, "subject to such modifications as may be authorized by this constitution."

This amendment was agreed to, and the sixth section, as amended, was adopted.

The seventh section was then read as follows:

"Sec. 7. That printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty."

Mr. JAMES expressing a desire to prepare an amendment to it, the section was passed over.

The eighth and ninth sections were read and adopted as follows:

"Sec. 8. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for the libels, the jury

shall have a right to determine the law and the facts under the direction of the court, as in other cases."

SEC. 9. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place, or to seize any person, or things, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation."

The tenth section was read as follows:

"SEC. 10. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land."

MR. A. K. MARSHALL. I move to strike out the word "vicinage" and insert in lieu thereof, the word "commonwealth." I believe that the construction given to that word in our present constitution confines the selection of jurors to the county. It might happen, and I think I would not be far out of the way if I say it has happened; that in some criminal prosecutions it has been impossible to obtain a jury in the county where the offence was committed, and the offender passed unpunished, because of the construction given to this word. I desire therefore, to enable the public prosecutor to select a jury, if necessary, from the commonwealth at large.

The question being taken by yeas and nays, on the call of MR. A. K. MARSHALL—yeas 29, nays 61, as follows:

YEAS—MR. President, (Guthrie,) Alfred Boyd, William Bradley, William C. Bullitt, Edward Curd, Garrett Davis, James Dudley, Milford Elliott, Selucius Garfield, Ninian E. Gray, Andrew Hood, Peter Lashbrooke, Alexander K. Marshall, Martin P. Marshall, Richard L. Mayes, Thomas P. Moore, Jonathan Mewcum, Elijah F. Nuttall, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, George W. Williams, Silas Woodson—29.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, Archibald Dixon, C. T. Dunavan, B. F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, R. D. Gholson, Thos. J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, William N. Ma

W. D. Mitchell, J. M. Nesbitt, Hugh Newell, H. B. Pollard, John T. Rogers, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—61.

So the amendment was rejected.

MR. WILLIAMS. I move to strike out the words, "of the vicinage," entirely. It sometimes happens, from the atrocity of the crime perpetrated by an individual, and the whole country is so fully informed of the facts in the case, that from those very reasons the offender cannot be brought to trial. I hope we shall adopt some provision which will obviate this evil, and I think that result may be attained by not confining the selection of jurors to the vicinage, or to the county, as the term is construed to mean.

MR. R. N. WICKLIFFE. I voted "no" on the other question, with the intention of moving a reconsideration of the vote. I think that the term "vicinage" has no meaning in our constitution. It had one in England, whence it is derived. In old times there it was always customary to take the jury from the place of controversy, where the facts and all the circumstances were known to the jury. Now, the universal rule is, and the judge so charges the sheriff, to get a jury as far away from the scene of controversy as is possible, and to be composed of men who know nothing about the facts of the case, and have expressed no opinion in relation thereto. I intend therefore to move a reconsideration of the vote rejecting the proposition of the gentleman from Jessamine, (Mr. A. K. Marshall.)

MR. STEVENSON. We are here making a bill of rights, and the section we are considering is emphatically a right. There are a great many propositions in this bill that seem trite and axiomatic, and this I deem to be the best evidence of the wisdom of the men who framed the present constitution, from which they are copied. The gentleman from Campbell, (Mr. Root,) asked what was meant by "equal elections." I have no doubt it has never occurred to the gentleman what it did mean; but if he will look to Virginia he will see that in that state, from the very want of this term "equal elections," in some of the counties there are three days election, while in the others only one. Now it is proposed to strike out the words, "of the vicinage," and gentlemen say it has no meaning. It had a meaning in the old constitution, and it has one here. It is that a man, in his own county where his character is known, can come before those who have known him and stand the test of a criminal examination so far as a trial by jury. Take a man and try him before a jury of another section of the state in which the public opinion differs wholly from the section in which he resides, on the subject of slavery for instance, or anything else, and the natural feelings and impulses of men will induce them to go against him. Would a man, brought from Hopkins county, before a jury of the northern part of the state to be tried, a perfect stranger, be as likely to secure a safe trial as at home? I think not. In framing a constitution, let us act coolly and dispassionately, and if extreme cases exist under

this section, it is better to provide for them by a separate section than to override great principles. One or the other must yield.

Mr. A. K. MARSHALL. I have been surprised at nothing so much in this convention as in witnessing the extreme anxiety manifested on the part of some gentlemen to defend and protect and screen guilt. It is a fact, I presume, that is well known to every one in this house, and a fact that is known to the shame of Kentucky, that our criminal code has almost become a dead letter on the statute book. And there is scarcely an offence that can be committed which can possibly be punished under the laws, provided the offender has the means of corrupting the court or the jury. It is known, I presume, to every one here present, that the decisions of our juries and the construction of our laws, are such now, that offences are committed and pleas are admitted in our courts of justice, which savage vengeance itself would be ashamed to offer in extenuation of crime.

I made the proposition to amend, which I did, because there are instances that have occurred in the history of my own county and my own neighborhood, that bring forcibly to my own mind, a sense of its importance. There are gentlemen on this floor, who know perfectly well that offences are sometimes committed in this state of a character, so outrageous, so perfectly startling to an entire neighborhood, and so wholly inexcusable, that it has proved to be utterly impossible to obtain a jury to try the offender in the county where the crime was committed, and the criminal has gone unwhipt of justice, simply from that cause. Do gentlemen desire this thing to go on? Do they desire a clause in the fundamental law of the land, for it is equivalent to that, that a man may, by committing so enormous an outrage that it is impossible for him to be tried in the county where the crime was committed, secure himself against punishment? I believe our courts have decided that any man who has formed or expressed an opinion in respect to an offence, is not to be considered a competent juror. And do we not all know that cases have occurred where it was utterly out of the question to expect that a single rational man, in the county where the offence was committed, could be found who had not been compelled by the enormity of the offence itself, to form some opinion—aye, and express one, too—in reference to the guilt of the offender? My object was to give to the commonwealth some little power to arrest this unhallowed march of crime, that has tracked our entire country with blood. Scarcely a young man is there of the present day, who does not think himself degraded or unfit to associate with men until he has stained his diploma with blood. And the last act of the education of the bloods of the present day, is to throw themselves into a position where they may commit an act of that kind. And the best mark of courage one of them can give, is to stab in the dark, and our law gives them protection. I hope the amendment of the gentleman from Bourbon, (Mr. Williams,) mine having been rejected, will be adopted.

Mr. STEVENSON. I hope that I am willing to go as far as my friend from Jessamine, (Mr. A. K. Marshall,) in the punishment of all crime. But while I desire to see crime punished, and

the laws of the country upheld, I am not for undermining what I regard to be the great pillars of free government, to punish any man. Now let us test, and see the danger of striking out, as proposed by the gentleman from Bourbon, (Mr. Williams,) and the consequences likely to result therefrom. He proposes to strike out the words "of the vicinage". Then if a man is charged with any crime it is in the power of the legislature to remove him from any one county of the commonwealth to another. There is no remedy. My friend shakes his head, but I tell him there is no remedy when you strike out those words "of the vicinage." I admit that there have been crimes where juries could not be obtained to try the offender in the county, but the law now authorizes jurors from adjacent counties to sit. As the law is now, the citizens of Jessamine are competent jurors to sit in Fayette, if they are caught there, although you cannot go out of the county to summon a juror. All this provision in the bill intends, is, that the criminal should not be taken where he would be in a land of strangers, where he would be unknown, and where he might not have extended to him the panoply of justice. One of our greatest rights, as was said by the eloquent gentleman from Henderson, is this trial by jury. And when you fritter it away, you fritter away one of the strong pillars upon which the government itself stands. Why is it, that we have twelve men on a jury? Because the excitements we desire to keep away from the jury box, may seize on the minds of six, eight, or ten men, when it might not on twelve. And whenever you disturb that number, you overthrow the great right itself. I am unwilling to take away the least of the safeguards by which it is surrounded.

Mr. DUNAVAN moved the previous question.

The previous question was ordered to be now put, and the amendment of Mr. Williams was rejected. The question being taken by yeas and nays, on the call of Mr. Stevenson—yeas 31, nays 59, as follows:

YEAS—Mr. PRESIDENT, (Guthrie,) A. Boyd, William Bradley, William C. Bullitt, Edward Curd, Garrett Davis, James Dudley, Milford Elliott, Selucius Garfield, Ninian E. Gray, Andrew Hood, Peter Lashbrooke, Alexander Marshall, Martin P. Marshall, Richard L. Mayes, David Meriwether, Jonathan Newcum, Elijah F. Nuttall, William Preston, Johnson Prier, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, John L. Waller, Robert N. Wickliffe, George W. Williams, Silas Woodson—31.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, H. R. D. Coleman, Benjamin Copelin, Wm. Cowper, Lucius Desha, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Thomas J. Hood, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Thomas N. Lindsey,



Thomas W. Lisle, Willis B. Machen, William C. Marshall, William N. Marshall, Nathan McClure, William D. Mitchell, Thomas P. Moore, James M. Nisbett, Hugh Newell, Henry B. Polard, John T. Rogers, John W. Stevenson, J. W. Stone, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Squire Turner, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Wesley J. Wright—59.

The tenth section was then adopted.

Mr. GRAY moved to reconsider this vote with a view of enabling Mr. WILLIAMS to offer the following amendment:

"But the legislature may pass laws providing for the selection of jurors from adjacent counties in cases where a jury cannot be had in the county where the offence was committed."

The convention refused to reconsider, a count being had, yeas 37—nays 46. The eleventh section was then read as follows:

Sec. 11. That no person shall, for any indictable offence, be proceeded against, criminally, by information, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, by leave of the court, for oppression or misdemeanor in office."

The PRESIDENT called attention to the fact, that the section was evidently imperfect in its reference to the "leave of the court."

Mr. STEVENSON suggested the insertion of the word "but" before the words, "by leave of the court."

Mr. GRAY thought it was better not to act hastily inasmuch as the section was copied from the old constitution.

And then the convention adjourned.

#### THURSDAY, DECEMBER 6, 1849.

Prayer by the Rev. Mr. NORTON.

#### RULES OF ORDER.

The PRESIDENT desired to explain a decision which he made yesterday. He said on reflection, he was satisfied that his decision on the motion to reconsider and to lay on the table was wrong. The motion to reconsider should have been made and stated from the Chair before the motion to lay upon the table was entertained. He made this statement that the convention might know the rule by which the Chair would be governed in future.

#### PRINCIPLE OF APPORTIONMENT.

Mr. APPERSON from the select committee, some time since appointed under a resolution offered by the gentleman from Nelson, (Mr. C. A. Wickliffe,) on the subject of apportionment made the following report:

"Sec. 6. That representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of representative population, which shall be first ascertained in the year 1850. At the first

session of the general assembly after the adoption of this constitution, provision shall be made by law, that in the year 1858, and every eighth year thereafter, an enumeration of all the representative population of the state shall be made. The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation, the state is hereby laid off into ten districts.

The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg.

The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson.

The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart.

The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln.

The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson.

The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson.

The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry and Shelby, and the city of Louisville.

The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine.

The ninth district shall be composed of the counties of Clarke, Montgomery, Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan and Breathitt.

The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin.

The number of representatives shall, at the several sessions of the general assembly, next after the making of these enumerations, be apportioned among the ten several districts, proportioned according to the respective representative population of each; and the representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern, to wit: Every county, town or city having the ratio shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns or cities having one or more representatives, and the largest representative population above the ratio, and counties, towns and cities having the largest representative population under the ratio, regard being always had to the greatest representative population: *Provided, however*, That if there should be any county not having a sufficient number of representative population to entitle it to one representative, yet it shall have a representative, if all the adjacent counties in the same district have a sufficient number of representative population to entitle them respective-

ly to one representative: *And, provided further*, That when a county may not have a sufficient number of representative population to entitle it to one representative, then such county may be joined to some adjacent county or counties to send one representative, provided such adjacent county has not a full ratio. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of representative population."

I do not know that it will be necessary for me to make many remarks: but as we are getting along with business pretty rapidly, perhaps gentlemen would like to know how it will operate. The principle of representation is that which I submitted some days ago. It is only carrying it out as applicable to ten districts instead of four. The smaller the districts the greater will be the inequality. To exemplify this, the district of which Fayette is a portion, will have eight members and a greater residuum than any other; but giving it nine members, Scott having 1,839 voters, will be entitled to two representatives; and the same applied to another district, of which Pulaski is one of the counties, will give Pulaski one member.

But notwithstanding this seeming great inequality, if gentlemen will make a calculation they will find it impossible to lay down any particular principle of apportionment but inequalities will arise some where. Again, the county of Gallatin, now connected with the county of Carroll, with 883 voters, would be entitled to a member, because all the adjacent counties in the district will have a full ratio. I only make these remarks because these are the hard places where the principle may seem to work unequally. We have tried many principles and none of them are without similar difficulties. I move that the report be printed and postponed till tomorrow.

The motion to print and to postpone was agreed to.

#### MODE OF AMENDING THE CONSTITUTION.

Mr. M. P. MARSHALL. Mr. President, I beg to move the following resolution:

*Resolved*, That the committee to whom was referred the mode of amending the constitution, be instructed to inquire into the propriety and expediency of adopting the specific mode of amending one or more clause or clauses at a time, to be first proposed by a vote of the people at the polls, and then considered by the legislature, and if approved by a majority of all the members thereof, then submitted again to the people for their approval, on two several occasions, under such restrictions as may be safe and advisable.

The people of Fleming county, whom I have the honor to represent on this floor, entertain a class of opinions in regard to the amendment of the constitution of 1799, which my duty impels me to offer to the consideration of this house. They were moved to sustain the call of a convention to revise the present constitution by two reasons. They desired to increase the popular power over the agencies of the government, and to increase their power over the constitution. Experience had demonstrated to them the ineffi-

ciency of the amendatory clause to produce the effect for which it was inserted, and through me, their representative, they offer the plan set forth in the resolution on your table as a proper amendatory clause. It places the constitution of the state where it ought to be, in the custody of the people who created it, and restrains popular action for its amendment within the bounds of prudence and wisdom. This is not the proper period to elaborate the reasons why this resolution should be adopted. I therefore move its reference to the committee of revision and slavery, that they may give it the consideration its merits deserve. I am not informed when that committee will report, but hope the house will allow this resolution to take the usual course—be printed and referred.

Mr. MERIWETHER. I will observe to the honorable gentleman, that the committee to which he refers is ready to report; we will, however, take his resolution into consideration.

Mr. BARLOW moved to amend said resolution by striking out the words "a majority of all the members thereof," and insert in lieu thereof the words "two thirds of both houses of the general assembly."

Mr. KELLY moved to lay the resolution and amendment on the table, and he called for the yeas and nays thereon.

The yeas and nays were taken, and were, yeas 43, nays 44:

YEAS—William K. Bowling, William Bradley, Luther Brawner, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Henry R. D. Coleman, William Cowper, Edward Curd, Green Forrest, Nathan Gaither, John P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, George W. Mausfield, William N. Marshall, Nathan McClure, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Hugh Newell, Henry B. Pollard, Johnson Price, John T. Robinson, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Andrew S. White, Robert N. Wickliffe—43.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Alfred Boyd, William C. Bullitt, Charles Chambers, William Chenault, Jesse Coffey, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Benjamin F. Edwards, Milford Elliott, Selucius Garfiede, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Vincent S. Hay, Geo. W. Kavanaugh, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, Richard L. Mayes, David Meriwether, Jonathan Newcum, Elijah F. Nuttall, Larkin J. Proctor, Thomas Rockhold, Ira Root, James Rudd, Jas. W. Stone, Michael L. Stoner, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, George W. Williams, Silas Woodson—44.

So the convention refused to lay on the table.

Mr. MERIWETHER remarked that the resolution was simply a resolution of enquiry, and

therefore he hoped the convention would adopt it.

The resolution was then referred, and ordered to be printed.

#### POLITICAL AND JUDICIAL ELECTIONS.

Mr. A. K. MARSHALL offered the following resolution:

"Resolved, That the committee of revision be instructed to enquire into the propriety of providing that the civil and political elections shall be held on different years."

After a brief conversation, in which Messrs. C. A. Wickliffe, Machen, A. K. Marshall, James, and Garrard, took part, the resolution was adopted.

#### GENERAL PROVISIONS.

The convention resumed the consideration of the report of the committee on general provisions.

The 11th section was under consideration when the convention adjourned yesterday. It was now verbally amended on the motion of Mr. GRAY, by the insertion of the word "or" after the words "public danger."

The section as amended was then adopted.

The 12th, 13th, 14th, 15th, and 16th sections, were adopted without amendment as follows:

"SEC. 12. No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him."

"SEC. 13. That all courts shall be open, and every person, for an injury done to him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay."

"SEC. 14. That no power of suspending laws shall be exercised, unless by the legislature or its authority."

"SEC. 15. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted."

"SEC. 16. That all prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

The seventeenth section was read as follows:

"SEC. 17. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law."

Mr. HAMILTON moved to amend, by striking out the words "continued in prison after delivering," and inserting "imprisoned, who delivers."

The amendment was rejected.

The section was then adopted.

The eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections were adopted without amendment, as follows:

"SEC. 18. That no *ex post facto* law, nor any law impairing contracts, shall be made."

"SEC. 19. That no person shall be attainted of treason or felony by the general assembly."

"SEC. 20. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth."

"SEC. 21. That the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof."

"SEC. 22. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance."

The twenty-third section was read as follows:

"SEC. 23. That the rights of the citizens to bear arms in defence of themselves and the state, shall not be questioned."

Mr. WILLIAMS moved to amend, by adding the following:

"But the general assembly may pass laws to prevent persons from carrying concealed arms."

Mr. A. K. MARSHALL called for the yeas and nays, and they were yeas 50, nays 39.

YEAS—Richard Apperson, John L. Ballinger, John S. Barlow, Luther Brawner, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Garrett Davis, James Dudley, Milford Elliott, Green Forrest, Selucius Garfield, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, James W. Irwin, George W. Johnston, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, Nathan McClure, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Ira Root, James Rudd, John W. Stevenson, James W. Stone, Michael L. Stoner, Howard Todd, Squire Turner, John L. Waller, John Wheeler, Andrew S. White, Robert N. Wickliffe, George W. Williams, Silas Woodson—50.

NAYS—Mr. President, (Guthrie,) William K. Bowling, Alfred Boyd, William Bradley, Thomas D. Brown, William C. Bullitt, Beverly L. Clarke, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, Benjamin F. Edwards, Nathan Gaither, James H. Garrard, Ninian E. Gray, James P. Hamilton, Thomas J. Hood, Alfred M. Jackson, Thos. James, William Johnson, George W. Kavanaugh, Charles C. Kelley, Peter Lashbrooke, George W. Mansfield, William N. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Larkin, J. Proctor, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, John D. Taylor, William R. Thompson, John J. Thurman, Henry Washington, Charles A. Wickliffe—39.

So the amendment was adopted.

Mr. BULLITT called for the yeas and nays on the adoption of the section, and they were yeas 52, nays 7.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Bev-

erly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mausfield, Alexander K. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William E. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson—82.

NAYS—William C. Bullitt, Benjamin Copelin, William Cowper, Edward Curd, Nathan Gaither, Alfred M. Jackson, George W. Kavanaugh—7.

So the section was adopted.

The twenty-fourth and twenty-fifth sections were adopted without amendment, as follows:

"SEC. 24. That no standing army shall, in time of peace, be kept up, without the consent of the legislature; and the military shall, in all cases and at all times, be in strict subordination to the civil power.

"SEC. 25. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law."

The twenty-sixth section was read as follows:

"SEC. 26. That the legislature shall not grant any title of nobility, or hereditary distinction; nor create any office, the appointment to which shall be for a longer term than good behavior."

Mr. CHAMBERS moved to strike out the word "term" and insert "time;" also, to strike out "good behaviour" and insert "term of years."

The amendments were adopted.

Mr. NESBITT moved to insert the word "six" before the word "years."

The amendment was rejected.

The section as amended was then adopted.

The twenty-seventh and twenty-eighth sections were then adopted without amendment as follows:

"SEC. 27. That emigration from the state shall not be prohibited."

"SEC. 28. To guard against transgressions of the high powers which we have delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this constitution, shall be void."

The seventh section, which was heretofore passed over at the request of Mr. JAMES, was again taken up and read as follows:

"SEC. 7. That printing presses shall be free to every person who undertakes to examine the proceedings of the legislature, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty."

Mr. JAMES. Mr. President, I move to strike out the words "the free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty."

I rise to address the convention on this occasion under very peculiar and embarrassing circumstances. It may be necessary before I conclude, to make some allusion to myself, which, to me, is always unpleasant in any discussion, but more especially so in a parliamentary body. I hope this convention will not be afraid that I am about to revive what are called the "alien and sedition laws" which have become so notorious and unpopular, at the same time I doubt not they will admit the justice of the remarks I am about to make.

It has been well said, Mr. President, that the power of speech is a faculty peculiar to man, and was bestowed upon him by his beneficent Creator for the purpose of communing with his fellow man, and of enabling him thereby to enjoy to a fuller extent the social relations or life. But, alas! how often is this power converted to the worst of purposes! The same remark, Mr. President, may be made with regard to the printing press—confessedly an instrument of much good or of great evil—according as it is ill or well directed. When properly directed, none will deny that it is calculated to enlighten and improve a community by diffusing the most useful information. But when, like the power of speech, it is resorted to for the purpose of abusing, traducing, and calumniating the citizens of this commonwealth, I ask you if, in such case, it is not converted to the worst of purposes. It has been well said, Mr. President,

"Who steals my purse steals trash."

'Twas mine, 'tis his, and has been slave to thousands,  
But he who filches from me my good name,  
Robs me of that which not enriches him,  
And makes me poor indeed."

I have never heard the correctness of those sentiments controverted in all my life. Then, sir, if this is true, what is the condition of that man who will willingly, wilfully, wantonly, corruptly, and wickedly attempt to steal and rob from any citizen of this commonwealth—or any body of citizens—that reputation which does not enrich him, but makes others "poor indeed?" We know that this commonwealth has been excited for years, throughout the length and breadth of this land, upon party questions, and under the influence of party feelings; but when this convention was called, what did the people do? To their honor be it said, that they regarded this as an important consideration, affecting alike the interests of all, and laying aside all party feeling and animosity, they came up to this question like men, like statesmen, like patriots; for, Mr. President, it is well known that

many gentlemen who now occupy seats on this floor are indebted to those who are opposed to them in politics for those seats. And why did they do this? Because they wanted to assemble the wisdom and talent and experience of Kentucky to frame an organic law that should continue, not merely for a year, but that shall be held in respect by our children, and that shall be venerated by our children's children.

I here remark, Mr. President, that if our forefathers in 1799 succeeded in framing a constitution that has continued for half a century, we shall, indeed, be greatly behind them, if, with the additional knowledge and experience which we possess, the lights we have before us, and the widely different and more improved materials we have to work upon—we cannot frame such a constitution as will continue at least a hundred years.

Well sir, I congratulated myself when I was about to leave my family and friends, that I should be associated with some eighty of my old associates in legislation—the ablest politicians and statesmen of Kentucky. And I found here among those with whom I had not had the pleasure of an acquaintance, many young gentlemen to whom the road of fame is open and clear. I thought we should meet again, not for party purposes, to engage in a work for the common good of the country; might I not have expected under these circumstances, when the convention was convened, that it would be free from vituperation and billingsgate abuse of any portion of the press of this state? But, sir, what are the facts? It is humiliating to look at them; it is humiliating to reflect upon and acknowledge them. Letter-writers and editors have been assailing the delegates to this convention in the most virulent and disreputable manner. Let me call your attention, Mr. President, to what has been published in a newspaper, emanating from the city of Louisville, called the *Louisville Chronicle*. I will pass over the name of the gentleman he refers to; for I determined, in the outset, never to bring the name of any gentleman into question in connection with any little discussion I might be engaged in, unless it should be called for.

The first extract is—

“We understand that old ——— has at last openly come out—

Mr. HARDIN. Name the man; name the man.

Mr. JAMES. The gentleman says “name the man.” As Nathan said unto David, “Thou art the man.” The extract reads—

“SALE AVOWED.

“We understand that old Ben Hardin has at last openly come out and declared that he will oppose the new constitution. We stated some time since that old Ben was at heart against constitutional reform, and had sold himself to the central power at Frankfort, and now the avowal of the sale is made by himself. Nor does he stand alone. There are many others with him who have their price in their pockets; and the democratic party will learn with astonishment that among them are some men who dare to call themselves democrats.”

Well, sir, I don't know how many there are,

but this imputation evidently embraces more than one, for the charge is in the plural, not in the singular. Well, Mr. President, if that is true, those delegates, whoever they are, ought to be expelled from this convention. If it is untrue, he who published it—the editor of the *Chronicle*—ought to be branded as a base calumniator, and forever shunned by every honorable man. Who will controvert this position? No man I trust.

Well, sir, what does he say in a preceding number of his paper? After going on, when alluding to my name he says—

“Through six ponderous columns of the *Commonwealth* he poured forth the most nauseating twaddle and disgusting billingsgate upon every body who is not as willing as himself to sell out to the *Frankfort Whig Junto*.”

What is meant by this, Mr. President? This is another charge that I pronounce a base, wilful, vile, and corrupt calumny, and no other but a vile and filthy sheet would have printed it. I have had the honor of serving, at various times, with more than two thousand of Kentucky politicians and statesmen; I have had, with them, to consider a great many important questions—questions affecting our most vital interests, as well those of my immediate constituents as the constituency of other gentlemen, and I say to this base calumniator, that the lips of every man in this commonwealth are unsealed, and I challenge them all to declare if ever I have, by word, act, or deed, attempted the exercise of an improper influence, to induce any man to swerve from the discharge of his duty; and I call upon him to retract this charge, or I say again that he is a base calumniator. I here dismiss this subject, and leave the slanderer to his fate. “Cease, viper; you gnaw a file.”

I have voted on many questions in which the people of Frankfort were interested—I may have voted on these questions in conformity with their interests; and, Mr. President, I shall always do so when I think they are in the right. There are other questions in which they were deeply interested, and I voted against them when I believed it for the good of the commonwealth to do so. This also, Mr. President, I am sure all honorable men will say is equally right.

Where is this “whig junto” that the *Chronicle* is talking about? Who has seen it here? Where is it to be found? Nowhere within my knowledge. I have been for many measures that interested the section of country in which Frankfort is located. I have strenuously opposed others in which that section was thought to be interested. I have always endeavored to do right. 'Twas but the other day that I advocated a proposition in regard to tolls, which it was declared would injure Frankfort. I believed it was right, and I took my stand because I believed it right. I have made this my home for twenty-three winters, and I will say that a more upright, deserving, hospitable community I have never had acquaintance with. But they need no encomiums from the humble individual who addresses you.

But I appear already to have trespassed too long. I came here, sir, not to legislate for, or against, Frankfort. I came here to represent a

high-minded, honest, and honorable constituency; and I regard any imputation cast upon me as an imputation cast upon them. They probably don't drive out in their one or two-thousand-dollar carriages; but do you raise the curtains of a carriage to find honesty, bedecked in robes? I would as soon go to the individual clothed in home-spun. I cast no reflections upon the rich, and I will suffer none to be cast upon the poor; because they are the main-stay, the support in every sense of the word of our commonwealth—for the toiling millions have always been the men who have sustained this country. They sustain it by producing what the drones of the country need for their consumption; and when our country is assailed and invaded, they are always to be found foremost in the ranks to defend it.

I know there are men in this convention who will think I should not have condescended to notice an article of this kind. I have consulted with but few on the matter, but I thought a resolution of inquiry into an affair casting so foul an imputation on the character of this body, ought to be offered; and if any member of this convention be guilty, as imputed in the article I have referred to, he ought most certainly to be expelled. But I do not offer any resolution of inquiry. This is the last legislative body I shall probably ever enter. I have been sustained for many years by a generous constituency, and I could not, in justice to my constituency, say less. I withdraw my amendment.

This is a very important article, and although the privileges granted to the press and the tongue may be abused, I trust that public sentiment will always correct the influence of this abuse.

With these remarks, Mr. President, I will add no more; I could not, in justice to my constituency, say less. I withdraw my amendment.

The section was then adopted.

The PRESIDENT then announced the question to be on the section offered by Mr. DIXON as a second section:

"Sec. 2. That absolute, arbitrary power over the lives, liberty, and property of freemen, (except for crimes,) exists nowhere in a republic—not even in the largest majority."

Mr. DIXON. I do not feel it necessary to make any speech on this proposed section. It fully explains itself. But I wish the yeas and nays to be taken on its adoption.

Mr. MITCHELL. It appears to me, if I understand the section which it is proposed to adopt, that it conflicts with the succeeding section. It asserts "that absolute and arbitrary power does not exist in a republic." The next section declares "that all power is in the people." I think "all power" would include this "arbitrary power." It seems to me there is an absolute power somewhere, wherever there is a political organization. In Russia it is in the Czar. In a limited monarchy it may be divided, and in a republic, it is in the people. I think there is an inconsistency in the two sections.

Mr. DIXON. There is not the least inconsistency. The section to which the gentleman alludes says: "that all power is inherent in the people, and all free governments are founded on

their authority, and instituted for their peace, safety; happiness, security, and protection of their property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper." The section which I offer is: "that absolute, arbitrary power over the lives, liberty and property of freemen, (except for crimes,) exists nowhere in a republic—not even in the largest majorities." That is it. There is no inconsistency. The power does not exist in a majority, however large, to cut a man's throat, or to take away his liberty, or his property arbitrarily. It is only denying this arbitrary power when it is exercised by a portion. When it is exercised by the whole, there is no question. The section to which the gentleman from Oldham has referred, asserts the right only for the ends therein named; that is for the "peace, safety, happiness security and protection of property." For the advancement of these ends, they have a right to alter or abolish their government at all times. They have no right to adopt a constitution which would not advance, but which would destroy those ends, which would not secure his liberty, but which would make him a slave. I think the section is not inconsistent, but is carrying out the same principle.

Mr. TALBOTT. I do not rise sir, to make a speech, I merely wish to define my position. If I understand the mover of this section, it is to substitute it for a resolution offered by the gentleman some time since, and for which I was very willing to have voted. That resolution, if I recollect rightly, contained the sentiment or declaration that this convention has no right, by any principle it may incorporate in the constitution it may form, to deprive the citizen of his property without his consent, except for public use, and only then, by making to him a just and full compensation therefor. This sentiment I adopt. This declaration I believe to be true, and the resolution containing them I should have voted for most cordially. But sir, I understand the section here offered, to contain an entirely different sentiment, one at war with that resolution. It reads: "that absolute arbitrary power over the lives, liberties and property of freemen nowhere exists in a republic, except for crime. Now sir, I understand all power in governments to be absolute and arbitrary. It is so from the very nature of government. What I understand by absolute, arbitrary power is plenary, positive, irresistible power, or right to execute the will or law of the government, contrary to, or without the consent of the citizen. This sir, is admitted on the face of the proposition as far as crime is concerned. If it exists for the punishment of crime, it certainly does for the coercion of debt; and if it exists for these purposes, it seems to me sir, it must, in the very nature of government, exist for any and every other purpose of government. None deny, that in time of invasion, a republic like all other governments, has absolute power over the lives, liberties and property of her citizens to compel them, even contrary to their will, to furnish men and means to prosecute the war in defence of their country's rights, and their country's honor. None, I presume, Mr. Presi-



dent, will deny this. But sir, I wish to be clearly and distinctly understood on this subject. While I vote against this section, I deny the right that this convention, or any other that may hereafter assemble, has, or will have, by any principle to be incorporated in the constitution we are about to frame, or any constitution hereafter to be framed, to appropriate private property to public use, without paying therefor, a full and fair equivalent in money. Sir, this is a constitutional convention, assembled for purposes of protection—not plunder—to secure the rights of our citizens—not to destroy them.

Mr. DIXON. There has been a section adopted which meets the gentleman's views.

Mr. C. A. WICKLIFFE. I announce my intention to vote against the section. There is a question whether we have not delegated this power already. If we have done this, is not the section proposed inconsistent with the one we have adopted?

Mr. DIXON. I will explain. The power which is delegated to the legislature to take away property, life, or liberty, is a qualified power. It is consistent with the law of the land, which law has been made in conformity to the powers delegated by the people, and which powers so delegated, have resulted from the necessity of the case, and not from the exercise of absolute and arbitrary power. The power to punish a man for crime, to take away his property when the public good may require it, by paying him a just compensation for it, is not only necessary to the security of the liberties of the people, but no free government could exist or maintain itself without the right to exercise this power. This power is derived from the people, who constitute a free government, by their consent; and it is agreed by them that it shall be exercised with a view to their mutual protection, in the promotion of all the great blessings of free government.

Arbitrary and absolute powers are opposed to the very idea of consent, so far as it respects those on whom it is to operate. It is the exercise of an unrestrained will, either in an individual or a multitude; and whether exercised by the one or the other, over the lives, liberty, and property of the citizen, it is tyranny, it is despotism in its darkest form. This power, whether exercised by one or a majority, is never binding, except so far as force may make it so, on those whose liberties are cloven down and destroyed by it. It is opposed to the great principle of self-preservation, written by God himself on the hearts of all his intelligent creatures, and which principle, according to a beautiful writer, "is the primal compact and bond of society, not graven on stone, nor sealed with wax, nor put down on parchment, nor set forth in any express form of words by men, when of old they came together; but implied in the very act that they came together, presupposed in all subsequent law, not to be repealed by any authority, not invalidated by being omitted in any code; inasmuch as from thence are all codes and all authority." Kingly governments look to the exercise of absolute and arbitrary power, in derogation of all the rights of the people. But all free republics derive their existence from the people; are created for their protection and happiness, and in the

making of laws, as well as in the execution of them, are restrained by the very objects and purposes of their creation. Whenever they cease so to be restrained, they cease to be republics, and become engines of tyranny and oppression. The section which I have offered, and which I wish inserted in the bill of rights, asserts the great principle which lies at the foundation of all free governments, that absolute, arbitrary power over the lives, liberty and property of freemen, exists nowhere in a republic, not even in the largest majorities.

I have offered this section because there are many persons in this commonwealth who do believe these powers exist, and that they may be rightfully exercised. The language which it employs is stronger than that in the second section of the report, and I prefer having it adopted, because it imposes not by implication, but directly, a negative upon the exercise of these powers. I wish this principle incorporated in the bill of rights, that the people of Kentucky and of other states, may know and understand that this convention does not admit that the power exists in a bare majority, or in a large majority, to take from the meanest citizen his property without compensation, or his liberty or life, unjustly. I wish it to be incorporated that it may be fully understood in all time to come, that this convention denies the right of any majority, however constituted, to free the slaves of this commonwealth without the consent of their owners and without making to them a just and fair compensation for them. I wish it incorporated because it opposes the idea which has been so long prevalent, that majorities in convention are omnipotent, and that they have absolute power over the lives, liberty and property of the citizen. Even here, Mr. President, we have heard it asserted again and again, that this convention is unlimited in its power, that it can do whatever it thinks proper to do, and that its voice is as the voice of fate, and there is none to resist it. According to the opinions of some gentlemen, this convention might constitute itself the sovereign power of the state, proclaiming itself the hundred—I will not call them tyrants—but kings of Kentucky. Does anybody believe it would not be usurpation? Beyond all question it would. Suppose the convention attempts to perpetuate power in itself and its successors. Does any one believe this would not be usurpation? What I mean to assert is, the limitation of the power of all future conventions, and all majorities; and this is what is embraced in the section, and which I wish gentlemen distinctly to understand. If they mean to say that at any time, the power of a majority may take away property without compensation, let it go forth.

The PRESIDENT. I acknowledge, that so far as relates to the life and property of citizens, we have no right to invade it, but as to property necessary for public use, have we not a right to take it? That is a difficulty which presents itself to my mind.

Mr. DIXON. There is nothing in the section which I propose, that controverts that view. If there is, I am willing to amend it in such a form that it will not oppose taking property for public use, on paying a compensation. I have used

strong language, because I wish it to be fully understood.

Mr. TALBOTT. I do not believe this convention, or any other, has a right to take away the property of the citizen without compensation. I understand the import of this proposition to be: we have no right to take it with or without compensation—justly or unjustly. I shall vote against it.

Mr. HARDIN. I think the suggestion of the President entirely correct. Arbitrary means taking without the consent of the owner, and would include those cases where property is paid for as where it is not, if the consent is not given. They have a right to take it for the public good, even against the will of the owner, and that is arbitrary. But I cannot vote for it. It is entirely an abstract proposition. Does the gentleman mean to say that a man cannot be called out to serve his country, for six, eight, or twelve months. We cannot take his property without paying for it, but we have a right to call out citizens to fight, to repel invasion, and that is the most arbitrary power in the world. I have seen men turn as pale as if there was no blood in them, when they came to draw. This was very arbitrary on them. Many a man I have seen draw, and many a man I have told to feel for the loose ticket, for the prize ticket would be sure to be folded up, and how they have fumbled about to get the right ticket.

Mr. GHOLSON. I think the provisions already made are sufficient. No pro-slavery man would wish for other provisions. Why, the power to make a man serve on a jury is arbitrary, and would conflict with this section. Slave property is sufficiently safe so long as we have the guaranty that property shall not be taken without compensation. In a republican government majorities must rule, and if the day should come when we shall be in a minority on this question, we must either submit or fight. That is the sum total of it. There is no necessity for this provision, and I hope it will not pass.

Mr. STEVENSON. I wish to enquire of the gentleman from Henderson, if he intends this amendment as a substitute for his resolutions, or does he intend to call them up hereafter?

Mr. DIXON. I do not. I intend to have that resolution voted on.

Mr. STEVENSON. I have no objection to the amendment, but will cheerfully give it my support. It strikes me as being rather too abstract and not well calculated to have any practical effect. The convention will perceive that the committee amended the old constitution in this section, by adding the words "protection of their property," which was all we thought was required. They intended to come within the principle of my friend's amendment, that while the right of the government exists to take property, yet they can never do it without just compensation. The committee thought that the addition of the words "protection of their property" was all that the people now or at any other time would demand. They considered the addition of these words would fully come up to every possible state of case which might arise, and be amply sufficient for any crisis.

This amendment is a mere abstract proposition, which, although true, will not have any

obligatory force on any future convention. Like many others which we have adopted, it is at least but the expression of opinion of this convention. The gentleman from Oldham suggested that it was inconsistent with other sections. I do not so understand it. All declarations of abstract rights are apparently contradicted by subsequent provisions in the same constitution. They should be regarded rather as necessary exceptions than contradictions! I am sure if we adopt this amendment we shall not be guilty of any inconsistency. Its adoption would not be more contradictory than another section which we have adopted. In the fourth section we declare:

"That the civil rights, privileges, or capacities of any citizen, shall in no wise be diminished or enlarged on account of his religion."

In the first section we declare:

"That all freemen, when they form a social compact, are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community, except in consideration for public services."

Although we have these two sections, declaring that all men are equal, and that no restriction shall be placed upon the political rights or capacities of any citizen on account of his religion, we have excluded ministers from certain civil privileges; and whilst we have declared these great principles of equality and freedom of opinion; yet, before the sound had ceased to reverberate in this hall, by which we gave utterance to them, we in another breath declare, that ministers of the gospel shall not hold a seat in the legislature. Now, my friend from Oldham voted, I believe, for this restriction on ministers, and does he think it contradicts the other sections of the bill of rights? I apprehend he would justify his vote for restriction on the necessity of an exception to the great truths contained in the bill of rights!

I am glad to hear that the gentleman from Henderson has not given up his resolutions, because I regard them as embracing the most important principles which we shall be called to act upon. I feel an abiding interest in their adoption. They assert a great, and just now, a vital principle. They proclaim boldly that there is no difference between property in slaves and other property, and I hope this convention will not separate without giving their opinion upon them! The voice of a great and united people must and will have its influence on the great political struggle which is now going on at Washington! For we shall let them see that we are united in the assertion of our constitutional rights—that we regard the property in our slaves as sacred as the property in any thing else—and that in the defence and protection of that property we mean to stand together. But I forbear.

I merely rose to say that I did not regard the section of the gentleman as liable to the objections made to it; although I thought it unnecessary, in consequence of the amendment of the committee, yet I will vote for it cheerfully.

Mr. DAVIS. I think the resolution of the gentleman a good deal abstract, but I do not see any objection to its general truth, nor do I think there is any impropriety in its phraseology. It

is proposed that this resolution shall become a section of the constitution. In construing it, and ascertaining its meaning, if it be incorporated in the constitution, it would be considered in connexion with every other part of the instrument, and especially with that article of which it is to form a section, and the proper force and effect be given to every part. It is very general in its terms, and in the same article you find another section which is more particular and precise, and which admits the right of the government to take private property for public use upon making just compensation therefor. What is the construction then of the two sections? This particular provision is the exception, the qualification of the more general one which my friend from Henderson (Mr. Dixon) offers, to become a part of the constitution.

There is a section in general terms in the proposed *project* of a constitution which interdicts the withholding any right or privilege from the citizen on account of his religious opinions. But there is a qualification of it in another, which declares a man who entertains a religious opinion, by which he conceives it to be his duty to instruct his fellow man in christian doctrine, is denied a seat in the legislature. The state of case is just this: the constitution embodies general truths and principles, and also others specific, that are incompatible with and are intended to qualify those more general ones.

If this proposition be adopted, a man taking up the constitution and reading this section—"that absolute, arbitrary power over the lives, liberty, and property of freemen, exists no where in a republic—not even in the largest majority;" and by turning to another section of the same article, he would learn, nevertheless, that private property could be taken for public use, but only upon proper compensation being made to the owner, the examiner would see no improper confliction, no discrepancy, but a plain declaration of a general right and immunity of the citizen, with a proper and necessary encroachment upon it, for which a fair equivalent was secured.

The other objections gentlemen make, are to the particular import of the words, "absolute arbitrary power over the lives, liberty, and property of freemen, exists no where in a republic." A question arises, what is absolute and arbitrary power? We all know that private property frequently becomes necessary for the purposes of government; yea, that government could not be maintained and administered without the existence of the right to take private property for the public use. When this property becomes thus necessary, and is taken from the owner in virtue of a constitutional principle, which also provides it shall not be taken without making just compensation to the owner, the power is not absolute and arbitrary. What is absolute power? It is power without condition. It is power to take property without compensation. It is power upon mere will, and without limit. What is arbitrary power? It is power simply emanating from volition—a man's will without restriction, by which he wrests from an individual his property, when and how he pleases, in the exercise of his own mere purpose. When you say one may take private property without compen-

sation—without any terms or condition whatever—without any imaginable restriction, it is absolute and arbitrary power: and nothing short of that is of such a character. When the constitution authorizes private property to be taken for public use, but requires the owner to be fully remunerated as an indispensable precedent condition, this cannot be, with any reason or truth, denominated an absolute and arbitrary power. It is a reasonable, proper, and necessary power of government. It is one consistent with the public liberty, and not an encroachment on it. I believe the exception taken to the language by several gentlemen cannot be sustained; but even if properly taken, it would be obviated, when we consider this clause in connexion with the other particular clause of the constitution, which necessarily is, and was, intended to be an exception to the general truths contained in it. But I am like the gentleman from Kenton, (Mr. Stevenson,) willing to meet this lion in my path, and I am ready to make the slavery question fully and at once. I lay down the position that the legal essence and nature of this property is identical with every other class of property whatever—that the owner of it has the same indefeasible, absolute, and inviolable right of property in his slaves as he has in his land or in his horses; and that no majority has the power to deprive him of it, in any manner, without compensation. And when I use the term power, I do not mean brute force, or the mere physical strength of numbers, but a function of legitimate government, that may be rightfully exercised. And I mean especially to proscribe any system of emancipation, immediate or prospective, of slaves in being or not in *esse*, without paying a full equivalent to their owners.

We know the power of the majority in a physical point of view is omnipotent. So a man, who has more strength than I have, assails me at night as I am going to my domicile, and says to me "stand and deliver," and I refusing, he thereupon fells me to the earth and rifles my pockets—this man has the power to rob me, but is it right on his part? Can an act, which, when done by an individual is robbery, change its moral turpitude when performed by a multitude? The majority of the men of this state are not the owners of the most valuable portion of its real estate. This majority may meet, and in physical power nothing on earth can overcome or control them, and they may proclaim a general agrarian law, and distribute the lands equally among themselves. They have no right to do this, and yet they have the physical power to do it, and as much right as to wrest from the owners of slaves their property. They might establish a regulation that no man shall own more than one hundred acres of land, and that those who have more, shall surrender it in trust, and the proceeds thereof shall go to establish a fund for the support of common schools, or a great system of internal improvements. There is an immense amount of money on interest in this state. It belongs to people who mostly have surplus means. Suppose now, the majority in this convention should make a provision in the constitution that the money thus loaned should be forfeited to

the state, and it should be distributed among the poor to remedy pauperism, and to bring about in some measure that democratic equality of condition among our people, which is so congenial to our institutions. Here would be great and enduring objects of general good, to be secured or promoted by these measures. Their advocates could, with as much truth as the friends of emancipation in support of that scheme, say, "the majority have the right and must rule, and the minority must obey. Here are important measures resolved upon by this majority to secure the greatest good to the greatest number; and those from whom their property is thus taken, are compensated in the general advantage secured to the community, and no wrong to them, no invasion of their right of property is perpetrated?" Is there a man in this body of such mental or moral obliquity as not to understand and concede the mocking fallacy of such reasoning, and the flagitious injustice of such measures? And I defy the ablest and most astute champion of emancipation to show that there is any principles in our scheme of society which condemn those other measures, and at the same time authorized his party, if it was the majority, to emancipate the slaves without paying for them.

Let me illustrate this position. A. B. and C. own property individually, consisting of lands, slaves, and personalty, the right to all of which is sanctioned and secured to them by national and general law. They form a social compact, and they declare that their rights of life and liberty, except for crimes committed, their rights of conscience and freedom to worship God according to its dictates, and their right of property, except so far as it may be taken for their common benefit upon compensation being made jointly by them to the individual owner, shall be forever held sacred and inviolable. The property held by each of those persons so changes that A. becomes the owner of all their slaves, and B. and C. severally of all the lands and personalty belonging to them. The sentiments of B. and C. change—they believe it to be against natural justice and religious morality, against the convenience of themselves and the permanent prosperity of them all, that A. should longer hold his slaves. Can they justly and rightfully take them from him without compensation? If they, being the majority, will insist upon sending those slaves out of their community, ought they not to pay A. for them out of their common treasury? By the eternal principles of justice but one other alternative is left to them, and that is to leave themselves and seek a new country and a new home. Being the most numerous, B. and C. might by physical force seize the slaves of A., in defiance of his will, and deport them. But by taking this course they would substitute might for right. They would subvert the original and fundamental principles upon which they had planted their civil compact. They would not only change their government, but they would overthrow the order, forms, and rights, to secure which it had been framed, and with the surrender and destruction of which it never would have been made. They would bring on a violent revolution, and involve A. in a state of force and war. Weakness might constrain

him to submit to the oppression; but by reason, by right, by universal law, he would be authorized by all his means and power to resist this wrong; and if able, to drive B. and C. from the community, and to seize upon all their possessions.

Our ancestors brought their slaves with them into this state when it was a virgin wilderness, and all institutions and laws allowed them to do this. When Kentucky became a state, their property in their slaves was recognized and confirmed to them by the first constitution. When the present constitution was framed, the pledge was solemnly renewed, and the inviolability of this property again carefully secured. Emigrants from our sister states were invited to come and bring it with them, and the citizen to invest in it his means. Its owners are spread over the face of the commonwealth, and they consist of men of all ages, of the minor, of the widow, the orphan; and they have those ancient and oft renewed guaranties. Its value is now more than a fourth of the aggregate wealth of the state. Its owners are entitled to the same security and defence in their possession of this property as those who hold any other property, and so long as the primary organic principles of our society, as right, justice, and faith, are observed, they will have it.

I am ready to meet the question at once, and declare to the emancipationists, that they have no right, no proper authority to emancipate the slaves by any system, without paying their owners for them. Their project would be an enormous and most calamitous infraction of the right of property—that most essential principle of civilization, which has contributed more than all the other forces wielded by man to bring him from a state of naked and ignorant barbarism to the highest improvement in arts, science, and letters. Without this mighty propulsive principle, he would now, in all his races, be lower in the scale, than the Blackfoot Indian or the Hottentot. If his arch enemy could expel the institution and right of individual property from the face of the earth, it would be a curse far transcending the aggregate ills with which he has afflicted the whole race since the fall of our first parents in Eden. It would bring back upon the world one long, never ending night of hopeless barbarism. The preservation of this inappreciable principle, would be cheaply purchased by paying a full price for all the slaves in Kentucky, when, if ever, the majority will emancipate them by the physical power of numbers. To escape the burthen of even this great charge would be no sufficient compensation to them or their children for losing in its position, the chief corner stone on which rests the vast fabric of social organization, and all the achievements of the industry and genius of man.

Mr. GARFIELD. I should not trouble the convention with a word on this additional section, were I not a member of the committee on revision; and I dislike to incorporate the same principle in several sections of the constitution. To the sentiments contained in the proposition of the gentleman from Henderson, I yield my hearty support. It asserts doctrines I believe to be true. The same principle is clearly set forth in the second section of the report of the com-

mittee. I would ask gentlemen to read that section. No language can cover broader ground, or be more extensive in its signification. Wherefore, then, the necessity of repeating the same doctrine in a different part of the constitution?

Mr. PRESTON. I am aware that sections such as this are often regarded as abstractions. An abstraction is sometimes the essence of experience. These great principles are the results of long practical knowledge and of long reflection upon acts of great importance to the welfare and happiness of mankind. The declaration that all men are free and equal, is the broadest political abstraction. The declaration that private property shall not be taken without compensation, and that the freedom of the press shall be inviolable, may be termed abstractions, but on such the foundations of liberty repose.

Two objections have been pressed against the proposed section. One by the President, and the other by the gentleman from Nelson, (Mr. Hardin) which I think badly taken.

This section uses the words "arbitrary power." Now what is arbitrary? The word is derived from *arbitrium*, the will, the judgment, meaning the unlimited will of an individual, as opposed to the will of the people expressed by law. The will of the Emperor of Russia is arbitrary. We declare that no *ex post facto* law shall be passed, that no law may be passed which will render that criminal which was not criminal when performed: a violation of these rules by power would be arbitrary.

The President says this section does not provide for the case that government may take property by making compensation. The reply is simple, and I think satisfactory. Such an act is not arbitrary. It is an act sanctioned by the constitution, and carried out by law. If a road is to be carried through a man's property, it may be done by ordering a writ of *ad quod damnum*. Therefore, this is in conformity both to the organic and statute law.

The gentleman from Nelson says the act of drafting is an arbitrary act. I deny it. It is in conformity with the organic law and statutes carrying out that law. It is no arbitrary exercise of power; but a legitimate carrying out of necessary power.

The second section has this language, and I want to show that the language of the gentleman from Henderson is preferable.

"That all power is inherent in the people and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and protection of their property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper."

I grant the people of Kentucky have a right to alter their organic law as we are now doing, but I deny that we have the right to take the property of any citizen and appropriate it under our direction, or that we, by the act either of the legislature or this convention, can alter the slightest contract. Even if the federal government had not declared we should not violate the obligation of a contract, we could not strike down the rights of property on which society

rests. If, like the French convention, we choose to constitute ourselves into a tribunal of force, we are in a state of revolution.

I never will admit that this convention has such power either over the lives, the liberties, or the property of the people of Kentucky. If we chose to exercise it, it would be repelled by every man in Kentucky who had a rifle in his cabin, or an arm to wield it.

Do you tell me we may appropriate property beyond the limits prescribed? If so, we are in a state of revolution. If this convention consisted of any other number than one hundred, it would not be a constitutional convention. If there were one hundred and fifty instead of one hundred members, we should not be a constitutional body. We are now a constitutional body, legally called, to revise the constitution in a certain specified way. If we had been elected as a mob—if one county had sent twenty members and another but one, I believe it would be declared by the sense of the whole community, and of the union, and of all the courts of justice, that this convention would be a nullity.

Imagine all the people of Kentucky assembled on one great plain, and that they had sent us here to alter their law. After the organic law is framed, they cannot alter that law except by the mode pointed out, or by going into a state of revolution. Nor can all combined, take by right, one man's property. We have therefore, no right to interfere with the rights of property, or curtail the rights of life or liberty, without revolution. For that reason, if the sergeant-at-arms were ordered to take property in any other than the mode prescribed, to seize an editor, or destroy a press, it would be criminal. We have a mode pointed out, and that mode must be pursued.

There is a clause in the section which I wish was out of it. It is that contained in the parenthesis ("except for crimes.") If one is legally punished for crime, he is neither punished by an exercise of absolute power, nor arbitrarily. I think these words mean nothing and should be stricken out. I deny that punishment executed in conformity to law, and under the government we have constituted for ourselves, is either absolute or arbitrary. It is legal, proper, just, and right, and one sanctioned by law, and commanded by the people.

I believe that in point of expression, in perspicuity, and in truth, this section is preferable to the one offered by my friend from Fleming, that, "for the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper."

That is all true. But government cannot be so framed as to deprive the citizen of his property. Grant the contrary, and the convention might have declared that all the negroes were free when this convention assembled. Such a principle would authorize the act by which the negroes in the French colonies in the West Indies were set free under the enthusiastic eloquence of Brissot.

That power I deny, and I deny that if the whole people of Kentucky were to come up here, they could rightfully destroy the principles on which our government is based, that they could

enact a general agrarian law, or that our slaves should be emancipated without compensation. That is the point to which the doctrine tends, and it is for that reason that I suggested, heretofore, to the venerable gentleman from Nelson, that we are not in a state of revolution.

He replied that he was not to be terrified by that raw-head-and-bloody-bones of revolution being shaken before him. But I still firmly assert, that no body of men, nor all the people in Kentucky could deprive a single citizen of one dollar's worth of property, under any circumstances, by convention or otherwise, without paying a just compensation. Sir, to what a position are we reduced. All on this floor admit it would be a violation of the obligation of contract to repeal the charter of the bank of Kentucky. There is not a lawyer who does not know that would be declared a null act by any court in Kentucky, or in the union. Yet we are gravely told that this convention has power to take away all the property of every citizen. You cannot take away one dollar's worth of bank stock or repeal a charter, but you can take away the negroes, and the property of the citizen and divide his lands. They say this is no impairment of the obligation of contracts. If it be no impairment of the obligation of contracts, it is the impairment of a still greater obligation, and that is, the implied promise by which a man comes into a community under certain guaranties. He comes with the guaranties of security of life, liberty, and property. If a citizen of the United States were to come under the control of the Emperor of Russia, and he should declare, by an arbitrary edict, that his property should be confiscated, and that he should be exiled to Siberia, it would be a just cause of war. Why? Simply because he came into the country under the guaranties that no such tyranny should be brought to bear on him—a principle recognized by international law, and the practice of every civilized nation of the earth.

When we came with our slaves from Virginia, in 1799, we came under an implied guaranty that they should not be taken from us by any law, either passed by a legislature or a convention. Not three months have passed, since this commonwealth, by the agitation of the slavery question, was shaken to its centre. Establish the principle contained in the proposed section, and you cannot be legislated out of your property, nor conventioned out of it. Assert the opposite principle, that a majority may control it, and you vest a bare majority with the rights of plunder, rapine, and robbery, and establish

"The good old rule, the simple plan,  
That he may take who has the power,  
That he may keep who can."

The right of property is not coeval with, but antecedent to, government. The rights of property originate in industry and labor, and are antecedent to written constitutions: those constitutions are framed to declare, to define, and to protect those rights.

If the constitution of Kentucky, and of the United States, were silent in regard to the obligations of contracts, and there were no such clause in them, even if they did not exist; still, by the great and immutable principles of justice—that justice which, in the jurisprudence of

the world, has declared it is wrong to pass an *ex post facto* law, or to seize private property on those great principles apart from any constitution, the right is invulnerable by any civilized state. If a difference exist between slaves and other property, I defy any man to show the difference. I want to know who those enemies of justice are, and what sort of men they be. I want to know them for all future time, and that the states shall know them. This, Mr. President, is no abstraction; if so, it is such an abstraction as will affect our right to our slaves and \$60,000,000 of our property—an abstraction that will give that property security, and give hope and unalterable reliance in the public justice. But if we refuse to put it in the constitution, it will carry uncertainty, insecurity, and dismay to all the slaveholders in Kentucky.

Mr. MITCHELL. I move to amend the section, by striking out, in the second line, after the word "crimes," the words, "exists nowhere," and inserting in lieu thereof the words, "and, from necessity, should not be exercised." The proposed section, so amended, would read thus:

"Sec. 2. That absolute, arbitrary power over the lives, liberty, and property of freemen, (except for crimes, and, from necessity,) should not be exercised in a republic—not even in the largest majority."

I am one of those, Mr. President, who from education, conviction, and if you please, from prejudice, regard the institution of slavery not only as no curse, but as a blessing to the community in which it exists. I am one of those who acknowledge, to its fullest extent, the existence of property in slaves; and I will go as far as any one, without sacrificing principle, to give security to this description of property. But, sir, while I avow my regard for this institution, I must also be permitted to say, that among the earliest lessons which I learned in politics, was the great maxim, "*vox populi, vox dei*"—the sovereignty of the people. I have been taught that it was incompatible with popular rights to impose limits to popular power. In my apprehension, the gentleman from Henderson (Mr. Dixon,) has permitted his zeal for the security of slave property to hurry him into this extreme, in offering the proposition now under consideration. I have proposed to amend it, because, sir, regarding myself as a friend to the institution of slavery, I should suppose I was doing an injury to that institution by advocating the proposition, as it was originally presented before the convention. I should regard its adoption as putting an argument into the mouths of the opponents of that institution—as giving a powerful handle to the advocates of emancipation in this state. They would say, "see the tendency of slavery! Behold how it attempts to bolster itself at the expense of popular rights!" I say it would be the ground-work of a powerful appeal, and I do not know what might be the result of that appeal—I do not know what might be its influence upon the people of Kentucky. I have always been taught to believe that, in popular governments, the citizen looked for the security of his rights—whether of person or property—to the justice of the people—that that justice was the only sure foundation on which individual rights repose—that whenever popu-



lar justice ceases to exist, then the rights of every man are in jeopardy. That, sir, is the view I have always entertained, and I want no better security than this for my life or property. Now, sir, what is the proposition asserted here? That "absolute, arbitrary power over the lives, liberty, and property of freemen (except for crimes,) does not exist any where in a republic." Does not exist any where, sir—not on the floor of this convention—not in the halls of our legislature—not among the people themselves! So long as the people of this country stand associated as a republic, no such power exists any where. Is that the proposition?

The gentleman from Bourbon says, this proposition is explained away, or, at least, that it is qualified by other propositions contained in the constitution, and that it must be taken in an explained and qualified sense. Now, sir, I contend that if the principle asserted in this proposition is wrong in itself, why then it is a contradiction to any other proposition, the principle of which is correct. For example, if in one part of the constitution a declaration of power is made as to any given subject, and in another part of the constitution that same power is denied or qualified, the two propositions being inconsistent does not make the one or the other true. Such a rule might be appropriate in the construction of an existing instrument, but could scarcely obtain in forming a new constitution, the provisions of which should consist with one another. The proposition under consideration is true, or else it is not true. It is true, that the same effective power which exists in other political organizations has been generated in the formation of our institutions, or otherwise—that the people have this power, or they have not. If they have not this power, denied to them in the proposition under consideration, they must either have yielded it up or else it must have been taken from them; and in either event it belongs some where else; for power cannot be annihilated. Where else does it reside? Not with the citizens individually; for then the political association would be dissolved into its original elements. Not with the general government; for it is not among the powers ceded by the States. In order to maintain the proposition it is necessary to demonstrate that the attribute of sovereignty does not belong to a republic.

Now, sir, in regard to the powers of this convention, are they limited, and if so, by whom, and what is the nature of the restriction? Is not all the power residing in the people for the time being, lodged in this body for the purposes for which they are assembled here? It is true, they might abuse that power, but that does not go to show that it does not exist. The liability to abuse power, does not necessarily carry with it a restriction of power. Gentlemen talked about "brute force." If you come to the question of morality, sir, how is that to be decided? How is it to be decided whether the popular action is right or wrong? How is it to be decided whether it is just or unjust? What superior tribunal exists? If you say that in the nature of things, powers of this character should not be exercised—if gentlemen will say because it would be unjust to infringe the rights of individuals who hold this description of property,

that although the powers exist, they should not be exercised, I will go as far as any other gentleman on this floor—I will assert the moral obligation to maintain inviolate property of this description. Every right that belongs to the people either in their individual or social capacity, I will go as far as any one to maintain; but when you come to prescribe limits to popular power—to detract from the sovereignty of the state—however it may seem to interfere with my prejudices—however it may seem to interfere with an institution, the maintenance of which involves, as I think, the best interests of the country—however it may be supposed to interfere with the general welfare of the country—I say, however the assertion of such a principle might tend to maintain this institution, or however its denial may seem to interfere with it, I am not prepared to go to the extent which is contemplated in that proposition. While I maintain the existence of absolute arbitrary power in the people, in their political relation, I firmly and confidently rely on their justice for the security and preservation of my rights. I want no other guaranty. I shall never seek safety in attempting to abridge what I esteem to be their just rights and clear powers.

The gentleman from Louisville talked about "arbitrary power." He said, if I understood him, that arbitrary power was "power exercised in accordance with law." I don't understand it so.

Mr. PRESTON. I said that arbitrary power was the unlimited will of an individual.

Mr. MITCHELL. The gentleman says that arbitrary power is the unlimited will of an individual. I do not perceive the force of the definition. Arbitrary power, in my conception, is an attribute of political sovereignty. It may reside in a monarchy or in the people. The will of the people in this country is paramount to the law, which emanates from government, the creature of the people. It is to the government, what law is to the individual citizen, a rule for its action—if you please, an absolute arbitrary rule. It is in the formation of government, that the people exhibit their absolute and arbitrary power, by imposing restraints on delegated authority. Political association is a compact entered into from necessity, and that compact is exhibited in the organic law. Whatever it proclaims as the popular will—that constitutes the terms of the association—that sets out, limits, defines the powers which the people propose to delegate in their political association, and defines the various restraints against the abuse of delegated power. Now, sir, in our present constitution, on this subject it was declared that the legislature should have no power to emancipate slaves. What was the opinion of our forefathers in this matter? Without that provision in the constitution, they conceived that this power would have existed in the legislature. The proposition under consideration, on the other hand, asserts that it exists neither in the legislature nor the people. I don't say that it would be right—I don't say that it would conduce to the interest of the country to exercise this power. Very far from it. I think it ought not to be done; nay, I am very sure that it will not be done; but I am not prepared to assert the absence of a

power which I believe exists with the people. Why, sir, Mr. Calhoun, the great Ajax Telemach of slavery, declares that the power alone exists in the states to abolish slavery; and if they have a right to abolish slavery, there can be no doubt that they are fully vested with the power of prescribing the mode in which it shall be abolished.

Gentlemen have talked about contracts. What contract is there, embracing this subject, which cripples popular sovereignty? Gentlemen have talked of immigrants bringing to the state their slaves, upon the pledge which the laws afforded of security to this property, and therefore any change in those laws would be violative of this pledge. Sir, to indulge such an idea would close the door on legislation. Popular justice is the only safeguard, the only reliance in popular governments, for the preservation of individual rights. Why sir, before the revolution, in Virginia the right of primogeniture existed; and there was such a thing as entailed estates. Are we to suppose that the abolition of the one and the conversion of the other into fee simple estates—that the repeal of these pernicious laws was a violation of individual rights, that the heir in entail was divested of his rights by a usurpation of legislative authority, and that by the exercise of arbitrary power not existing in the government, the eldest son instead of acquiring the whole property, acquired only so much as his younger brethren and sisters, (and this was made, in Virginia, to apply to slaves as well as to landed property.) Why sir, could they not, on the principle attempted to be maintained here, complain of the exercise of arbitrary power over the rights of property; for the right to hold property prospectively is as strong as to hold that which we already have,—could they have complained? No, sir; a great reform was accomplished, but even if it had been otherwise, individual judgment cannot array itself against the public will; the safety of individual rights is found in the intelligence which exists in the public mind. Shall we then attempt to place this kind of property above the sovereign power of the republic? The only powers which the people of Kentucky have parted with are those which have been ceded to the national government, or expressly relinquished in the federal constitution; and aside from this, they have a right to destroy this government and adopt any other form of government, not incompatible with the federal constitution—a right paramount to mere legislation in reference to property. The idea of property may exist by the laws of nature; but title to property is conventional and the creature of political association. The same power that created it can destroy it. Is it consistent with the laws of nature that one man should hold a thousand acres of land, and another man only a hundred, and a third none at all? By what sanction does such an unequal distribution exist? It is by the sanction of municipal law, and not by the laws of nature. Can you conceive of the existence of property in persons by the law of nature? Is it in accordance with the law of nature that one man should be held in bondage by another? No, sir; it is merely a conventional right. The same power, then, which gives efficiency to that right

by enabling the possessor to maintain it, can destroy it.

Sir, I acknowledge the title to this description of property to be as absolute as any other in this country; I am as much in favor of its being perpetuated as any other gentleman on this floor; but I don't regard it as property acquired by the laws of nature, but by the laws of human government—the power which created it, which has continued it, and which, I say, is able to destroy it.

Gentlemen have laid great stress on the binding efficacy of contract, in relation to this subject, and I heard on a former occasion, when this question was under discussion, that there was such a contract as would bring any effort to destroy this description of property, within that provision of the constitution of the United States, which declares that no state shall pass any law impairing the obligation of contracts. I am at a loss to discover the application of this postulate. A constitutional declaration, according to my apprehension, has none of the elements of a contract about it. What is a contract? It is an agreement between parties, able to contract and be contracted with, touching something properly the subject of such agreement.

The government, in the exercise of its legislative function, is prescribing a rule of action; and when an organic law is being framed, that rule has the same relation to the government that ordinary legislation has to individuals. It is true the government may come down from its political elevation, and assuming the attitude of an individual, make contracts with the citizen; but that is a very different affair from the prescription of a general rule of action. The case cited here on a former occasion of a grant of lands to Henderson by the state of Virginia, and the grant of lands in the state of Georgia adjudicated upon by the supreme court of the United States—I refer to the case of *Fletcher vs Peck*—are of the description of which I speak. But to suppose now that the government has made a contract with each individual citizen of the country, and that any departure from the terms of this contract would be a violation of our compact with the federal government, would be to fasten upon the country the original compact, and deny to a free people the right to modify their government. Suppose the original compact to be the present constitution, for as the last written expression of the public will it is the only compact we recognize; according to the argument in this case, we have assembled here in vain, and any attempt to change it would be a violation of private rights. Does not the argument go to that extent?

For these reasons, and for many others which might be assigned, I am opposed, utterly opposed, to the proposition under consideration—not because I am opposed to the institution of slavery—not that I would favor emancipation—but that I am disposed to place that institution, as well as every other right which I hold dear, upon the justice of the people; I am willing to rest it there; for whenever the people cease to be just, whenever they cease to be virtuous, all our rights and liberties must cease to exist. Without any regard, therefore, to such a proposition as this, or the amendment, (which I regard as preferable

to the original proposition,) without feeling any necessity for hedging in this institution with extraordinary laws, I shall rest satisfied that the property of the country, of every description, is in perfect safety.

Mr. CLARKE. This section has been called an abstraction by some gentlemen. It is no abstraction or I think it would have met with more favor from the gentleman last up. This section contains a great principle, and I ask the convention to come directly up to it and act upon it. When we come to submit this constitution to the people of the state, it ought to be clear and distinct, in respect to the great rights asserted in the section proposed. A majority of the people of Kentucky may have no property in lands or slaves, and however sacred that majority does and may hold the rights secured by the section, still it is proper to assert in the fundamental law, that that majority possess no power, while this state remains a republican government, to divest those who have property in lands or slaves of that property. What does the section declare. The section declares that "absolute, arbitrary power over the lives, liberty, and property of freemen, exists no where in a republic. Not even in the largest majorities." Now the question is, does absolute and arbitrary power exist in any republic, over the lives, liberty, and property of the citizens?

If absolute and arbitrary power does not thus exist in a republic, then this section and the principle contained in it are true. Does it exist? If it does exist, then the converse is true. This is the great question which this convention is now about to settle. The very moment that a majority of the convention shall determine the power does exist, that very moment they destroy one of the elements, the great elements, that constitute a republican form of government. To take from me my property by a bare majority of the people of this state, without crime or offence being alleged against me, and without compensation and against my consent, is a high handed act of tyranny, the predominance of brute force over right, and incompatible with all forms or principles of free government. The exercise of such a power would be revolutionary and subversive of government itself. If you take away from me my liberty without forfeiture on my part, or my property, without making compensation to me, that instant you exercise such a power, or assert such a right—that moment you sap the foundations of all free government, and regulated liberty. What is a republican government? It is a free government created to secure the citizen in the enjoyment of life, liberty and property.

But would it be a free government if a bare majority or any majority could deprive a citizen of his property? It would be establishing without offence on his part, or compensation to him, the very worst system of agrarianism—a principle upon which the labors and earnings of the few might be seized and divided out amongst the many. Would that be a free government? Would it be a republican government? Is that a republican government where ten men, who have not a dollar in their pockets, have a right, because they are in a majority, to take ten dollars out of your pocket and divide them among

themselves? It may be the right of the robber, who claims might as right—but no such power exists under a republican constitution. It is that government where the citizen is secured in the accumulation of property, and the enjoyment of it, and of life and liberty, that may justly be denominated republican. And no government is free where those rights are not permanently secured. And the very moment the converse of this proposition is established, we cease to be a republic, we cease to be freemen. Will any gentleman be so bold as to assert that absolute and arbitrary power over the lives, liberty and property of freemen, exists in a republic—that freedom can live and breathe and have a being—when a bare majority having the physical power shall trample down life, liberty, and the rights to property, at will and pleasure. Sir, such a power exists. It has been, and may again be exercised, but its exercise and existence was in revolution—and never in accordance with constitutional liberty, and such a power never did exist under a republican form of government.

Before my constituents I took the position taken by this section. I declared in upwards of twenty speeches that when the convention should assemble, they would have no power to emancipate slaves either in being or hereafter to be born, without making compensation. I went further, and said that they could not do it without the consent of the owner. In this I may have run the principle too far. But I asserted, then, and I here reiterate the sentiment, that the majority of the people of the state have no power, compatible with freedom, to take from the owner of a slave his property without making him just, and full, and ample compensation. I think it is quite seasonable, at this time to assert, yea and in the constitution, the great principle contained in the section, when we find a spirit pervading, more or less, some fifteen states of this Union, a spirit which is calculated to disturb the harmony that ought to exist in the confederacy—when we see congress thwarted in its organization at this moment by this same fell spirit—when from present indications this Union may be shaken to its very foundation—when we see that same spirit and those feelings now pervade the legislative councils of the nation, harrowing up the worst passions of the human heart—and asserting the right of numbers to plunder minorities of just and sacred rights. I ask, in the name of all that is dear and sacred to us and our children, is it not time that we should act, and act promptly and decisively? When we behold all these portentous dangers staring us in the face, it does seem to me that no ground, asserting correct and true principles can be taken which will be too strong. That the principle contained in the proposed section is right, I am prepared to proclaim and defend. That the reverse would be a violation of those rights which existed before the articles of confederation were adopted, none will be so bold as to deny. They existed when we composed a part of the state of Virginia. We brought those rights with us, and no absolute or arbitrary power under heaven can deprive us of them, consistent with regulated freedom. We brought our slave property here under solemn contract. We were

told that we would be secure in the enjoyment of life, liberty and property—that such was the object and end of government; that for the protection of these inestimable rights, free governments were first established. How did we acquire the lands upon which are built your splendid cities, your lovely cottages—those broad acres, upon which roam your herds of cattle—by the same description of contract that slaves were acquired. Can a bare majority of this proud and glorious commonwealth, now having a voting population of from 150,000 to 175,000, and a slave population of 200,000, estimated at sixty millions of dollars in value—can a bare majority come up, and without forfeiture by, or compensation to the owners, seize that property and dispose of it consistent with republicanism; never, never, in my judgment without revolution. They can do no such thing. The moment such an attempt is made by society, that moment, if it shall be sanctioned and carried out—that moment this commonwealth ceases to be a republic, and it becomes a revolutionary despotism, in violation of right of principle, and in violation of all guaranties by which the enjoyment of life, liberty and property has been secured.

Having, before I was elected, taken the very ground which I have here taken, I felt it my duty to make these remarks. I never can concede the principle, that if I enter into a society with ten men, with the express understanding that I am to be protected by them, in the enjoyment of life, liberty and property—that six of them, consistent with that understanding, have the power to deprive me of either right, at will and pleasure. To concede it would be a base abandonment of principle—it would be to resign the title of freeman and to become a slave.

Mr. TURNER moved the previous question, and the main question was ordered to be now put.

The question was first taken on the amendment of Mr. Mitchell, to strike out "exists no where" and insert "and, from necessity, should not be exercised."

Mr. MITCHELL called for the yeas and nays, and they were yeas 1, nays 87.

YEAS—William D. Mitchell—1.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Ben. Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, A. Hood, Thomas J. Hood, Thomas James, George W. Johnston, George W. Kavanaugh, Charles O. Kelly, James M. Lackey, Peter Lashbrooke, T. N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, Thomas P. Moore, James M. Nes-

bitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson—87.

So the convention refused to amend.

The question then recurred on the amendment of Mr. DIXON.

Mr. MITCHELL called for the yeas and nays and they were, yeas 55, nays 34.

YEAS—Alfred Boyd, Luther Brawner, William C. Bullitt, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Nathan Gaither, J. H. Garrard, Thomas J. Gough, Ninian E. Gray, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, Thomas James, William Johnston, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Wm. Preston, Johnson Price, Larkin J. Proctor, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, John D. Taylor, John J. Thurman, Howard Todd, Henry Washington, Andrew S. White, George W. Williams—55.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, William Bradley, Francis M. Bristow, Thomas D. Brown, William Chenault, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, Selucius Garfield, Richard D. Gholson, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Richard L. Mayes, David Meriwether, William D. Mitchell, Hugh Newell, Henry B. Pollard, John T. Robinson, Ira Root, James Rudd, Albert G. Talbott, William R. Thompson, Squire Turner, John L. Waller, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—34.

So the section was adopted.

Mr. A. K. MARSHALL moved a reconsideration of the vote, adopting the section with the avowed intention to move to strike out the words "except for crime."

The motion to reconsider was agreed to.

Mr. A. K. MARSHALL moved to strike out the words "except for crime."

The motion was agreed to.

Mr. TALBOTT moved to amend, by inserting the following as a substitute:

"That absolute, arbitrary, unconditional power over the lives, liberties, and property of freemen, exists no where in a republic, not even in the largest majority."

The substitute was ruled out of order.

The question again recurred on the adoption of the section.

Mr. BALLINGER called for the yeas and nays, and they were—yeas 57, nays 30.

YEAS—John L. Ballinger, Alfred Boyd, Luther Brawner, Thos. D. Brown, Wm. C. Bullitt, William Chenault, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Wm. Cowper, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Nathan Gaither, James H. Garrard, Thos. J. Gough, Ninian E. Gray, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Thos. James, William Johnson, Geo. W. Johnston, George W. Kavanaugh, Charles C. Kelly, Jas. M. Lackey, Peter Lashbrooke, Thos. N. Lindsey, Thomas W. Lisle, Willis B. Machen, Geo. W. Mansfield, Alexander K. Marshall, Wm. N. Marshall, Nathan McClure, Thos. P. Moore, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, William Preston, Johnson Price, Larkin J. Proctor, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, John D. Taylor, John J. Thurman, Howard Todd, Henry Washington, Andrew S. White—57.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Wm. K. Bowling, Wm. Bradley, Francis M. Bristow, Benjamin Copelin, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, Richard D. Gholson, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Richard L. Mayes, William D. Mitchell, Hugh Newell, Henry B. Pollard, John T. Robinson, Ira Root, James Rudd, Albert G. Talbott, William R. Thompson, Squire Turner, John L. Waller, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—30.

So the section was adopted.

Mr. DAVIS offered the following as an additional section:

"Sec. —. The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to his property is the same and as inviolable as the right of the owner of any property whatever."

Mr. A. K. MARSHALL desired that the section should lie over for future consideration.

Mr. DAVIS assented, and the section was laid over.

Mr. JAMES said the convention had for some time been laboriously employed, and the reporters had necessarily been still more industrious, and therefore he moved that the convention do now adjourn.

Mr. HARDIN moved that the convention do now take a recess.

The last motion having priority, it was first put.

Mr. RUDD called for the yeas and nays thereon, and they were—yeas 42, nays 44.

So the convention refused to take a recess.

Mr. JAMES then renewed his motion to adjourn.

Mr. WHEELER called for the yeas and nays, and they were—yeas 38, nays 47.

So the convention refused to adjourn.

Mr. MACHEN again moved that the convention take a recess.

The yeas and nays were called for, and were—yeas 43, nays 42.

So the convention took a recess.

#### EVENING SESSION.

The convention resumed the consideration of the report of the committee on general provisions.

The first section, which was heretofore passed over at the request of Mr. BULLITT, was taken up and read as follows:

"Sec. 1. Members of the general assembly, and all officers, executive and judicial, before they enter upon the execution of their respective offices, shall take the following oath or affirmation: I do solemnly swear, (or affirm, as the case may be,) that I will be faithful and true to the commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of ——— according to law, and that I have neither directly nor indirectly, given, accepted, or knowingly carried a challenge, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, since the adoption of the present constitution of Kentucky, and that I will neither directly nor indirectly, give, accept, or knowingly carry a challenge to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, during my continuance in office."

Mr. BULLITT. I move to strike out the words "and that I have neither directly nor indirectly, given, accepted, or knowingly carried a challenge, to any person or persons, to fight in single combat or otherwise, with any deadly weapon, either in or out of the state, since the adoption of the present constitution of Kentucky, and that I will neither directly nor indirectly, accept, or knowingly carry a challenge to any person or persons, to fight in single combat or otherwise, with a deadly weapon, either in or out of the state, during my continuance in office."

I am opposed to that portion of the first section which provides that all officers of government, before they enter upon the execution of their offices, shall swear or affirm that they "have neither directly nor indirectly given, accepted, nor knowingly carried a challenge to any person, or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of the state, since the adoption of the present constitution of Kentucky, and that they will not during their continuance in office."

This absolutely excludes the offender from office forever without the possibility of a pardon. As it is a constitutional provision, the executive cannot relieve a person from its penalties under any circumstances whatever. You thereby not only select the duelist as being the greatest offender of all other criminals, and deserving the peculiar vengeance of a constitutional provision, whilst you leave all other crimes to legislative action. You mark it out as a crime so peculiarly atrocious for a man to challenge another to a fair fight—though the quarrel may have been amicably compromised—as to be unworthy of executive clemency forever, and under all possible circumstances.

It is believed that the power of pardoning exists in every civilized government in the world, even in cases of the most atrocious crimes which can be committed. In the governments of Rus-

sia and Turkey, the strongest military governments known, the power of pardon exists in the monarch.

In every government, however despotic, this power exists somewhere. The laws must necessarily be general, and it is impossible for the law-maker to foresee and provide for all the cases which ought to form exceptions; hence the necessity of vesting this power somewhere. If the matter is left to the legislature, the governor can extend the executive clemency to all cases deserving a pardon.

The adoption of this section would be an interpolation of a criminal law into the constitution. This convention has power to establish a form of government for the people of Kentucky—to declare what department or body of men shall make the laws—who shall adjudicate on and expound the laws—and who shall execute them—but you have no power to do either of the three yourselves. Your powers are as separate and distinct from the law-making power, as those of the legislative, executive and judicial departments under the existing constitution are separate from each other. The entire constitution, which we are now making, is a restriction on the legislative power; yet we are asked to set them the example, in our own action, of violating the constitution under which we are now acting. If we possessed the power it ought not to be exercised.

It violates all proportion between crimes and punishments, which is necessarily made the basis of every well regulated code of criminal law. Why under our laws are so few crimes capitally punished? Because the lighter punishment is held out as an inducement to the aggressor to refrain from the last act—that of murder. The law should always hold out an inducement to stop the perpetration of crime. Hence robbery is punished more slightly than murder, and consequently the robber does not generally murder; but if robbery and murder were each equally capital offences, the robber would always murder, as thereby his chances of escape would be greater.

Under the existing laws, the man who commits a highway robbery and murder, or poisons his own wife and children, and is cleared by a bribed witness or juror, or is found guilty by a jury, and pardoned by the governor, labors under no disability; whilst the man who, under the most aggravated insult, invites another to fair and equal fight, is to be forever disfranchised, though the moment after he might regret the act and withdraw the challenge—thus punishing mere words, attended with no overt act of criminality, as an unpardonable offence. Here, instead of holding out the wise and humane inducement to its infractor to stop at those mere words, you invite to the crime of murder by withholding from the executive the power of pardoning the lighter offence.

A high principle of honor pervades society, teaching that a man ought to hold his character and reputation as dearer to him than his life. This is an ennobling, high-minded principle, worthy to be cherished and encouraged—one which we have derived by inheritance from our ancestors, and which we should inculcate in our children and transmit unimpaired to our poster-

ity. Although it sometimes leads to excesses and even crimes, the good far overbalances the evil.

Duelling is the fairest mode of fighting known—and although perfect equality between the parties is unattainable by this or any other mode—it more nearly approximates to equality than any other. It is a high protection to females. In the northern papers we hear continually of suits brought by females for breach of marriage contracts and slander, whilst with us they are very rare. The prodigal young man, who may be wholly indifferent to a law suit, would often be kept under a most wholesome check by a fear of bodily chastisement. A certain and immediate punishment is generally found more efficacious than a much greater—if the last is remote and contingent, which any punishment must be—where it depends on the uncertainties of the law.

It operates as a restraint on the bully in high life. With us no man can succeed in politics or at the bar, if he suffers himself to be insulted with impunity. The people never respect a coward. It is notorious, that the most popular man would be defeated in a canvass before the people for any public office, if he permitted himself to be insulted and did not in some way resent it. We sometimes see a large man, from envy of the superior merits and talents of a rival bully, brow-beat and insult one smaller and more feeble in body than himself, for the express purpose of taking his practice from him. Suppose this is carried so far as to rub against, sneer at, insult, and spit in the face of the feebler man; and suppose the latter challenges and kills his adversary, I would ask, would any reasonable human being censure the act?

In this case the challenging party finding, that without any fault on his own part, his opponent is resolved by an unceasing persecution to destroy his utility to himself, his family and country, being the more feeble of the two, is compelled to resort to deadly weapons of some kind, either in a duel or street fight. In the case supposed, the challenger is strictly acting in self-defence, and doing from imperious necessity what nothing else could excuse.

That it might distress a good man to kill another in a duel under even the circumstances described, is admitted. If he permits himself to be considered and treated as a coward, he is certain to be miserable; and of the two I would prefer the first alternative. It is only in extreme cases that I consider the duel at all justifiable. The man who fights for revenge, and not for the protection of his own honor, is a murderer. I never did, nor can believe, that providence designed that one man, because he was weaker in body than another, should therefore submit to insult and injury, else why permit the invention of the revolver, which very nearly reduces the strong to the level of the weak.

It is a saving of human life. Out of the population of the city of Louisville, now numbering 50,000, there have been but two deaths from duels (which I recollect to have heard of, and I think I am not mistaken) during the whole period of its existence since its foundation in 1780. Where the duel is resorted to, men do not find it necessary to carry arms; and conse-



quently, in case of a sudden quarrel, resort cannot be had to them on the instant. A second must be hunted up—arms provided—a challenge sent—time allowed the challenged party to prepare himself—all which usually occupy some days—thus giving time for the passions to cool, and for the intervention of friends, who in nine cases out of ten, effect a compromise; whereas, in a majority of similar cases, if the parties had been armed and a street fight had taken place, the result would probably have been fatal.

So long as public sentiment remains unchanged, you can only succeed in suppressing the duel by substituting in its stead, the common practice of carrying arms, and street fighting, by far, more fatal than the duel. That feeling of honor or chivalry, or by whatever name it may be called, which impels to self-defence, is innate with the Kentuckian, and neither law nor constitution can destroy it. I am authorised to protect the clothes on my back, and should I not be permitted to protect my honor and character the most important thing to me in life?

Until public opinion undergoes a material change on the subject of dueling, no human laws can suppress the practice. If mild, they will be ineffectual—if disproportionate and cruel, juries will not enforce them.

Whenever public opinion no longer requires the duel, it will wear out of itself, and never till then.

The only remedy must be found in a gradual amelioration of public opinion, strengthened and enforced by an able and efficient judiciary, with able prosecutors and upright jurors. For then, the duelist who fights from motives of revenge, or any other insufficient cause, and kills his adversary, will be hung as a murderer. No honest and intelligent jury, in such a case, would hesitate to find a verdict of guilty against the accused. If a man, with malice aforethought, seeks and accomplishes the death of another in a duel, without just provocation, he is to all intents as much a murderer, as if he had waylaid and murdered him. Then the punishment would light on the aggressor—and not as would often occur (under the clause proposed,) on the innocent equally with the guilty.

No punishment ever will be enforced if it be wholly disproportionate to the crime—nor will this people ever consent to inflict the same punishment on the man who is forced into a duel in defence of his honor, which should fall on the aggressor. It may be said that you will not only suppress dueling, but that you will avert the evil consequences of carrying concealed arms. By the imposition of taxes and oaths, you might possibly succeed in suppressing the practice among the upright and honorable, but the base man and assassin would wholly disregard any laws which you could impose; the consequence would be to put the honest man wholly at the mercy of the assassin, taking away from the good citizen the greatest protection which he has against the bad and the vicious.

In a country like ours, of a comparatively sparse population, where the accused is necessarily tried by a jury of his neighbors and acquaintances, it must always be extremely difficult to convict, capitally, for almost any offence—not from the want of a proper moral sense in

the community or detestation of crime—but from that sympathy and feeling of compassion for our neighbor in distress, common to us all, which renders us, to some extent, incompetent to mete out to our acquaintance that even handed justice, which we would do to an entire stranger. For this reason criminal laws cannot possibly be as rigorously enforced with us as in crowded cities, where the jurors are unacquainted with the accused. Hence, it is a generally received opinion, that each man amongst us, must mainly rely on his own arm for the protection of his person.

Mr. NUTTALL. I do not flatter myself that I shall be able, on the present occasion, to convince the gentleman from Jefferson, (Mr. Bullitt,) that he occupies a wrong position and is behind the age in which he lives on this great question. I look upon this as pre-eminently the great question of this convention, and one which should receive proportionate consideration. I desire to present some information to the convention on the subject, in the preparation of which I am indebted to the kind aid of another gentleman, and for which I desire here to accord to him my thanks. Since the foundation of the world, so far as history throws any light upon the subject, there have been but four descriptions of duels, and modern duelists would, if allowed, trace back to, and justify the practice by the celebrated combat between David and Goliath, or the famous one between the Horatii or the Curiatii. But there is a marked distinction between the motives upon which these contests were based, and those which govern and influence those who at this day engage in the duel. Devotion to country has, in all ages, been regarded as praiseworthy, and such was the motive which influenced the participants in the two celebrated combats to which I have referred. The Horatii and the Curiatii stepped forth between the hostile armies of the Romans and the Latins and staked the fate of the day upon their single prowess, and in so doing, they were not more guilty, in a religious and moral point of view, than they would have been, had they remained in the ranks and fought there, as they undoubtedly would have done, and slain each other. The ancient Scandinavians believed there was a providential control over the affairs of men, which especially decided between right and wrong, and making a direct appeal to Heaven to favor the right they resorted to personal combat to decide their controversies respecting property or any other of the rights recognized in their communities. This I presume was the origin of the trial by combat of the feudal ages. Was such a controversy based upon personal feeling or malice? No sir; it was a controversy between parties as to legal rights, and in the belief that an overlooking and overruling providence would determine the justice or injustice of the case, they resorted to a trial of arms. This notion became modified in the process of time, until, in the feudal ages what was known as the wager of battle was substituted in its place. The first mention of it is in the Burgundian code as early as A. D. 501. There is, I presume, scarcely a gentleman here—the legal portion of them particularly—who does not fully comprehend the history of, and the manner in which

this wager by battle was carried out. It applied only to controversies as to the right of property in land, and for some curious and quaint reasons the parties never fought themselves, but always presented a champion to fight in their stead. Here, clearly, the combat did not arise from any resentment of personal injury or insult. In the appendix to Chitty's Blackstone will be found a description of the last effort made in Great Britain to settle a question of this sort by an appeal to arms. The whole court adjourned, and were cited to assemble in Tothill fields, and there to witness a controversy as to title to land decided by wager of battle. This was very much akin to the celebrated trials in the courts of Knights Errant, where a certain knight proclaiming that his fair mistress was the most beautiful and handsome of any, would throw down his gage of battle to any who dared dispute it. If any such, there were, the challenge would be accepted, and then in a great tournament, they would decide by force of arms, before that assembly of magnates and people of the land, who had the fairest mistress. And what is most extraordinary, this barbarous, cruel and bloody ordeal of trial by battle—withstanding the existence of the wise, learned, and distinguished men who gave being to the great system of English jurisprudence—remained the law of the land down to the time of George III, and was not repealed until the year 1818 or 1819.

Now I come to the origin of the duel as it is now practiced. That is a combat for the redress of personal or family injuries, fought with deadly weapons. It is the offspring of the trial by battle, and is governed by what is called the code of honor. This practice grew into such general use after Francis I challenged the emperor Charles V, that in the first eighteen years of the reign of Henry IV, over four thousand gentlemen fell in the duel. In that day the military spirit was the ruling one, and men were influenced largely by the sentiments avowed here by the gentleman from Jefferson, (Mr. Bullitt), that he preferred death to the tarnishing of his fair fame and character. This was the ground assumed, and thus the country who needed their services in a military point of view, was deprived of four thousand men, and not only that, but the number of widows and orphans necessarily created thereby, must necessarily have been considerable.

I have thus very rapidly, and I may add unsatisfactorily to myself, given something like an epitome of the rise and progress of the duel, as far back as I am able to trace it, and I will now attempt a similar sketch of the legislation of Christendom with a view to its suppression. The history of legislation for five centuries past is singularly uniform, especially in the results of such legislation. Ecclesiastical and civil enactments of the most stringent character have been made to suppress it. The Council of Trent, (section 25, chapter 19,) declared it to be a detestable custom introduced by the devil for the destruction of soul and body, and excommunicated not only those who fought, but their associates and even the spectators. Philip the Fair, in the 13th century, tried to suppress it, but the spirit of the age was too fierce to be restrained.

Henry II of France published the first edict prohibiting it in that kingdom, but this only seemed to increase the passion for it, and to make men stretch the usual points of honor, on the principle that honor exerts itself most in satisfying those points which are not of legal obligation, or are even in defiance of law. The parliament of Paris in 1599 declared duelists, and all those present either as assistants or spectators, to be rebels and transgressors of the law. Henry IV in 1609 ordained further, that all in any way concerned, all spectators, even those accidentally present who did not strive to prevent bloodshed, and all carriers of challenges, or of offensive or provoking words, should suffer in various degrees, by death, confiscation of goods, fines, imprisonment, loss of place, loss of power, etc. But I will not trouble the convention with further details of the legislation of Christendom, all of the same character, from this period down to the English statute of William. This statute extends to seconds, and all concerned, the punishment of banishment and escheat of moveables, and these statutes are still in force. In the case of Lt. Brundell, in the present century, his antagonist, second, and two others who were held accessories, were all convicted of murder and sentenced to death, though afterwards pardoned. And it will be found that almost all the great and good men of Christendom, although in some instances these were made to yield and fight duels, have always regarded it as a barbarous custom.

I desire now to show to the convention some specimens of the "code" which governs these sanguinary encounters. I will read from a "code of honor" published in Ireland, which is the only one I have ever seen, and which is a very curious affair indeed. If there is an American published "code of honor" I have never yet had the pleasure of seeing it. This purports to have been "settled by the gentlemen delegates of Tipperary, Galway, Mayo, Sligo, and Roscommon, and prescribed for general use throughout Ireland," where I presume it is still in practice. It contains 36 rules, of which the following are specimens:

"1st. The first offence requires the first apology, although the retort may have been more offensive than the insult. Thus A. to B.: "You are impertinent." B. to A.: "You lie." A. must make the first apology, and then, after the first fire, B. may explain away the retort.

"2nd. But if the parties would rather fight on, then after two shots each—but in no case before—B. may explain first, and A. apologise afterwards.

"3rd. If a doubt exist who gave the first offence, the decision is with the seconds; if they cannot agree, the matter must proceed to two shots or a hit, if the challenge requires it.

"4th. When the *lie direct* is the first offence, the aggressor must, 1st, beg pardon in express terms, or, 2nd, exchange two shots previous to apology, or, 3rd, three shots, followed by an explanation, or, 4th, fire on till a severe hit is given.

"5th. A blow is strictly prohibited—no verbal apology will atone for it. The offender must, 1st, hand a cane to the injured party, to be used on him while he begs pardon; or, fire till one or

both are disabled; or, fire three shots, and then ask pardon without the cane.

"6TH. If A. give B. the *lie*, and B. retorts with a blow—the two highest offences—no reconciliation can take place till after two shots have been given, or a severe hit. B. may beg pardon for the blow, and A. may simply explain for the offence of giving the *lie*.

"7TH. Challenges for undivulged causes may be reconciled on the ground after one shot. No apology can be received in any case after parties have taken their ground, till after one fire.

"8TH. No dumb shooting, or firing in the air, admissible in any case.

"9TH. All imputations of cheating at play, races, &c., considered equivalent to a blow; but may be reconciled after one shot, on admitting the falsehood, and begging pardon publicly.

"10TH. Seconds must be of equal grade and rank with the principals, as the seconds may become principals.

"11TH. When seconds disagree, and resolve to exchange shots, it must be done at the same time and at right angles, &c., &c., &c."

This is the "code," though I do not know that it governs the duel in Kentucky.

The legislation of every state of this union, upon this subject, has been as uniform as that of the rest of Christendom, to which I have referred. It is true, as the gentleman says, that in the year 1799 there was a law enacted against dueling. That law was followed by the act of 1812, and if gentlemen will refer to the preamble attached to it, they will perceive that it was written by no ordinary man, and that it embraces within a few lines as strong arguments as could be deduced and elaborated in a whole day's speaking. It is as follows:

"Whereas, the commonwealth have repeatedly sustained great and irreparable injury, in the loss of some of her best and most valuable citizens; inroads have been made in private families; their peace, happiness, and domestic felicity destroyed, by the present inhuman practice of duelling; a practice contrary to the precepts of morality, religion, and civil obligation, which originated in a barbarous age, fostered by savage policy, and only perpetuated in this enlightened era by mistaken ideas of honor; for remedy whereof," &c.

The gentleman (Mr. Bullitt) contends that this legislation is all that is needed, but I must differ with him. It is true, that these laws have existed on the statute book from the very foundation of our government, down to the present time; but there has been a shameless and shameful violation of them at every session of the legislature of the commonwealth. If there is a class in Kentucky, who more than any other, have called on the legislature to adopt provisions for their especial use and benefit, I am ready to admit it is the profession to which I have the honor to belong—the lawyers. But from the first time that I had the honor of a seat in the legislature, I always opposed, and if I should be thus honored hereafter, I shall ever oppose this special legislation for the purpose of restoring gentlemen to privileges which they have forfeited by infractions of these laws. I recollect an instance, where one of my particular and especial friends, personal and political, who had

challenged a man to mortal combat, made an application of this kind to the legislature, and I spoke against, and calling the yeas and nays, voted against them, and they were not granted. If you could enforce this law against dueling,—if you could in some way inspirit the grand jurors of the country with proper ideas of the obligations of the oaths which they take, and they would indict, and petit jurors could be induced to convict under it, there would be no necessity for this constitutional provision. And I think my friend from Jefferson introduced a strange argument here in support of the position which he occupies on this question. He says that if we have good jurors, able prosecuting attorneys, and independent tribunals, those who commit murder will be punished, and at the same time he goes on to declare, that for certain indignities offered to a man, the privilege of deciding the matter by the duel, ought to be allowed! I cannot see the consistency of such an argument at all. The killing of a man in a duel is the most deliberate, and the most malicious description of murder of which I can conceive, and every man who thus takes the life of his fellow man, deserves to be hung, and if I had the power of a court, I would have no more compunction of conscience in pronouncing the sentence of the law upon him, than I would upon a dog. And the gentleman's idea that dueling is a saving of human life, strikes me as the most extraordinary one that ever I heard promulgated. It is in fact, an argument against himself. Duelling has been practiced in this country ever since its earliest settlement notwithstanding the laws against it, and does experience show that it has caused a saving of human life in the way the gentleman contemplates? He states, that in Louisville, from its earliest times down to the present, but two men have been killed in duels, while upwards of an hundred have been killed in rencontres. Therefore, this practice which has been almost unchecked, does not, as he contends it would, prevent these bloody street butcheries. And I do not think with the gentleman, that we must be cursed with one or the other of these alternatives—a street fight or a duel. I think that legislation can be devised which will suppress either the one or the other under proper constitutional direction, and oblige men to resort to some other means of settling their personal controversies. The bill that I introduced when in the legislature, and which became a law, is a sufficient demonstration of the facts, that with a little more stringent provisions in our constitution and laws, there never will be a duel fought in Kentucky.

Duels formerly were of frequent occurrence in this state, between men with families, dependent on them, but since the adoption of that which made all on the ground, spectators as well as participants, responsible to the wife and children of the man slain, not a married man has been engaged in a duel. It is too great a risk for his antagonist to incur. All this is evidence of what may be effected in correction of this evil. And the experience in Tennessee, Louisiana, Mississippi, and Alabama, are all triumphant examples of the fact, that men can be restrained in this matter, by constitutional enactment,

without those direful consequences resulting therefrom, which seem to haunt the imagination of the gentleman from Jefferson. If dueling can be suppressed in those states, by a constitutional enactment, I ask in the name of high heaven if it cannot also be put down in the same manner by the people of Kentucky? The constitution of Louisiana utterly disqualifies every man concerned in a duel, from the principals down to the spectators assembled to witness it, for the holding of office. What has been the result? Not a duel has been fought by the citizens of Louisiana, since the adoption of that constitution. Nor have those direful consequences anticipated by the gentleman, resulted from the prohibition of the duel there. Have we heard of men being slaughtered in public rencontre, or of private assassinations prevailing since that time, to an unusual extent? No sir. And I will say to the gentleman, that in my opinion, the man who at any time would be mean, cowardly and dastardly enough to assassinate his enemy, will assassinate and stab in the dark, with or without such a provision as is here proposed in the constitution. A high minded, honorable man, no matter to what extent his feelings have been wounded or outraged, would rather submit to it, any indignity to which he might be subjected on the face of God Almighty's earth, than to have it charged upon him with truth that he attempted secretly and cowardly to assassinate his insulter. For myself, I would rather be charged with the most heinous offence that blackens the long catalogue of sin, than to lie under the imputation of having, cowardly and secretly attacked my enemy in the dark.

And shall it be said that this convention, who have now in their hands, the power to cut up this evil, by the very roots, has not the moral courage to march up and perform this work. Will they refuse to apply the knife to this corroding ulcer that is eating into the very vitals of the body politic? Will they not at once arrest this deep and deadly poison that is diffusing itself through every vein and artery of the social system? Have we not, I ask, the moral courage to do it, and ought we not to do it? Who is to be injured by it? It is time, and we now have it in our power to throw a bulwark of protection around the citizen, which ten thousand times ten thousand volleys from the artillery of detraction will never be able to batter down. All that the good and virtuous citizen, the friend of peace and good order fears, is the expression of a misguided and mislead public opinion, and I would in this constitution give him a protection behind which he might entrench himself, fearless of the scorn, sneers and detraction of any man on earth.

I would like to know from the advocates of dueling here, what is gained by a resort to that practice. Let us take the case stated by the gentleman (Mr. Bullitt.) I am a larger man than he, and I spit upon him and offer such an offence to his sensitive honor that satisfaction only can be obtained by calling me into the field to fight him. Suppose he calls and I do not come? Well, he would have the pleasure of posting me as a coward; yet every body who knows me, knows that if he would do that he would post himself a liar. But suppose I do go, and fight him, and

kill him, what has he gained by it? Or, suppose he kills me; what has he gained even then? He has committed a murder in the eyes of both God and man, and my blood will cry to heaven against him, but he has not acquitted himself of any thing or convicted me of any thing. I know of no offence a man can offer to another, for which, if he is an honorable man, suitable and ample atonement cannot be made. The elder gentleman from Nelson (Mr. Hardin) may say that I am a thief. Well, I challenge him for it, and we go forth and fight. I think I would display but little sense in putting myself on an equality with a man who had no more regard for truth than to make such a charge against me. A man outrages and insults your feelings and you challenge him, and what do you gain? He has insulted you and outraged your feelings, and yet you turn around and invite him out to the field and give him an equal chance to kill you in the bargain! That is a kind of philosophy, laying aside the question of morality, which I confess I cannot comprehend. If the result of a duel established any fact or proposition, then I might comprehend the grounds upon which gentlemen support the practice. I know of but one case under heaven, and that is the strongest it is possible to imagine, where blood alone could atone for the injury. A man insults the wife and daughter of another, and will gentlemen say that in such a case a challenge ought to be given? My God, can it be that public opinion will exact of me that I shall place myself on a perfect equality with a demon in human shape, who could be so base and dastardly as to inflict an injury upon the feelings of a woman? A man has attempted to rob you of all that is dear and sacred in human life, and in the next moment you are to call him out and give him a chance to kill you! It cannot be—the proposition is too outrageous. The only way I would treat such a being as that, would be to meet him with a gun, and shoot him down, with no more compunction of conscience than if he was the fiercest wild beast that ever inhabited a forest. And I would fearlessly rest upon a statement of facts and appeal to the people of the country and to the pardoning power to save me from degradation for that act, for I know that such an appeal would not be in vain.

I say, then, that it is our bounden duty to provide in our organic law, that any man who fights or is accessory in any way to a duel, shall be disfranchised from the holding of any office of profit and trust under this commonwealth. I can see no danger that will result from it. I know that many high minded, honorable men differ with me on this subject, but I cannot but think that if they will recur to their recollection from the earliest period to the present time, of the melancholy consequences that have resulted from these encounters, they will not hesitate to place a barrier in this constitution that will operate to prevent any such occurrence in future. Sir, very frequently has the cup of conjugal bliss been turned to gall and wormwood—the parents been robbed of an estimable and promising son—and wife widowed and the children orphaned and thrown on the cold charities of the world—by the result of a duel. And I have known even the virgin heart widowed by

this barbarous and cruel practice. It is in many instances, in its results, like running a red hot plough share over the human soul. It is a practice which had its origin in barbarism, and in a christian country like this, should be detested and abhorred. Let us provide for its expulsion from among us in this constitution, by giving tone and protection to a sound, and wise, and christian public sentiment on the subject. That is all that is now needed, and that is all I desire.

My only desire is to act for the best interests of the people of Kentucky, and the only reward I look to is the good opinion of my coadjutors here, and the commendation of that people. Above all things on earth do I despise the fulsome adulation of the man, who like a whining, sneaking spaniel-pup, crouches before me, hoping that I may cast him some vagrant crumbs; or the ephemeral praise of some vulgar, dirty black-guard, who is prompted only by a fear that I may injure him. And if I have the esteem of my compeers in this body, I shall be satisfied, notwithstanding the slanders and traductions that may be heaped upon me by every little whipper-snapper who is so fortunate or unfortunate as to be the conductor of some vile thumb-paper. I have come in with other gentlemen of this convention, for a full share of the vile abuse and the mean and dirty calumny which sundry little dirty pups, who have come into this lobby during the session, have thought proper to vent upon us in their correspondence to certain newspapers. I can live down such calumny, or else I have lived to no purpose. If I cannot live it down, I am not worthy of a seat on this floor. And these attacks excite in me no other emotions than those of mirth. The highest reward I seek, is that when the impartial historian comes to give a full and fair account of the action of this body, it shall appear that I bore some humble part in bringing about this grand and glorious revolution on this great question. And rather would I prefer that when I am borne to my final resting place, a loving family and circle of friends and neighbors shall cluster around it, to drop a tear to my memory, than all the fulsome praise that can now be spread upon me.

I do hope that the action of this convention on this great question, will be proper, wise and just, and if I were a righteous man, and it would not be mockery for me to do it, I would implore kind heaven to so guide the deliberations of this convention upon it, as to advance the happiness and prosperity of our noble old commonwealth.

Mr. CURD moved the previous question, but it was not sustained.

The question was then taken by yeas and nays—on the call of Mr. WALLER—on the motion to strike out, and it was negatived—yeas 32, nays 56, as follows:

YEAS—Mr. President, (Guthrie,) Alfred Boyd, William Bradley, Thomas D. Brown, William C. Bullitt, William Chenault, Beverly L. Clarke, Benjamin Copelin, Garrett Davis, James Dudley, Green Forrest, Nathan Gaither, William Hendrix, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Charles C. Kelly, Alexander K. Marshall, William C. Marshall, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, William

Preston, Johnson Price, John T. Rogers, John D. Taylor, John J. Thurman, Philip Triplett, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe.—32.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Charles Chambers, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas James, William Johnson, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, Nathan McClure, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, Wm. R. Thompson, Howard Todd, Squire Turner, John L. Waller, John Wheeler, George W. Williams, Silas Woodson.—56.

Mr. A. K. MARSHALL moved to amend so as to include all members of the bar within the operation of the provisions of the section.

Mr. TURNER. I hope the amendment will be accepted by the friends of the section. It is right and proper, and its only object is to include the young men of the legal profession.

The amendment was agreed to.

Mr. CHAMBERS moved to amend, so as to require all officers to take the oath to support the constitution of the United States, as well as the state.

The amendment was agreed to.

Mr. A. K. MARSHALL moved to extend the prohibition to cases where an individual had worn any concealed deadly weapon except for self-defence.

Mr. HARDIN. I hope this amendment will not be adopted, and I think it is offered by a gentleman who is not very friendly to the section. Those, therefore, in favor of attempting to put down dueling, ought to vote against the amendment. I will not say that the gentleman is opposed to the section, but if I may be allowed to guess, it would be that he is not very friendly to it.

Mr. A. K. MARSHALL. I have no hesitation in stating that I am directly against the section as it now stands. If the amendment I have proposed should be adopted, I do not know that even then I should be in favor of the section, but I should be strongly in favor of such a law. I think it is peculiarly unfortunate that this section is proposed to be introduced into the constitution at all, as it places members in an exceedingly embarrassing position. There are many of us who not only are not favorable to duels, but desire to prevent and to stop them, and yet we do not believe this to be the proper way to do it. Nor do we believe that the penalty affixed to the act of giving, sending, or bearing a challenge, is approximated at all to the degree of the offence. There are other offences known to the laws infinitely worse than bearing a chal-

lenge—than giving and accepting a challenge, or than fighting a duel even, which gentlemen do not pretend to provide for in this constitution, by disfranchising the persons who shall be guilty of them. What would be thought of a proposition in this constitution to disfranchise any man who should be convicted of seduction—a crime, in my estimation, infinitely worse than a duel? The punishment is not proportioned to the offence, and it is the wrong place to apply the remedy. And it is extremely unjust, unkind, and uncandid in the gentleman from Henry, (Mr. Nuttall,) to place all those opposed to the enactment of this section in the constitution as being in favor of dueling. I am as much opposed to dueling as any man ought to be. I have never fought a duel, nor do I know that I ever shall; but I will go so far as to say that there are circumstances and conditions in which a man might be placed where he ought to fight. And in such a case it would require some stronger inducement or restriction than this section to restrain a man from giving or sending a challenge.

The gentleman has drawn a mournful picture of the evils which have been brought upon families by this practice—of widowed wives, children bereft of fathers, sisters of brothers, and lovers weeping over their loss; and this section he intends as a remedy for all these evils, and to dry up this fountain of tears. I would be glad to wipe the tears from all eyes, and to stop and stay the march of crime in this land of ours, but I ask gentlemen which has produced most misery and mourning in Kentucky, the duel or the bowie knife? Which, I ask, has shed most blood, the fair and open combat or the knife of the assassin? I do believe from my heart, that if we insert in our constitution a clause such as this, we shall compel men to resort to some other means of redressing grievances than the duel—the knife for instance. And despite all the eloquence of the gentleman, he knows that there are aggressions that may be committed on him or me for which the life of the aggressor alone could atone. The world could not hold us both. What is best to be done in such a case? If we stop the duel, and insults of this kind are offered—and we have it from the lips of Him who “spake as never man spake”—that “offences will come”—something must be done at once to check the other mode of avenging grievances—that of street fighting or assassination. Now, if gentlemen want to correct the public morals, and to stop the flow of human blood, if they seek to dry up the tears of the widow and the orphan, and if indeed they desire to surround the citizen with a panoply which will be a guard against the knife of the assassin as well as the bullet of the duelist, I beg of them to insert this clause of mine in the constitution. I shall vote for my amendment sir, and hope it will be adopted, but I shall vote against the section in any event, believing it to be wrong to incorporate it in the constitution, and that it must make, necessarily, hundreds of enemies to it, and because the punishment there laid down as falling upon that kind of offence with certainty, will not be considered by the people of this country as just and fair and proportionate to the offence itself.

Mr. PRESTON. Is it in order to offer a substitute for the section.

The PRESIDENT. It is not in order.

Mr. PRESTON. Then I will offer it when it will be in order. It is with some degree of pain that I have witnessed the vote upon this subject, and I intend, as soon as the pending amendment is acted upon, to offer an amendment providing that the legislature may take this subject, which is one that should be regulated by legislation, under their control. I deem it most unwise for us here, to place the citizen in such a situation, that in the instances alluded to by the gentlemen from Jessamine and Jefferson, (Messrs. A. K. Marshall and Bullitt,) he will be compelled to take such an oath before he can go into office under this constitution. I am no advocate of the duel, but it seems to me we are seeking to apply a remedy against it that will outrage human nature. What is the proposition here? It is to incorporate in the organic law of the state, what the public sense of justice, of clemency, and of rights, has never permitted to rest in quiet on the statute book. Year after year have you seen your legislatures covering the statute book with evidences that the laws on the subject of dueling imposed penalties which the public opinion of our people could not tolerate. And yet it is here proposed to incorporate those laws in the face of that public sentiment in the organic law! I have now lived thirty two years. Many of my friends and the companions of my boyhood have grown up with me, and many of them were men possessing erroneous principles with regard to the taking of human life, and the revenge of insults. In that time some twelve or fourteen have perished in violent affrays in the streets, and I have never known but one who fell in fair and honorable duel. And why is this? It is because a thousand opportunities exist of effecting a reconciliation between parties where a challenge has passed and a duel is proposed, and the difficulty by the interference of friends may be adjusted; but in the murderous street fight the parties excited with passion, heed no one, and arming themselves, go forth in the thoroughfares and the by-ways, and there in a bloody affray, to the terror of every passer-by, settle their quarrel with the knife and the pistol. That is the way in which it is done. It is murder stalking abroad. By that section in effect, it is said that all this is right and proper, for human passions will have vent; but if it is a duel, the participants shall be disfranchised. Opportunity being thus denied for the honorable adjustment of difficulties, men are to be driven to resort to street fighting! How many are they in this hall who have had friends perish in fair and open duel? Few, very few. But let me ask, how many of your friends have been butchered by the knife of the assassin? Are we then to be reduced to this system of ruffianism. Are we sir, in a spirit of false humanity, to drive the torrent of human passion into a foul, instead of a fair and honorable, though reprehensible channel? I can never consent to do it sir. If the wife of a man's bosom is taken from him and carried by a seducer to a foreign land, if his domestic hearth is thus polluted, it is a crime so far beyond that which the duelist has committed, that it will justify no parallel, and



endure no comparison. But what would be said if we, the lawgivers of the land, should here declare that the adulterer should be disfranchised? And are we then to place the men of honor, who carry or accept a challenge, the various great and distinguished men of this country who have given and accepted challenges—the Clays, the Jacksons and the Rowans—upon a footing beneath that of the vilest felon who inhabits the penitentiary? They may be pardoned by an exercise of the executive clemency, and restored to the rights of freemen. With this provision in the constitution you declare it to be out of the executive power to restore to his rights the disfranchised gentleman who has carried a challenge or fought a duel. The vile wretch who murders for hire, may be pardoned and restored to his civil rights, but he who meets his adversary fairly and openly in the field, it may be, through a mistaken sense of honor, is to be excluded forever from all claims for mercy. Behold your fine speeches about mercy and executive clemency; and yet if a man, influenced by a keen sense of honor, meets his adversary face to face, and scorns the use of the bowie knife and concealed weapons, where do you place him? Down below the adulterer, down below the seducer, down below the murderer, and down below the vilest felon in your prison. I tell you the feelings of the people of Kentucky will not tolerate this most extraordinary injustice. They have not tolerated it to this extent in other states, and will not in Kentucky.

I have never in my life given a vote with more cheerfulness than that to-day, to prohibit the bearing of concealed weapons. But if combats take place in this state—and they are as certain to occur as any other violations of law, arising from misdirected and ungovernable passions—let us induce them to be of a character where opportunities of reconciliation may be afforded—where difficulties may be adjusted, and in which the great and magnanimous character of the people of my native state will not be reduced to the ruffianism of the worst portions of the south. Preserve and guard us from the bloody rencontres which have occurred during the last summer. The same feeling which prompts a man to the duel, has—as is often the case with other misdirected feelings—given birth to the noblest sentiments that elevate and adorn the human character. It is that feeling, in a great degree, which has ever given dignity, strength, and manhood to our delegations in congress, and made our people among the most gallant and chivalric of the soldiers ever engaged in the battles of our country. Venerable age may tell me that I am in favor of instituting a bloody code, but I deny it. I only desire to fall back upon it, because it is the least of two evils, which the experience of the past, fraught with wisdom, has demonstrated. I have never borne a challenge in my life—I have ever refused to do so, and I have often attempted, and on some occasions with success, to reconcile differences. The very procrastination incident to the arrangement of a duel, gives an opportunity for its adjustment, which is never obtained under the ruffianly practice of street fighting. And this is the main reason why I protest against the introduc-

tion of such a feature as this in our constitution. If I speak on this occasion with warmth, it is because I feel that I speak honestly and sincerely; not that I ever expect to claim the benefit of this bloody code, for I abhor it. But why should we especially seek to place the man who commits a crime of this character, utterly without the pale of mercy? Why not leave the matter to the regulation of the legislature, the sovereign representatives of the people, who may assemble hereafter? Suppose this provision had existed in our constitution at the time the statesman of "Ashland" engaged in a duel with Humphrey Marshall, or when he of Tennessee was similarly engaged, would not the country have been deprived of those great services and talents, the high character of which is conceded by all, however opposed to them? Either this would have been the case, or else they would have resorted to the barbarous alternative of the street duel.

But the sense of justice of the people would have torn such a provision from the constitution, rather than to have suffered such men to be disfranchised and degraded, and deprived of all the honors of the state, for all time to come. I am willing to let the duelist remain—so far as regards the operation of the law—in the same position with the seducer and the culprit, stained with all the offences that blacken the catalogue of human crime—I am willing to leave his transgression subject, like others, to the control of the legislature; but never put such a feature as this in the constitution. Do it, and the result will be like the laws of Massachusetts, which, instituted by the pilgrims, after the Mosaic code, punished fornication and adultery with death—it will never be carried out. They were too rigid for the frailties of erring human nature, and experience has demonstrated the futility of laws so tyrannical that mankind will not execute them. Take the law against dueling now on the statute book, and you will find that year after year, in obedience to the sense of justice and mercy pervading the people, the legislature has exempted individuals from their penalties, until the law itself has almost been virtually repealed. Why then is it now sought to incorporate its provisions in the constitution? Do you expect in this way to compel or repress public sentiment in Kentucky? Shall we put that in the constitution which the people will not permit to remain on the statute book? That is the point, and the true point. Here is what I intend to offer and to stand by, and what I hope the convention will accept:

"The general assembly shall have power to pass laws for the suppression of dueling, and for excluding from the right of suffrage, and eligibility to all offices of honor or profit under this commonwealth, all persons who may hereafter be engaged in duels."

This is what I desire to have done. I desire that gentlemen, and particularly the challenged party in a difficulty of this kind, shall be within the reach of executive clemency, and not be placed on a worse footing than the murderer, the adulterer, and the common felon. Adopt this provision in your constitution, and not only will this be the result; but you exclude and forever disfranchise distinguished and talented immi-

grants from other states and other lands, who might have been engaged in affairs of this kind, and who might desire to settle in your state. You declare to them, that they shall forever be excluded from all stations of honor and emolument in this state. Should the heroic and courageous Kossuth himself, he who stands in the front rank of the advocates and defenders of human freedom, and who would be an acquisition of which any country might be proud—proscribed and driven from his crushed and bleeding country—seek a refuge in Kentucky, it would in effect debar him, had he, under the sentiments of honor which prevail in his land, participated in a duel. He would, under this section, forever be deprived of the privilege of every American citizen—that of eligibility to office. Away, then with such a principle. I tell you it is wrong. I feel that it is wrong, and when I feel so, I know that I can denounce it. My sense of justice has never been so outraged by any act of this convention, as by this proposition to put forever under the ban of constitutional disqualification—without the pale of repentance—the hope of reprieve, or the power of pardon, every unfortunate gentleman who has been forced into an affair of honor.

Mr. HARDIN. I was very much in hopes that the session would draw to a close in the course of eight or ten days, and have not been disposed to trouble the convention with more than a word or two on a subject at a time. But to-day the debating has taken a new turn to my mind, and every gentleman who makes a speech puts me in mind of the boy who had a large piece of bread, and a small bit of butter; so anxious was he to have bread and butter, he spread his butter over his bread so thin, he could not taste the butter at all. So with the speeches, they are so extended they lose their whole force.

The act of the assembly of 1811 on dueling, was drawn up by myself, and carried through the house of representatives by the aid of a gentleman one year younger than myself, Mr. Solomon Sharpe, one of the ablest and most eloquent men ever born and raised in Kentucky. And with the exception of a single verbal error in the printing—"have" for "has"—it now reads precisely as it was drawn. I thought then, and I still think it to be a most excellent law. We had, sir, ever since Great Britain and France advanced a step beyond barbarism, and in this country ever since its foundation, the severest possible laws against dueling. In the course of my reading as to the history of mankind, I have turned my attention some little to this subject, and sir, from the days of Nimrod, the mighty hunter of Babylon, down to about three hundred years ago, I have not found a single instance where a private, personal quarrel was settled by a duel. In every case where there were personal combats, they were for public and not private considerations. The private combats before the walls of Troy, and the walls of Jerusalem, were fought by men in each of the armies opposed to each other, and in behalf of each army. Such was the character of the case referred to by the gentleman (Mr. Nuttall) between the three brothers of the *Horatii* and the *Curia-tii*. There the fate of the battle, it was agreed, should turn upon their success. There is no

instance of the modern duel presented until we come down to time when Francis I, of France gave the challenge to Charles V, king of Spain and Emperor of Germany. There the practice took its origin, and it has been in existence ever since. And why is it? Because there is a notion, a ridiculous kind of opinion going abroad, invisible, intangible, and which no man can touch, called the code of honor, which compels a man to fight in certain cases. Thus: do you want to kill me? No. Do I want to kill you? No. But there is some imaginary insult,—some supposed injury, and some sickly sensibility feels itself insulted, and asks for an explanation. The man who is asked is a little too proud to give it, and the parties correspond a while, and finally fight—and all about nothing. In a case where a real insult is offered, and a man gives another the lie, it ends generally in a fist fight, and there is an end of it. If it is an outrageous insult, such as seducing a man's wife, or his daughter, the offender is generally shot down at once, and he is served pretty near right in having the thing administered to him in that way. It is only for small, imaginary and idle insults that men fight duels.

But says one gentleman, we must have a provision against the carrying of concealed weapons if we desire to guard against this terrible shedding of human blood. I should have no objection to that if it were possible to carry it fairly out, but we all know how indefinite such a provision would be. Here is a miserable old penknife that I carry, and it is a weapon.

Mr. A. K. MARSHALL. Deadly weapons are referred to.

Mr. HARDIN. It would be a deadly weapon if used as Jesse Swearingin did once an old penknife upon Mr. Gentry. He struck him with it in the breast, and it just touched his heart, and killed him instantly. But there is no need to make the carrying of concealed weapons a test of office, because the very conviction of a man for such an offence, would be punishment enough to deter him. But if you arraign the duelist for his offence, where will you try him? We all know what public sentiment is on such a subject. Have you ever heard of a man in Kentucky, being convicted of killing another in a duel? No sir, and why? Because the public sentiment—though in the teeth of the law—will not convict a man for that crime. The statute of 1811, for eight or ten years after its passage, did a great deal of good, but after the legislature got into the practice of relieving them from the effect of its operation, and during the last five and twenty years, I think I hazard nothing in asserting that every year has witnessed the addition to the statute book of a relief law of this kind. And instead of requiring the oath to go back to the passage of the law, the oath only goes back to a certain day in the last session of the legislature.

What I desire is, that there shall be created a sufficient apology to public opinion for the man who will neither give nor accept a challenge. No man wants to hazard his life or jeopardise that of another, or to give a challenge, or to accept one—but he makes the sacrifice in obedience to a false notion of honor. All I desire is, then to furnish an apology to public opinion for a

man's refusing to be bound by this false notion of honor. But, says the gentleman, if you do not allow challenging, you will have street murders. Do we not hear of them being committed now all over the country? And who are the perpetrators of them? Why, by the young Hotspurs of the land. This provision is not now in the constitution, why do they not resort to the duel in these cases. Just because it suits them better to kill without a duel than with it. They become excited, and under the hope and confident belief of being cleared from the consequences through the influence of their own family and powerful friends, they are tempted to commit the crime. I could name to you as having occurred in the last ten years, some of the most flagrant and atrocious murders where the parties could have fought it out in a duel. But there is a desire in the country on the part of a great many men, to indulge their violent and angry passions because it gives them a reputation of being brave men.

Sir, there are a great many men who are skilled in the use of weapons, and are ready to show their bravery by fighting and killing you, that would not storm a battery as quick as you, if they were at the head of an army. They practice themselves in the use of weapons—some with the small sword and others with pistols—until they become exceedingly expert and they are able to come on the ground with a confidence in their superior skill that unnerves their antagonist and gives them additional nerve. Nor are these combats on an equal footing in other respects. Here is a young gentleman with no wife and family, to whose reckless feelings life is nothing, and he is ready enough to fight. Another young man of five and twenty has a wife and family of four or five little children so near an age that you can hardly tell which is the oldest, and all dependent upon his daily exertions for their bread. The risk therefore is all on his side. One of Alexander the Great's successors called Antigonus, noticed among his soldiers one who was conspicuous in the army for his daring courage and disregard of danger. Sending for him, he observed that the soldier looked pale and sickly, and he asked him what was the matter with him. Said he, "sire I have long since lost my health." The king ordered his physician to attend him, and save his life if possible. He complied with the injunction, and restored his patient to robust and vigorous health. The king observing that he no longer exhibited that courage and daring which previously characterized him, sent for the soldier a second time, and asked him what had caused this change in his conduct. "Sire," replied he, "your physician has made me a coward. When I was sick my life was a burthen to me, and I did not care how soon I lost it, but in giving me health, he has given me the enjoyment of life, and I fear to lose it." This thing depends greatly on the temperament of a man. Some are reckless and willing, at any moment, to risk their lives. Others who did not hesitate an instant to hazard their lives against an enemy of their country, and shed the last drop of their blood in its defence, would, in no case, engage in a private encounter.

We know that dueling does not stop killing

in the streets, or assassination on the highways. No sir, this is a mistake, and nothing will stop it but a sense of certain, positive, and speedy punishment. And how are we to stop the practice of dueling? We are to furnish men who are in doubt as to a point of honor, with a competent apology for avoiding a duel. That is all we want. There is not a man in the world, enjoying health, and who has friends and connections around him, that does not love life. Look at the man in the last agonies of death, and see how he clings to life. And why? Because he loves life. And yet a false notion of honor, or rather a false public opinion, will force the man in fine health to hazard his life to a false notion of honor. Frederick the Great of Prussia was one of the ablest and bravest men who ever fought at the head of an army, and yet what did he say to the duelist? Why, that if a duel was fought, he would hang all concerned in it, and if he could find out where was the place of meeting, he would go there himself with his hangman, and hang up the survivor without a trial. Has not Great Britain lately hung up several men who killed others in duels. A Colonel Campbell there, killed a man in a duel, not long since, and was hung. And other instances might be mentioned.

And Kentucky is the only country where no man has ever been punished for giving, accepting, carrying a challenge, or killing his antagonist in a duel. What inroads have been made in the family of Alek. Pope, my old friend with whom I practiced law until he died, by the dueling propensities of those two young men, Henry and Fountain Pope. One was killed in Arkansas, and the other near Louisville, without any cause, if the parties had understood each other. The parties fought at a distance of twenty yards, with shot guns. Did I not know, while in Washington, Barron and Deatur, two of the first men at that period in America, come up in mortal array within sixteen feet of each other, because one was near sighted, and the rule was that both should take deliberate sight before the word to fire was given? They both fired and fell with their heads not ten feet apart from each other. And before they were taken from the ground each expecting both to die, they spoke to each other, and a reconciliation took place. They blessed each other, and declared that there was nothing between them. All that was required to have prevented the meeting was an explanation between them. There was the case also of McCarty and Mason, own cousins, who fought one of the most murderous duels on record, because McCarty voting for another man, Mason being a candidate, felt aggrieved, and challenged his vote on the ground of not being twenty one. McCarty first proposed they should sit over a keg of powder and set fire to it, but Mason declined. Next he proposed they should go to the top of the capitol and hand in hand jump from the parapet wall to the ground, a distance of ninety feet. This Mason also declined. Then McCarty proposed that they should fight with muskets with three balls a piece, which Mason accepted, and then they went out and fought eight feet apart—about nothing. McCarty has told me that the duel was forced on him by one of Mason's seconds. Such are the bloody scenes which il-

lustrate this code of honor, as it is styled. In the poems of an old English satirist, Churchill, by name, is a satire against dueling, which I remember made a strong impression on me when I first read it, many years ago. In speaking of the duelists' honor, he says:

"His honor is like a maiden-head  
Which if in private brought to bed  
Flaunts and flutters about the town  
And is never missed until the loss is known."

Such is just about the character of the insults for which men fight duels. A real insult is resented at the moment, and an uncertain or imaginary one leads to the duel. In the last case the parties correspond and consult their friends and seconds, who generally are young hotspurs, who take a great deal more delight in acting as second than principal. A great many of these seconds, no doubt, feel very much like the lawyers in a case in court; they would a great deal rather see their clients pull their hair the wrong way than get at it themselves. And in ninety-nine cases out of one hundred, an amicable arrangement of the difficulties between the parties is prevented by the seconds. In the recent case of young Pope, I have no doubt that had my young friend over the way, (Mr. Preston,) been one of the seconds, he could have stopped it. The gentlemen who did act as seconds were equally respectable and worthy, but perhaps they were not so prudent and discreet in going back to the origin of the quarrel, and having it arranged, as they might have done. The evil is in these controversies, in ninety cases out of a hundred, the parties get into the hands of men who believe they will be brought into consequence by becoming seconds in a duel.

I hope the convention will not adopt the amendment offered by the gentleman from Louisville, (Mr. Preston,) to leave this matter to the control of the legislature. Can there be any law proposed which does not now exist? No. Is it not death if a man is killed, to all the persons concerned? It is; and if it is, it is the strongest kind of disqualification to hold any office in the future, I warrant. But is there not a law now in existence disfranchising from office any one who gives or accepts a challenge? There is; and what good can be attained by the passage of any further laws on the subject? If left to the legislature, they will continue to pass special laws, relieving men from the penalty, and thus nullify the statutes. What more, then, can you do? You can furnish to the man who desires not to fight, an apology to public opinion for refusing to give or accept a challenge. Let the constitution contain this disqualification, and you will attain this object by putting it out of the power of the legislature to absolve a man from the penalty. These were the sentiments I uttered thirty-eight years ago in the legislative halls of Kentucky, and I was supported in them at that time by a young man one year younger than myself, and one of the most eloquent and able men Kentucky ever knew—I mean Solomon P. Sharpe.

I hope the amendment in regard to the carrying of concealed weapons will also be rejected. The laws are sufficient to punish that practice in a great many ways. You are to bear in mind that it is the punishment between the offence and

the punishment that makes a law a living law. Suppose the law punished men for getting drunk or gambling by imprisonment in the penitentiary—it would be found that nobody would enforce them. I have seen a man prosecuted, and did it myself, because the grand jury having found an indictment against him, I was obliged to do it, for keeping a kind of gambling wheel. I had bet on this wheel, and I saw on the jury seven men who had done the same, and the jury, without leaving their box, found a verdict of not guilty, though seven had the strongest evidence of his guilt. I recollect once in Marion county that some twenty men were indicted for keeping what they call a Spanish needle. I argued before the jury that the punishment was too violent and disproportionate to the offence, and was cruel and inhuman. The jury brought in a verdict something like this: "We, the jury, find the defendant not guilty; for, although we know he played the wheel, we consider the punishment cruel, extravagant, and disproportionate to the offence." Judge Green sent them back, and they again returned with this verdict: "We, the jury, know the man kept the wheel, but in our consciences we do not believe him to be guilty under the constitution." They were sent back again, and on the fourth day they returned with an unqualified verdict of not guilty. You must adapt the scale of punishment to the grade of the offence. If a man kills another, it is not too great a punishment to hang him; or if he steals a horse, it is not too great a punishment to send him to the penitentiary. But if a man gets drunk, it would be a cruel punishment therefor to put him in the penitentiary. I would not make the punishment for the carrying of concealed weapons too stringent. A fine of \$50, \$100, or \$200, is quite sufficient. I am against the carrying of concealed weapons for aggressive purposes, and voted very cheerfully for the section on the subject. But I would not here make it a disqualification for office. The same reason does not exist for it, as in the case of dueling. In the latter case the object is to give to the friend of peace and good order a sufficient apology to public opinion for refusing to have anything to do with a duel. Kentucky is behind most of the states of this union on this subject, and I hope this section will be adopted.

Mr. TURNER moved the previous question, and the main question was ordered to be now put.

Mr. GRAY moved an adjournment. The motion was not agreed to.

Mr. A. K. MARSHALL called for the yeas and nays on his amendment, and the roll was partially called, when he asked and obtained leave to withdraw it.

The question then recurred on the adoption of the section.

Mr. A. K. MARSHALL called for the yeas and nays thereon.

Mr. C. A. WICKLIFFE asked for a division of the question.

The PRESIDENT replied that the section was indivisible.

Mr. C. A. WICKLIFFE said a question was always divisible when it was susceptible of division. He was willing to take the first part of the oath, but not the second.

Mr. TRIPLETT inquired if it could be divided with the general consent of the house. As it stood, it would place several of them in an awkward position.

The PRESIDENT said the section could not be divided.

The clerk then called the roll, and the yeas were 62, nays 28.

YEAS—Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, Luther Brawner, Thos. D. Brown, Charles Chambers, William Chenault, Jas. S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Jas. Dudley, Chas-teen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Selucius Garfield, Jas. H. Garrard, Richard D. Gholson, Thos. J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas James, Wm. Johnson, George W. Kavanagh, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Richard L. Mayes, Nathan McClure, Wm. D. Mitchell, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, J. W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, Howard Todd, Squire Turner, Johe L. Waller, John Wheeler, Robt. N. Wickliffe, George W. Williams, Silas Woodson—62.

NAYS—Mr. President, (Guthrie,) Alfred Boyd, William Bradley, William C. Bullitt, Beverly L. Clarke, Benj. Copelin, Green Forrest, Nathan Gaither, Thos. J. Hood, Jas. W. Irwin, Alfred M. Jackson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, Alexander K. Marshall, Wm. C. Marshall, David Meriwether, Thos. P. Moore, James M. Nesbitt, Jonathan Newcum, William Preston, Johnson Price, John D. Taylor, John J. Thurman, Philip Triplett, Henry Washington, Andrew S. White, Charles A. Wickliffe—28.

So the section was adopted.

The convention then adjourned.

FRIDAY, DECEMBER 7, 1849.

Prayer by the Rev. Mr. NORTON.

#### SPECIFIC AMENDMENTS.

Mr. CHENAULT. Mr. President, I offer the following resolution:

"Resolved, That the committee on the revision of the constitution and slavery, be requested to inquire into the expediency of submitting the constitution, about to be formed, once in every period of ten years, to the qualified electors of this state, and if a majority of all of said electors shall vote for amending the same, the next ensuing legislature shall pass an act presenting one, and not more than two, specific amendments, to be voted on at the next succeeding election, and should a majority of all the qualified voters decide in favor of said specific amendment or amendments, at two successive

elections, the same shall be engrafted by the legislature, as a part of the organic law of this commonwealth."

It is known to this house, that since the formation of the constitution of 1799, there have been serious objections to that constitution; and had it been in the power of the people to amend that constitution in some other way than by the mode therein specified, in my humble judgment, this body of delegates would not now have been assembled here. But as that instrument specified the particular manner in which any amendments should be effected, and as there was no alternative but to comply with its requirements, we are compelled to follow the course prescribed. It seems to me, however, that a plan might be adopted which, while it would answer all the purposes of that requirement, would, in future, obviate the necessity of our meeting together in conventions similar to this. I submit that once in every ten years, when any specific amendment is desired, it should be presented to the people at their elections to decide upon without being mixed up with various exciting questions, and a definitive vote taken on the matter. This, it appears to me, would be preferable to the mode now provided for. There have been various propositions to this effect offered to this body, and some gentlemen appear to be startled and afraid lest the question of slavery should, by this means, be made an open question. I think, however, that under the old mode of altering the constitution the question is left equally as open, and is subject, on that ground, to objections equally as forcible. If the convention prefer to adhere to the old method rather than to adopt this plan of specific amendments, I have no choice but to submit.

I move that the resolution be printed and referred to the committee of revision and slavery.

The resolution was ordered to be printed and referred.

#### DUELING.

Mr. HAMILTON gave notice of his intention to move a reconsideration of the vote adopting the first section of the report of the committee on general provisions.

Mr. PROCTOR moved to dispense with the rule which requires a motion to reconsider to lie over one day.

The motion was agreed to.

The question was then stated to be on the reconsideration.

Mr. PROCTOR. My object in moving this resolution, is to insert after the word "challenge," in the eighth and twelfth lines in the first section, the words, "in this state."

I hold, sir, that this is a question, the consideration of which, by this convention, is not at all called for by the people of Kentucky at the present time. It was not discussed before the people when this convention was determined upon, and from the disposition manifested in this convention, it appears that a large number of members are opposed to this clause. Under the old constitution the legislature had all power in this matter and could carry out the will of the people. If you insert this provision in your constitution you are both arraying gentlemen against each other, who believe that this is a matter on which the legislature has sufficient

power to act, and arraying the public mind against the work of your hands in framing this constitution. You have been told by my friend from Nelson, who has often told us that we were running too much into detail, that this provision will endanger the popularity of the constitution. I am opposed to running into detail; I am opposed also to the practice of dueling. If I take the life of a man I do it in action—on the spur of the moment. I never either received or gave a challenge; but I do not believe a clause ought to be inserted prohibiting a man from going into another state, if insulted, and he should have an opportunity of thus defending himself. Let me put a case. We send a man to congress where he meets with men from every state of the union; many of them are aware that such a provision exists in the constitution of Kentucky. Will they not, knowing how his hands are tied down, seek every opportunity to insult him. I do not mean to speak disrespectfully of the gentlemen who compose that body; but who is there that does not know that there are not a few of them who would avail themselves of any opportunity, under such circumstances, to insult a Kentuckian? He is not placed upon an equal footing with the members from other states. Send your delegate to congress, and let an insult there be passed upon him, and it will be out of his power either to defend himself, or his honor. I am willing, if this amendment is adopted, to go for the section; but as it is, I cannot give my sanction to it; hence, I voted yesterday in favor of reconsidering this proposition.

Mr. HARDIN. If that amendment is adopted, all that will be necessary when a duel is determined upon, will be for one gentleman to send to another that he wishes him to go over into Madison, Indiana, or any where else out of the state, in order that he may send him a particular communication. When there, the communication will be a challenge.

This is a matter in which I have no personal interest, for no man will ever challenge so old a man as I am, with but one hand, and that a left hand. I think it is no evidence of courage for a man to fight a duel; but to go out to fight the enemies of the country I think is evidence of it. If a man wanted to show his courage, he could have done it in the attack on Monterey, on the field of Buena Vista, or under General Scott in any one of the seven battles he fought. I do not believe there is one man in a thousand, in Kentucky, who has not courage enough to fight the enemies of his country.

The gentleman says a member of congress may want to fight, and must have the liberty to do it. A member of congress must have the liberty to do a little fighting! The best way in the world, if one gentleman insults another, is to end it in a fist fight; or, if that is too low, cane him or "rock" him; but do not go into a system of diplomatic negotiations, each trying to secure an advantage over the other. Talleyrand and Metternich never went into negotiations more fully than two duelists. They make every effort to get the advantage of each other with regard to weapons or distance, and when they come to the ground they throw up for position.

When Decatur and Barron fought, they stood within sixteen feet of each other, and Decatur's

friend got him killed. He took his stand on the right of Decatur—Elliott, Barron's friend, went and whispered to him, "now watch his mouth, and you can catch the words sooner than Decatur. By doing this he got the fire on him, and killed him. There is no fairness in this mode of fighting.

With regard to the matter of going out of the state, it can be done, and the law be evaded.

There were once some strong laws with regard to fighting a duel in the vicinity of London. The Marquis of Wharton insulted the Duke of Marlboro' in the house of lords. The Duke sent word to the Marquis that he wanted to take a ride into the country for an airing, and he would have a friend with him, and would like to meet with him there. The Marquis understood the object, and declined to take the airing. It was no challenge, but he understood it so. If you send a note preparatory to the challenge, as you can do in this case, you might as well dispense with the law. I have no particular objection to the amendment, but I do not want to offer any defence for men who have been engaged in duels at all. They are never fought but in obedience to a sickly, fastidious public sentiment.

Mr. MERIWETHER. I am no duelist, nor am I an advocate of it; but I have some objection to that section, because we are not making a constitution which will apply to Kentuckians all over the world. If it were to be confined to Kentucky only, I should have no objection. I protest against the adoption of the section. I recollect that some years ago, when several officers of the navy of the United States were on a foreign station, one of them went ashore and was insulted by some British officers. He was unable to knock all of them down; and what redress had he? Why, he challenged every officer, from the highest to the lowest, or from the lowest to the highest. He fought the highest in rank, and killed him, and the others then retracted all that they had said, and there ended the difficulty. Now, would you disfranchise such a man, under these circumstances, who had promptly taken up, when on a foreign soil, an insult offered to his country? It is not at all times that we have it in our power to knock down the man who insults us. For instance, a small man insults me, would I take a cudgel and knock him down? I could not do it. But if a large man were to insult a small one, a cudgel in his hands might not place them on an equality. It is said public opinion sanctions dueling. That has been the burden of the argument on this floor. Did we come here to make a constitution to control public opinion? We came to frame a constitution which is in accordance with public opinion, and shall we introduce a provision which, the gentleman from Nelson says, is contrary to public opinion?

Mr. HARDIN. Public opinion is sickly on this subject.

Mr. MERIWETHER. It is sickly, the gentleman says. We do not come here as doctors, to cure it. Were we sent here as physicians, to cure it? I have stated my position.

Mr. STEVENSON. I will barely state the object of the committee in framing this provision. I yield very cheerfully to the distinguish-



ed gentlemen who differ with me, and who I believe differ honestly. I think I can satisfy the gentleman from Jefferson, that if his position is true, this provision ought to stand. The simple question is, whether dueling is right or wrong. Do the people wish to see the practice of dueling carried out? I think I have heard no gentleman on this floor, who did not set out with the declaration, that he was opposed to dueling, and that he would not fight a duel. That section requires that it should be put down if public opinion requires it. The statutes have failed to do it. Is it not the duty of this convention to carry out public sentiment? I think so, and such was the object of the committee. Such, I think the true policy of the state. I am willing to give my vote, and trust the constitution upon the single question, whether the people of Kentucky desire to see dueling prevail, or dueling put down.

I am opposed to the amendment, because I know that if it prevails, the constitution will prove as inefficacious as the statutes have been. A gentleman can remove to Ohio temporarily, and fight a duel while there, and in two or three months remove back again to Kentucky. I have seen the practice of confining a statute of this kind to citizens. We have a statute now, that a lawyer while practicing at the bar shall not send a challenge or fight a duel. But he has only to give up his practice till the legislature releases him from the effect of the statute. As soon as a relief measure is passed, he is released from that obligation, and he comes back to his practice again at the bar. Would not precisely the same state of things exist in regard to many men, especially young men, if you attempt to confine it to a mere citizen of the state? Would not a mere temporary change of residence release them? They would not be slow to remove their residence, and after remaining a short time, they would come back.

The object of this convention should be to reprobate the practice of dueling, to let our children be brought up with the idea that public sentiment, and the feeling of Kentucky are against it. There is not a gentleman on this floor who, if asked the question, whether it is not so, would not give me an affirmative answer. Suppose my friend is under bonds to keep the peace, and I know that fact, and go up and insult him. What would public opinion say with regard to a man who should do this? It would be to consider him as worse than a coward. It would be like insulting a woman, and public opinion would fix on his forehead the indelible mark of the most miserable coward that ever trod the earth. So it is here. Let the constitution demand that dueling shall not exist within our borders, and those who insult another would have the same sort of epithets heaped on them, as they would have if they insulted a woman.

The gentleman from Jefferson has cited an instance of a man who boldly fought a duel abroad, in defence of the honor of his country, and asks if this convention would have disfranchised him. I say yes, sir; disfranchise him, and it would be giving utterance to a high moral principle. What great conservative principle is there, to which occasionally there will not be harsh exceptions? The greatest act of that distinguish-

ed man whose portrait hangs over your chair, (pointing to the portrait of Washington,) when all the great attributes of his character were called into display, was when the amiable and accomplished Andre petitioned him to spare him the disgrace of suffering on a gibbet. Young, gallant, ardent, he found himself condemned to death, and he appealed to the great leader of the American army, in whose bosom he knew ran the milk of human kindness, to spare him, and to spare his nation the disgrace of suffering on a gibbet. What were the impulses, and the struggles that overcame that great man, when he had to answer that request? If left to himself—if left to his own feelings, and to what he believed the justice of the appeal, he would have said yes. But he looked not to mere individual interests. The interest of a nation was in his hands, and however unjust, however cruel and trying, he said, Andre must suffer, and he must be hung. He must be hung as a great example. That was necessary to carry out a great principle. What patriot is there, who would not willingly be disfranchised if the honor, the safety, or the integrity of his country is to be preserved by it?

Sir, the highest example a man can give of patriotism, is to be willing to be disfranchised, to deny himself a seat on this floor as a legislator, or any other, that a great moral principle, by which his country is to be served, may be carried out.

I think these individual examples prove nothing, and if we want to act for the public good we must not let these individual examples affect our judgments. They must give way to public justice. The simple question is whether dueling is bad, and whether it should be reprobated? If so, let us shut the door to all the little avenues which the ingenuity of man can invent to defeat this great object.

It is to put down this practice, and to show our children by our acts, as well as by the constitution, that we are determined to set our faces against it, and my word for it, dueling will be stopped. Look at the state of Tennessee, look at Virginia, and you will see men who are as distinguished as any the country has produced, who bear their disfranchisement cheerfully and patiently. I know one young man in Virginia, who, although opposed to me politically, I here say is perhaps as promising a man as that state has produced within the last half century. Let him be asked, although he has been disfranchised, would you be willing to see that anti-dueling law struck out, and he would say that he bore his disfranchisement with pleasure, and he would not strike it out. These are the views which actuated me, and which I believe actuated the committee.

Mr. MERIWETHER. I want to ask my friend from Kenton one question. He asks the question, if dueling is not reprobated in this country, and if we should not take every step to put it down? Is not the murderer reprobated as much as the duelist? Why do you not extend our constitution all over the world against the murderer?

Mr. STEVENSON. As far as I know all criminal laws do extend against the murderer, to the limits of their jurisdiction. The murderer is as much reprobated in another country, though

we could not punish him here. He is not disfranchised, because we suppose the people of Kentucky would hardly send a man known to be a murderer, to the legislature.

Mr. BARLOW moved the previous question, and the main question was ordered to be now put.

On the motion to reconsider, the yeas and nays were called for, and were—yeas 50, nays 41.

YEAS—Mr. President, (Guthrie,) William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Beverly L. Clarke, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsay, Willis B. Machen, Alexander K. Marshall, William C. Marshall, William N. Marshall, David Meriwether, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Johnson Price, Larkin J. Proctor, John T. Rogers, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—50.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Luther Brawner, Charles Chambers, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Benjamin F. Edwards, Selucius Garfield, Richard D. Gholson, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, George W. Kavanaugh, James M. Lackey, Thomas W. Lisle, George W. Mansfield, Martin P. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, Squire Turner, John L. Waller, George W. Williams—41.

So the convention reconsidered, and the question recurred on the adoption of the section.

Mr. PROCTOR moved to amend by striking out the words: "and that I have neither directly nor indirectly, given, accepted, or knowingly carried a challenge, to any person, or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of the state, since the adoption of the present constitution of Kentucky, and that I will neither directly nor indirectly, give, accept, or knowingly carry a challenge, to any person, or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of the state, during my continuance in office"—and to insert the following—"and I do further solemnly swear, (or affirm,) that since the adoption of the present constitution, I, being a citizen of this state, have not fought a duel with deadly weapons, in this state, nor out of it, with a citizen of this state, nor have I sent or accepted a challenge to fight a duel, with deadly weapons, with a citizen of this state; nor have I acted as second, in carrying a

challenge, or aided, advised, or assisted any person thus offending. So help me God."

Mr. TAYLOR. After the unanswerable and spirit stirring speech of my friend from Louisville, yesterday evening, it would be an attempt "to gild refined gold or paint the lilly" for me to try to add anything to what he and others have said. It is not so much the principle contained in the section adopted, as the language in which it is couched, that I object to. It brings men into judgment for their thoughts. Now I had believed that there was but one power that brought men into judgment for their thoughts.

But here is a tribunal to be set up on earth to bring men to judgment for their thoughts. By this section a man who under peculiar circumstances may have accepted a challenge, will be disfranchised even though he does not fight. To this I object. It is a matter which should be left to the legislature, and with which we should not burthen the constitution.

Mr. GARRARD moved the previous question, and the main question was ordered to be now put.

Mr. PRICE called for the yeas and nays on the amendment, and being taken they were yeas 58, nays 34.

YEAS—Mr. President (Guthrie,) William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, William Chenault, Beverly L. Clarke, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, William Hendrix, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Wm. Johnson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, David Meriwether, Thos. P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, William Preston, Johnson Price, Larkin J. Proctor, John T. Rogers, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Henry Washington, Jno. Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—58.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Charles Chambers, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Selucius Garfield, Richard D. Gholson, Ben. Hardin, John Hargis, George W. Kavanaugh, James M. Lackey, Thomas N. Lindsey, George W. Mansfield, Nathan McClure, William D. Mitchell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, Wm. R. Thompson, Squire Turner, John L. Waller, George W. Williams—34.

So the convention adopted the amendment.

The section as amended was then agreed to.

The eighteenth section was next read, as follows:

"Sec. 18. Any person, who shall, after the

adoption of this constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person, or persons, to fight in single combat, or otherwise, with any deadly weapon, either in or out of the state, shall be deprived of the right to hold any office of honor or profit in this commonwealth, and shall be punished otherwise in such manner as the legislature may prescribe by law.

Mr. MERIWETHER suggested that the section should be modified so as to make it agree with the first section.

Mr. GARRARD moved to strike out the words "or otherwise" after the words "single combat," and insert the words "with a citizen of this state."

Mr. A. K. MARSHALL asked if this section would prevent a person who had fought in any other state from coming here and enjoying the privilege of a citizen.

A brief conversation ensued on this point which was terminated by the previous question on the motion of Mr. Dudley.

The main question was ordered to be now put.

Mr. A. K. MARSHALL called for the yeas and nays on the amendment and they were yeas 56, nays 38.

YEAS—Richard Apperson, John L. Ballinger, John S. Barlow, Luther Brawner, Francis M. Bristow, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Selucius Garfelde, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, William Johnson, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, Howard Todd, Squire Turner, John L. Waller, John Wheeler, George W. Williams, Silas Woodson, —56.

NAYS—Mr. President, (Guthrie,) William K. Bowling, Alfred Boyd, William Bradley, Thos. D. Brown, William C. Bullitt, Beverly L. Clarke, Benjamin Copelin, Lucius Desha, Green Forrest, Nathan Gaither, James P. Hamilton, James W. Irwin, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Alexander K. Marshall, William C. Marshall, William N. Marshall, David Meriwether, Thomas P. Moore, John D. Morris, Jas. M. Nesbitt, Jonathan Newcum, William Preston, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, John D. Taylor, John J. Thurman, Philip Triplett, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe—38.

So the amendment was agreed to.

The section was then adopted.

The convention next proceeded to consider the

amendment offered by Mr. GRAY, as additional sections, as follows:

"Sec. 19. Taxation shall be equal and uniform throughout this state. All property, on which taxes may be levied, shall be taxed in proportion to its value, to be ascertained as directed by law. No one species of property shall be taxed higher than another species of equal value: *Provided*, The general assembly shall have power to tax merchants, brokers, hawkers, peddlers, shows, theatrical performances, law process, seals, deeds, licenses, stocks, playing cards, corporations, and privileges, as may, from time to time, be prescribed by law.

"Sec. 20. The general assembly shall have power to authorize the several counties, and incorporated cities and towns, in this state, to impose taxes for county and corporate purposes, respectively; and all property shall be taxed upon the principles establish in regard to state taxation: *Provided*, A poll tax may be assessed for county and corporate purposes."

Mr. GRAY moved to amend the 2d of his proposed sections, by adding the following:

"And the expenses of grading and paving streets, alleys and sidewalks, and digging and walling wells, may be assessed upon the owners of lots in cities and towns, under such rules and regulations as may be prescribed by law."

Mr. HARDIN. The position I hold in reference to the state debt, imposes upon me the necessity of making some further explanation. The specific tax the gentleman proposes to repeal, amounts to \$14,301 50. The tax on carriages amounts to \$3,207; the tax on buggies \$1,542 50; the tax on pianos \$1,540; the tax on gold spectacles \$600 50; the tax on gold watches, \$5,934; the tax on silver levers, \$1,418.

This was the taxation the year before last. I presume on account of the increased number of these articles, that tax now, may be fairly set down at \$15,000. The auditor says that no portion of the specific tax is appropriated to the sinking fund. He told me, that he had transferred five parts out of nineteen of the specific tax, thinking it would come fairly within the meaning of the law.

The income of the sinking fund consists of five cents upon every hundred dollars of the total valuation, and of five nineteenths of the specific tax I have now read. It will yield the present year \$140,000. The year before last it yielded \$123,000. The next item of the sinking fund is the dividend on bank stock. The Northern Bank of Kentucky furnished \$13,074 75, at the last semi-annual dividend, which will make something more than \$26,000 per annum. The Bank of Kentucky furnishes a dividend of \$60,000; the Louisville Bank \$1,624; and in addition to that, the present year, there will be the rent of the Lexington and Ohio railroad, which is \$14,635 62. There will no longer be any rent coming from that source. Hereafter the road may divide something. It will, however, be two or three years before there is any income from that source. There is a rent from the water powers of \$480; turnpike roads, \$34,09 564; and there are some other miscellaneous receipts. There is what is called the Craddock fund, the history of which is, an old gentleman named Craddock, left \$20,000 in the hands of his ex-

ecutor, Judge Underwood, to lay out in stocks according to the terms of his will; but the judge, instead of doing so, got the state of Kentucky to take it and pay interest on it. And that is what is called the Craddock fund. There has been \$5,525 paid in, and this sum is placed to the credit of the sinking fund. I would remark there will be taken from this whole amount \$14,635, which is now derived from railroad rent, after this year. Last year an act was passed that in 1850 the whole avails of the slackwater should be passed to the support of the free schools, and the amount last year was \$10,000. The next year it may be more. And if we take away the avails of the slackwater, the rent of the railroad, and also take away three or four thousand dollars, as required by the gentleman's amendment, what is to become of the sinking fund? I would ask the very identical question which was asked in congress many years since by Mr. Lowndes, the chairman of the committee of ways and means. A man came to him and very politely asked him to dispense with a certain item of taxation from which a revenue of several millions was derived. Mr. Lowndes replied that he had no objection whatever to dispense with this item of taxation provided the gentleman would provide a substitute for it. And that ended the subject. And no doubt my friend here has provided a substitute for the sinking fund. It now yields the government about \$15,000, and the gentleman now proposes to take away from the government the principle of specific duties. I say it is the easiest tax paid. We pay to the United States government not less than \$1,153,000. Our duties at the custom house amount to not less than a million of dollars. There is the profit of the importer of the articles, the profit of the wholesale merchant and the retail merchant, and when you put these three profits together, before Kentucky consumes the foreign article, we pay in the shape of duties and profits a sum of not less than \$1,350,000. But we do not seem to know it, because it operates on our ready means. If you cannot pay half a dollar for a pair of gold spectacles, exchange them away and get a pair of silver ones. If you cannot pay one dollar for a gold watch, sell it and get a silver one. A man who rides in a carriage is supposed to be able to pay the necessary tax upon it. A man who rides in a barouche, is expected to pay a tax. Many a man rides in his barouche and pays a dollar for it. But put it down to forty cents, and he will not be so ready to pay the tax. Those who enjoy luxuries are supposed to be able to pay for them. It may be necessary some day or other that we should raise the sum of \$50,000 more to add to the sinking fund, instead of taking from it. Go over the list, and put a fair valuation upon it, and it now amounts to about \$15,000.

Every man in the state should contribute according to his means toward the support of government. And if it be necessary, I want to resort to the income of a man. I can resort to an officer's income. I can tell the officer of a bank, who receives \$5,000 a year, pay a tax on your salary. I can tell a judge your salary is your means, and pay on that. I can tell a lawyer, your profession is worth \$3,000 a year, and you do not pay a cent, you must pay three or four

dollars. So I would say to the doctor, your profession is a lucrative one, you can pay three or four dollars; and to the clerks and the sheriffs, I would address similar language. Give the legislature the power of selecting the articles and objects to be taxed. You tax a farmer for his land and negroes which do not yield three per cent. A man may have \$10,000 worth of land and negroes, and they will not yield him three hundred dollars a year, and he will pay full one per cent. of his clear profits. A man may have an income of \$3,000, and if it does not consist of land and negroes, he does not pay a dollar, not a cent. I do not propose any additional tax; but I want to give the legislature, from the time of the going into effect of the new constitution, the power to select the articles to be taxed, as I have already said. Are not pianos a luxury? And if a man cannot afford to pay the tax, he can afford to do without the piano. It is not like taxing land and horses. A man must have his land and his horses.

I again ask, is this convention going to tell the legislature that, in all time to come, you never shall select any specific article of property for taxation, and you shall never resort to taxation on the income of officers of this government? I do not propose such a tax, but I propose leaving the power to the legislature.

Mr. MERIWETHER. I had supposed that under the present law, when a professional gentleman makes money, he is taxed as well as any other citizen; if not before the money be realized from his profession, at least immediately after. Now, my friend from Nelson seems to think that professional men are not taxed; but are they not taxed in every sense of the word in the same manner as every other class of citizens? Have they money at interest? Is not that taxed like every other man's money? And surely you would not tax that money which he has not yet received. I hold that the government of a country acts as a general insurance office, and that each man should pay for the maintenance of that power which secures him in the enjoyment of his property in proportion to the amount which he has at risk. If he has property to the amount of \$10,000 at risk, he should pay in a proportionate ratio to the man who has only \$5,000. This is the principle involved; tax each man according to the amount he has at risk.

Mr. GRAY. This matter has been agitated a great many years, and I suppose every man's mind is pretty much made up on the subject. My friend from Nelson. (Mr. Hardin,) seems very particular on this matter. He is monstrously afraid of the legislature, when you talk of allowing them to make as many judges as they please. You must not trust the legislature then, for fear they run the people too much into debt in trying causes for them; but when you come to say you must have a revenue based upon principles of eternal justice and equality, that won't do for the gentleman from Nelson, but we must have this specific taxation, and the particular items selected upon which it is to be levied. Now, it seems to me that there is nothing more unjust than this. We are taxed to support government which guarantees to us the enjoyment of our rights, and the right of property is one of the greatest and most sacred of our rights. If

then our property is protected, should not all the property of each individual be taxed, and all protected alike? We have said that slave property should be regarded as sacred as any other species of property. Now, if money thus invested, means carriages, buggies, barouches, spectacles, and watches, or any thing else, should a man be deprived of this any sooner than of any other species of property? No sir. If the gentleman is anxious to tax a man's profession before its products are realized, I have nothing to do with that. We are met here to tax property, not imagination. I trust in God that Kentucky will never be so hard run as to have to resort to any such mode of taxation as that; because I think we would have to institute some other kind of officers to any yet known to the law, to ascertain the exact value of each lawyer or doctor's profession. Some of them, I presume, will hardly make enough in a year to support themselves, much less to pay out by way of taxation. There is no principle of equality in it. This proposition operates only as regards property. It has been a settled principle all over the world, that property has been, and should be, the basis of taxation; and the revenue of a country has always been derived from property, because it was something you could estimate, something you could fix a value upon, something that you could collect a tax from; but surely gentlemen did not think of collecting a tax from a man's intellect, or from any salary that might be given him for services. What sort of a principle would that be? First of all, you say a man's services are worth so much; and then you say you must take back so much out of that for taxation. Had we not better say at once "we will reduce his salary by so much, and we will keep this portion back in the treasury?" I hope never to see such a principle as that advocated in this commonwealth. The gentleman says that spectacles, watches, carriages, buggies, barouches, and what not, should be taxed. I have no objection to tax them. But he says that will not be enough. Now, I do think the old woman should not be taxed fifty cents for her spectacles because they may happen to be gold spectacles. It is a very small matter, and in my opinion it is a disgrace to a state like that of Kentucky.

Now he wants to make it out that that has some connection with the sinking fund. The first answer I have to that is, that it constitutes no part of that fund, and that the sinking fund has nothing at all to do with it any more than with the revenue derived from any other property; but if the sinking fund is not sufficient, then make it upon a just principle of taxation; tax every man according to what his property is worth. That is the way to supply a deficit if there is any deficit. But sir, there is no deficit. There are about eleven or twelve thousand dollars derived from specific taxation. Now take that on the uniform principle of nineteen cents on the hundred dollars, and you would realize vastly more in proportion than you will by getting occasionally a dollar for a carriage or fifty cents for a pair of spectacles. And here again is the injustice. You tax the splendid carriage of the millionaire just as much as you do that of the poor farmer who has a miserable two horse affair to take his wife to church. Is there any

equality in this? Not at all. The old carriage that is thrown by, and has not turned a wheel for years, is taxed just as much as that which is running in all the splendor of novelty. Is there any justice in that? Is there any equality in that? Then a watch that is worth \$300 is taxed the same as the one that is worth but \$50. Is there any honesty in that?

But sir, the revenue is increasing and the debt is being diminished. I suppose that is the reason why the legislature took away a part of the sinking fund. The income of the slack water has been taken from the sinking fund and applied to the school fund. I think that is wrong. Whatever has been set apart to the sinking fund should be held sacred. I am willing to vote for that, and that it should remain so till the entire debt is discharged. But sir, I would not go to supply the means of sustaining the sinking fund by any such unjust and iniquitous principle as this. If it is to be supplied, let it be supplied by taxes from property according to its value. Now, if you leave your constitution open, what shall be done? Some suppose our slave property should be taxed. Well if you tax the old woman's spectacles worth \$5, why not tax a man's slaves worth \$5,000? How would that operate? We must adopt some principle. If the gentleman can embrace any other ideas than those in the article I have proposed, I am willing to submit. All I want is, that taxes should be equal and uniform, and that all property should be taxed alike, according to its value. That is the great principle which I think ought to govern a legislature in taxing the community of a great state. These are the reasons why I offer that amendment. I don't want to deprive the sinking fund of anything! Kentucky is in debt, and she is willing to pay that debt. All I ask is, that the burden may fall alike upon all according to their means.

Mr. HARDIN. Sir, I acknowledge there is sometimes a carriage worth over \$500; but a carriage would have to be worth that sum to be taxed. Now suppose a carriage of the value of \$500 was taxed, is there any man in Kentucky that would be likely to give it in at \$1,000. Some men, it is true, might do so for the sake of vanity and show, but in that case there would be no oppression—not even the appearance of it. The gentleman may have seen some carriages in this country worth more than \$1,000; I have never seen one. Sir, we know the tax on gold watches yields \$5,934. Now what would it yield if given in, one watch with another? Would they yield \$100. What would gold spectacles yield? The gentleman from Jefferson says he knows carriages worth \$1,200; but we know the average value of carriages will seldom be given in. Now take barouches and buggies. We know that these, which cost \$275 will seldom be returned at more than \$150. I venture to say that if we take the manner in which these articles are usually given in, we lose an income of at least \$11,000 a year.—They will give in the finest kind of a gold watch worth, probably, \$500, at not more than \$100, or at most \$120. They will give gold spectacles at \$10, and all other articles at a similarly reduced value.

The most that I object to is the taking away

from the legislature the power of specific taxation. Let them exercise it, or not, as they please—but certainly give them the discretion.

The honorable gentleman from Jefferson got up and made a wonderful discovery. He discovered that if a lawyer or doctor had a tract of land, or money at interest, he was taxed according to its value or amount. Well, if the farmer clears \$300 upon a capital of \$10,000, he pays nineteen dollars. I have often enquired of farmers, and they tell me that three per cent. was the full amount they could realise on their capital. The amount of tax which they pay is upwards of five per cent. upon what they make. I am therefore against going beyond the nineteen cents upon the visible, tangible farming property in this state. All taxation should, as near as possible, approach the income; and not only so, but it should be diversified as much as possible, so that every man would pay according to his means of paying.

The gentleman says I was afraid to go to the legislature in relation to the court of appeals. If I recollect right, the gentleman compromised that matter; and when two men have quarreled, and a compromise has been entered into, I deny the right of going behind that compromise.

Mr. GRAY. I did not refer to the court of appeals at all, but to the circuit judges.

Mr. HARDIN. The whole bill was compromised; and I lay it down, that if two nations quarrel and fight, and then enter into a treaty, they are not to go behind that treaty. And, sir, I protest against the gentleman again referring to what was the subject of that compromise. Shall Brutus' ghost haunt me eternally, and meet me here and there, and disqualify me for the last battle with Mark Anthony and Cæsar? I compromised my own opinion on several occasions; I came here to make compromises in relation to this constitution; I have been compromising from the first day; and with all my compromises, I can, with pleasure, vote for this constitution. I believe we are making a good constitution. I believe we shall save \$27,500 a year by holding the legislature biennially. I can see in the circuit courts we have saved \$7,500; and we have only lost \$1,500—the salary of one additional judge of the court of appeals. We are effecting the great cardinal points for which we came here—to regulate the franchise, to give new strength, new life, new vigor to the government, and to do it more economically; and if ever an expression has escaped me unfavorable to the constitution, it must have been in jest; for, like my friend from Henry, (Mr. Nuttall,) I jest frequently. But I do firmly believe that the great ends for which we were sent here will be accomplished, even if the gentleman should succeed with his amendment. I believe we have all labored for the best. I yield all I can, and every gentleman here has to yield something for the constitution.

Mr. TURNER, after stating that, as a general thing, he was opposed to specific taxation, said that it would not be very wrong to tax bowie knives and pistols. This he thought would be in accordance with what they had done on the subject of dueling. He believed it would be the most wholesome exercise of power that had yet been exercised by the convention. It would

doubtless save many valuable lives, and have a great tendency to improve the morals of the community. He then moved the previous question.

The main question was ordered to be now put. The question was then taken on the amendment offered by Mr. GRAY to the last section, and it was rejected.

The question next recurred on the substitute of the gentleman from Henry, as follows:

"The general assembly shall have no power to pass laws compelling any citizen of this commonwealth to pay taxes upon more than he, she, or they may be intrinsically worth."

Mr. NUTTALL called for the yeas and nays, and they were yeas 14, nays 75.

YEAS—John L. Ballinger, Alfred Boyd, Beverly L. Clarke, Jesse Coffey, Edward Curd, Jas. Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Alexander K. Marshall, James M. Nesbitt, Elijah F. Nuttall, John T. Rogers, Michael L. Stoner—14.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, William K. Bowling, William Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thos. J. Gough, Ninian E. Gray, Jas. P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Andrew Hood, J. W. Irwin, Alfred M. Jackson, Thomas James, Wm. Johnson, George W. Johnston, Geo. W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Robert N. Wickliffe, George W. Williams, Silas Woodson—75.

So the substitute was rejected.

Mr. MERIWETHER asked for a division of the question, on the adoption of the proposed sections, and the question recurred on the first section.

Mr. ROGERS called for the yeas and nays on the adoption of the first section, and they were yeas 52, nays 38.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, William Hendrix, Andrew Hood, James W. Irwin, Thomas James,



George W. Johnston, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Alexander K. Marshall, William N. Marshall, David Meriwether, Wm. D. Mitchell, John D. Morris, Henry B. Pollard, Wm. Preston, Johnson Price, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, Philip Triplett, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, Wesley J. Wright—52.

**YAYS**—John S. Barlow, Luther Brawner, James S. Chrisman, Green Forrest, Selucius Garfield, Richard D. Gholson, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Alfred M. Jackson, William Johnson, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Richard L. Mayes, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John Wheeler, George W. Williams Silas Woodson—38.

So the section was adopted.

The second section was adopted without a division.

Mr. ROGERS moved the adoption of the following as an additional section.

"That every citizen of this state has the right to sell any and every article produced, made, or manufactured by him in the state, without tax or license."

Mr. CHRISMAN moved to amend, by inserting after the word "state" the words "except spirituous liquors."

The amendment was not agreed to.

The yeas and nays were called for on the proposed section, and being taken were—yeas 12, nays 77:

**YEAS**—William K. Bowling, B. L. Clarke, Jesse Coffey, Edward Curd, Nathan Gaither, James W. Irwin, James M. Nesbitt, Hugh Newell, John T. Rogers, John J. Thurman, Philip Triplett, John Wheeler—12.

**NAYS**—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Alfred Boyd, Wm. Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, Wm. Chenault, James S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Alfred M. Jackson, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold,

Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams, Silas Woodson—77.

So the amendment was rejected.

Mr. KELLY moved an additional section, as follows:

"The general assembly shall have power to tax bowie knives, pistols, and incomes."

The amendment was rejected.

Mr. LINDSEY moved the following, as an additional section:

"That in all criminal prosecutions, the courts having jurisdiction thereof shall be judges of the law, and juries of the facts, as in civil cases; and where an impartial jury cannot be obtained in the county where the offence was committed, competent jurors—citizens of the commonwealth—shall be summoned from other counties, in such manner as may be provided by the general assembly."

Mr. President: It is known that in some of the circuit courts, the judges have decided that they have no power, on the motion of the commonwealth or the accused, in a criminal case, to instruct the jury upon the law; while in other circuits the judges have decided that they have the power, under the present constitution, to instruct, and they do instruct the jury, on the motion of the parties. Uniformity in decisions and in practice, is as important in criminal as in civil cases, and we should have the principle fixed, one way or the other. If it is the sense of the convention that juries shall be judges of law and fact in criminal cases, and that the judges shall have no power to interfere with counsel in arguing what is the law to the jury, so let us say in the constitution, as it is the only place where we can act upon the subject. For, if the legislature were to attempt its regulation, the judges, differing as to the true construction of the constitution, one side would adjudge that the legislature could give no authority to the court to decide the law, as the constitution had given it to the jury, and the other side would adjudge the contrary, and we would be precisely where we are now.

I remember some years ago, in a neighboring circuit, a man was indicted for larceny, and from the proof was undoubtedly guilty. The counsel moved to quash the indictment, for the want of such description of the property as the law required, in his opinion; the object being, if successful, to get delay, as the grand jury had been adjourned. The court overruled the motion, and the trial was had. In argument to the jury, the counsel took the ground before them, as he had taken it before the judge—that there was a defect in the indictment, for want of proper description of the property—and that the law was this: "if the accusation was not sufficiently set forth there was as much impropriety in finding the accused guilty—although the proof was clear—as there would be to find 'guilty,' on a good indictment without proof." Strange to tell, the jury found a verdict of not guilty.

In a recent case, tried in this circuit, the indictment was for murder, under which the law-

yers know man-slaughter may be found; a whole day was consumed by counsel in reading and discussing law to the jury and in explaining what was the law called murder, and what man-slaughter. The prisoner was acquitted. A juror giving a description of what had taken place in the jury room, said they concluded first to take the question on whether the accused had committed murder or not, and they voted by ballot. The ballot was unanimous that he was not guilty of murder. They then voted in the same way as to whether he had been guilty of man-slaughter, and there was found two ballots that he was guilty. One remarked that it was impossible to come to any other conclusion than that the accused was insane when he committed the act. One of those who voted guilty, replied that he concurred in the opinion expressed, that the accused was insane, and therefore ought not to be found guilty. Yet, as the question taken had been, whether manslaughter had been committed or not, he had voted in the affirmative, as a man had been slaughtered.

These are the judges of law and fact in some circuits. Is it right that it should be so?

For what purpose do you have a judge, if it is not that he may instruct the juries as to the law, and see that the law is properly administered. Is it intended that a judge shall sit upon the bench and decide questions as to the competency of witnesses, and all questions of evidence upon the sufficiency of the indictments, and that counsel may disregard his decisions and make the same questions to the juries? If the true constitutional principle is, that juries are judges of law and fact, what right has the judge to interfere even on questions of evidence, after the jury is sworn. If the juries are to be the sole triers of law and fact, the judge's power should end after the jury is sworn.

There is, to my mind, much of the ridiculous in requiring a grave judge to sit upon the bench merely to keep order in a criminal trial and be compelled to say nothing, although counsel may pervert the law to the prejudice of the commonwealth, or the accused, in the argument to the jury. Where are the boasted protections to the rights of a prisoner in having an impartial trial, when the prosecuting counsel may argue principles to the jury, not law, and the judge cannot instruct them to the contrary. The court should see that the law, and nothing else, is stated to the jury, and should have the power so to state the law, that the jury may understand it, and that counsel should not travel outside of it to the prejudice of the commonwealth, or the accused.

I have not as yet found out where the courts derive their authority to grant new trials in criminal cases, if the constitution gives to juries the exclusive right of judging of the law and the fact, and yet judges who have decided that they cannot say what the law of a case is, take upon themselves to grant new trials in every case where the juries convict, as they may deem improperly.

Let the law be one way or the other throughout the whole commonwealth. If we are to make a tribunal to determine law and fact in the jury, so let us express it; or if we mean to have judges to decide law, and juries facts, let us so

determine and make the rule operate the same in every circuit.

The amendment was not agreed to.

Mr. BOYD moved the following, as an additional section:

"No charter shall be granted which will confer banking or trading powers, without providing that the private property of stockholders, be made liable for all the debts and obligations of any such corporation or chartered company; but the general assembly may submit such charters, without any such restriction, to the people at a general election, for their approval or rejection."

Mr. HAMILTON offered the following, as a substitute:

"All corporations hereafter established in this commonwealth, in case of failure, the stockholders shall be liable, individually, or collectively, to an amount as large as their stock in such corporation. All banks which now are, or may hereafter be incorporated, shall forfeit their charters, when they refuse to pay their liabilities in gold or silver, and they shall not be re-chartered."

Mr. TURNER moved the previous question, and the main question was ordered to be now put.

The question was then taken on the substitute, and it was rejected.

Mr. CLARKE called for the yeas and nays on the adoption of the section offered by Mr. BOYD, and they were yeas 29, nays 55.

YEAS—Alfred Boyd, William Bradley, Beverly L. Clarke, Henry R. D. Coleman, William Cowper, Edward Curd, Lucius Desha, Milford Elliott, Green Forrest, James H. Garrard, Richard D. Gholson, James P. Hamilton, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, William N. Marshall, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, Thomas Rockhold, Ignatius A. Spalding, John Wheeler, Robert N. Wickliffe—29.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Benjamin Copelin, Jas. Dudley, Benjamin F. Edwards, Selucius Garfield, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Thomas N. Lindsey, Thos. W. Lisle, Alexander K. Marshall, Martin P. Marshall, David Meriwether, William D. Mitchell, John D. Morris, Hugh Newell, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, George W. Williams, Silas Woodson—55.

So the section was rejected.

Mr. MERIWETHER moved to reconsider the vote, rejecting the second of the two sections offered by the gentleman from Christian, (Mr. Gray.) He said on reflection he was satisfied that section should be adopted.

After a few words from Mr. CLARKE, and Mr. RUDD, the motion to reconsider was agreed to.

The question then recurred on the adoption of the section.

Mr. A. K. MARSHALL. I presume this is designed to compel individuals in cities and towns to pave the streets before their own doors. I move to strike out the words "streets and alleys, digging and walling of wells." That leaves the side walks. In a certain city that I will not name, they claim the right to make a man pave the streets in front of his lot. That sometimes costs more than the lot is worth. It is unfair, and should be paid out of the general revenue.

The PRESIDENT. The motion is not now in order.

Mr. NESBITT. I shall vote against this amendment, because I do not want the constitution to show that we voted respecting pumps and side walks, and things of that sort. If the legislature have power to tax, that will be sufficient.

Mr. PROCTOR. I am opposed to the whole section. We should leave the matter in the hands of the people. If the principle is to be adopted in the constitution, that we are to be taxed to raise a revenue, and an opposition at once to our work will arise. Let us fix on correct and fundamental principles, and leave the legislature to carry them out. I am opposed to this partial and local legislation.

Mr. KAVANAUGH. I do not know where this principle is to apply, or what it includes. It appears to me to conflict with the section in which we declare that the county revenue could not be assessed on slaves.

After a few words from Mr. RUDD, the question was taken on the adoption of the amendment, which Mr. GRAY had offered as an addition to his second section which was again moved by Mr. MERIWETHER, and it was agreed to.

On the motion of Mr. TURNER, the word "towns" was inserted in the proviso, after the word "county." So that it will read: "Provided, a poll tax may be assessed for county, town, and corporate purposes."

The question again recurred on the adoption of the proposed section as amended.

On the motion of Mr. C. A. WICKLIFFE the section was amended by the insertion of the words "except titheable and poll tax on slaves."

After a few words from Mr. HARDIN and Mr. GRAY, Mr. KAVANAUGH, called for the yeas and nays on the adoption of the section, and they were yeas 49, nays 36.

YEAS—Richard Apperson, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, Charles Chambers, William Chenault, Beverly L. Clarke, Jesse Coffey, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Milford Elliott, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thos. James, George W. Johnston, James M. Lackey, Thomas W. Lisle, Alexander K. Marshall,

Martin P. Marshall-David Meriwether, John D. Morris, James M. Nesbitt, Henry B. Pollard, Johnson Price, Ira Root, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, John J. Thurman, Philip Triplett, John L. Waller, Henry Washington, Andrew S. White, George W. Williams—49.

NAYS—Mr. President, (Guthrie) John S. Barlow, Luther Brawner, Thomas D. Brown, Jas. S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Benjamin F. Edwards, Green Forrest, William Hendrix, William Johnson, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Willis B. Machen, George W. Mansfield, Nathan McClure, William D. Mitchell, Thomas P. Moore, Jonathan Newcum, Hugh Newell, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, James W. Stone, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—36.

So the section was adopted.

The convention then took a recess.

#### EVENING SESSION.

Mr. CLARKE. The call for the previous question on the nineteenth section, offered by the gentleman from Christian, (Mr. Gray,) prevented me from offering an amendment to it, and with a view to move a reconsideration I voted for it. I was a member of the legislature in '42 or '43, and the pressing demands on the treasury, to pay contractors and laborers on the public works, and the heavy burden of taxation on the people rendered it necessary that some other means should be resorted to, to increase the public revenue. In the absence of any other resource, I voted, although satisfied at the time, that I was wrong, and was violating a great principle, for the specific tax on watches, spectacles, etc. If the motion for reconsideration prevails, I intend to move to strike out of this nineteenth section, the words "merchants and pedlers." I do not think the legislature should possess the power to impose specific taxes on this class of citizens, for they will not pay it, but the mass of the people generally. They would increase the price of their commodities so as to reimburse themselves for the taxes they would have to pay, and thus indirectly the tax would be one on the people. This no man can deny, and I am opposed to holding out an idea to the people that we are taxing merchants and pedlers to raise revenue, when it is only the people themselves that we are taxing. It is upon the principle that the consumer pays the duties imposed on articles imported into the United States. We go against specific taxation because it is unequal and against the minimum principle, because it is fixing a fictitious value on property, and entertaining these views, I cannot consistently vote for a section professedly imposing specific taxes on merchants and pedlers, but indirectly levying it on the people themselves. I only consented to vote for the specific taxes of '42 and '43, because I believed the debt they were to meet, had benefitted particularly those portions of the state where were most of the articles upon which the specific taxation was levied. I believed it but fair that

those who had received the greatest benefit from the money borrowed, should bear the heaviest burden for its repayment. I yielded to the necessities of the case then, and voted for a specific tax, believing then as I now believe, that it was wrong, and I cannot consent to vote now for any section in the constitution, which gives that power to the legislature. I move then, with the views I have indicated, a reconsideration of the vote by which this section was adopted.

Mr. C. A. WICKLIFFE. I am glad that the gentleman has moved to reconsider, and I hope the motion will prevail; though not particularly on the ground of the policy or impolicy of specific taxation. On this subject, I think a sound public sentiment will, and must control through the tax imposing power. I am willing to go so far as to say that all taxation shall be equal and uniform, upon land and negroes, in view of the suggestion made by the gentleman from Daviess, (Mr. Triplett,) of any possible danger at a future day of so inordinate a specific taxation on negroes as to render them worthless to their owners. But, in any other respect, I would not say to the legislature, that no matter what might be the emergency, they shall not impose a specific tax on any property. It is a matter for public sentiment to control, and the very fact that the legislatures have not yet repealed the present specific tax is an evidence that it is not against the general public sentiment. With these views, I shall vote for the motion to reconsider.

Mr. STEVENSON. I hope the motion to reconsider will prevail. As the section now stands, I am inclined to the opinion that it would prevent, in cities, the exercise of that species of specific taxation known as assessments, by which only a system of public improvement in cities can be carried on. It was a graduation of the taxation upon the owners of property, in proportion to the benefits they derived from the improvements. All gentlemen from cities would understand this, and it would be a death blow to the prosperity of those cities to deny them this privilege. As to the general question, it is one which should be left to the control of the legislature under the influence of public sentiment and public emergencies.

Mr. GRAY. I hope the vote will not be reconsidered, and that the convention will adhere to the decision it has so solemnly made. I think we ought to lay down in the fundamental law, a certain general principle of taxation, right in itself, which should govern the legislature. It would certainly be a strange proposition to throw out to the people, to say that there should only be two kinds of property—land and negroes—on which taxation should be equal and uniform, as proposed by the gentleman from Nelson, (Mr. Wickliffe.) I am for making the application of the principle general. Nor do I agree with the principle as declared by the gentleman from Simpson, (Mr. Clarke,) that when you tax pedlars and merchants, it is the people who pay the taxes. Tax or no tax, they will as now, put as high a price on their articles as the people will pay. As to the effect of the proposition on cities, I think the gentleman from Kenton, (Mr. Stevenson,) is mistaken. They could carry on their improvements by gen-

eral taxation, as is the case in most of the towns now. I am aware that some property derives greater benefit from these improvements than others, and for that reason, I was willing to make an exception in the section to meet such cases, but as the section has been adopted, I think it hardly worth while to reconsider for that purpose.

Mr. BROWN. I am glad that the motion to reconsider has been made, for I am opposed to the whole section, because I believe that this power of raising revenue ought to be confided to the legislature. What is the use of this section? It declares that the legislature shall possess the power to impose certain taxes, but has not the legislature that power as fully and completely without that declaration as with it? Most certainly; and why make the declaration in the constitution then? I voted for the section myself, when I saw the previous question moved, with a view of moving a reconsideration, and thus affording an opportunity for that full and free discussion which should be given to all subjects proposed to be embodied in constitutional law. I hope the motion to reconsider will prevail, and I shall vote against the whole section.

Mr. STEVENSON. It is against this inhibition of the power of cities to lay specific taxation, on the petition of the owners of the property assessed themselves, that I protest. I have nothing to say against the general proposition; on the contrary, there is no more firm advocate of uniform taxation than myself, but I know that the cities cannot exist without the power to which I have referred.

Mr. PRESTON. If the section is reconsidered, I shall move an amendment to obviate the inconvenience under which the cities will be placed. If not, then I shall offer an additional section, with the view to the attainment of that object.

Mr. A. K. MARSHALL. Will it strike the people that there is any thing dangerous in declaring that taxation shall be equal and uniform? It seems to me to be a rule which it is imperatively the duty of this convention to adopt and engraft in the constitution. Is there any thing wrong or startling in it? If there is, let us try the reverse of the proposition, and say that taxation shall not be equal and uniform throughout Kentucky. Do you think that would look well in the constitution? Or would it look well, or be calculated to give strength to the constitution, to say that all property on which taxation is levied shall not be taxed in proportion to its value? The object of gentlemen seems to be to reach indirectly what the convention refused to do directly this morning. It is to give to cities and towns a power which, in my judgment, ought never to be given to them, and which is not necessary to their prosperity. I have heard of an instance in one of our cities, where, for the opening of a street, a citizen was made to pay more than his lot was worth. Then the work formed a pond on the lot, which was declared to be a nuisance, and then he was obliged to go to the expense of filling up his lot to abate the nuisance. All this may be very necessary for ought I know to the prosperity of cities, but it looks wrong to me. I do trust this conven-

tion will not exhibit this disposition to change, that will have a tendency to give an idea to the public of uncertainty in reference to our action here by this continual reconsideration of what is done. I do not like the rule of the witness, who having once sworn that his horse was sixteen feet high, determined to adhere to it, for that is not right. But there is a rule which I think ought to be adopted, and that is to measure the horse, and know how high he is before we swear to it.

Mr. DAVIS admitted the general correctness of the principle contained in the amendment of the gentleman from Christian, (Mr. Gray,) but doubted its practicability and policy, and maintained that the public treasury might hereafter be in such exigency as to require additional revenue, which could only be obtained through those sources which the principle of the amendment would cut off.

Mr. TURNER concurred in these views, and hoped the motion to reconsider would prevail.

The question being taken—by yeas and nays on the call of Mr. BROWN—the motion to reconsider prevailed; yeas 75, nays 16, as follows:

YEAS—Mr. President, (Guthrie,) John S. Barlow, William K. Bowling, Alfred Boyd, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Wm. Chenault, James S. Chrisman, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Cope-  
lin, William Cowper, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benj. F. Edwards, Green Forrest, Selucius Garfield, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Wm. Hendrix, Thomas J. Hood, Alfred M. Jackson, William Johnson, George W. Kavanaugh, Chas. C. Kelly, Peter Lashbrooke, Thos. N. Lindsey, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Wm. C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, Wm. D. Mitchell, Thomas P. Moore, John D. Morris, Jas. M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ira Root, Jas. Rudd, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Chas. A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson—75.

NAYS—Richard Apperson, John L. Ballinger, Wm. Bradley, William C. Bullitt, Jesse Coffey, Milford Elliott, Nathau Gaither, Jas. H. Garrard, Ninian E. Gray, Andrew Hood, James W. Irwin, Thomas James, Alexander K. Marshall, Johnson Price, Ignatius A. Spalding, Andrew S. White—16.

Mr. CLARKE moved to strike out the words "merchants and pedlers."

Mr. BROWN asked for a division—the question to be first taken on striking out the word "merchants."

The motion to strike out the word "merchants" was rejected, as was also the motion to strike out the word "pedler."

Mr. A. K. MARSHALL moved, with a view, (as he said,) of testing the sense of the conven-

tion, to strike out all of the section except the words, "taxation shall be equal and uniform throughout the state."

Mr. TRIPLETT. I move to strike out the whole of the section, and to insert the following:

"The legislature shall have no power to lay taxes on land or slaves, except on the *ad valorem* principle; or a higher tax on slaves, in proportion to their value, than on land: *Provided*, That a poll tax may be assessed on slaves for county and corporate purposes."

The amendment explains itself, and attains all that I ever sought to attain by voting for the 19th and 20th sections. I believe the great object the convention has in view, is to protect slave property from excessive taxation, and in this there will be no difficulty, if we link it with landed property. All other subjects I am willing to leave in the hands of the legislature. The great object that we have in view is to lay down land-marks and general principles, the carrying into execution of which we must leave to the legislature. All must concede the impossibility of carrying out in the organic law any principle of mere detail. The experience of this convention has demonstrated the difficulty and impossibility of thus carrying out matters of detail. Let us therefore confine ourselves to the laying down of general principles and land-marks merely, for the guidance of legislation. And as such, I hope that either this proposition, or one having the same object in view, will be adopted by the convention.

Mr. M. P. MARSHALL. Mr. President: I regard this as a grave and important question. I do not doubt, no man doubts, the correctness of the general principle involved in the amendment under consideration. Slaves are property, lands are property, and they should be taxed equally. This, as a naked proposition, I mean not to contest. But, sir, there spring out of the institution of slavery, risks, dangers, and expense, of a peculiar kind; expense which, in my judgment, ought not to be defrayed by the community at large, but should be met by that particular interest, on account of which it is to be incurred, and but for which no such danger, and no such charge, would impend or could happen. While all of us, sir, are determined in defence of the property itself, to interpose the constitutionalegis to the utmost extent that justice can require; still, sir, that institution should not be permitted to become, not only a source of danger, but a ground of charge and expense, to other and distinct interests of the state.

At this particular period of our history, the whole subject of slavery presents matter of deeper feeling, and more excitement, than any other property we possess. Our land we know to be firm, and stable, and safe; our slaves we feel are not. Sir, the safety of that property is dependent first upon a well ordered public sentiment in regard to it. It is well known that that sentiment in Kentucky is now in favor of sustaining the institution. The people, a large majority of whom hold no slaves, feeling that we have been induced, by laws recognizing and founding the institution, to invest our money in this property, are disposed to protect us in it; but while they are ready to do this, they are not prepared to

protect the slave holder in the enjoyment of his peculiar property, at the expense of their own. I shall therefore be in favor of this amendment, if there shall be added to it something like this: "And all expenses which the commonwealth shall incur for the protection of the slave institution, shall be assessed by a specific tax on that property." Then the gentleman's amendment will square with justice, and meet the public sentiment of the state.

Mr. TRIPLET. I suppose the gentleman's object is, that whenever a slave is executed, his expense shall be borne by those who own slaves.

Mr. M. P. MARSHALL. More than that, sir. That, to be sure, is one of my objects, and one in which, I doubt not, the people of Kentucky will sustain me, as just and proper. But farther than that; difficulties, growing out of this subject, are occurring on our border, and other questions will arise. Sir, I am a slaveholder. Upon my farm I hold and work a number of slaves, like the balance of you. Interest should enable me to view this subject justly, at least so far as the rights of the class to which I belong are concerned. I have endeavored, (and I think I have succeeded,) to approach it with as fair a purpose as can influence the mind of any man. Our border is in a disturbed condition, stretching as it does along a river front of near eight hundred miles, with three free states facing and coterminous. Our neighbors beyond the Ohio, with active means, are inciting the slave to leave his master; they make this property hard to hold. If this state of things continue, the burden will become intolerable to the slave holder, throughout the long line of that great river. Then will be suggested and the government of the state will feel the necessity of organizing an armed police, a coast guard, to protect such a number of her citizens, and such a mass of property, against the efforts equally subtle and energetic, of this abolition frenzy. When the occasion fairly to be anticipated shall occur, it will cause an expense which no man here can estimate. The revenue necessary to defray it will be a question for the consideration of the legislature. I tell you sir, that the border counties in the northern part of the state now hold their slaves by a tenure so frail, a chain so slight, so fragile, that it only wants the will and the knowledge on the part of the slave, not to break, but to glide from his fetters. These things are drawing to a head in the northern part of the state. The necessity has come for the exertion of the power of the state to protect this class of her citizens and this description of property.

Sir, I repeat it, for the protection of a great but peculiar interest in this property, there must soon be an armed police along that border, sufficiently strong in numbers to guard this interest, and this sir, will be placing the state in armed and hostile array against the powerful organization, the fierce and "methodical madness" of abolition beyond the Ohio. When this thing shall be done, are you prepared to say, that the lands and other interests of this commonwealth shall be taxed to support something like a standing army, for the protection of this institution? Is there a mind among us that believes the people of Kentucky, a law-abiding people, as they are, will ever consent to this? Five-sevenths of

them own no slaves; the other two-sevenths trembled under the call of this convention for the security of this property, at once great and feeble, vast in point of interest, insignificant almost in the numerical force, the political strength directly interested in its support. In this state of things, this overwhelming majority of five-sevenths, forgetting all other feelings, discarding, merging all other considerations of reason or of policy, or of a separate interest, in a regard for what they considered the vested rights of a minority thus feeble, surrendered this convention to their control. They have excluded from this hall, some of the wisest and ablest men of the state, merely because they feared rather than believed, they might desire to interfere with these rights of the weak. They have sent a proslavery convention, merely because of their sense of justice and honor, their respect to a property peculiar in its kind, feeble and comparatively limited as to the number interested. Sir, in the present state of the question, in the sweeping tendencies of the age, could higher evidence be found of the sense of justice and honor, that lofty sense of justice and honor, which compels the deference of power to right, the proud submission of strength to weakness, than is furnished by the composition of this assembly? Sir, the monument is here before us, an everlasting monument of the capacity of the non-slaveholders of Kentucky, to guard their own rights, to protect their own interests; and it is to be found in that caution, that tender caution, which they have shown for the rights and interests of others, when overwhelming power was in the other scale. I have said, sir, forgetting all other feelings, discarding all other considerations of reason or policy, save a regard for vested rights, the people of Kentucky have thus acted. I repeat it, do not place it in your minds that the people of Kentucky believe slavery to be a blessing, or that they have so decided. There are not a dozen well-balanced minds in this house that believe slavery to be a blessing.

With few exceptions, you believe it to be a social and political evil. Few of you, indeed, under the broad light which experience has thrown on the subject, were the question of the introduction of slavery now open, few of you indeed, I am persuaded, would impose it upon Kentucky. Can these facts be denied? Can any gentleman here look over the population of his own county, and fail to acknowledge that on the abstract question of the social and political evil of slavery, a large majority entertain the views I have stated? Not one of you can do it. And when this people have generously surrendered to the minority all control over the subject, I ask you, if with that power in your hands, thus obtained, you do not make a poor, I will not say ungrateful return, if you fail to provide, that the institution shall sustain itself? I ask you further, if the matter is not likely to force upon the country other expenses besides those to which I have alluded? The expense of executing slaves heretofore has been light, and the *ad valorem* taxation has been sufficient to pay for the capital punishment of condemned slaves. But should the institution, either by the influence of the fanatic frenzy of abolitionism, or the mistaken enthusiasm and awakened hope of the slave himself,



bring on this fair land the dark horrors of a servile insurrection, there may be, independent of the cost of suppressing the insurrection itself, a thousand slaves executed in one year. These must be paid for under the existing law of the land, and if the gentleman's amendment shall pass without amendment, in such an emergency a debt will be thrown upon the treasury which it will not be able to defray.

In framing a constitution which is to last, we hope for all time to come, we should not be governed solely by the existing condition of things, but should have a due regard to the possible contingencies that may arise in the future. If such an insurrection should occur, throwing on your treasury an expense, say of \$500,000, would you think it fair to lay the tax upon lands as well as negroes, to pay the slave-owner for the use of his property? And yet such is the effect of this amendment. I most solemnly warn gentlemen of one fact, that whenever the institution of slavery, from any cause, becomes obnoxious to the sentiment of the country, then is it indeed in danger. Whenever injustice is perpetrated wilfully and plainly by the slaveholders, upon the other property-holders, to sustain the institution, then will they feel themselves absolved from the high obligations which have caused the representation on this floor, and at perfect liberty to take the subject into their own hands. And when they do, they will not deal as tenderly with it, as I might think justice would require them to do. I am proud, and justly proud of the population whom I here represent, and who although slaveholding in part, entertain the same views in regard to this question which I do. From every part of that county, I was told not to interfere when here with slave property; but to resist every attempt at emancipation. That although they regarded it as a social and moral evil, yet they desired it to be left to the operation of natural causes, to work its own cure, and not to be subjected to legislative enactments. I stand here the representative of the sentiments of the people of Fleming county, thus avowed and expressed, and I challenge gentlemen to point out any thing more noble, elevated, and just. Yet, sir, intelligent as they are, were the question put to them, whether in all time to come, they would sustain the institution at the expense of the non-slaveholding portion of the community, they would say no. They would say the men who enjoy the property should pay the public expenses of it; that it was but just and proper that by a positive law of the state, the institutions should be made to sustain itself.

I am not aware that in any part of this proposed constitution, a provision is made for the payment to the owner for slaves taken for execution. If there is not there should be, and I will vote for the amendment if it shall be so qualified as to provide that these charges upon the treasury shall be met by a tax on slave property. This property now is not taxed any more than land for such a purpose. A change in this respect is desired by those who own no slaves, and who are paying an *ad valorem* tax necessary for the extinguishment of the public debt. Do not understand me as favoring the idea of taking a slave for public use any more than land or any thing else, without due compensation. I hold

no such principle, and will occupy no such attitude. It is most clearly the policy of the state to pay for negroes so taken. It is a policy pursued ever since the formation of the government, and without complaint. The object is to remove the temptation from the master to carry offenders out of the reach of justice.

But at the same time I insist upon it that expenses thus accruing, should come out of the pockets of the slaveholders. The institution of slavery stands on its own basis. The permanence and safety of society does not require its introduction, nor is it at all a necessary element of civilization. On the contrary, the greatest advance of society, and the highest grade of civilization known to ancient or modern times, is and has been where property in man is unknown. It is merely property by municipal regulation, and depends for its existence upon the existence of these regulations. All that I ask is that the institution shall be fitted to public sentiment and not become a burden and an expense to those not interested in it. If my views are understood, I have accomplished my purpose.

Mr. W. C. MARSHALL. I am opposed to the section as it stands, and the proposition of the gentleman from Daviess. I look upon this question as one of great magnitude, and as I should like to give my views on the subject, I move that the convention adjourn.

The convention then adjourned.

SATURDAY, DECEMBER, 8, 1849.

Prayer by the Rev. Mr. NORTON.

MODE OF AMENDING THE CONSTITUTION.

Mr. MERIWETHER, from the committee on the revision of the constitution and slavery, reported the following article, prescribing the mode of amending the constitution, and on his motion, it was laid on the table and ordered to be printed.

#### ARTICLE —.

When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this commonwealth as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other officers of elections, at the next general election which shall be held for representatives in the state legislature, after the passage of such law, to open a poll for, and make return to the secretary of state, for the time being, of the names of all those entitled to vote for representatives, who have voted for calling a convention; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for calling a convention, the general assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made, for the next election

for representatives; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for calling a convention, the general assembly shall, at their next session, pass a law calling a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen in the same manner and proportion, at the same time and places, and possessed of the same qualifications that representatives are, by citizens entitled to vote for representatives; and to meet within three months after their election, for the purpose of re-adopting, amending, or changing this constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a convention, a convention shall not be then called. And for the purpose of ascertaining whether a majority of the citizens, entitled to vote for representatives, did or did not vote for calling a convention, as above, the legislature passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the state. All cases of contested elections, and where two or more candidates for delegate to any convention which may be called under this constitution, shall have an equal number of votes, shall be decided in the same manner as may be provided by law for similar cases arising in elections to the house of representatives.

Mr. TURNER presented the following as another plan which he had prepared, to provide a mode of amending the constitution:

"ARTICLE —.

"In the year — it shall be the duty of the several sheriffs and other returning officers, to take the sense of the good people of this commonwealth, as to the necessity and expediency of calling a convention, at the several places of voting in their respective counties, on the first Monday in August, by opening a poll for, and making a return to the secretary of state, for the time being, of the names of all those entitled to vote for representatives, who shall vote for calling a convention. And, if thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for a convention, a similar poll shall be opened and taken for the next year; and if a majority of all the citizens of the state, entitled to vote for representatives, shall a second year vote for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen at the same time, manner, and places, and in the same proportion that representatives are chosen, and to meet in three months after the said election, for the purpose of re-adopting, amending, or changing, this constitution. The qualification of delegates to the convention, shall be the same as members of the house of representatives, except that ministers of the gospel shall be eligible as members of the convention. If it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not

vote for a convention, none shall be called; and a similar poll shall be opened every — year, until a majority, as aforesaid, shall, for two years in succession, vote for a call of a convention; and when such vote shall be given, the general assembly shall, at their next session, call a convention as above prescribed, and pass such laws for carrying the call into effect as may be proper."

He said the old plan of revising the constitution authorises the question to be brought before the people every year, and, as a matter of course, the slave question can be agitated every year, thereby keeping the public mind in a state of continued excitement. It goes into the legislature, and if two or three persons happen to be there who wish to agitate the question of emancipation, they can raise it there, and debate it, and thus keep the community in a state of constant anxiety. I think, sir, the mode of specific amendments, suggested by some gentlemen, is open to the same objection, because it would be productive of the same evil. You place it in the hands of the legislature, and on every occasion, when that body is assembled, this question of slavery may be brought up.

Now, the mode which I propose is, that at stated periods, the people themselves shall vote whether they will have a convention or not. The politicians are to have nothing at all to do with it. The people vote upon it; and if there is, for the time being, a majority of electors against any suggested amendment, it is put over until the next stated period when such amendment can be again agitated.

The intervals, in the resolution I have offered, are left blank; if the general principle of the resolution should be approved by the convention, these intervals can be filled up as they may deem most conducive to the general welfare.

So far as I am concerned, Mr. President, I am anxious that this convention should not appear to give the slightest indication of any idea that the right of property in slaves is to be abolished, but that the fullest possible guaranty should be given to every man holding property of this description, that he shall hold it inviolate.

Mr. PROCTOR. I am pleased, at all times, to see gentlemen offer different propositions for amending our constitution; but I will say, that some of the gentlemen upon the floor of this convention, who profess to be pro-slavery men, have taken a course calculated to do more harm than all the preachings of all the emancipationists in the country. From the course which has been adopted by some gentlemen here, we are putting the strongest kind of arguments into their mouths, and we are strengthening their hands against ourselves.

Every gentleman appears to have made up his mind as to the mode by which the constitution, at any future day, should be amended; we are well instructed upon that matter; but in regard to the question of slavery, I do think the house have no discretion—no power; and I protest against our taking such a course as will give emancipationists an opportunity of drawing arguments from our words or our proceedings, to justify them in their fanatical course on this question. From the discussions which have taken place here, I much fear that we have sup-

plied arguments which may hereafter be used in attempts to weaken the stability of this institution. I am not a slaveholder; I came here to represent a constituency not holding slaves to any large extent; but I am a pro-slavery man—I am in favor of slavery for the sake of slavery. But when we argue this question in the mode in which it has hitherto been argued on this floor, we are, I am satisfied, only putting weapons into the hands of our enemies, which may be used against us. Let us then, make a constitution to meet the requirements and the wishes of the people, and leave this question of slavery to be settled by those whose business it is to settle it.

Mr. TALBOTT. I will vote for the printing of the resolution, and its reference to the appropriate committee, as indicated by the gentleman. I have entire confidence in the intelligence, integrity, and wisdom of this convention, and I have no fears that any proposition, no matter how inflammatory in its nature, or erroneous in its positions, will either corrupt or mislead them. But sir, it does seem to me, that if we have come up here, instructed upon any one subject whatever, it is to settle, as far as possible, and place beyond controversy and agitation, that most exciting of all other questions: the question of slavery. It seems to me, sir, to insert in the constitution we are about to frame, a clause, that a convention shall be called, or voted on every five, ten, or even twenty years, would be all the emancipationists would want, or, under existing circumstances, could ask. Insert this clause, sir, and they would at once proclaim upon the house tops, that Kentucky, at the expiration of the time fixed in the constitution, should be rescued from what they denominate, the curse of slavery. They would bring up their men, armed and equipped for battle, from the north and from the south, from the east and from the west, and you would thus enable them to destroy the very interest and institution we came here to secure. All I ask, is for gentlemen to consider this proposition before they vote upon it.

Mr. R. N. WICKLIFFE. There, sir, is a resolution, providing another mode of amending the constitution, but I think this is not the proper time to discuss it. The subject will come up in a few days on the report of the committee, and that, in my judgment, will be the appropriate time to discuss this resolution. I therefore move the previous question.

The main question was ordered to be now put, and the motion to lay on the table and print was agreed to.

Mr. WALLER submitted the following resolution:

*Resolved*, That in the constitution formed by this convention, the same provisions in relation to slavery should be inserted as in the present constitution, with an additional clause prohibiting the emancipation of slaves, to remain in the state."

He moved that it be laid on the table and printed, with an intimation that he would ask for its consideration on Wednesday next.

The motion to lay on the table and print was agreed to.

#### GENERAL PROVISIONS.

The convention resumed the consideration of the additional section of Mr. GRAY to the re-

port of the committee on general provisions, to which Mr. TRIPLETT had moved an amendment.

Mr. W. C. MARSHALL. Under somewhat of impulse last evening, I requested this convention to adjourn, with a view that I might have an opportunity of presenting some remarks this morning, on the subject which was then under consideration. If I had felt then as I do now, I do not know that I should have been tempted to offer one remark upon the subject, but in all probability would have contented myself with giving a silent vote upon this question. The positions assumed by the gentleman who closed the debate last evening, were to me somewhat novel and startling, and I candidly confess, excited me; and whilst laboring under that excitement, I asked the convention to adjourn, in order that I might have an opportunity of replying to the positions assumed by the gentleman from Fleming: I had hoped, sir, that the interrogatories propounded to the gentleman during his remarks, would have caused him to pause, and in some degree, to retrace his steps. In this, however, I was mistaken.

Having asserted the proposition, as he did, in a somewhat excited manner—in a manner peculiar to himself—(because the position which he occupies upon this floor, and elsewhere, is of a character that gives him position in society—that gives him position in a body like this—that gives him position in any place)—I felt, Mr. President, after those propositions were asserted, and the manner in which they were asserted, that we were going too far upon this question. I regretted, exceedingly, that the proposition introduced by my friend from Daviess had called forth a discussion, out of which no good can ever grow to our state; and I still more regret that it should have become necessary for any gentleman on this floor, entertaining the views that I do, to be constrained to oppose them.

Mr. President, in the years 1841-2, I had the honor of a seat on this floor; I then occupied the seat I now occupy. When a question was presented by the governor of the commonwealth of Kentucky, showing the condition of the finances of the state; when it was discovered that the treasury was almost entirely exhausted, and that the means which we had to meet the demands against it were wholly inadequate. The legislature was appealed to, by every sense of honor and justice, to save the state, and relieve it from its embarrassments.

A proposition was introduced into this house in that year, with a view to raise the taxes to meet the deficit, but that proposition was defeated. The banks of Kentucky came forward and paid off the interest of the debt due to the bond holders. They became the creditors at home, instead of obliging us to seek credit abroad. They stepped forward in this great emergency, relieving the credit and character of Kentucky, and the legislature was appealed to for the purpose of paying off that debt and relieving the state of the burdens that then hung around it. In what manner was the proposition received by this body? A proposition was made for an increased taxation to the amount of one cent on the dollar upon a fair valuation of all property, and out of one hundred mem-

bers on this floor, there were only three who raised their voices to provide means for paying this debt. That proposition was opposed on this floor; it was asserted that the debt had grown out of a system of extravagance and improvident expenditure in carrying out our system of internal improvements, and that the people looked to these improvements now as a means whereby this debt should be discharged. These improvements had failed to meet the expectations of their projectors, and it was thrown in the teeth of every gentleman on that floor who advocated that system that they must devise ways and means by which this debt should be paid; that taxation, for the purpose, was improper, and that the people of the state were unwilling to bear it. I heard it with pain and regret. I, who represented but a small county, whose people are poor—a county whose borders are swept by the Ohio, and looking to that as the natural outlet to our trade, having failed to secure any of the benefits of our system of internal improvements—not a dollar having been expended within its limits, still sir, I heard it argued with pain and regret that these improvements should be made to pay this debt, and that no means should be resorted to to save the state from the emergency in which it was then placed. On that occasion I stood upon this floor representing a small county, mountainous in its character and sparsely populated. But I came here not to represent that county alone, I came here to represent the people of Kentucky; and I was proud to say that when I cast my vote, I represented the unanimous sentiments of the people of my county, and sir, I was proud to occupy the same seat which I now occupy, because I had determined that I would never be the willing instrument of disgracing my county and my state. Yet, sir, those means were unprovided; and what were we to do? In the language of the gentlemen from Bourbon and Jefferson, equality of taxation is beautiful in the abstract. Who can object to it? None; none; but I ask gentlemen, and all who hear me on this occasion, let a crisis come like that, and place them in the position I occupied then, and what would they have done. Sir, I am proud of that vote. The gentleman from Simpson was present and voted with me. He said he felt constrained as an honest man to give that vote, and yet he regrets it as the worst vote he ever gave; while I regard it as a vote reflecting more credit upon him, than any given by him during that session.

At that time, sir, while Arkansas and Mississippi had repudiated, and Indiana was on the very verge of repudiation, Kentucky stood high, and her bonds were held at par all over the world. I ask that gentleman, and all who hear me, if an emergency like that should arise, would any gentleman on this floor be unwilling to provide the necessary means to relieve the state from such an embarrassment? No man, I am sure, would rise from his seat and say, in the presence of the congregated gentlemen on this floor, that he would be willing to refuse to do all in his power to save the credit and the honor of the state. Let, however, such a proposition as this pass, and there is no power in the legislature; your government is disarmed and has no

power to meet an exigency that might come upon us as it did in the year 1842. I am as unwilling, sir, to tie up the hands of the legislature, as I am to manacle the people of Kentucky.

Of all subjects, sir, that of taxation is the most delicate; nothing but a high sense of duty and of moral honesty can force a man to come up to the mark that honesty and justice demands at their hands; and I ask you to look at that section, proposed to be inserted in your constitution, and say whether we are not tied up, hand and foot, and the legislature rendered powerless. That is the position in which we are placed, and I see not how it is to be remedied unless we look to that state of things in which Kentucky never can be in debt. While, however, she is in debt, the interest must be provided for as well as some means of ultimately extinguishing the principal.

These were the motives, sir, which induced me then to vote for this specific law, so odious in the estimation of many gentlemen present. I voted for it then; and two years afterwards, when I had the honor of a seat on this floor, and a proposition was made to repeal that law, I voted against its repeal. And why did I do so? Because it was imperative that the state should provide for her exigencies; that she should meet the demands which were made upon her treasury and her sinking fund. And on whom, and on what did that tax fall? Upon the wealthy citizens of our state; upon the luxuries of the country. Sir, of all portions of Kentucky who walked up boldly towards meeting the demands upon the treasury, those who live in the wealthy portions of our state are the first to respond to that call. It is those who pay least that complain the most; while at the same time those who pay the most, pay it most cheerfully; and this was to meet a crisis which, I trust in God, may never occur again.

Whilst I am opposed, sir, to the proposition of the gentleman from Christian, I am equally opposed to that of the gentleman from Daviess. I think it is wrong, sir; and but for the proposition submitted by my friend from Daviess, and the remarks made by the gentleman from Fleming, I would not have addressed the convention this morning.

Why all this excitement, Mr. President, on the subject of slavery here? Why all this talking about rebellion and insurrection, and the instability of our institutions, and about keeping out the incendiaries and the fanatics of the north? If our institutions are placed upon so frail a basis as this, if we are to be alarmed at every corner, and by every brawling demagogue who takes it into his head that slavery is a great moral and social evil—if our institutions stand upon a foundation so precarious that every breath, however foul, may sweep them into oblivion, why it is better that they should go at once. I ask my friend from Fleming, who, though he says he is a pro-slavery man, yet affirms that slavery is a moral and a social evil, and that every gentleman on this floor admits it to be so, though I differ with him on that subject—I ask him why all this talk, all this excitement, all this dread in reference to this institution? He regards it as a moral and a social wrong. I have never regarded it, nor do I yet

regard it in that view. The question is asked, as a new proposition, "if slavery had never existed in Kentucky would you introduce it now?" I do not think it necessary to answer that question at this time; but as it exists now, I am not prepared to admit that it is a moral and a social wrong. Kentucky, wherever she is known, stands high in character for chivalry, bravery, intelligence, integrity, honor and purity; and what is it that keeps her pure? In my judgment it is nothing but the institution of slavery. Strike that out and what do you get? A mongrel people; your identity of character is gone; your chivalry is gone; your purity is gone; your whole character is destroyed. These I believe, are the effects of the institution of slavery; and so far from its working moral and social wrong, I am of opinion it is working moral and social good. The gentleman says, "Do away with slavery and the stalwart sons of the north will supply the place of the slave? What north? The north of this Union? No sir, with men from the north of Europe. And what are their habits and qualifications for business? Is it to cultivate your soil? Are they capable of arts and manufactures? No sir, they are fit for neither. Drive out your slaves and fill up your country with a population of this description and you have lost all, sunk all, thrown away all that has ever contributed to give Kentucky a name among the states of this Union.

You have heard a great deal said about our sister state of Ohio, and the rapid progress she has made in civilization, art, improvement and wealth; but I tell you that God has made a wide difference between the state of Ohio and the state of Kentucky. Ohio has her lakes on the north and her river on the south, both affording the most admirable outlets for her produce. She has all the facilities that a country could desire, to promote her commercial prosperity. On the other hand, Kentucky may be said to be an inland, and consequently, a purely agricultural country—not commercial—compelled to depend entirely upon her own productions, the only outlet for carrying off her surplus produce being the Ohio, on her northern border. We depend upon slaves for carrying on those pursuits. You build up your towns and cities in other states, and carry on your commerce with every portion of the civilized world; but in such case your great agricultural interests must be neglected, and dwindle into insignificance. Such must be the result in this state, if you attempt to follow such a course. Your lands now, which, on an average, are worth from seven dollars to seven dollars and fifty cents per acre, would not be worth half that amount. Drive out your slaves, and so far from increasing the value of your lands, that value will be woefully diminished, and a decrease in the quantity of your produce, and in the value of your lands, must, of necessity, bring about a decrease in the revenue.

I know that these views are not entertained by some; but so far as I have been able to bestow reflection on the subject, this is the deliberate conviction of my mind. I have seen those "stalwart sons"—I have been in Ohio, and seen how business is carried on; and so far as I have been in Ohio, I can tell my friend that those "gentlemen" who come from Europe are not

qualified to carry on the great agricultural pursuits of our country in the manner in which we carry them on here; and that, were we to introduce them into Kentucky, we should be losers rather than gainers by the operation. But is that all? If the question rested merely upon this, I should not have made a single remark.

But strange to say, we hear of rebellion and insurrection. Living, as I do, on the margin of the Ohio, I think I may safely say that I understand the feelings which operate upon the minds of the whole people of northern Kentucky; but I was startled last evening when I heard the gentleman from Fleming say that if insurrection should arise, if rebellion should be brought about, it would come from the north of the state. Insurrection, sir! In what way? brought about by whom? Insurrection! brought about by the negroes! Insurrection! brought about by the citizens of our own state—by the fanatics of the north! But it matters not from what quarter it may come; he tells you that in such case—in case of insurrection, slavery must sustain itself; that the whole cost of suppressing such an insurrection must be met by the institution itself.

Mr. President, I ask how does Kentucky stand in relation to your slaves and taxation? She pays into your state treasury every year, \$70,000 as part of your revenue—she pays in her counties about \$40,000—she pays to your sinking fund \$35,000—to your school fund \$14,000, independent of the actual revenue paid into the treasury of \$70,000. There is, besides this, a poll tax on all slaves over sixteen years of age, and of these there are eighty-nine thousand. Of slaves under sixteen, there are about one hundred and eleven thousand. They pay, then, \$70,000, as revenue; expenses of this convention; \$14,000; school tax, \$14,000; sinking fund, \$35,000; and for county purposes, \$40,000.—Take the whole amount of tax that they pay to the commonwealth of Kentucky, and it will reach \$173,000. And is that all they pay? No. Independently of this \$173,000, which is paid in the shape of taxes, every negro over sixteen years of age is bound to work upon the roads. Calculate that, and you will find that the whole amount of labor will bring it up to \$40,000 more, making a total of upwards of \$200,000. Now, what is the amount realized from all the lands in the state? About \$200,000. If the negroes, therefore, pay a revenue into the state treasury of \$70,000; of \$14,000 to the school fund; \$14,000 for expenses of convention; of \$35,000 to the sinking fund, and of \$40,000 for county purposes, and \$40,000 more for road purposes, they pay a sum equivalent to \$213,000; making a larger amount of tax paid by the slave population of the state, than is paid by all the lands in Kentucky. And yet, the gentleman says, if an insurrection should come—if a rebellion should be brought about by the citizens of our own state—if they should invite the slaves to rebellion—if the man who owns no slaves in your state—the man who has no interest in your country, should create an insurrection—if such a man should create an insurrection, your lands, your carriages, your buggies, your watches, your spectacles, are not to be taxed to maintain the general peace! Oh, no; these must not pay a cent of the expense—not a dollar to meet this de-

mand. I ask, is this right? Is this equality? Is there any fairness in such a proposition as this?

I go further. A slave is kidnapped from Kentucky, and goes into Ohio; the owner of the slave follows him, (I saw an instance mentioned in the papers the other day, of a man who went to Cincinnati in pursuit of a slave, and a fight occurred)—well, a slave is kidnapped; the owner, in accordance with laws existing mutually between the states, follows him; a fight occurs in his attempt to recover his slave, and the white man should be the cause of it in consequence of this attempt; there are those who say that the whole expense incurred in such case should be met by taxation upon the owners of slaves—in other words upon the slave population of Kentucky. If his position is true, he might carry it out in all its bearings, and what would be the result, if brought about by one of your own citizens—a freeman of your own commonwealth—no matter that the right to bring back his slave is guaranteed to him by his own constitution, and the constitution of the United States—if such a result be brought about, these expenses are to be met, and to be met alone in that form. I ask the gentleman, in all candor, if he intends to go thus far?—if this is the point at which he is driving?—this the end which he aims to accomplish? I trust not.

But again, if a slave is executed in Kentucky, the gentleman says that this must be a tax upon the institution. And why, in all conscience? Those who own slaves (and I can hardly say that personally, I am interested in this matter, for I do not own slaves to any extent—I can only boast of three—but it is the interest I feel in the question as a Kentuckian, that induces me to speak)—why, I say, in case of the execution of a negro, is the slave population of the state to be taxed? I ask, how is this to be done? Are you to create a separate fund? And when, and how is this tax to be levied? If an emergency should arise in the commonwealth, and a necessity for taxation should arise, how are you to carry out that principle? Are you to wait till the slave is executed? If you lay a tax higher than the emergency demands, it is an oppression upon the slaveholder without cause or necessity. But he does not propose to wait till the emergency arises. If he does, how is he to carry out the principle? It cannot, in my humble judgment, be done. But suppose it could be done, would it be right? The amount of the slaveholding population in Kentucky is, say 200,000; the total amount of population is, say 700,000. The lands and other taxable property of the 500,000 are to be relieved from all participation of the burden, and the cost of these emergencies, and it is to be placed on the slave population alone. I say this is wrong. It is unjust, impolitic, impossible. Why not come out at once, and say to the slaveholding people of the state, "these burdens shall fall upon you; therefore, I propose to carry out my peculiar notions upon the subject of slavery. My notions are of such a character, that they require you, in carrying them out, to make these sacrifices. If wrong is done among you, you must settle it among yourselves; if expenses are incurred by this system, those expenses must be met by yourselves."

I ask the gentleman to take this back. I ask

if there be either justice or propriety in a position like this? While you take away my rights you hold sacred your own; while you are willing to impose taxes upon this species of property, and this class of citizens, you quietly fold your arms and say, "I am secure and cannot be reached." I ask if this is equality, if this is justice. It occurs to me sir, that there is neither equality, nor propriety, nor justice in a demand of this kind. Sir, carry this principle out. Why do you say that the institution of slavery should sustain these burdens? The answer is, that it is based upon wrong to hold a slave. I ask gentlemen on this floor who hear me now—what difference is there between a slave, and a horse, a mule and land, or anything else, so far as property is concerned? The law makes no distinction—no difference. If there be no difference in point of law, if the law recognises all equally as property, what reason can be propounded why we should tax that species of property while we hold exempt all other species of property, and say to the owners of negroes, "these are the demands we make upon you, these are the sacrifices you are required to make if you continue to hold this species of property?" Sir, is it right? Why does the gentleman ask this? My mind can suggest no other reason for it than, as regarding the institution of slavery, believing, as the gentleman says he does, "that it is wrong in itself," that it ought to be stricken down, that all protection; all idea of property in slaves should be expunged from the constitution, and that all the slaves in the country should go free. But sir, so long as slavery does exist, so long as our institutions recognize it, so long as the people recognize it as it stands upon your constitution, why make this distinction—a distinction which neither in principle nor practice can ever be carried out. If my land be taken for turnpike or railroad purposes, the constitution guarantees to me the certainty of my remuneration whatever that may be. Is it concluded then that this species of property shall be taxed to support itself, as well as to aid in the protection of all other property? Is this right, is it just, is it proper?

Mr. President, when you talk about equality, and propriety, and justice, I say to that gentleman, that there is neither equality, nor propriety, nor justice, in a demand like this. So long as the institution remains, let it remain upon the same equal footing with other property; let it be taxed like your lands and other species of property, subject to taxation, and then, sir, there will be no cause of complaint. I say now—for I deny that slavery is either a moral or a social wrong—attempt not to throw up any walls around it; let the institution stand as it is; leave the power of taxation in the hands of the people, and let it be regulated through the legislature, and I tell the people, in such case, their institutions are safe. Throw up no walls around them; it is needless to do so when no enemy is approaching; fight not against phantoms. Take my word for it, there are those who are standing at the out-posts, and listening to and gathering all that falls from us here, and they will catch it, and use it, too. But let us stand firm, relying upon the guards already thrown around this institution, and, mark my word, that will be the greatest security



that can be given to the slave property in this country.

Do you believe, sir, when they talk about the five hundred thousand of the non-slaveholding population of Kentucky—do you believe when they are appealed to and told the amount of tax which is paid upon negroes in this state—do you believe that when you tell them their taxes must necessarily be increased as you strike this vast amount off—do you believe that when you thus appeal to their common sense and judgment, they will not soon see the result—and aid you, for their own sakes, in the maintenance of this property? Strike off the slave and let free population come in; do so, if you can; but I tell the gentleman that the institution of slavery will stand in Kentucky as long as time shall last. We require no guard, no walls around this institution. It addresses itself to the intelligence, the good sense, and the pockets of the people of this country; and while these are appealed to, you may depend upon it your institutions are secure.

Mr. President, further about this institution permit me to remark. Strike out the proposition of my friend from Christian, and what is the result as it regards the amount that goes into the sinking fund? Strike that out I would say, because if that section is engrafted upon the constitution, the legislature is disarmed of all power; you strike out \$35,000 going to the sinking fund, and the demand must be met from some source; and how I ask does he propose to meet the deficiency? Is the gentleman willing to strike out from the resources of the sinking fund the sum of \$35,000, and propose no means for making up the deficit thus created? There is none proposed; and I trust no delegate in this house will feel authorized to vote for that proposition until some feasible proposition is presented for meeting this deficit.

I hope the proposition of my friend from Daviess will be laid upon the table. I would rather fall back upon the constitution as it stands.

I would not, Mr. President, have said a word to this convention on the subject now before it, had it not been for the reasons which I stated in the outset; and having asked the convention to adjourn, and as they were kind enough to adjourn, I express my thanks to them for that courtesy, and also for the patience with which they have heard me to-day.

Mr. BRISTOW. I regret to see every question run into the subject of slavery or cities; but this question has got into both. I wish there could be some check put to the tendency to speak of slavery in connection with every other question. That is a settled subject; we came here instructed to leave it as we found it.

The simple inquiry now before the convention is, how can we settle in the best manner a principle of taxation? Shall we leave it to the legislature, or shall we settle it? If a tax has been raised improperly on articles specified, that principle should be done away: Gentlemen say that \$14,000 has been raised in this way, and unjustly, and therefore you must not do it away. If the sum raised was \$100,000, the argument I suppose would be still stronger, for the difficulty of supplying the deficit would be so

much greater. If it is right, go on with it; if not, do it away.

I know how to appreciate the motives of the gentleman from Bracken when he was operated upon by a proper desire to prevent repudiation and disgrace to the state. But I would ask what would have been his condition, if the same principle had been in our present constitution, for which he now contends? He could not have departed from the straight forward principle. Where did this principle start? I hold it never did start at home. It commenced in the legislature, and would not have started there, but the legislature had raised a debt, and they endeavored to justify themselves for this tax on that ground. Tell me not it is laid to protect the yeomen of Kentucky. I know how to sympathise with that class. They do not ask injustice to be done for their benefit. The gentlemen who represent peculiarly the mountain section, and the people who live in that portion of the state will tell you that they do not need, nor wish to be considered objects of charity. They want only justice. Can we give it? I say we can do it without interfering with the rights respecting cities or slaves.

Gentlemen say we cannot do without these specific taxes, and that it is easier for men of wealth than for others. One man vests his means in one species of property which is profitable, and another in another species, which is not, and it is said it is more convenient for the man who has vested his means profitably to pay the tax on specified articles. Let us not make these distinctions. The fine carriage is taxed just the same as the mere convenient article of the poor, worth perhaps fifty dollars. Legislators say they do not know how to avoid this difficulty. If you must tax articles of luxury, let it be according to their value, and then the old lady who owns the mere article of convenience, the humble carriage, will pay only what it is worth, and the \$1,000 carriage of the nabob for what it is worth.

But it is not yet settled that this specific taxation is so clearly a benefit to the poor; it depends on the feelings of the man, and his own tastes and inclinations. If he spends his property for luxuries, he will have to meet the taxes on them, and if he lays up his money like a miser, then he will not pay this specific tax. But this tax will not operate equally. The man who is worth \$100,000 will own but one carriage and pay a tax on that. The man who is worth but \$5,000 or \$10,000, will have his carriage. Ten men will have more of these articles than one man who is worth as much as all of them. Then the old lady's spectacles, a mere memento of some friend, or the gift of some friend, to accommodate the old lady, must be taxed specifically.

Gentlemen say we have had this fund so long, and gone so far, that we cannot get clear of it, and must leave the matter to the legislature. The gentleman from Bracken would do this. I would settle it now, as one of the principles by which the legislature should, in all time to come, be governed and controlled. We have had all these difficulties because that principle was not first settled. Let me show you in what manner the states around us have settled this principle, states having larger cities than any we have.

Mark how short and succinct the principles adopted by the states around us. First, look at the state of Tennessee.

"All property shall be taxed according to its value."

That settles the whole principle, and excludes the idea of specific taxation.

Here is Louisiana;

"Taxation shall be equal and uniform throughout the state. After the year 1848, all property on which taxes may be levied in this state, shall be taxed in proportion to its value, to be ascertained as directed by law."

Here is the language of the constitution of Illinois:

"The mode of levying a tax shall be by valuation; so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession."

That is very distinct, short, and clear. Here is Missouri still shorter.

"All property shall be taxed in proportion to its value."

The same principle is carried out in Arkansas, and in Texas, and other states. I have not looked over them all, but I see here the principle is settled; the same principle which I wish to see settled. The gentleman says circumstances may spring up that may make it necessary to tax the people in this way. We only lay down the general principle. Kentucky is a state of that character that we cannot anticipate it will be necessary to depart from this principle. It is an agricultural state. Shall we, the farmers, be taxed unequally? Surely not. All who are protected, shall be protected in proportion to the value of their property.

I may be peculiarly situated in this respect. I argued this through my county, and I did not find one man against the principle. We, in my county, are not very rich nor very poor, as a whole, though some are very poor. They are all in favor of this principle of taxation in proportion to the value of property which a man is worth. A beautiful speech may be made on taxation of incomes and that sort of thing, but there is no necessity for it in Kentucky. When we leave the state, to tax every man just in proportion to what he is worth, what more can we ask? We just simply take away the power to do wrong. Every man agrees that it is wrong that this specific tax should exist, and is only right from necessity. But such a necessity can never come, provided you put it in your fundamental law that you shall not resort to specific taxation. I have no doubt it was the very thing which many in the legislature would have rejoiced to have had in the constitution, when driven to the necessity which was brought before them. What else did they do? They even taxed collateral inheritances—a man's children, brothers, and sisters, to keep up the revenue. If the legislature may do that, do we know how far they may go? Gentlemen say they have already gone far enough to receive \$14,000 per annum, and use that as an argument to go on. How far will they go, unless we restrict them from saying that a class of persons, or species of property, shall be taxed separate from the rest? I intend to vote for taxing property according to its value, and no further. I have a proposition

which I desire to offer, by which I propose to provide, that after the year 1853, all taxes levied for state purposes, shall be equal and uniform; nor shall any one description of property be taxed higher than another, in proportion to its value. But the general assembly may authorize the several towns, cities, and counties to impose taxes for town, city, county, corporate, and other purposes, respectively, in such manner as may be authorized by law.

I put in 1853, in order to give time to the legislature to meet the loss of this \$14,000; and I get justice, at least for the great body of the state. I am willing to leave the matter of taxation which is peculiar to cities and corporate towns, to the legislature. I am aware that we do not meet all the injustice that may exist. We do not go into detail, but simply assert that taxation shall be in proportion to the value of property, and that counties and towns may have poll taxes.

Do gentlemen know what is the practice with regard to specific taxation? The general opinion is, that when an article is taxed specifically it is not given into the list, according to its value; but that is not the law. The attorney for the state has settled the question, and the auditor has issued his instructions to that effect. Then, do you see the injustice to which the legislature went? They first authorized to tax in proportion to value, and then in addition to that, they were taxed specifically. That is the law. Suppose they are not taxed now according to value, then we shall not lose so much when that portion of the revenue is taken away. Then, when we do tax according to value, the carriage worth \$1000, which now pays only one dollar, if the gentleman from Nelson is correct, will pay nineteen cents on a hundred dollars, which will make one dollar and ninety cents; so that you will not lose so much as has been stated by some gentlemen.

I want the whole to be raised in a different way. One cent upon every hundred dollars would overrun that amount which would be lost from specific taxation, and make something like \$30,000. A man worth a thousand dollars will pay ten cents. The taxes will be paid by the rich, and in proportion to value of property, and the protection they receive from the law of the land.

There will be no partial favors in regard to the law, at least, and if the legislature will travel out to reach licenses, let them do so. There are cases which I do not know how to reach.

Whilst I have the floor, in order to save time—as I am very anxious to complete the business for which we were sent here, and adjourn—I will say a word in regard to the abstract resolutions, or sections, which have been, and may hereafter be, urged before this convention, with the design of making them a part of the constitution. I shall vote against them, as I have already done, under the firm conviction that we, as practical men, should not consume time in debating mere abstract questions, which can have no practical bearing. I am aware that it is the wish of delegates to render more secure the rights of owners to certain property. I pledged myself at home to make no change on that sub-

ject in our constitution, except to provide for colonization, as connected with future emancipation, so as to prevent the further increase of the free colored population in our state. I regret that excitement on that subject should cause so much discussion here. The people settled it at the polls. Resting upon the provisions in the present constitution, which should remain unchanged, and the justice and magnanimity of our people, and the rights of slaveholders are entirely secure. And my conviction is, that it is our duty to resist every effort to add to, or take from, the present constitution on that subject. And whilst gentlemen may honestly believe that they the better secure that property, by adding sections and declaring against the power of the people and future conventions, to interfere with it, I am clearly convinced that they but weaken the tenure. They thus multiply and change issues, and place themselves in a false attitude; and instead of contending against the justice, propriety, and moral right of interfering with their property, they challenge the power of the people, by asserting that such power does not exist. Power, in the abstract, is innocent, and only partakes of the qualities of good or evil as it may be put in practice. Then make no issue on the abstract question of power, but leave the question as we found it—to the guards and sanctions of the present constitution, and the justice and magnanimity of our citizens, and their response will always be such as will do credit to Kentucky character.

Mr. HARDIN. The gentleman from Todd has made a very strong speech; when on the wrong side he can, like Belial, make the worse appear the better side. The truth cannot be denied, that the true principle of taxation is that every man should pay according to his means. The income of the county should be called upon to contribute to the support of government. That is true as a general principle. As I said yesterday, we pay a tax of \$1,350,000 on imports, and yet we hardly know it. We pay to the customs about a million of dollars, and we pay a profit to the importer, the wholesale merchant, and the retailer, all of which comes out of the pockets of the consumers; but it is not felt because it falls on the means of the country, and no man buys unless he can afford it. We pay this year by way of direct tax, about \$562,000, and we find it very inconvenient and oppressive. By the great body of the people it will be felt very sensibly; they do not feel the indirect tax, because it falls on those who can afford to pay. It will fall on the man who wears a fine coat, and not on him who makes his own coat; and it will be admitted, I suppose, that if a man will disguise himself in fine clothes he should pay for them. The tax on tea and coffee is small because they have become necessities of life; and we pay but little tax on foreign salt because it is also a necessary; but whatever can be dispensed with enters into what is called the superfluities or the luxuries of life, and upon it government must have the power to raise revenue.

I care very little about the specific tax of \$14,242; but the proposition of the gentleman would take away from the legislature, in all

time to come, the power to discriminate between the necessities and the luxuries of life. The constitution which we shall form, we hope will last some fifty or a hundred years, and does the gentleman really so far distrust the taxing power as to take from it the ability to distinguish between luxuries and necessities? Can the poor woman dispense with her horse, or her cow, or her bed? And yet the gentleman would tax her as much, according to value, as you tax the watch and the carriage of the rich: that is, nineteen cents on the hundred dollars. The gentleman from Todd shakes his head, but if it does not mean that it means nothing. I contend that the power should remain with the legislature to discriminate in respect to the articles of taxation. Such a discrimination should always be made, in a well regulated government, by diversifying the articles so as to make the tax fall upon the means of the county, and not upon its visible and tangible property. We know that there is a tax upon cattle; and the gentleman would prevent any discrimination after 1853 in favor of the poor man. Nor could we exempt the scientific apparatus of a college or a university. All the college books—all the college apparatus is to be taxed. Sir, what a strange spectacle it will be, to tax the articles belonging to our schools; but yet you will be able to exempt nothing. You will not be able to exempt a poor woman's property to the amount of \$50. She must pay at the same rate that would be paid on a piano. I know the tax falls very heavy on some of us. It falls very heavy on me. My ridiculous pride makes me carry a gold watch. My friend from Christian (Mr. Gray)—I will not say it is ridiculous in him—also carries one, and I have no doubt he will have a pair of gold spectacles. According to the old saying, "lawyers live well, work hard, and die poor." Some of us have not only a gold watch, but a gold guard chain, and if over fifty years of age, a pair of gold spectacles. Our old lady too, must have her gold spectacles, of course; and rich or poor, we must have our carriage, and if we have a daughter, she must have a piano; and to what does the tax amount? Why, take one lawyer with another, I think this specific tax will be about four dollars per annum. I repeat then, sir, that it is a tax which falls upon those who have the means to pay it. The gentleman's profession is worth \$2,000 per annum as his income, and the farmer's income is not more than \$300 upon \$10,000 worth of property, and his tax will be about five per cent. Now certainly you can better tax the piano of a rich man, than the cow or the horse of a poor widow. I would rather do it; and I would rather tax the fine gold watch, or the fine carriage of a gentleman of fortune than the college books. The gentlemen from Todd and Christian—and there are no gentlemen on this floor for whom I entertain a higher respect—should bear in mind that the specific tax falls upon the means of an individual; it falls upon the vocation of professional men, whether of medicine or of law. The farming community is unequally taxed. It lacks but a fraction of being five per cent. on his net income, for you may take all the lands, and negroes, and stock of this country, and I do not believe they yield a clear profit of three per

cent. And yet they are taxed about five percent. upon their income.

"Ah!" but says the gentleman, "we can increase the tax." Yes, you can increase the tax. The British government said, "we will impose a tax on tea." What was the consequence? Why it brought about the revolution. And in levying and increasing taxes here, I would say to the gentleman, "take care, for in overloading a horse, the last feather may break the horse's back."

A word or two as to the debt due to the school fund. The tax of two cents on the \$100, which was imposed last year will not pay the interest on the school fund. It will take three cents. How much then will raise the \$50,000 surplus to extinguish the debt? It will take another cent; that will be a five per cent. tax on the agricultural products of the community. I was down in the second auditor's office when the gentleman from Todd, (Mr. Bristow,) came to enquire whether the articles specifically taxed, were included in the valuation, and he said he could not tell, but Mr. Page told me that the attorney general said they ought to be. If the attorney general has given an incorrect opinion, it will be easy to leave it to the legislature to say that articles specifically taxed, shall not be included in the valuation. I do not say anything in regard to the opinions of attorney generals, but I will say that I have not always a great reverence for those opinions. Why, we had not been here more than ten days, before a "bed of justice" was held on this convention, and an opinion was given that if we staid here over sixty days, our pay would be brought down to two dollars per day. "No you won't," said I, when this was told to me; "we can unfrock you as quick as queen Elizabeth unfrocked the archbishop of Canterbury. You had better be a little careful what you are about, and not hurt our feelings." I considered the remark an insult to the convention.

Such, sir, is the way these opinions are given. There was once an opinion given by an attorney general that the governor had a right to remove his secretary of state, but the court of appeals decided differently, and so did the legislature, and the whole people of Kentucky. There was once an attorney general in France, Fouquier Tinville, who gave his opinion on individual cases that came before him, that certain persons should be guillotined, not because they were guilty, but because it was a matter of state policy. When Danton and Desmoulines were put upon their trial, and the jury 'hung' as we say in Kentucky; they refused to convict until they were told by the attorney general that conviction was necessary as a matter of state policy, and then they were sentenced to be decapitated, as it was a political measure.

Mr. President, attorneys general were always consulted when Caligula and Nero found or thought it necessary to cut off the head of any one, and they never failed to do it. Isaiah was a true prophet when he said, "The ox knoweth his owner, and the ass his master's crib." He told the truth, and no wonder that he was able to prophecy the destruction of Babylon, the great whore of the world. A member of congress once said of mankind, "He is a monstrous

big rascal." [Laughter.] The scriptures say the same thing when they say "The heart is deceitful above all things, and desperately wicked." Cromwell said, "God save me from Sir Harry Vane," and I say, "God save me from attorney generals opinions."

If I understood the gentleman from Fleming, (Mr. M. P. Marshall,) last night, to whom I listened with great pleasure, he contended that negro property should be taxed, to cover the loss of those negroes who absconded. How are you to prevent the citizens of Ohio, Indiana, and Illinois from tampering with slaves? Are you to do it by the erection of block-houses at different points from the mouth of the Big Sandy to the mouth of the Ohio? Are you to do it by indemnifying a man who runs to Ohio, Illinois, or Indiana, in quest of his slave? That would be very difficult. Are you to do it by contributing to the expenses? I could make a suggestion to my honorable friend, and I think he will then see the fallacy of his argument. In 1815, immediately after the war closed, there were innumerable applications to congress for indemnity for private property destroyed by the enemy. How was it destroyed in the city of Washington? Private rope-walks, and much other property was burnt or otherwise destroyed to the amount of millions of dollars. The committee of claims had a most important duty to perform in the settlement of the great principle which was involved. The United States were called upon to pay all these claims, and the committee of claims, of which I was a member, decided and reported that the United States ought not to pay them, for the reason that if they were to do so, the effect would be to change the character of war in the future, for if the government was liable for the property thus destroyed, the object of the enemy would be to destroy all they could in order to cripple the government. But if we do not pay them, the enemy will not destroy it. All nations set their faces against the wanton destruction of private property.

Now, I would ask if the emancipationists come over here, and induce our negroes to run away, are we to indemnify every man, to the amount, it may be, of \$500, for every negro he may lose? Sir, I regard this as neither more nor less than an emancipation law, in its tendency.

Take the position of the gentleman from Fleming (Mr. M. P. Marshall) in all its bearings upon the slaves of this country, no man could keep his slaves. The taxes on them would be so heavy as to become insupportable. The result would be, that men owning slaves would either move out of the country with them or sell them; and in either event, Kentucky, in less than ten years, would become a non-slaveholding state, and the whole object of the emancipationist would be fully accomplished, and that by our own solicitude, and the over anxiety of the pro-slavery men to guard with unnecessary vigilance the right to retain their slaves, and protect them in the use and enjoyment of that kind of property. If, by any system of measures either direct or indirect, Kentucky was to become a non-slaveholding state, what would be the result? It would give to the non-slaveholding states a majority of sixty or seventy members in the house of

representatives and four in the senate in the congress of the United States. The political consequences would be this, that the non-slaveholding states would in congress commence and carry on such measures, so at war with the institutions of slavery, as to compel the slaveholding states either to give up their property or separate from the other states and dissolve the Union. The latter alternative would be adopted, and the Union dissolved. I ask what would be the situation and condition of Kentucky then, would she attach herself to the north or south? If she went to the northern confederacy, what would be the result? A heavy tax would be laid upon all her products and manufactures sold to the tobacco planters, cotton growers, and sugar makers. The slaveholding states in the south furnish a market for nearly all Kentucky has to sell; she sells but little elsewhere. A heavy duty she would not submit to, and at the same time compete with Tennessee and Missouri, when those states would pay no duty. Louisiana once belonged to Spain, and so did Florida. Kentucky was the first state formed on this side the mountains—all our produce had to be sold to Spanish America. Spain levied a duty of six per cent. upon all we sold within her possessions, and six per cent.—an export duty—upon the money we brought from there, amounting in all to twelve per cent. Spain erected forts—one about six miles below Memphis, and the other at the Walnut Hills. These two forts made all the boats, descending the Mississippi, land and pay the six per cent. import duty. The export duty was levied and collected when our traders attempted to bring home the avails of their sales. These two duties—the import and export—were too heavy and oppressive. Kentucky could not bear it, and the government of the United States failed to obtain better terms and conditions from Spain. The people of Kentucky were much excited on this subject during the years 1793, '4 and '5. In 1795, the leading men in Kentucky sent the late Judge Sebastian to Orleans to obtain from the governor of Orleans a reduction in these duties, and to procure better terms and conditions in our commercial intercourse with Spain. I have said—and I repeat it—that the first men in Kentucky—great too as any in America—concurred in sending Sebastian to Orleans to make the commercial arrangements with Spain. The original papers connected with that transaction, were given to me near twenty years ago, either by Judge Sebastian himself, or his son, Dr. Charles Sebastian. I have some of them now in my hand—one signed by George Nicholas, Harry Innis, William Murray and Benjamin Sebastian—declaring the necessity of such a treaty, and appointing Sebastian to make and conclude such a treaty, or commercial arrangement, as the necessities of Kentucky required. I have also a copy of the treaty in the hand writing of Judge Sebastian.

The signatures of George Nicholas, Harry Innis, William Murray and Benjamin Sebastian, are genuine. I have shown them to their acquaintances and relations, and they recognize their respective signatures. I also had a paper of a similar character, signed by near one hundred gentlemen of Kentucky, to the same im-

port, or nearly so. I cannot now lay my hands upon it; if it is not mislaid, I have it at home. Sebastian went to Orleans, and in pursuance of his instructions, he made the treaty. It reduced the import duty to four per cent., and took off the export entirely; nay, the treaty went further—we had the permission to trade to all Spanish America on the same terms. It is the best commercial treaty we ever had with Spain. I am, Mr. President, greatly rejoiced that I have this opportunity to vindicate the names, characters, and memories, of the illustrious men who figured in this country in the days of other years—days that tried the souls of men—men who have been slandered by some of the histories of this country, in which they are branded as traitors and Spanish conspirators—men that I feel proud of, and so ought my country to be proud of. Thirty or forty years ago I knew most of them. I see in my mind, and can recollect exactly how they looked. They then had the aged and venerable appearance of the senators of Rome, seated in the senate chamber, when the Gauls took and destroyed the city.

I will read the papers I referred to here. They are genuine, and any person may inspect them:

"We consider it as essentially necessary to the interest of our country, that the application made to Mr. Sebastian by letter from the governor of New Orleans, should be seriously attended to. We are induced to be of this opinion, from a conviction that, the navigation of the Mississippi is indispensably requisite to the prosperity of the western country; and that there is now no longer a hope of our obtaining it by the intervention of the general government. Situated as this country is, there is no other mode in which communications respecting this important subject can be made but by, and to individuals; and as we have been addressed by the governor, we think we ought to meet his communication. It is therefore, with our unanimous consent and desire, that Messrs. Innis, Murray and Sebastian, or any one or more of them should go to New Madrid to meet governor Gayoso, to receive such communications as he may be disposed to make; to know in what manner, and upon what terms his Catholic Majesty is disposed to open to us that navigation; to point out to him the impossibility, arising from our situation, of sending agents empowered to negotiate with him; that it is the most favorite object with the citizens of this country to be on friendly terms with his Catholic Majesty and his subjects, and to carry on a free commerce, on terms of reciprocal advantage to both countries; that from the extent of our territory, and the rapid increase of our population, it will be impossible long to preserve peace, unless we are permitted to enjoy that commerce; to make a true representation of the present population of the western country, and of its probable amount within a very few years; of the different articles of export, which we can now furnish, of the quantity of each which could be exported at present, and of the increase of each kind which might be calculated on in a few years, if there was a certain prospect of a market for them; of the advantages that might be derived to both countries, should his Catholic Majesty make such regulations as would enable his American dominions to re-

ceive their necessary supplies from the western, instead of the eastern part of the United States; and of the opportunity which now occurs, of attaching the inhabitants of the western country to his Catholic Majesty, and his subjects; by voluntarily doing them that act of justice, which they no longer hope to be able to obtain by the aid of their own government.

"In testimony of our concurrence in every thing above stated, we have hereunto affixed our signatures this 19th day of November, 1795, in the state of Kentucky.

"G. NICHOLAS,  
"HARRY INNIS,  
"WILLIAM MURRAY,  
"BEN. SEBASTIAN."

"His Catholic Majesty having taken into consideration the relative situation of his province of Louisiana and its dependencies, and that part of the United States of America, lying west of the Apalachian Mountains, and being of opinion that a commercial intercourse between the two countries will be productive of the harmony and reciprocal interest thereof, has been pleased to concede to the people of the said western country, during his pleasure, the following privileges:

"1st. The people of the said western country shall henceforth freely use, and exclusively enjoy, for the purpose of commerce, the navigation of the river Mississippi, and all the ports and places thereon, under the government of his Catholic Majesty, subject to the same regulations and restrictions, and no other, by which the commerce of the subjects of his Catholic Majesty is now governed. And whereas the people of the said western country are now subject to the payment of six per centum, ad valorem, on all the produce of the said western country imported into the government of Louisiana and its dependencies, and also to the payment of the same duty on the exportation thereof, and his Majesty, being willing to remove every obstacle to that friendly intercourse which he is desirous to establish and maintain with the said western people, does hereby concede, that the said western people shall hereafter be subject to the payment of a duty of four per centum only, whether the produce imported be disposed of in the markets of Louisiana, or exported to foreign markets, and that the duty to be thus paid by the said western people shall be regulated by the valuation of their produce hereto annexed.

"2d. That there may be no impediment or obstruction to the fullest and most advantageous enjoyment of the privileges hereby granted to the people of the said western country by his Catholic Majesty, such of the said western people as may choose to reside in the government of Louisiana, for the purpose of carrying on commerce, shall henceforth be permitted to acquire by purchase, or otherwise, both real and personal property, in any port or place on the said river, Mississippi, or at any other place within the government of the said province of Louisiana and its dependencies, and shall be protected by the said government in the enjoyment thereof, the said residents being amenable, during their residence, to the same laws and regulations, by which the subjects of the said province are

governed; and should the said residents, or any of them, die in the said province, or think proper to remove to the United States, or elsewhere, their property, both real and personal shall, in the first case, be disposed of according to the will of the decedent, and, where no will has been made, shall descend to, and be distributed among the legal representatives of the deceased, agreeable to the laws of the said province; and in the last case, the removing resident shall have the liberty of disposing of the absolute estate in the whole, or any part of the property which he has either carried to, or acquired in the said province, and to transport the proceeds thereof, free from duty to any part of the world.

"3d. His Catholic Majesty, to evince to the said western people, his disposition to encourage the commerce of their country, hereby permits them when they cannot get a satisfactory market for their produce in the province of Louisiana or its dependencies, to export the same to the Havana,

or to any other port or place either in the United States or Europe; and the said produce, being exported to the Havana, or to any of the said ports in the Spanish dominions, having paid the duty in the province of Louisiana, and the proprietor thereof, taking from the proper officer in the said province authentic documents of the payment, shall not again be subject to the payment of any duty in any port or place in the said Spanish dominions, to which the said produce shall be exported, but the same may be disposed of in such port or place under the same rules and regulations which, at present, govern the disposal of the produce of Louisiana.

"4th. To prevent any misconception, or improper use of the privileges hereby granted, it is explicitly declared, that the importation of all articles of commerce, of what nature or description soever, which are not actually the production of the said western country, is absolutely prohibited; and if any person shall hereafter attempt, under any pretext whatsoever, to introduce into the province of Louisiana, or its dependencies, down the Mississippi, the products or manufactures of any other country, (unless specially permitted by the government,) the same are hereby declared to be contraband, and liable to seizure.

"5th. As the commutation of the products of one country for those of another, is the foundation of commerce, his Majesty, in order to establish that reciprocity of interest between his dominions and the said western country, without which, no commercial intercourse can be permanent, will cause a preference to be always given in his markets to the products of the said western country, and therefore expects, that the people of the said western country, acting under the influence of the same principle, will, in the purchase of such articles of commerce as they may need, whether foreign or domestic, prefer his markets to any other. And as a further inducement thereto, his Majesty, contrary to a long established rule of his government, does henceforth permit the people of the said western country to carry out of his dominions whatever money may remain to them, after completing their purchases, free from any duty or impost whatsoever."



Kentucky enjoyed the benefits of the regulations made by Sebastian until Spain transferred that country to France, and France to the United States; and after enjoying the benefits of Sebastian's labors for years—when the necessities for those regulations had passed away—Kentucky, for a time, forgot his services, and the whole legislature attacked him in 1806. Those that sent him who were alive—for some were dead—gave him no aid or assistance, and he sunk under the assault and fell a victim to the rage of popular fury. I trust in God that the present generation will do his memory justice for the consolation of his posterity.

Mr. President, I would vote very cheerfully for the amendment of my honorable friend from Daviess, if I did not think like my friend from Lewis, (Mr. Proctor,) that we are making a little too much noise about slavery.

I protest against wrapping up negro property as some midwife would wrap up a woman in sixteen blankets, because she has had a hard labour. Just let us put in the constitution what my friend from Woodford, (Mr. Waller,) proposed to day. That is my doctrine. Your negroes should not be set free, pay or no pay, unless they leave the state; and what is more, no free negro should come here. Slave property must be protected in this country. I am for protecting it upon another great principle, and here I know I shall be met hand to hand, by my friend from Bourbon, (Mr. Davis.) Whenever the foreigner comes here from Europe, I would say, naturalize him, and give him all the rights to which he may be entitled, but do not encourage foreigners to come to this state. New York has increased in her population, by reason of immigrants from Europe, at the rate of twenty per cent. Ohio at fifteen, and Pennsylvania, at fifteen. I thank God that the negroes keep them out of Kentucky, and that the northern states keep the foreign convicts and paupers generally, within their borders.

I have another reason; it is that the slaveholding population is the finest population the world ever saw. In a non-slaveholding country they view liberty as a political right; but in a slaveholding country they view it as a personal privilege, and would die sooner than surrender it.

I heard the gentleman from Bracken, to-day, and he spoke very much to my satisfaction. Like when Tom Owens tried the question whether a government could condemn a town for public purposes by paying the owner therefor—that question was tried as to Bardstown, in this federal court. Martin D. Hardin, and myself appeared for the town, and we argued the case three or four days. Judge Trimble delivered the opinion, and he was the clearest, most distinct judge in giving an opinion that I ever heard. He divided the subject out so handsomely, and with such perspicuity and order. While he was giving his opinion, one or two of the people of Bardstown, went up to him, crowded up very close, and stood there with their mouths wide open. (Laughter.) So it was with respect to the argument of the gentleman from Bracken, to-day. I was affected much in the same way, except that I did not open my mouth. (Laughter.) He presented the argument truly, but he did not go far enough. He made a mistake in

one thing, and that is, that the negroes pay more than one-fourth of the revenue. They pay nearly one-third. The negroes work the roads, while the whites are talking politics. I recollect going on a road in my county, where I saw sixteen hands, eleven of them were whites and five of them were blacks, and the whites were sitting on the bank on the road side, talking politics, while the negroes were working. (Laughter.) That was the way they spent their time. I recollect a mud hole in a fifteen feet road was to be stopped up in my neighborhood, and the overseer called out my hands to work, and I liked to have lost my whole crop of corn by it, (Laughter,) after that I petitioned the county to appoint me overseer, and I was overseer for twenty-five years, and I never called on a single hand all that time for work, for I did it with my own hands. No man can run against me for overseer in that neighborhood. (Renewed laughter.)

I say, the negro population do pay for three-fourths of the work done on the highway. They pay nearly one-half of the county levy, and within a fraction of one-third of the revenue. I hope I have not given any offence on the subject of taxation, to any gentleman. Many a man's fire has burnt over into another man's barrens. May be the speech of the gentleman from Todd, has burnt into the gentleman from Christian's barrens. (Laughter.)

Mr. President, Before I take my seat, I will in part recapitulate what I have said, and correct some inaccuracies I perhaps fell into. The specific duties of last year were as follows:

Carriages and Barouches	\$3,207
Buggies	1,542 50
Pianos,	1,540
Gold Spectacles,	600 50
Gold Watches,	5,934
Silver Watches,	1,418
Total.	\$14,242

The specific duties for this year, are as follows:

Total number of carriages, buggies, pianos, gold watches, gold spectacles, and silver watches, listed for taxation in Kentucky, for the year 1849:

	Number.	Tax.
Carriages and Barouches,	3,411	\$3,411 00
Buggies,	3,576	1,788 00
Pianos,	1,628	1,628 00
Gold Spectacles,	1,289	644 50
Gold Watches,	6,242	6,242 00
Silver Lever Watches,	2,933	1,466 50
	19,079	\$15,180 00

One third of this belongs to the sinking fund, the remainder to the common revenue. Take off the specific duties, and tax the same property according to its valuation, and it would not yield a revenue of \$4,000. There may be a few carriages valued at more than \$500, yet out of the 3,411, the number now given in, there would not be ten but would be valued by the assessors at less than \$500. They would not average more than \$200. Take the 3,576 buggies, and they would not be valued at more than \$100 each. Take the 6,242 gold watches, they would not be valued at more than \$100 each. The

2,933 silver watches would not be valued at more than \$40 each. The 1,289 gold spectacles would not be valued at more than \$10 each. The 1,620 pianos would not be valued at more than \$200 each, and it is in vain to tell us, as some have done, that to take off the specific duties and to prevent the legislature in future from ever imposing duties on the luxuries and superfluities of life, will be for the benefit of the poor man; such an assertion Davy Crockett would have called "not good nonsense."

Mr. BRISTOW. I have ascertained that I can accomplish my object in another way. I therefore move to amend the section, and in this I have the approval of the mover of the original section, by striking out all after the words, "taxation shall be equal and uniform throughout this" and inserting the following, "commonwealth, and after the year 1853, all tax levied for state purposes shall be equal and uniform, nor shall any one description of property be taxed higher than another in proportion to its value. But the general assembly may authorize the several towns, cities, and counties, to impose taxes for town, city, county, and corporate, and other purposes, respectively, in such manner as may be authorized by law."

Mr. GRAY. I have no objection to the language of that amendment. My object is to introduce into the constitution a just mode of taxation.

Mr. TRIPLET. There should be some way by which we can accomplish two objects, provided both are good. If I understand the proposition of the gentleman from Christian, (Mr. Gray,) it aims at that at which I have been aiming since I first took my seat here. I think there are at least eighty-four members of this body in favor of the object which I would accomplish, and there are not more than thirteen who have a different object in view. We are placed in a peculiar situation indeed, when by the rules of this house or otherwise, the will and settled determination, as I believe, of three-fourths of this convention cannot be carried into execution. It ought not to be so. Delegates, whatever is our will, we should have the power to execute. It is demanded at our hands by our constituents. I am opposed to the taxation of slaves for improper purposes, but I am willing they should be taxed for proper purposes, as high as other property. If any man will oppose that principle, let him rise now. Then how many are there who wish slaves taxed for improper purposes? Would not that be to deprive the owners of their slaves by legislation? It is emancipation by direct taxation. Let me not be mistaken. The object I aim at, and at which you aim, if you are honest and mean what you say, is the same. If men are not honest, and do not mean what they say, then it is our duty to head them. (A voice, amen.) Amen. Yes, every gentleman in this house will say amen.

Does this house wish to place itself in a position by which they cannot attain that object? I do not believe they will do it. I have made one proposition to the house. If gentlemen do not like that, still I say, attain your end before you stop. Is it possible this convention will determine, that although the slaveholder cannot now be deprived of his property without compensa-

tion, it may hereafter be done? Does the gentleman from Christian deny that he aims at the same end which I would attain? Why do you introduce that proposition if not for this? Turn down all but the first line, and it aims at the same end. But I have learned to speak out, and the difference between me and some other men is, that I have learned to speak, and do speak in plain English. Is there any difference between the proposition of the gentleman from Christian and mine, except that mine authorizes the legislature to tax luxuries or articles which are not the necessities of life, which his does not? Then what do you aim at? It is to protect slave property. We all aim at that end. And I cannot and do not believe we have so trammelled ourselves by rules of order, which were made, or should have been made, to facilitate the transaction of business in the convention, instead of embarrassing it, that we cannot attain that object, and at the same time attain another but minor object, by leaving the legislature at liberty to tax, at their reasonable discretion, the luxuries, or such articles as they may deem to be the luxuries, as contradistinguished from the necessities of life—such as carriages, pianos, gold watches, &c. My amendment, at the same time that it accomplishes the first object, of preventing any future legislature that might be so disposed, hereafter, from laying specific or special taxes on slaves for the illegitimate purpose of rendering them of no value to their owners, leaves them subject to all legitimate taxation for the purposes of revenue; and, also, leaves the power with the legislature to tax the luxuries I before mentioned; whereas, the original proposition of the gentleman from Christian, (Mr. Gray,) deprives the legislature of this latter power entirely—and to that I object, and I believe a large majority of this house will object.

But, before I leave this subject, I want to get the vote and aid of my friend from Fleming, (Mr. M. P. Marshall,) my old friend and only schoolmate now living in Kentucky. I want his vote; and he says he concurs with me in the main great object I wish to accomplish, and he will willingly vote with me, provided another object is attainable which he thinks justice requires—and that is: that all expenses incurred by the state in preventing the escape of slaves from the state may be taxed on the slave property; because he believes the institution of slavery should maintain itself; and his plan is, that such a police force shall be stationed along the Ohio river, as will prevent the escape of the slaves from their masters. Now sir, a cordon of sixteen thousand troops, reaching six hundred and twenty-four miles—for that is the estimated length of the frontier of Kentucky on the Ohio river—could not protect this property, even in day light, because one man could not see all the way to another; and, unless they are in sight, or nearly so, of each other, they could not prevent the escape of the fugitive slaves between them; and at night, ten times that number would not be sufficient to afford efficient protection to this property. And if you were to place your police, or other force, on the river, I tell you the whole navy of Great Britain extended on the Ohio river would be unavailing to attain that

and. You therefore aim at an impossibility. When it is demonstrated to be so, neither taxation on slaves or all the balance of the property of the commonwealth can attain the object.

What is the other position of the gentleman from Fleming in relation to slaves executed for crimes? I am perfectly satisfied that my friend from Fleming is the last man who would claim that the commonwealth should pay for a slave executed for crime from slave property only. Why is the life of the slave taken? Is it not for public security? Five sevenths of the voters in Kentucky are land holders. And all who are land owners, and a large proportion of those who are not land holders, are interested in that public security—indeed all the settled population of the state have the same interest; then by no calculation can you show that slave holders alone should pay for securing the public safety and security, which requires the execution of a slave. The slave is private property, and the constitution, as it now stands, as well as every principle of justice and common honesty, requires that private property should not be taken without full compensation to the owner. And the state pays for the slave because the slave is executed for the public good. I hope therefore, I shall attain his vote. I think I have a proposition which will attain the object aimed at by the convention. Is there no way by which we can prevent slaves from being taxed for improper purposes? When gentlemen see that this is one of the means proposed to accomplish emancipation, directly or indirectly, by driving the slaves from the state; will they hesitate what course to pursue? If we do not interpose this provision in the constitution, by and by the course taken will be this: You tax them twenty dollars this year, and by and by a hundred, and when a specific tax to that amount is laid upon them, they cease to be of value, and are, at least, really driven from the state. If we have the power, ought we not to exercise that power? Yes sir; and now or never is the time to do it. Just this day you must exercise the power you have, if you want to protect your slave property from improper taxation; for if the sun of this day sets without this power having been exercised, it is gone, and gone forever. Let us exercise it by some means or other by placing the necessary restraint on the powers of the legislature, on the subject of taxation, which is the only power they can exercise under this constitution to attain their end, should they aim at driving the slaves from the state.

My object is to leave to the legislature also the power to tax incomes. I agree with my friend from Nelson, (Mr. Hardin,) that no means of raising a tax is borne more willingly by the people of Kentucky, than the tax on incomes, direct or indirect. Instead of taxing interest on notes, we now tax notes themselves. This is an indirect income tax. I would go further, and would tax incomes as incomes. Shall we deprive the legislature of that power? No. I am opposed to that. Then shall we go further, and deprive the legislature of the right of taxing the superfluities of life? No sir; because all who buy them do it with the understanding that they are to pay the tax which is upon them. There is no injustice in regard to them. When I bought my

watch, my spectacles, or my carriage, I knew there was a tax on them. I thought with myself in this manner: Am I willing, in order to enjoy the luxury of a piano for my family, to pay, in addition to the price of the piano, one dollar per annum to the state as a specific tax? So all reason with regard to these articles, and a hundred others, which the legislature might tax. It is a part of the contract when the article is bought, and of which the purchaser has no right to complain.

The specific tax amounts to about \$15,000 per annum. That is a matter of some importance. A portion of this goes to the sinking fund, and I do not want to deprive that fund of one dollar. Here is an argument which I will address to the gentleman from Fleming. What has become of the money raised by the taxes on slaves, when they have for years past paid one-third of all the taxes raised in the state? What has become of the \$3,000,000 borrowed on the faith of the state, for the purposes of internal improvement? It never came into the treasury. It has gone to add to the value of the lands of the state, through these internal improvements. Look and see how the lands along the line of these improvements, whether by rail roads, slack water, or other means, have increased in value. These improvements have more than doubled the value of your lands, and what have we got for it? Not one solitary cent. Our slaves paid one-third of the money, or will have to pay it; and your lands got the benefit. We did not complain of that. All that we now ask, all that I ask for my constituents is, that you will not deprive the legislature of the power of laying any kind of tax hereafter on the luxuries and superfluities of life, for the purpose of paying off the principal and interest of that debt, as far as it will go. Five ninetieths of the money now raised by the specific tax goes into the sinking fund. It is not right nor just to deprive that fund of this money without supplying some other means. If it is taken off from these luxuries, you must put it on lands, or slaves, or some of the necessities of life. This specific tax is not complained of so far as I know.

The objects at which I aim I think can be obtained by my proposition; but on the request of my friends, I have agreed to withdraw it for the present, in order to know whether the proposition of the gentleman from Todd will be adopted by this house. If that is adopted, then I want to provide also, that the legislature may lay a tax on the luxuries of life.

It is my habit when I have a proposition, to go for success, and I care not who furnishes the means. Accordingly, I shall withdraw my proposition, and shall vote for the proposition of the gentleman from Todd, and then it will be our duty to add the section which will give power to the legislature to tax the luxuries of life.

Mr. MERIWETHER. A good deal has been said here about the poor man, and many gentlemen have professed very great love for him; but I ask those gentlemen to examine the principle of specific taxation and see whether it acts on the poor and the rich alike. Take the instance of a carriage. If an individual rides in a carriage that cost \$1,200 or \$1,300, and pays a specific tax, he pays no more than an individual

who rides in one of less value. Take the magnificent barouch and the costly buggy, and you will see that they pay no more tax than those of small value.

Mr. BRISTOW called for the yeas and nays on his amendment, and they were—yeas 53, nays 35.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, William Chenault, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, William Hendrix, Andrew Hood, James W. Irwin, Alfred M. Jackson, William Johnson, James M. Lackey, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Hugh Newell, William Preston, Johnson Price, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, John D. Taylor, Philip Triplett, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—53.

NAYS—John S. Barlow, Luther Brawner, Jas. S. Chrisman, Henry R. D. Coleman, William Cowper, Garrett Davis, Green Forrest, Selucius Garfield, Ben. Hardin, John Hargis, Thomas J. Hood, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, George W. Mansfield, Martin P. Marshall, William N. Marshall, Nathan McClure, Jonathan Meweum, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, James W. Stone, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, John Wheeler, Charles A. Wickliffe, Silas Woodson—35.

So the amendment was adopted.

Mr. KELLY moved to amend by striking out all after the word "value," and inserting the following:

"*Provided*, That the general assembly may impose specific taxes; *And provided further*, That said specific taxes be graduated according to the value of things taxed; and that slaves shall not be specifically taxed, except the poll tax for county, city, and town purposes, and that cities and towns may be allowed to tax specifically for corporate purposes."

The PRESIDENT decided that it was not in order to move to strike out that which the convention, by a vote, had inserted.

Mr. C. A. WICKLIFFE called for the yeas and nays on the adoption of the section, as amended.

Mr. MERIWETHER moved to amend by adding a provision to tax corporate stock specifically.

After a few words of explanation from Messrs. HARDIN, DAVIS, MERIWETHER and PRESTON,

Mr. MERIWETHER modified his amendment so that it would read as follows:

*Provided*, That corporate stock, privileges,

licenses, and franchises, may be taxed specifically.

The question was then taken on the adoption of the section, and the result was—yeas 39, nays 50.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Alfred Boyd, Wm. Bradley, Francis M. Bristow, William C. Bullitt, William Chenault, Beverly L. Clarke, Jesse Coffey, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Nathan Gaither, Thomas J. Gough, Ninian E. Gray, Andrew Hood, James W. Irwin, Thomas James, James M. Lackey, Alexander K. Marshall, William N. Marshall, David Meriwether, William D. Mitchell, John D. Morris, William Preston, Johnson Price, Ira Root, James Rudd, Ignatius A. Spalding, Philip Triplett, Henry Washington, Andrew S. White, George W. Williams—39.

NAYS—John S. Barlow, Luther Brawner, Jas. S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Garrett Davis, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Thomas J. Hood, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—50.

So the section was rejected.

Mr. MERIWETHER then gave notice of his intention to move a reconsideration of the vote adopting the twentieth section, which had become inapplicable since the rejection of the nineteenth section. He moved that the rule be dispensed with, which required a motion to reconsider to lie over.

The motion was agreed to.

The vote adopting the section was then reconsidered, and the section was rejected.

The amendment submitted by Mr. DAVIS on Thursday was then taken up for consideration, as follows:

"Sec.—The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to his property is the same, and as inviolable as the right of the owner of any property whatever."

Mr. TURNER. I want to ask the gentleman from Bourbon if we should make a constitution, and say in it that involuntary servitude shall not exist except for crime, whether slavery will still exist in this commonwealth? If he contends for that, I shall understand where he is, and what is his position.

Mr. DAVIS. I did not intend to solve that proposition, but I will use this language—that this convention has no right to pass an agrarian law. It has, however, as much right to make a provision to take and distribute our property in

land, as it has to take away our property in slaves, without paying for them. They have as much right to take away our property and apply it to a system of common schools, as to take away our slaves without our sanction.

Mr. MITCHELL. This section contains two propositions, and I therefore ask for a division of the question. For the first I cannot vote; the second I am prepared to support.

Mr. DAVIS. Before the question is taken, I desire to modify my proposition by the addition of the words, "and its increase," after the words, "and the right of the owner of a slave to his property."

The PRESIDENT. The gentleman has the right to modify his proposition.

It was so modified accordingly.

Mr. GHOLSON. I hope there will be no division of this proposition, but that the question will be taken upon it as it stands. If there is any proposition that is true—if there is truth in the declaration that man has certain inalienable rights, of which he cannot be deprived but by violence—then this must be true. I hope, therefore, there will be no division upon it, and that it will be adopted unanimously.

Mr. CLARKE. This proposition meets my entire approbation. I am perfectly satisfied that the right to obtain and to enjoy property is a right that has existed, and that will always exist, independent of any constitution that may be made; and that to deprive citizens of the enjoyment of that right, would be to deprive them of the means to sustain life. I am also well satisfied that no distinction can be made in Kentucky, or in any other slave state of this Union, between property in a slave, and property in land, or in a horse. And I think it proper and fitting under all the circumstances by which we are surrounded, that we should declare that such property does exist, and that every citizen of Kentucky has the right to acquire and enjoy it. I hope the section will be adopted.

Mr. MITCHELL again asked for a division of the question.

The PRESIDENT. Before putting the question, with the consent of the convention, I will state the principles upon which I shall cast my vote against both branches of the section. We have already provided that private property, including slaves, shall not be taken for public use without compensation to the owner first made; and we have a report upon the subject of slavery for which I intend to vote, declaring that the general assembly shall not emancipate slaves without the consent of the owner, or without full compensation being first made. Such is the justice and the security I am prepared to give the slaveholder. They should, in my opinion, be satisfied with that. I think the proposed section not necessary to the security of that kind of property and the rights of the slaveholder, and that there is no necessity to put the section in the constitution. The provisions made, and to be made, will restrain the power of the legislature over private property and slaves, and but for those provisions the legislature might enact laws to take private property without paying the owner for it, and might emancipate slaves without the consent of the owner and without paying for them.

I believe the right to all property is conventional, and that a people, in forming their organic or constitutional law, have a right to declare what shall and what shall not be property, and the mode of passing it from one to another, and if they do not restrain the legislative power, that the legislature will have the whole power over property; therefore, I do not believe the section declares a correct principle. I can imagine a case, where it would be the right of a people, for self-preservation, to drive out slave property without the consent of the owner and without compensation. The law of self-defence belongs to a nation as well as to individuals. The declaration contained in the section does the slaveholder no good, and will not bind the majority of the people when that majority shall believe the peace and happiness of the state, or the protection of the lives of the citizens, shall demand the slaves to be driven out.

Mr. NUTTALL. On this question I call for the yeas and nays.

Mr. THOMPSON. I can see no necessity for encumbering the constitution with such a provision. As I understand it, it is proposed to incorporate this section in the Bill of Rights. To this I am opposed, for I think it is so perfect that we need not cross a T nor dot an I. Have we not every guaranty that private property cannot be taken unless compensation be made for it? Why then are we to throw down the gauntlet to the adversary? How do we hold our property? Is it not under the sanctions of law? And what greater security shall we have if this provision be adopted? Of what value will any paper constitution be when a majority of the people shall be arrayed against it? I am a native born Kentuckian, and a large part of the property I possess consists of slaves, but I subscribe to no such doctrine as that which assumes that the people have no right to change their institutions.

The previous question was moved and the main question was ordered.

The question was then taken on the first branch of the proposed section, in these words: "The right of property is before and higher than any constitutional sanction," and it was adopted—yeas 65, nays 23.

YEAS—Richard Apperson, John L. Ballinger, William K. Bowling, Alfred Boyd, Wm. Bradley, William C. Bullitt, William Chenault, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Benjamin F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Andrew Hood, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Wm. C. Marshall, William N. Marshall, Nathan McClure, Thos. P. Moore, John D. Morris, Jas. M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, John J.

Thurman, Howard Todd, Philip Triplett, Henry Washington, John Wheeler, Robert N. Wickliffe, George W. Williams—65.

**YAYS**—Mr. President, (Guthrie,) John S. Barlow, Luther Brawner, Francis M. Bristow, Benj. Copelin, Chasteen T. Dunavan, Milford Elliott, Selucius Garfiede, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Alexander K. Marshall, Wm. D. Mitchell, Hugh Newell, Ira Root, James Rudd, William R. Thompson, Squire Turner, John L. Waller, Chas. A. Wickliffe, Silas Woodson, Wesley J. Wright—23.

The question was next taken on the second branch of the proposition, as follows: "and the right of the owner of a slave to his property and its increase is the same, and as inviolable as the right of the owner of any property whatever," and it was adopted, yeas 77, nays 10.

**YAYS**—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, William C. Bullitt, William Chenault, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Andrew Hood, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, William N. Marshall, Nathan McClure, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Geo. W. Williams—77.

**YAYS**—Mr. President, (Guthrie,) Francis M. Bristow, Milford Elliott, Selucius Garfiede, John Hargis, William Hendrix, Ira Root, James Rudd, Silas Woodson, Wesley J. Wright—10.

**MR. C. A. WICKLIFFE.** I move to reconsider the vote just given, and I do so, Mr. President, to do what the demand of the previous question prevented. It is to state the reason why I voted for the last clause and against the first clause.

The last clause declares that the right of the owner to his slave and the increase of the females, is protected, and as secure as other property. There is no increase till born; when born, under the constitution, the increase, like all other property, is protected by the constitution and laws just to the same extent as other property; and I deny the power of the legislature to emancipate future increase.

But do gentlemen intend to declare by the first clause in this section, that there is no power in the people of Kentucky, by constitutional

provision, now and in all time to come, to declare that no person born in Kentucky after the year 1900 shall be held to involuntary servitude without crime. Though a pro-slavery man, the owner of slaves, and opposed to emancipation, present or prospective, in any shape or mode which has been suggested, I cannot deny the existence of such a power. I must leave my countrymen free to exercise it by changing their organic law or form of government. Whenever the majority shall will such a change, and to exercise such a power, they will do so by a change of their constitution and form of government, and will regard your declarations of abstractions as idle wind.

Having given the reasons for my vote, I withdraw my motion.

**MR. A. K. MARSHALL.** Mr. President, I offer the following as an additional section:

"That neither this convention, or any hereafter to be assembled by the people of this commonwealth, has any right or power to either emancipate the slaves now in this state, or their descendants; or to authorise the legislature to pass laws for their emancipation."

My vote, sir, on the section just disposed of, is expressive of my opinions, and therefore, I need say but little on that which I have now offered. I believe, sir, I shall vote against my own proposition, but I desire some gentleman here clearly to express their opinions by their votes on the subject. If they think it possible, permanently to fix slavery in this commonwealth, I wish them to say so.

There is not a man in Kentucky who is more thorough, and a more ultra pro-slavery man than I am. I go further than the furthest. Instead of holding that slavery is either a moral or a political evil, I believe that it is a moral and political blessing. If Kentucky were a free state, and slavery existed in any other state of this Union, I would give my vote to introduce it into this state. Yet, sir, I cannot say that the people of this commonwealth have not entire control over it, and that, if they think it an evil, they cannot remove it from amongst them.

There are gentlemen here, however, who have professed to believe that the right to this property exists above all constitutional provisions; and if so, it may be well perhaps, to stick in a little constitutional provision, and say to future generations that it is fixed on them forever. I hope that those gentlemen who voted for the first clause of the section just adopted, will vote for my proposition, for I cannot do it myself.

**MR. GARFIELDE.** I do not see any necessity for these additional sections. That which has been just adopted covers the whole ground. The proposition has been asserted that the right of property in the increase of slaves *in futuro*, is just as much "before, and higher than any constitutional sanction," and is "as inviolable as the right of the owner of any property whatever," as in those that are in actual existence. That, I understand, has been adopted, and if so, that covers the whole ground of the amendment proposed by the gentleman from Jessamine, and hence I see no necessity for his additional section.

It was a matter of regret with me that the gentleman from Nelson, (Mr. C. A. Wickliffe,) withdrew his motion to reconsider, for the vote



which some of us were called upon to give on the adoption of that section, if unexplained. placed us in a wrong attitude before the public. It has become the practice, I believe, when a question is before the convention to speak on any other subject, and I shall therefore take this opportunity to set myself right.

In the first place, by my vote against that section, I neither affirmed nor denied its truth. I but simply say what my constituents told me to say, and that is to sustain the same provision that is in the old constitution respecting slavery, with one exception, and that is respecting the removal of the emancipated slaves out of the state. It was therefore in obedience to the instructions of a pro-slavery county that I voted, and not because I believed the proposition either true or false in itself.

Mr. CLARKE. Mr. President, I offer this as an amendment to the section of the gentleman from Jessamine:

"Unless all the people owning that species of property in the state, shall sanction such emancipation, or just compensation be made for the slaves emancipated."

Mr. DAVIS. My own sentiments are embodied in the proposition which I submitted to the convention. I do not think it necessary to iterate and reiterate principles that are substantially the same on this subject, and for that reason I shall vote against the proposition of the gentleman from Jessamine; and if my opinion should hereafter be asked for, which I do not expect, because that can be a matter of so little moment, I will refer to the section submitted by me to show what it is.

The proposition which I presented was twofold. In the first place it sets forth the general principle that the right of property was anterior to the constitution, and that it was before, and higher than constitutional sanction—that it existed before there was any constitutional sanction; and whether or not it had any. Such is the first position which I occupy. Now I say, without reservation, that this convention has no right to abrogate, to annihilate all property in the commonwealth of Kentucky. Suppose this convention were to frame a constitution, to go into effect at once and absolutely, a provision which should declare, that individual property should no longer exist in Kentucky. Such a provision would have no effect, no legal force, but would be void. If you concede that general position, you yield all I ask, in relation to slaves; for if this convention has not the power to abolish all individual property, it has no authority to expunge the right and the ownership of individuals in upwards of 200,000 slaves. If this convention could, by a scheme of emancipation, without paying for the slaves, wrest them from their owners, what is there to prevent it from inserting a clause in the constitution, that the estate and right of all individuals to lands, should be abolished, and no longer have any legal existence whatever. No delegate I presume will controvert the position, that this convention might make a new constitution, to go into effect without its being submitted to the people, but at once, upon its being agreed to and promulgated by this body. Suppose that course was taken, and a most explicit and complete provis-

ion, abolishing, as effectually as language could express it, all right and property in real estate for every purpose, was incorporated in it; and when each gentleman here reached his home, he found his family expelled from his domicile, by an intruder, would we all be without legal remedy in the premises? Would our rights have been annihilated by such a provision in the constitution, and we forever be cut off and exiled from our comfortable possessions? No, upon an appeal for redress against the wrongdoer in the ordinary form of suit, the courts would decide such a provision, even in a constitution, utterly null and void, as being in subversion of the right of property, to secure, and not to destroy which, the government and constitution were formed. Suppose we make a constitution emancipating the slaves without compensation, to have immediate and absolute effect. Would that extinguish the right of every slaveholder of 200,000 slaves, and strip the owners of \$70,000,000 of property, of their rights? If such a regulation would be void as to land, what principle, what magic power would make it legal and valid as to slaves. Such a provision as to both subjects must be conceded or rejected; otherwise there is a distinction between property in slaves and other subjects, by which a man may be legally and rightfully, against his will and without compensation, deprived of his slave, when his right to his other property would be impregnable. There is no escape from this dilemma. I pronounce that we hold both our lands and slaves by the same right and title, and that such a constitutional provision in relation to both would be equally void.

This convention is a constitutional body, called and organized according to the forms prescribed by the existing constitution, and circumscribed by its provisions and principles, so far as they are limitations and restrictions upon the power of government generally.

Art. 10 in the existing constitution, declares among other things: "that all power is inherent in the people, and all free government are founded on their authority, and instituted for their peace, safety and happiness.

"That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences.

"That in all criminal prosecutions the accused hath a right to be heard by himself and counsel; to demand the nature and the cause of the prosecution against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself, nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

"Nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

"The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty."

The twenty-eighth section of this article (10,) reads:

"To guard against transgressions of the high powers which we have delegated, we declare, that every thing in this article is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this constitution, shall be void."

Some gentlemen claim for this convention illimitable authority—all power. Let us test that position. Suppose we were to make a constitution to go into full effect immediately, without being submitted to the people for their ratification—that this constitution declared and provided that no power whatever is inherent in the people, but all power, by divine right, belonged to some individual, and naming as absolute king him and his heirs in succession; abolishing popular government, and declaring that the life and liberty of every individual was held subject to the will of this king; that private property no longer existed, but every subject of property was vested absolutely in the monarch; that there should be no worship of Almighty God whatever, but all adoration should be paid to the king; and that no person should speak, write, or print any thing whatever upon government, politics, or religion. Would a constitution formed and promulgated by this convention, containing these provisions, be of valid and of binding obligation upon the people of Kentucky? I have put a strong case, but all its branches are modes of the exercise of power which might be connected with political government, and all such power is claimed by some for this convention. Power in the purposes of the government of man, has, among one people or another, and in some ages of the world, been exercised in forms quite as oppressive and revolting as it would be in such a constitution—indeed, in exactly the same features. Gentlemen may answer, that no convention would ever be so wicked or mad as to devise and establish so monstrous a constitution. But that would be an evasion of the question between us. Your proposition is, that in this convention dwells all the fulness of power as it might be exercised in human government. I have presented you some supposititious examples, such as by historical record have often existed, and as may again exist, and many of which are now bowing down into hopeless slavery numerous communities of civilized man. Were this convention to embody such perversion of power in a constitution, and throw it upon the people, would those revolting provisions be the supreme law? I say, no; and there will be none to take the affirmative of the proposition. Then, what great truths, what fundamental and overruling principles would arrest such a constitution and nullify it? The tenth article of the present constitution, and the imprescriptible and enduring rights and liberties of the people therein proclaimed, which are excepted out of the general powers of government, and proclaimed to remain inviolate: the inviolability of the rights of person, of property, of adoration to Almighty God, and others of only secondary importance:—these inappreciable rights and liberties, that so far from being created or instituted by the constitution, existed

and were enjoyed by the citizen before we had constitutions, and to secure which in peace and perpetuity, the constitution itself was formed, can never be destroyed by it or in it; and any of its provisions having such purposes and effect, would be absolutely void.

I will advance another step in this view of the subject. Suppose such a constitution formed and imposed upon the people, even with the sanction, and its validity upheld by the majority—would it have a legal and rightful obligation upon the minority? I reply no! Attacking and destroying all the essential rights and ends for which society and government in this country has ever, and does now exist, it would be a revolution brought about without rightful authority, violent, wrongful, and oppressive; and the minority would have an unquestionable right to resist it forcibly. It would be the most flagrant tyranny and oppression, and will free-men ever concede that they have not the unalienable, eternal right to resist oppression?

It is not necessary for me to attempt to define what character and extent of encroachment upon existing rights and liberties, by this convention, would amount to unauthorized revolution, and which those opposed to it might rightfully resist—it is enough for me to say, that all the changes which I have suggested would amount to such a case. That the total and unconditional abolition of the worship of God; that the denial of any political power in the people and the investiture of all of it in one man; that the abrogation of all constitutional and legal provisions for the security of person and personal liberty; that the denial and annihilation of individual property in the lands of the state, being of the value of \$127,000, and belonging to 90,000 persons; that the emancipation of more than 200,000 slaves without compensation, worth \$80,000,000, and the property of 30,000 persons, would each and all be the usurpation of unauthorized and tyrannical power, and in subversion of the primary and chief objects of our government and our constitution; and any attempt to enforce them would be a violent and lawless revolution which every good citizen might, and every friend of liberty would resist to his utmost. Such resistance, in some of the classes of cases at least, all would acknowledge to be the highest duty and patriotism, and its success the greatest blessing to the whole country.—Among the whole people, the free citizens of the United States, the parties to our social compact, whose honor and faith are mutually pledged to each other for the maintenance and inviolability of those great rights and liberties, the principles which apply to and govern each case are the same. If there be different principles of right or law, which apply to property in slaves, and which give to this convention a greater power over them, than all other subjects of property, I challenge any gentleman, who maintains such difference, to name specifically and distinctly those different principles of right and law. The natural right of the slave himself to his liberty is a very different question, and is one between himself and his owner. It may be a question between the slave and the government and the whole people of Kentucky. But slavery having existed from the earliest traditions of history;

and in all the forms and with all the rights as we have it, first in the colonies and then in the United States, for three hundred years; established by, and until lately existing under the authority of almost every civilized nation of the earth; recognized and enforced by treaties between sovereign powers, by national and general law, by constitutions, by municipal and statutory law; and in Kentucky its sanctions and inviolability, existing precisely as those of all other property, neither this convention, nor a majority of the people can emancipate them without a proper compensation to their owners. I concede that a majority of the people can rightfully, by the agency of a convention, take all the slaves in the state and emancipate them; but not in the rightful exercise of power, except on the condition of paying for them out of the public treasury. Whenever a clear and decided majority of the people, in my day, determine to put into execution a system of emancipation, based upon this principle, I am ready to go with them. But I am opposed to forcing, or attempting prematurely any such scheme. I am for awaiting the spontaneous and general action of the people in its favor. If to this it be objected, that the people will never consent to pay for the slaves, I answer, they cannot emancipate, with a due observance of justice and right to the owners, without it. If it be said that any scheme of emancipation, upon the principle of paying for them, would necessarily be so difficult and tardy in its execution as to continue through generations, it might be answered, that would be for the better; for then it would be so gradual as to introduce no great disorders or sudden changes in society, and the institution would disappear so gradually as to produce no shock, no great popular commotion.

But it appears to me, that any intelligent and carefully reflecting mind, must come to the conclusion, that slavery is to have but a transitory existence in Kentucky. The general sentiment of the world is against it, before which, in fifty years it has receded vastly; and this sentiment is deeply and widely formed in our limits and among our own people. In all the free states it is universal, and it exists in such intensity and activity, that hereafter, it will be an accident for a fugitive slave to be reclaimed from any of them. The climate and productions of Kentucky do not peculiarly require slave labor; in the southern states it is different, and there a great demand exists for slaves, and must continue until their vacant lands are settled. The insecurity of the property in our state, the great and continual demand for it in the cotton and sugar states, the extending disposition among our people individually to emancipate—these and other causes which are now powerfully acting, and which will continue to act with increasing force, will, in the course of a few generations, remove slavery, in its existing form, from Kentucky. If left to itself and the forces now acting, and which must continue to act upon it, the remedy for it will be more proper, peaceable and effective than any the meddling of the day would, or could, apply to it. The history of slavery, as we have it, proves in all the pages of the past, that it is progressing to its end. That consummation is in the course of

events, and when men throw themselves in the current of events to hasten or to retard, they are but straws. Let all straws be kept out of that section of this resistless current which flows through Kentucky, and let it roll on in its undisturbed power.

In any thing which I have advanced, I do not intend to controvert the right of every people and state to adopt all and any measures which shall be necessary for their self-preservation. That is the paramount and immutable law of man and nature, and cannot be controlled by any human regulations. If the slaves were to revolt and the insurrection could be brought to an end only by driving the slaves out of our limits, it would be right thus to expel them. Because this would be a measure necessary for the protection and preservation of the whole community. If the slaves could not be kept among us without bringing upon our social organization certain ruin and dissolution, and the state and all its citizens had not the means to pay for them, the commonwealth might throw them from her without paying for them. This principle was illustrated some days since by the gentleman from Nelson, (Mr. Hardin) in putting the case of a boat being wrecked in the Ohio river, and two passengers being thrown into the stream on the same plank, which was sufficient to save but one. The stronger would have the natural right to push the weaker off, even inevitably to perish, that he might save himself. But if that plank, plainly and obviously, had size and buoyancy to float them both, and carry them to shore, the strong man would have no right to force the other from the plank; and if he did so, and the other was drowned, he would be guilty of a crime, and that crime would be no less than murder. So, as long as the slaves may remain here without bringing into imminent danger the white population, or the continuance of the society; and so long as there are means besides in the state to pay for them, no convention, no majority however great and overwhelming in numbers, can rightfully emancipate the slaves without making a fair compensation for them.

And then the convention adjourned.

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MONDAY, DECEMBER 10, 1849.

Prayer by the Rev. Mr. WARDER.

SPECIAL COURT OF APPEALS.

Mr. APPERSON. I submit to the convention the following resolutions:

*Resolved*, That the committee on the court of appeals inquire into the expediency of authorizing the general assembly to provide in certain cases for a special court of appeals.

*Resolved*, That the committee on the circuit courts inquire into the expediency of permitting the general assembly to provide, by law, for the holding of circuit courts by others than the judges thereof.

I will make an explanation of the object of these resolutions. It might happen in electing

a judge of the court of appeals, that a circuit court judge would be placed upon the bench of that court. It has been so frequently, and a case has come up which could not be determined for the want of a majority of judges to sit on the bench. It may happen also, that a case is decided in the circuit court affecting the interest of one of the judges of the court of appeals, or some of his relations. This resolution, relating to that court, is only one of inquiry, whether in such case as either of the above, it may not be expedient to provide for a special court of appeals, so that the legislature might make some provision that a portion of the judges of the circuit court should come in and form a part of the appellate court.

The second resolution provides for holding the circuit court in case of the illness of a judge of that court. This has been done in other states, and I hope the resolutions will be adopted.

The resolutions were adopted.

#### MODE OF AMENDING THE CONSTITUTION.

Mr. EDWARDS. I offer the following resolution:

*Resolved*, That any amendment or amendments to this constitution, may be proposed in either house of the general assembly, and if the same be agreed to by a majority of the members elected to each house, within ten days after the meeting of the same, such proposed amendment or amendments shall be entered on their journal, with the yeas and nays taken thereon; and the secretary of state shall cause the same to be published three months before the next general election, in at least one newspaper in every county in which a newspaper is published, and if a majority of all the voters in the state shall vote for such amendment or amendments, then the secretary of state shall cause the same again to be published, in the manner aforesaid, at least three months previous to the next general election for representatives; and if a majority of all the voters in the state shall again vote for such amendment or amendments, the general assembly shall, at its next session, incorporate the same into the constitution. If more than one amendment is submitted at a time, they shall be submitted in such manner and form, that the people may vote for or against each amendment separately: *Provided*, That no such amendment or amendments shall be made to the article on slavery, or the article for the revision of this constitution.

I will remark that the report of the committee on the revision of the constitution, meets my approbation as far as it goes. But, in addition to that mode, I prefer specific amendments. Yet I would remark that I cannot consent to any mode of specific amendment, which will give rise to the agitation of slavery, by the legislative power. I therefore will move that the resolution be printed, and that it be taken up when the report of the committee on slavery comes up for consideration.

The motion was agreed to.

#### SUBMISSION TO THE PEOPLE.

Mr. KAVANAUGH offered the following resolution, and it was adopted:

*Resolved*, That the committee on the miscellaneous provisions take into consideration the time,

mode, and manner of submitting the new constitution to the people of the state, for their sanction or rejection, and that said committee report thereon to the convention.

#### GENERAL PROVISIONS.

The convention resumed the consideration of the report of the committee on general provisions.

The pending question was on Mr. CLARKE'S amendment to Mr. A. K. MARSHALL'S additional section.

Mr. MITCHELL. A great deal has been said here, sir, about "abstractions," and no little railery has been indulged in, at the expense of those who have attempted to trace back proposed measures to their first principles. Everything, sir, is regarded as abstract, which does not compose a feature palpably distinct in our present condition; and any inferential effort to exhibit the tendencies of a proposition, by examining it in connection with the leading principles which constitute the substruction of popular government, is regarded by some as a useless excursion into the regions of ideality.

The revolution—the glorious revolution which gave birth to our nationality—was founded upon an abstraction. Did the stamp act—did the inconsiderable tax upon tea, when that article sold cheaper in the American market after the duty had been imposed than it did in Great Britain—cause the sword of America to be drawn, which was not sheathed until the hour of her triumph? Was it not, sir, the detection of a violated principle in the imposition of taxation without representation, which led to the disruption of those cherished ties that bound the colonies to the mother country? There was nothing, sir, of actual, tangible oppression; the burdens of the colonial population were less than those of British subjects at home. That clear perception of political right, which results from a vision undazzled by the splendors of royalty—from a spirit nursed amid the wild grandeur of nature, and therefore unawed by the "pomp and circumstance" of regal power, at once detected the violation of principle; and the wisdom born of such knowledge, discovered in an unjust beginning the fearful portent of a ruinous end.

This, sir, is the proud characteristic that distinguishes ours from every other political struggle which has marked the annals of revolution; it is a characteristic that commends itself to the American citizen as the means of perpetuating those blessings which it was so mainly instrumental in achieving.

Entertaining these sentiments, I hope to be pardoned for attaching somewhat of importance to the abstract enunciations emanating from a body clothed, in its representative character, with the sovereignty of the state. I say, sir, a body clothed with the sovereignty of the state. Let us, sir, for a moment examine this question.

What I ask, are the origin and object of written constitutions? They originated, sir, in the necessity which exists in popular representative governments of imposing a limit on popular agents. The offspring of political progress, they were born amid revolutionary travail. It is the boast, sir, of Virginia—that proud old commonwealth, the mother of states—it is her

boast, according to Mr. Jefferson, to have originated the first written constitution that was ever known to the world. She, sir, amid the storms and perils incident to invasive warfare, on the 29th of June, 1776, framed her original system of organic laws. Written constitutions, sir, are intended not to define popular sovereignty, but to erect bulwarks against the abuse of delegated power. They do not proclaim, as some gentlemen seem to think, that the popular will, which can only be ascertained through a convention, is incapable of achieving the attributes of sovereignty—they do not proclaim what the people cannot do; but they proclaim what the people's government shall not do. Their great object is to define, limit, circumscribe, the operations of representative government. In a pure democracy, where all action is taken by the people primarily, there can be no necessity for a written constitution; but, on the other hand, in a representative democracy, from this very necessity resulting from the impracticability of direct popular action, springs the further necessity of clothing a convention with the sovereignty of the state—with the whole power of the people.

I do not wish to be understood as asserting that this convention has unlimited power; I would say, sir, that its powers are co-extensive with those of the people, and are only restricted by the national constitution. Can gentlemen find any other restriction—any other limitation to these powers? Surely sir, it is not to be found in the constitution of the state; and here, sir, I take issue with my honorable friend from Bourbon. If I understood him correctly on this point, he maintained that this is a constitutional convention, called by the authority of the present constitution, and subject to be controlled by its principles as much as is the legislature. It is, sir, called a "constitutional convention," not because it is subject to be controlled by the principles of the existing constitution, but because it was called to frame a constitution. It is so denominated to distinguish it from a convention called for other purposes. To prevent confusion, to facilitate the ascertainment of the public will, the present constitution has a provision inserted in it for the calling of a convention; but when the delegates to that convention had once been selected, being clothed with the same power that resided in the convention which framed the present constitution, all power over them, so far as the existing constitution is concerned, was at an end. The framers of the present constitution intended to do nothing with respect to a future convention, but to provide for the mode of its appointment.

But if this convention is to be controlled by the principles of the existing constitution, its powers are narrowed down to a mere modification of details—it shrinks away under the application of this stringent rule into a mere legislative assembly, and does not possess the power to effect and carry out any of the radical changes, indicated by public sentiment, because they involve an overthrow of existing principles; when therefore delegates upon this floor proposed any material alteration—any new and important measure—such for instance as the abolition of the life tenure of office, or such an extension of the elective franchise as to embrace

all the functionaries of government—if my friend from Bourbon be correct in his views, the existing constitution would have risen up in judgment against the fell spirit of unlicensed innovation, and rebuked them into silence. It is, sir, a well settled principle that the acts of one legislature are not binding upon succeeding legislative bodies; and why so? Because they are supposed to reflect the popular will; and that will is as potential at one time as at another. If one generation can legislate for another, irrespective of its will, then, sir, that potent influence which we denominate popular sovereignty would be like the fosforescent light which arises from the charnel house—a delusive brilliancy, an empty seeming, the merest mockery of power; and popular intelligence devitalized would perish in the cold embraces of political power, exercised by a by-gone race.

My remark, sir, is not made in a spirit of irreverence to the memory of the illustrious dead. If any state in this Union has cause to be proud of her political fathers, it is Kentucky. When her present governmental charter was framed, a step in the progress of political science was accomplished, by which she was placed far in advance of her sisters; and now, after the lapse of half a century, when we are desirous of profiting by the teachings of experience—when we propose to infuse a greater amount of popular activity into our government, regardless of those sacred associations connected with this instrument, we approach it not to desecrate, but to amend. Our fathers inscribed not upon their work "*noli me tangere*" as a warning against the innovations of posterity. We do but realize their patriotic wishes by conforming the organic law to the changes which time has effected in the popular will, and the popular character.

But sir, to return to the point. It is true, that this convention might misrepresent the people—it is true, it might abuse the trust which has been confided to it; but such misrepresentation and abuse of power, would only display wrong action, and not the inability to act. It is also true, that public opinion may have indicated—as it has certainly done—the extent to which the exercise of the powers confided to this convention should be carried; but sir, if there was any action by this body in contravention of that public opinion, although it would involve a breach of trust—although it would render this convention obnoxious to the charge of faithlessness, yet it would not, by this departure from the popular will, become amenable to the charge of usurpation—of exceeding the limits of that power which the people have confided to its charge. Let me for a moment, illustrate this position. Public sentiment has decreed that there shall be an elective judiciary. If this convention were to bestow the appointing power elsewhere—if it were to vest it in other hands than those of the people, it would have abused the trust confided to it—it would have been disregarding of the pledges which it had made to the country; but still it could not be said that the convention had exercised a power which did not legitimately reside in it. Public sentiment has also required that the constitution, when framed, should be submitted to the people for their ratification, and this convention would be

acting in bad faith, if it did not respond to that sentiment. But it will not be urged here, that it has not the power to make a constitution without conditions. Suppose that such were its action, and the new constitution did not meet the public expectations, the remedy would consist in the calling of another convention.

If, sir, public sentiment does not impose a limit upon the powers of this body in the instances which have been given, then public sentiment does not impose a limit in any other supposable case; nor can it be inferred that there is any restriction upon the powers of the convention imposed by the disposition of the public mind. Its ability is like that derived from a general power of attorney given to an individual, with instructions to act only in a particular case. The transaction of business beyond the instructions, but within the power, might well raise the question of propriety, but certainly could not bring up the question of authority. If, then, sir, the powers of this convention are undefined and unlimited, all the powers which reside in the people reside in it.

If it be true, as I have endeavored to show, that the powers of this convention are the powers of the people, the enquiry arises as to what is the extent of popular power—as to what is popular sovereignty. I take it, sir, that the quantum of power is the same in every political association; that all states have the same amount of power residing somewhere. In an autocracy it is centered in the will of one individual who is endowed with despotic, absolute, uncontrolled power. In a republic it resides in the whole people in their political capacity. With us, sir, a portion of the popular power has been yielded up by the federal compact; but the residue resides in the people. The people of Kentucky in their political capacity—as a political association, have the same powers as the emperor of Russia, or any other sovereign, where the exercise of these powers would not conflict with the national constitution. They can, at pleasure, amend, change, or abolish their government, and institute another system in its stead, provided that the government so substituted, be not in conflict with the limitation imposed by the constitution of the United States. Their power over property is as absolute as the power of any government; and unless property possesses an attribute which elevates it above all law and all constitutional sanction, it is as much within the grasp of the people of Kentucky, as of any other political association or sovereignty. What, sir, is the right of property? It is the right to hold, to enjoy, to dispose of during life, and to transmit to whom we may choose after death, anything which is legitimately the subject of ownership. This I take it is a full and fair definition of the right of property as it exists among us—a right which will be held sacred and inviolate so long as the sense of justice in the public mind is adequate to the ends of government. This right, sir, might be as completely destroyed by the repeal of the laws in which it originates, and by which it is secured, as it can be by a positive announcement declaring that it shall no longer exist. By what sanction does the heir enjoy the estate of his ancestor if it be not under the law of descent. Re-

peal that law, and the right to all that class of property derived by descent is at an end; it either vests in the government by escheat, or it falls back upon its original state to be appropriated in the natural mode of acquisition which is by occupancy. By what right does a devisee claim to hold property which has been willed to him if not by the law which sanctions and prescribes the mode of such transfer? Repeal the laws which regulate estates, and what becomes of the right of property? This it is competent for the legislature to do if there be no constitutional inhibition; and if such an inhibition does exist, it is competent for this convention to remove it. But if gentlemen are right in the position which they have assumed; nay, if the amendments of the gentleman from Henderson and the gentleman from Bourbon, which have been adopted, assert the truth, the repeal of all laws could scarcely effect the community, as rights, whether of person or property, are above the sanction of law and constitution, reposing on some airy substratum generated, as I suppose, in the eternal fitness of things.—Constitutional inhibitions to prevent legislative encroachments upon the rights of property, are presumptuous assertions of power over a subject entirely above their sanction, and hence all constitutional guards being unnecessary, constitutions themselves sinking from the paramount importance heretofore attached to them, become political supererogations.

But let us look at the right of property in its simpler form, as the right to hold a thing. Now, my honorable friend from Bourbon, in delivering his sentiments on this subject last Saturday, contended that this right of property was above and anterior to all constitutional sanction, and yet he admitted that the state had a right to take it upon making compensation to the owner. Now, I ask, is the right of property complete if it can be taken at all, under any circumstances, without the consent of the owner? What signifies compensation if his will is not consulted? Is not the strong arm of the law employed to wrench it from him against his will? And I ask if it does not involve the same principle, so far as the question of power is concerned, whether compensation be given or not? To take against the owner's will, is to violate that owner's right of property. If the right of property be inviolable—if it be above and anterior to all constitutional sanction—then, compensation or no compensation, it cannot be touched by the law or the constitution without violating that right. Compensation, sir! What compensation could atone for the desecration of the spot of earth rendered dear by the memories of childhood, consecrated by the joys and sorrows of life—by the sports of our youth and by the graves of our fathers? I say, sir, that the right of property, when it is conceded, that it can be taken by the government for public purposes, even when compensation is made, is not above legal sanction; for the right to take and the right to enjoy are propositions incompatible with each other. So far as the right to hold is concerned—a right inseparable from the idea of absolute property—compensation does not cure the violence done to the will in taking; and if the right to property be above all constitutional sanction, then the



act of taking it away is an assertion of power irreconcilable with the tenure by which it is held. If this be no impairment of the right of property, then I can enter upon the land of my neighbor; cause a valuation to be made of it; tender him compensation; avoid an action; and by that course possess myself of his estate, whether he is willing or not. If taking without regard to the owner's will does not impugn the right of property—if the offer of compensation is an equivalent for the absence of consent, he has no cause of complaint—has sustained no injury, and therefore has no remedy. And yet, sir, it is a matter of every day occurrence, when the public convenience requires the construction of a railroad or a turnpike, that private property is taken even without the will of the owner, although a compensation may be made. That compensation is made, sir, because of the requisition of the constitution, that no private property shall be taken without compensation to the owner; and yet there are legislative enactments which go so far as to say that that compensation shall in part or in whole be composed of the collateral advantages that may be derived from the improvement, except so far as the mere value of the soil which is appropriated may be concerned. Will gentlemen, in the face of these facts and these admissions, still contend that the right of property is above the sanction of the law?

Mr. President, civilization is the offspring of law; its rights originate in law, and its incidents are secured by it. Like every other earthly thing, it is a mixed blessing; but it may be safely asserted, that as that condition is more appropriate to the rational existence of man, the good it dispenses predominates over its evil. It is an artificial system which is based upon municipal law; and, according to my humble apprehension, whenever there is an attempt to jostle it from its true basis, the whole structure is in danger. Why sir, attempt this thing? If the power exists, the mere denial of it in a constitution will not secure the right, and if the power does not exist, still we accomplish nothing. In departing from the beaten tract, we are treading upon dangerous ground. *Cui bono?* Will any gentleman explain the practical benefits that are to result? Does the occasion demand such a course? Is there such a crisis in the proprietary affairs of the country?

\* Non tali auxilio, non defensoribus istis,  
Tempus eget." \* \* \* \* \*

I see nothing in the occasion which justifies these hooks, upon which the enemies of constitutional reform—the enemies of the institution of slavery will hang their opposition. I am opposed to the whole series of propositions on this subject—*ab ovo, ad pomum*—from the egg to the apple—from the beginning to the end; because I regard them as intrinsically wrong in principle—because I regard them as dangerous and mischievous in their practical results. If we would secure the institution of slavery, let us guard against legislative infraction, by placing the subject beyond such control.

Sir, there is no gentleman on this floor whose feelings are more deeply involved in the question of slavery than mine. I have been associated

with it from my earliest recollections. I am now the owner of slaves who are connected with an hereditary vassalage, which has subsisted in my family for more than a hundred years. I would not sell them—I would not dissolve the relation existing between us—a relation which I am constrained to believe has been of mutual benefit. If it should so happen that this climate becomes injurious to the existence of such property, I can seek a home elsewhere. I should look upon any necessity which might constrain me to dispose of this property, as a great calamity to me—a greater to the slaves; and yet, as much as I value it—as much as I am attached to it, I rest it, and every other right which I possess, with perfect security upon the firm basis of public justice.

Mr. TALBOTT. I will ask the indulgence of the house but for a short time. I agree with the gentleman from Oldham, (Mr. Mitchell,) that much has been said here, and elsewhere, about abstractions. If not in this house, there has been out of it, a constant effort to show that the right the citizen has in every other species of property is a glorious reality, while the right he has in his slave is a glorious abstraction. Much excitement seemed to have sprung up here, on Saturday, while the amendment offered by the delegate from Bourbon (Mr. Davis,) was under discussion; and gentlemen seemed anxious to know the reasons why delegates had voted for it. Sir, I voted for both branches of that section, and I voted for them because I believed them to contain the truth, the whole truth, and nothing but the truth. Sir, I esteem that section one of paramount importance. Its principles and positions form the very basis and foundation pillars upon which our government stands. It is the only proposition, in my judgment, which meets directly, fully, fairly, and perfectly, the great question now at issue between the emancipationist and the pro-slavery man. Sir, there is a party in this country, weak it is true, in numbers, but powerful in intellect. A party of great intelligence, integrity, and piety; organized, skillful, enthusiastic, and determined upon the abolition of slavery in Kentucky. A party who contend that this convention has plenary power or right, if we wish to exercise it, to emancipate the slaves on any, on our own terms. And here, sir, I take issue with them.

The first branch of that section asserts that the right of property is before, and higher than all constitutional sanction. The second asserts that, the right the citizen has in his slaves, and their increase, to be the same; he has in any and every other species of property whatever. I believe the first, and I believe the last declaration in this section to be true. I voted for them sir, and I voted for them cordially. I voted for them with all my heart. I am willing for gentlemen, I am willing for this convention, and sir, I am willing for the whole world to know, how and why I have thus voted. They are right in principle and right in policy. Upon them I take my stand, and with them I intend to stand or fall. I voted for them sir, and I voted for them because I believe them to be true.

They may be disregarded, broken down, and abandoned, for a season, by revolution, by violence, by brute force; but sir, they are principles

and positions, as incontrovertible, in my judgment, as the truth of heaven, the justice of God, or the existence of man. They will rise up in judgment in after days against the reckless, ruthless revolutionist, who attempts to disregard and trample them under his feet. They will stand the test of time—pass unscathed through the fiery strife and conflicts, the clash and crash of contending and crumbling empires and republics. And when the storm of revolution shall have passed, and reason and justice again enthroned, the principles set forth in this section, will then stand, acknowledged and revered, firm and unshaken as the hills of eternity, and serve as the pillars, upon which to found new republics, and new states. The first branch of this section asserts that the right to property is before, and above all constitutional sanction. The question then is: is this true or false? Now sir, let us suppose a case. I would ask gentlemen, if there was no liberty, no property, no rights, no interests to secure, nothing to protect before, where would be the necessity of government? Where the inducement to organize? Man is the creature of motive, always actuated and impelled by interested motive. It seems to me sir, to be axiomatic, a self-evident proposition, that if men had no liberty or rights to be lost without, no interest or property already held and enjoyed, to be secured and protected by government, there never would have been one framed upon the face of the whole earth.

Why, sir, God, when he made the first man that ever lived, (Adam,) and placed him in the garden of Eden, gave him certain rights and privileges, which might have been lost without, before he gave him a law, or instituted a government by which he could be protected and secured in their enjoyment. Why, sir, the preamble to every constitution in the union, positively declares, that the very object of the constitution, is to secure to the citizen the enjoyment of life, liberty, property, and the pursuit of happiness—all of which he enjoys before the constitution is framed. Sir, neither the constitution of the country, nor the law of the land, gives the citizen a right to any property he owns. He purchases the right, by his labor or his money. The government only secures and protects him in the enjoyment of that right, and gives him a formal evidence of title.

It seems clear, sir, to my mind, that the very existence of government argues the necessity of it, and the necessity goes to show, conclusively, the anterior right contended for. There could be no such imperious necessity in the absence of all right.

The second branch of this proposition, sir, affirms, that the right the citizen has in his slaves, and their increase, to be the same he has in any and every other species of property whatever. There is nothing in the constitution and laws of this state—nothing in the constitution and laws of the United States—nothing in the laws of God, that I have ever seen, which denies this declaration: It is then true. And I affirm again, that he can only be deprived of that right in the same manner, and for the same purposes of government, on the same terms, and by the same authority, he can of his right in any and every species of property he may possess. While

I admit that we, as a convention, have plenary and unlimited power to prohibit the further importation of slaves into this state, as merchandise, or for the use of our own citizens—while we have the power to declare that all the children, born of bond women, purchased and brought into this state, from and after the adoption of this constitution, shall be free from their birth, without the consent of the owner of the mother, and without one cent of compensation from the commonwealth, or any other source—while I admit this, I deny that this convention, or any convention hereafter to assemble, has, or will have, the power or right, by any principle we may incorporate in the constitution we are about to frame, or any constitution hereafter to be framed, to emancipate the slaves, or their increase, now owned by our citizens, without their consent, or without paying therefor, a full and fair equivalent in money. This, sir, as I stated on a former occasion, is a constitutional convention, assembled for purposes of protection—not plunder—to secure the rights and property of our citizens—and not to destroy them.

We have been called together under the mandate and according to the provisions of the constitution, and if we, as delegates, have a right, under the existing constitution and laws of the state, to claim our seats and recover payment for our services, it seems to me clear, that the farmer is under the same constitution and laws, and to the same extent entitled to his land, the merchant to his merchandise, the lawyer to his books, the doctor to his medicines, the banker to his stocks, and the slaveholder to his slaves. If we have the right, as a convention, to destroy the right of property in one, we have in all. If we have the power or right, (and I understand power and right to be synonymous, for legally and properly speaking, where there is no right, there is no power,) then I affirm, if we have the right to say that one species of the property of a citizen shall be taken for the public use without compensation, we have the same right to say all may be taken for the same purpose and on the same terms. Sir, we have no such right—we can do no such thing. The very moment government ceases to protect the lives, the liberty, and the happiness of her citizens, that moment it ceases to exist for the very end for which it was established and has been maintained. The very moment a majority, no matter how great, meet, and arbitrarily, and unconditionally declare, regardless of the rights and interests of the minority, that without compensation a certain species of property, hitherto and at present held by the minority, shall be forever confiscated or destroyed—that very moment, sir, the government ceases to exist—the people are in a state of revolution—life, liberty, and property, stand insecure and unprotected by law, and the citizen then has a right to assume his own defence, to assume his own protection.

Sir, I have taken the position here assumed, and avowed the sentiments here expressed, under the full conviction that I am to be held responsible here and before the country for what I now say and do. I may be condemned—I may be assailed and put down by the spirit of revolution for advocating such principles—but, sir, they are the honest convictions of my judg-

ment, and I would rather perish with them, than live without them.

Mr. WOODSON. Mr. President: The following amendment offered by the delegate from Jessamine, (Dr. A. K. Marshall) is, I believe, the immediate subject before the convention. It reads as follows:

"That neither this convention, nor any hereafter to be assembled by the people of this commonwealth, has any right or power, to either emancipate the slaves now in the state, or their descendants, or to authorize the legislature to pass laws for their emancipation."

From the fact that the mover of the amendment, just read, announced his intention to vote against it himself, and as no one seems inclined to urge its favorable consideration, I apprehend that it will shortly be given the go-bye, and that we will pass to the consideration of something else.

I have not arisen, sir, for the purpose of discussing the proposition of the delegate from Jessamine; but for the purpose of explaining to the convention, the constituency I immediately represent upon this floor, and the world, the reasons which induced me to vote as I did upon the amendment presented some days ago by the delegate from Bourbon, (Mr. Davis.) As the vote I then gave, without an explanation, might lead to misconception on the part of some, I desire, therefore, to express my views fully in regard thereto.

The amendment offered to the report of the committee, as an additional section to which I have reference, reads as follows:

"The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to his property is the same, and as inviolable, as the right of the owner of any property whatever."

Now, sir, I voted against the section I have just read—the reasons for so doing, I propose to give.

Mr. President, I recognize no legal difference in a man's right to his slave and any other property. We hold our slaves by legal and constitutional sanctions. When they are improperly injured or taken from us without our consent, and without legal authority, the laws of the country afford us redress, just as they do when our lands are trespassed upon, or our horses taken from us. This is all as it should be. I wish not to interfere with the constitution or laws as they now stand upon the subject.

Yet, sir, I voted against the proposition of the gentleman from Bourbon. First, because I can see no necessity, earthly, for it. We have already secured to the slaveholder his property in his slaves as fully as we have secured our lands, our houses, and our homes, or any description of property whatever; and, sir, when I have placed the slave property of the country upon an equal footing, so far as the protection of the constitution is concerned, with all other property, I have done as much as I am willing or intend to do, for its protection. When I recognize the legal right to slaves to be as perfect as the legal right to my homestead, I have done all that I am expected to do, and have gone as far as I intend to go.

Notwithstanding all I have said, sir, I cannot

subscribe to the doctrine attempted to be established by the amendment—for the great reason, sir, that it is false in fact, and founded rather upon the strong pro-slavery proclivities of the times in Kentucky, than upon reason or propriety. I say this with all imaginable deference to the great mind that conceived it, and presented it to this convention.

Look at the proposition, sir. What does it assert? Nothing more nor less, than that slave property is before and higher than any constitutional sanction. This, if true, I would subscribe to, but as it is false, I will endeavor to expose it.

All questions of doubtful import, arising under the constitution and laws of the United States, when they do arise, are referred to the judicial department of the government for settlement; and after they are settled by the supreme court of the United States, the country must submit to the settlement thus made. Now, sir, I regard the question presented as no longer a mooted one, as having been long ago determined by the highest and only authoritative tribunal known to our constitution and laws.

The supreme court of the United States in the case of *Prigg* against the commonwealth of Pennsylvania, 16 Peters, 611, says:

"The state of slavery is deemed to be a mere municipal regulation, founded upon and limited to the range of territorial laws."

Now, sir, what does this decision assert? That slavery is founded upon and limited to the range of laws—that it is the creature of municipal regulation—and not, sir, as the amendment asserts, "before and higher than any constitutional sanction."

I have now said as much as I intended saying when I arose, but as the subject of slavery and emancipation has occupied much of the time of the convention, and as there are still many important propositions connected with these subjects, upon your table, I propose now, sir, by the indulgence of the convention, to say all I have to say, in regard to them; and if I should not confine myself to the immediate subject of discussion now pending, I shall at least not wander further from the issue than has been customary with all who have preceded me in the discussion of the great questions to which I propose addressing myself.

The resolutions of the delegate from Madison, (Mr. Turner)—the preamble and resolution of the delegate from Henderson, (Mr. Dixon,) and the report of the committee on slavery, present four practical questions.

First, is it expedient to invest the legislature with the power to emancipate slaves hereafter in Kentucky, under any circumstances, without the consent of the owner? Secondly, the expediency being granted, have we the right and power to do so? Thirdly, has the master the same perfect right, in the offspring of his slaves, that he has to those in *esse*? And fourthly, the propriety of incorporating the provisions of the law of 1833, in the amended constitution, is presented.

The foregoing questions have been extensively discussed by delegates upon this floor, as well as the abstract proposition, is slavery right and proper in and of itself?

That the legislature ought to have the power to emancipate slaves without the consent of their owners, I have no doubt, and I shall, without any hesitancy, vote to give it the power—first, because I believe it to be right; and secondly, because I regard it as essential to the reception and ratification of any constitution we may make, by the people.

A great many considerations have brought my mind to the conclusions just indicated—a few of them I propose submitting to the convention.

In the first place, the power is delegated in the present constitution, and I do not believe that the people have demanded any change.

The first clause of the first section of the eighth article of the existing constitution, reads:

“The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated.”

As the power has been lying dormant for the last fifty years in the constitution, I am told that time has demonstrated that there is no necessity for its retention. And I grant, sir, that if public sentiment continues in Kentucky, throughout all coming time, as it now is, that this, as well as all other constitutional provisions having the ultimate extinction of slavery in view, with great propriety might be omitted. I would ask though, what assurances we have that such will be the case? How do we know that the succeeding generation may not be as zealous for the extermination of slavery as we are for its preservation? Liberty has one day in France been the idol of every heart, and in its defence every Frenchman would have poured out his blood. The next, the same precious treasure, with equal devotion, would have flowed like rivers in the effort to extinguish the hallowed fires of freedom and rivet the chains of tyranny, oppression, and despotism. Whether Kentucky is destined at any time, proximate or remote, to reverse the decision recently given with unparalleled unanimity, in favor of the institution of slavery, time alone can determine. The framers of the constitution under which we have lived so long, and under the influence of which Kentucky has acquired her world-wide reputation, thought that the day might come when policy and interest, as well as humanity, might sanction emancipation. And if it were not so much out of taste—if the sentiment were not so much at war with that breathed by all who have preceded me in this discussion, I would venture the expression of the hope, and hazard the declaration of the opinion, that the time will come when all who have been cursed and devoted to slavery, ignorance, and degradation, will be banished to other lands and other climes, more in accordance with their condition than Kentucky.

Fifty years ago, sir, our ancestry made provision for emancipation, to the full extent that I propose to go now. All I wish is, to give to those who are to come after us the same power to judge of, and act in reference to, this matter, that we possess. We have judged of the propriety of the abolition of slavery, and have decided it to suit ourselves. Let us leave the

same high privilege to our children—let us content ourselves with proclaiming the inalienable rights of freemen—let us endeavor to perpetuate liberty, and leave slavery to perpetuate itself.

Suppose, however, sir, that we take from the legislature the power it now possesses to act in reference to this subject, and that at a future day the voice of Kentucky is as united in favor of emancipation as it now is against it, what will be the effect? Can the object, even then, be attained without manifest injustice to those who then own slaves, and are opposed to giving them up for the purposes of emancipation? Clearly not; and for the plainest and most palpable reason: it would be violative of the pledge we give the slaveholder, when we tell him that his slaves shall not be taken from him without his consent. Property is purchased, inherited, and enjoyed, subject to the existing constitution and laws. The laws of the land are to be regarded when we acquire property, because it is an universal principle of law, and one that holds in every civilized state, that property is held subject to the demands of law. If you have purchased a slave, sir, since 1799, at the time you made the purchase you were aware that the legislature had the power to deprive you of the slave so purchased, by paying you a fair equivalent for such slave. And if the legislature should think proper to purchase and emancipate your slaves, you cannot, in justice, complain of the act; simply because all slaves have been acquired and held in Kentucky subject to the exercise of the unlimited discretion of the legislature, under the clause above quoted. Will any one deny that the legislature has not only the power, but an undisputed constitutional and moral right, to take all of our slaves from us, by paying us a fair compensation for them? Certainly no one will deny the power, because the constitution guaranties it in express terms.

For a single moment though, sir, let us suppose that the constitution had vested no such power in the legislature, and that without the consent of the owner the legislature were, in obedience to the unmistakable voice and wishes of three-fourths of all the voters in Kentucky, to pass a general law, emancipating all the slaves in the state, without the consent of the owners, and providing for the prompt payment of the proprietors a full equivalent for every slave emancipated, I ask you, sir, and I put the question to honorable delegates, if the equivalent paid would not be a poor compensation for the high-handed invasion of the private rights of the citizen committed, and for an act perpetrated directly in violation of the plighted faith of the government? We are taught to love and respect the government of our country, on account of its justice and high sense of honor, and because it throws the broad and comprehensive shield of protection over and around the life, reputation, and property of the humblest citizen.

The framers of the present constitution thought it not improbable that their descendants might wish to abolish slavery; hence they vested the legislature with the power. This was done, sir, fifty years ago. Shall we, instead of consummating the object they had in view—instead of advancing the cause of universal liberty—destroy the very foundation stone of emancipation

—strike from the constitution a provision that will enable the legislature to carry into effect the wishes of the people without doing injustice to any one; and rivet the institution of slavery in Kentucky until the last slaveholder voluntarily surrenders him? Shall we take from our children the power and right to judge of this matter for themselves, and give liberty, even to slaves, when they desire to do so? The voice of humanity forbids it, religion forbids it, interest forbids it, the warning voices of the illustrious dead forbid it. Thomas Jefferson, as late as in 1814, in a letter to Edward Coles, says:

"The hour of emancipation is advancing in the march of time. It shall have all my prayers, and these are the only weapons of an old man. It is an encouraging observation, that no good measure was ever proposed, which if duly pursued, failed in the end."

Patrick Henry, in a letter to R. Pleasants, makes the following prophecy:

"The time will come, when an opportunity will be offered to abolish this lamentable evil. I shall honor the Quakers, for their noble efforts to abolish slavery."

Listen, sir, also, to the language of Washington himself. In a letter to Robert Pleasants, he says:

"There is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of slavery; but there is only one proper and effectual mode by which it can be accomplished, and that is by legislative authority; and this, so far as my suffrage will go, shall not be wanting." In a letter to Sir John St. Clair, he also uses the following strong and decided language: "I never mean, unless some particular circumstances should compel me to it, to possess another slave, by purchase, it being among my first wishes to see some plan adopted, by which slavery, in this country, may be abolished by law."

Do not understand me sir, as favoring emancipation at this time, or wishing to see this convention intermeddling with it in any manner whatever—far from it. I know sir, that the public mind in Kentucky is not prepared for emancipation, and that slavery will exist among us until we shall be thoroughly satisfied (I mean a majority of the people) that it is no longer the interest of the state to uphold it. And when that time does come, I for one, do not wish to see injustice done the slaveholder by taking his property from him without constitutional authority to do so, nor do I wish to see him holding it in defiance of the wishes of the great body of the people, when they are ready, in pursuance of the present constitution, to pay him an ample equivalent therefor. Whether the time will ever come, when the power desired to be conferred, will be exercised, no one can tell; if it never does, no harm can result from it. Another idea: have the people of Kentucky demanded that the constitution shall be altered in the manner indicated? I think not. Public sentiment, every where, among the warmest pro-slavery men in my region of country, is in favor of allowing the subject of slavery to remain as it is at present in the constitution; and my decided impression is, that if the institution of slavery is either weakened or strengthened by us, that

all we do will be rejected by the people when we submit our labors to them for final ratification. Will that respectable and philanthropic class of our fellow citizens who so much desire the entire abolition of slavery, vote to receive our amended constitution. I care not how many substantial reforms may be inserted by us, or how fully they may concur with us in regard to their necessity, if we have done any thing which may have a tendency to retard emancipation, and cast more insuperable obstacles in the way of the final extinction of slavery than now exist? No one can, ought, or will expect it. On the other hand, were we to weaken the tenure by which slaves are held and enjoyed as property, no one could expect the excited, victorious pro-slavery party to receive it. No sir, there is not a pro-slavery man in Kentucky who would vote to receive the amended constitution, were we to inflict the slightest blow upon the institution of slavery. True wisdom then, it seems to me, ought to induce us to allow this subject to rest where we found it. I am opposed to slavery, sir, as much as any man; and no one in America would feel more rejoiced than myself to see the last vestige of it destroyed. Yet I have never seen the time, and I never expect to see it, when I would be willing to see the legislature paying for, and emancipating the slaves of Kentucky. The condition of the country has never been such as to justify it, and I think it probable it will not be for a great while. Yet, sir, as sure as time lasts, and our free institutions last, and we continue to respect the christian religion, the time will come when it will be considered a high privilege, to pay for, liberate, and send from amongst us, every slave in the state. But I am told that if it should ever become expedient to rid the country of slavery by paying for the slaves, that their owners will consent, and that unless they do, no state of the case whatever, would justify the legislature in forcing them to give up their property. This is a doctrine, however, that I can never subscribe to, and one which strikes at the very vitals of all republican government. The doctrine that majorities have the right to rule, within the limits of the constitution and laws, and to settle the public policy of every free government, is so palpably plain and just, that it need but be stated, to be sanctioned by all. Have gentlemen reflected for what they are contending, when they assert that the institution of slavery shall exist until the masters of all the slaves in the state consent to part with them? Six-sevenths of all the voters of Kentucky are non-slaveholders. Shall this overwhelming majority agree that they'll have no right to have any part or lot in the settlement of this great question? And shall one-seventh of the voters of Kentucky arrogate to themselves the right, regardless of the wishes of every body else, to dictate the time and the terms upon which this great question shall be settled? Yes sir, six out of every seven men in the whole state, may desire to put an end to the institution of slavery, yet they are not to have the power to do so. One seventh of the voters of Kentucky are to have more power than six sevenths. This is republicanism truly! This is a demonstration of the equal rights of all, in our free and highly privileged country! This is a total disregard, in ver-

ity, of a property qualification for the exercise of political rights! A man must own slaves, before he is allowed to express the opinion at the polls, that slavery is wrong, and that he desires its extermination! Well, I have heard my friend from Henry (Mr. Nuttall) talking a good deal about slaveocracies; but if this is not practically one, I hope one may never be found.

The foregoing sentiments, Mr. President, I imbibed in early life. I have uniformly maintained them, thus far in my career, as a man, as a citizen, and as a politician; and they shall never leave me until I forget the regard I now have for the equal rights, privileges, and immunities of my fellow countrymen.

But, sir, I have other reasons for supposing that Kentucky will ere long desire the extinction of slavery, and hence, I am for the retention of the clause in the constitution as it now exists.

As a state, Kentucky has as much reputation as any other, for her enlightened public policy; and she, at all times, has been devoted to her interests, in regard to every thing except the perpetuation of slavery; in this respect she has been indulging in a suicidal policy, and one which has greatly retarded her greatness, her prosperity, and her glory. I cannot believe, however, that she will much longer persist in her course, when she opens her eyes to manifest facts, and sees that her interest requires a change. Interest is a magic word—individuals, states, and nations are influenced by it. There is not a Kentuckian living, who does not desire the prosperity and advancement of his country. We all feel a personal devotion to our state, and desire to see her true glory and lasting prosperity promoted. We want to see Kentucky, as she deserves to be, one of the first states of the Union. Her numbers, her wealth, her intelligence, her prosperity, and her happiness are subjects dear to the heart of every Kentuckian, for they constitute the true elements of greatness. And I am fully satisfied myself, that these great interests—these elements of power and greatness, must languish and suffer, as long as slavery exists among us; and when a majority of the people of Kentucky concur in the opinion, shall they not have the power to act and pursue that course of policy which they deem best calculated to remove the evil, and benefit the state?

I hope that the convention will bear with me for a short time, until I present a few of the facts and reasons upon which the opinion is founded, that slavery is an injury to us as a state, and consequently that those who come after us will desire to remove it.

Let us first inquire how does the institution of slavery affect the population of Kentucky? For, independent of numbers, no state can be said to be great. To show the effect, I propose to read an extract from an address recently submitted to the people of Kentucky, and which is familiar to us all.

“Virginia has a larger territory than New England; has one of the finest climates, one of the best soils on the continent, and is rich in mineral wealth. And yet in 1840 the population of New England is double that of Virginia, including her slaves, the per centage of increase during the last fifty years, in the former, with

all her emigration, having been twice that of the latter.”

As another pregnant proof of the assertion that slavery is a drawback upon the population of the state, let us contrast Ohio and Kentucky. Ohio, sir, sixty years ago, was the home of the Indian—the Anglo-American had not penetrated and settled upon her bosom. At that time, Kentucky had a free white population of 61,247, and a black population of 12,430—making her entire population, 73,671. But what do we see in 1840? Ohio has a population of 1,519,467—Kentucky a white population of 590,253, and a slave population of 182,258—and an aggregate population of 779,828, including free negroes. What a contrast in sixty years! When we compare Kentucky with Indiana or Illinois, the same marked difference is found to exist in population.

But, as I am sure all will admit that slavery has been a serious obstacle to the increase of our population, let us for a short time examine the effects slavery has had upon the wealth of those states in which it exists; and we can only do this by contrasting the slave states, and Kentucky amongst the rest, with the free. I find from official sources, that the property of Ohio is estimated at \$421,067,991—that of Kentucky at \$272,847,696—excess in favor of Ohio, \$148,220,295; and if we deduct \$76,000,000, the value of the slaves in Kentucky at \$400 per head, it only leaves the entire wealth of the state, \$224,220,295. Each citizen of Ohio, upon an average, is worth \$276—in Kentucky, exclusive of slaves, \$249. Virginia, we have stated, is larger than all New England, and has a more productive soil, and greater natural advantages for agriculture, and all the elements of natural greatness. Yet look at the contrast as presented by the following statistical table:

	Virginia. 1840.	N. England. 1840.
Capital employed in manufactures,	\$11,360,861	\$86,824,229
Capital employed in foreign commerce,	4,299,500	19,467,793
Capital employed in fisheries,	28,383	14,691,291
Banking capital, -	3,637,400	62,134,850
Agricultural products,	59,085,821	74,749,889

In 1840, the annual agricultural products of the south were estimated at \$312,380,151—those of the free states, at \$342,007,446. Yet in the south there were 1,984,886 persons engaged in agriculture, and in the north only 1,735,086. The cotton, sugar, rice, and tobacco, the chief products of southern labor, exported to foreign countries, as shown by the census of 1840, were valued at \$74,866,310—the single state of New York exported agricultural products to the value of \$108,275,281. Here we see that the agricultural exports from a single free state in 1840, exceeds the exports from all the south, in value, \$23,408,971. The south, in 1840, manufactured articles to the value of \$42,178,184—the free states to the value of \$197,658,040: The joint earnings of all the slave states was \$403,429,718—of the free, \$658,705,108. The annual earnings of North Carolina, South Carolina, Georgia, Alabama, Mississippi, and Louisiana, amount to \$189,321,719—those of the state of



New York to 193,806,433—exceeding more than four millions the income of six great southern states. The annual earnings of Massachusetts alone, are more than \$9,000,000 greater than the united earnings of South Carolina, Georgia, and Florida. The earnings of South Carolina, with a population of 549,389, is about equal to that of the county of Essex in Massachusetts, with a population of less than 95,000. (See Parker's letter to the people of the United States.)

I will again read extracts taken from a late address to the people of Kentucky: "Ohio possesses double the agricultural wealth of Kentucky. Her Indian corn and wheat alone, are worth the whole of the products of Kentucky. The aggregate value of all the products of Kentucky, exceed by one-fourth only the value of the simple article of hay in Ohio." Sir, I need make no comments upon the facts just exhibited. We all can but see that slavery has retarded our wealth as much as our population.

I propose now, to examine the influence slavery has had upon popular intelligence in Kentucky. And, sir, dark as the pictures just drawn may appear—as humiliating to our pride as they should be—they are bright, dazzling, glorious pictures for us, when contrasted with the one that facts, ah! sir, stubborn facts, compel me to present now.

The census of 1840 shows that in the fifteen slave states and territories, there were at the various primary schools, 201,085 scholars; at the primary schools in the free states, there were 1,626,028 scholars. The single state of Ohio had at her primary schools 218,609 scholars; 17,524 more than all of the slave states! South Carolina had 12,520—New York, 502,367. In the high schools, there were in the south 35,935 scholars at the public charge—in the north, 432,388 similar scholars. Virginia, the largest of all the slave states, had 9,791 such scholars—Rhode Island, the smallest of the free states, 10,749. Massachusetts alone had 158,351—more than four times as many as all the slave states. In the slave states, at academies and grammar schools, there were 52,906 scholars—in the free states, 97,174. In the slave states, there are 1,368,325 free white children, between the ages of five and twenty—in the free states, 3,536,686 such children. In the slave states, at schools and colleges, there are 301,172 pupils—in the free states, 2,213,444 pupils at schools and colleges. Thus in the slave states, out of twenty-five free white children, between five and twenty, there are not five at school or college; while out of twenty-five such children in the free states, there are more than fifteen at school or college. In the slave states, of the free white population over twenty-one years of age, there is almost one-tenth that are unable to read and write; while in the free states there is not quite one in one hundred and fifty-six who is deficient to that degree. (See Parker's address.)

I desire, sir, that Kentuckians may consider and ponder well the facts connected with the institution of slavery. And if the voice of Kentucky is destined to be forever on the side of an institution that affects her population, her wealth, and her intelligence, as I have shown slavery does, why, sir, all I have to say is, "her will, not mine; be done."

But, Mr. President, we have been repeatedly told during this discussion that slavery is an unmixed blessing—an institution of Heaven—and its endless perpetuity is ardently prayed for by the delegates from Simpson, Jefferson, Henry, &c. I must be pardoned for entering my solemn protest against these new, and as I must be permitted to say, with all imaginable deference, abominable doctrines. I boldly proclaimed whilst I was canvassing before the people for the seat I now occupy, that I regarded slavery in and of itself an evil, but that I was for taking no violent steps to rid the country of it; that time must solve the great question, how is the country to be rid of slavery? And I now propose to do nothing sir, but to call public attention to this matter. I intend to give no vote, or do any act to the injury of a slaveholder in Kentucky. But, sir, when I am required to recognize slavery as a divine institution, and to sing its praises, I rebel; and when I am required to go further than our fathers went, to provide for the protection and perpetuation of the institution, I will not do it. And I had thought, sir, until this subject was discussed some weeks ago in this convention, that there was scarcely a man in all Kentucky, who differed with me, provided he were a pro-slavery man. And I would like to know the antiquity and origin of the idea in this country, that slavery is a blessing socially or politically. Such sir, was not the opinion of the fathers of the republic, because their speeches and writings all go to show that they regarded it in a different light, and looked forward to the day when it should be annihilated. Need I adduce evidence of this? If so it is at hand, and I will read from the speeches and writings of the most prominent of our distinguished ancestry, as a set off against the speeches and opinions of those who have expressed different views during this discussion. And I hope, that when I say that the moral perception of a Wesley, a Henry, a Mason, a Pinckney, and a Jefferson, as well as their political sagacity, were quite equal to, and is still as high authority with me as the opinions of a Talbot, a Clarke, a Bullitt, and a Nuttall, that the remark will not be considered as a disparagement, notwithstanding the progress we have made in the science of government, religion, &c., since their day. John Wesley in a letter to Wilberforce, dated 24th February, 1791, says: "Be not weary of well doing. Go on in the name of God, and in the power of his might, till even American slavery, the vilest that ever saw the sun, shall vanish away before it." It would seem that Mr. Wesley, one of the ablest theologians the world has ever produced, differed in opinion with our political theologians as to the divinity of this institution, and that he at least did not regard it as flourishing under the approving smiles of God. For he exhorts Wilberforce to go on, and in the name of God and in the power of his might, till slavery should vanish away before it. Says Wilberforce:

"Never was a system so big with wickedness and cruelty. In whatever part of it you direct your view, the eye finds no relief. Slavery is the full measure of pure, unmixed, unsophisticated wickedness; and scorning all competition and comparison, it stands without a rival in

the secure, undisputed possession of its detestable pre-eminence."

Says Paley: "Slavery is a dominion and system of laws the most merciless and tyrannical that men ever tolerated."

Says Breckinridge: "Just and equal! What care I, whether my pockets are picked or the proceeds of my labor taken from me? The man who cannot see that involuntary domestic slavery, as it exists among us, is founded upon the principle of taking by force that which is another's, has simply no moral sense—nature and reason, and religion unite in their hostility to this system of folly and crime."

These men did not regard slavery sir, as my friends from Boyle, (Mr. Talbott,) and Jefferson, (Mr. Bullitt) do, as one of God's favorite institutions; but rather sir, as the object of his wrath, and meriting the execrations of man.

President Monroe in a speech in the Virginia convention says:

"We have found that this evil has preyed upon the very vitals of the Union. It has been prejudicial to all the states in which it has existed."

Says William Pinkney in a speech in the Maryland House of Delegates, in 1789:

"Never will our country be productive, never will its agriculture, its commerce or its manufactures, flourish so long as they depend upon reluctant bondmen for their progress. 'Even the earth,' says Montesquieu, 'which teems with profusion under the cultivating hand of the free laborer, shrinks into barrenness from the contaminating sweat of the slave.' This sentiment is not more figuratively beautiful than substantially just."

Mr. Custis in a speech in the Virginia legislature in 1832, says:

"There is a malaria in the atmosphere of slavery. See the wide spreading ruin which the avarice of our ancestral government has produced in the south, as witnessed in a sparse population of freemen, deserted habitations, and fields without culture. Strange to tell, even the wolf, driven back, long since by the approach of man, now returns, after the lapse of an hundred years, to howl over the desolations of slavery."

Says Thomas Jefferson:

"Indeed I tremble for my country, when I reflect that God is just, and that his justice cannot sleep forever. Doubtless a God of justice will awake to their (the slaves') distress, and by diffusing a light and liberality among their oppressors, or at length by his exterminating thunder, manifest his attention to the things of this world, and that they are not left to the guidance of blind fatality." Notes on Virginia.

But say gentlemen, slavery protects the mechanics of the country and the laboring poor generally, because if the slaves were driven away the Irish and Dutch, &c., would overrun the country. Mr. President, I deny that the institution of slavery is of service to the laboring population. I might adduce thousands of arguments going to show that so far from benefiting, it is ruinous to them. Who so competent, however, sir, as the working men and mechanics themselves, to judge of this matter. It is not the interest of the slaveholder to study the interest of the non-slaveholder or laboring man in

reference to this matter. Hence sir, I will not receive their evidence as authority; but let those who have studied, suffered by, and who have practically felt the evils resulting therefrom be heard—and I must here be permitted to say, sir, that I would not give the opinions and judgment of one intelligent, reflecting mechanic upon this subject, for the speculations and theories of a thousand men, who are wedded by interest, education, and association to the institution. Read the following resolution embodying the deliberate sentiments of many most worthy and intelligent working men and mechanics of Louisville, and we will then see to what extent the assertions of gentlemen upon this subject are corroborated by those who best understood their interests.

"Resolved, That the institution of slavery is prejudicial to every interest of the state, and is alike injurious to the slaveholder, and non-slaveholder; that it degrades labor, enervates industry, interferes with the occupations of free laboring citizens, separates too widely the poor and the rich, shuts out the laboring classes from the blessings of education, and tends to drive from the state, all who depend upon manual labor for support."

I have shown that the fathers of the republic looked forward to the end of slavery—that our population is retarded by it—that our wealth, as a state in consequence of it, is not half as great as it otherwise would have been—that the intelligence of the country has suffered and languished beneath its influences—and that when it is abolished, religion has suffered no injury, and that the church need not put on the weeds of mourning, provided a Wilberforce, or a Wesley understood her true interests and her true glory; these things all considered, and many others which I would like to present if I had time, I am fully persuaded that it is expedient to make no alterations in reference to the power the general assembly now has over the subject.

I propose now sir, to examine, for a short time, the question of power presented in the resolution of the delegate from Henderson, (Mr. Dixon.) The gentleman denies positively, that we have any power or right to delegate to the legislature upon this subject.

The present constitution declares that "no person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use without the consent of his representatives, and without just compensation being previously made to him." See sec. 12 art. 10.

The clause just quoted, it has been contended in the course of this debate, and particularly by the very distinguished delegate from Henderson, is to be considered as a contract between the state and the citizen, and that we, by a fair construction of that clause of the constitution of the United States, which declares that no state shall pass "any *ex post facto* law, or law impairing the obligation of contracts," and a just application of the decision of the supreme court, in the case of Fletcher against Peck, are precluded from emancipating slaves ourselves, or delegating the power to the legislature. Now, without stopping to analyze the clause of the federal constitution, or the decision of the court just referred to, for the purpose of ascertaining their applica-

bility to the rights and powers of the state and citizen, let me enquire if a lawyer can be found in Kentucky, who will not at once admit that the first section of the seventh article removes all doubt upon the subject, and wholly demolishes the specious and ingenious argument of the gentleman, for it declares expressly that the legislature has the power.

I submit it to the convention however, sir, if the construction is not a forced one, put by the gentleman upon the constitution of the United States, and the decision referred to under its authority? But grant that the clause just quoted does constitute a contract, as the gentleman contends, how long is that contract to last? How is it to be avoided? Or is it, as the arguments of the gentleman indicate, to last forever, notwithstanding, by the express stipulations contained in it, there is a certain method pointed out by which said contract is to be altered, changed, and made to suit the wants, interests, and feelings of both the high contracting parties? Now that the contract entered into by the mutual consent of the parties, has also by like mutual consent been submitted to this convention for "alteration, amendment and revision," and all power that the original parties thereto possessed delegated to it, the discovery is made that the present constitution is still a sacred compact, and binding upon both parties thereto irrevocably for some purposes at least. Now, if it be restrictive in some things, why not in every thing? Where is this doctrine to stop? Why is it, that the right to hold and enjoy slaves is more peculiarly and specifically protected than any other of the many political and civil rights of the citizen? If this right is to be regarded as a contract and protected by the constitution of the United States and the decision of the supreme court, I ask the gentleman if every single right guarantied by the present constitution on the part of the state to the citizen, is not also a contract according to the same rule of construction, and equally secure under the protecting ægis of the federal constitution? Most assuredly no distinction can be drawn. As an illustration. Suppose the convention should declare, in the amended constitution that no citizen shall hereafter be eligible to a seat in the lower branch of the state legislature until he arrives at the age of thirty years.

Now, I ask if such an alteration of the present constitution would not be equally violative of the rights of the citizen, and equally an infringement of the constitution of the United States? The contract between the state and all of her free white citizens, is that at an earlier age than thirty they shall be eligible to a seat in one branch of the state legislature. This is a very precious right. By its guaranty to the citizens of other states, under few other restrictions, we have lured them to Kentucky. We have assured them by an express provision of our organic law, that they shall be entitled to the political privilege just indicated; and I now put it to the convention, if we were to extend the time or residence, or require greater maturity of years, if we would not evidently infringe upon the contract entered into with him, and incur the high crime of a violation of the constitution of the United States?

I had thought, sir, with the very distinguished delegate from Nelson, until the meeting of the convention, that when we assembled here, we would be restricted by nothing save the constitution, treaties, and laws of the national government—that we were sovereign, except so far as express limitations and restrictions were placed upon our action, in terms, and not by implication. And I know of no provision of the constitution of the United States, or of any treaty or law, that denies the power, as the gentleman from Henderson supposed. I admit that the legislature has not the power to emancipate slaves, independent of the express right given in the constitution of Kentucky, and I agree that if it were not for the power delegated in express terms, that its exercise would not only be an outrage upon the tenure of property, but might be with justice regarded as an infringement of the federal constitution—and for the plainest of all reasons, the legislature only enjoys delegated powers. It can only do what we authorize it to do. We are sovereign. We are exercising unrestricted and unlimited powers, except so far as I have stated the exceptions. And can not gentlemen see this difference between the rights and powers of this convention, and the rights and powers of the legislature? The legislature are limited and circumscribed by the constitution of Kentucky—they have to support it—they take an oath to do so. The contract between the citizens and the state is to be respected and strictly regarded by the legislature. But I ask gentlemen to tell me what efficacy there is in the constitution of Kentucky to resist this convention? Absolutely there is no contract now existing between the state and the citizens to be protected by the constitution of the United States. If so I cannot see it. I know not where to find it. I know that if the constitution of Kentucky is the depository of that contract, that both of the parties thereto have rescinded, or given us the full power to rescind it. If these great rights contended for, are derived from the constitution of Kentucky, and gentlemen say that they are, it occurs to me sir, that when the constitution giving the rights is itself destroyed in the manner designated by those who formed it, that those rights that sprang from and were supported by it, and by it alone, must have passed away also. It seems to me to be more plain and explicit, that those who regard the right to hold slaves as a contract embraced in the constitution of Kentucky, and who admit that we have the same unrestricted powers that the convention of 1799 had, are also bound to admit that the contract no longer exists, because we have now surrendered into our hands all the rights of the government and the people of Kentucky that they possessed before and at the time of the creation of the constitution, and the contract contended for. The government has surrendered into our hands all the power delegated to it by the constitution, and the people have clothed us with their own unlimited sovereignty, reserving nothing which they themselves possessed. Where then, I ask, is this great contract about which so much has been said, and for the preservation of which the constitution of the United States is so zealously invoked? I call upon gentlemen to show

it to me—and what do I see? A clause of a constitution that no longer has vitality in it, and over which we have as ample control, collectively, representing the sovereignty of the people of Kentucky, as we as individuals have over our persons in a state of nature. Talk not to me any longer about the preservation of that that has no existence—that has been, by the only competent power, destroyed and thrown into its original elements, and which may be moulded and fashioned as we think proper.

The convention, Mr. President, will perceive that I have discussed together, to some extent, the questions of expediency and power. I will amplify no further, leaving the convention, the country, and posterity, to judge of the correctness of the arguments and opinions advanced.

I come now, Mr. President, to examine, for a single moment, the proposition, that the slaveholder has the same perfect right to the offspring of slaves yet unborn, that he has to those now in being. There are perfect and inchoate rights recognized by law, and many material and important differences now exist, and still more may be made to exist between them, without any violation of the individual rights of the citizen. If I have a moneyed capital, for instance, I have a perfect right thereto, and no convention or legislature, without manifest injustice, can deprive me of it. I now have the legal right to loan my money and collect six per cent. interest by law, for its use. I ask you, now, if there is no difference between the right to the capital, and the interest accruing therefrom? The capital I have—independent of law—a natural right to; the interest is given me by operation of law, as well as the right to coerce principal and interest, when payment is refused. The power to abolish the remedy for the collection of debts exists in, and may be exercised by, the sovereign power of all governments at will. The regulation of interest is a subject over which the sovereign power has undoubted control. Public policy must, as a matter of course, determine the rate of interest in all governments. Who will deny the power of this convention to authorize the legislature to increase or diminish the rate of interest, or to abolish it altogether? If you admit this power, it occurs to me that you also admit the power of this convention to provide that all slaves born after a certain age, shall be free. The same argument applies to the future profits resulting from the increase of slaves, that is applicable to the regulation of interest. Public policy must determine both subjects; and the power to determine the one is as plenary as the other. If you lessen the rate of interest you injure the money lender—if you take away the increase of a man's slaves you injure the slaveholder. I do not desire this convention to do either; and I would not, for all the gold in California, vote to insert a clause providing for immediate or gradual emancipation in the constitution; because I have promised not to do so, and because the voice of Kentucky is against it. But there is a great difference between the exercise of, and the possession of a power. I assert that we have full power to emancipate all slaves hereafter born in Kentucky, or to delegate the power to do so elsewhere. But I will vote to do neither. I hold, also, that we have full power

to emancipate all slaves now in Kentucky, by paying their owners for them, and to emancipate all born hereafter without paying for them. But, sir, I will not vote to do either. The reasons have been incidentally given.

I come now, sir, to notice for a short time the law of 1833, which prohibits the importation of slaves into Kentucky from sister states and from foreign governments under certain restrictions and penalties, and the propriety of inserting that law, or the spirit of its provisions in the amended constitution. The objects of the law of 1833 were manifold—first, to prevent the increase of slaves, and particularly bad slaves, in Kentucky. Secondly, to stop the trade in slave property that was going on between our citizens and the south. Thirdly, to receive money in exchange for our surplus products instead of negroes. The foregoing were among the chief reasons offered in support of the law in question at the time of its enactment, and in support of it whenever an attempt was made to repeal it. They are arguments which address themselves to the mind and conscience of every man, and seem to have met with the approbation and approval of the people of Kentucky for sixteen consecutive years—long enough to have impressed everybody with the conviction that the law in question reflected the settled policy and wishes of our people in reference thereto. And I now suppose that few men can be found who are not in favor of fostering the vital principles of the act of 1833, because all of us have seen the good effects resulting from it—all of us fully concur in the wisdom and philanthropy of its provisions. These matters, however sir, have been so repeatedly the subjects of discussion in Kentucky, that I do not feel disposed to amplify them at this time; especially as I have it in my power to refer all who desire information in reference thereto to the able, eloquent, and demonstrative speech of honorable George Robertson, delivered in the house of representatives last winter; and he who doubts the policy of the law of 1833, after reading that great effort, (I feel inclined to say the greatest that great mind ever produced,) could, if he were disposed, doubt whether two and two make four. I would like very much to see the provisions of this law engrafted in the constitution we are about to make, and thereby prevent the continual agitation thereof in the legislature; and if I were to consult my feelings or my judgment or the wishes of those who sent me here, I should unhesitatingly vote to give them a place in our organic law. But, Mr. President, I desire to do nothing that will have a tendency to defeat our labors and cause the people to reject the amendments we are about making to our constitution; nor will I give any vote which will tend to such a result. And from all the lights before me, I am fully satisfied that if we were to prohibit the importation of slaves into Kentucky for domestic use, or in exchange for our exportations to the south, that the people would refuse to ratify the constitution. Not that I believe that a majority of the people of Kentucky are opposed thereto, but because many are. Yes, sir, such a provision would cause thousands to vote for the rejection of the amended constitution—enough, perhaps, when combined with the standing army of uncompromising opponents of the amended

constitution, to render its defeat absolutely certain. Such being my deliberate judgment, and knowing that if the people of Kentucky desire to continue the policy of the law of 1833, they can do so by legislative enactment, I shall vote against its incorporation into the constitution.

In the course of the discussion of the institution of slavery some weeks ago, gentlemen took occasion to refer to slavery in the District of Columbia and to the Wilmot proviso.

I desire upon this occasion to remark, sir, that I do not believe congress has any power over slavery in the District of Columbia, and that its abolition in the district would be a violation of the rights of the citizens of the district, as secured by the deeds of cession from Maryland and Virginia. Nor do I believe that congress has any moral right to apply the Wilmot proviso to the territories of the United States. Slavery as it exists in the states and territories, is a subject over which the states and territories alone where it exists have any right to exercise control. I deny that congress has any moral or legal right to dictate to the states or territories of the Union what their policy shall be in reference to this great subject. The states and territories alone have the power to determine whether they will permit slavery to exist within them or not. But sir, I do not intend to discuss these great questions, and I have only referred to them for the purpose of expressing the foregoing opinions.

I wish now to notice a few of the arguments and observations of gentlemen upon the abstract question of slavery as an institution, and I will close.

The following remarkable language occurs in the speech of the delegate from Madison, (Mr. Turner,) of the 10th of October, viz:

"We all know that the institution of slavery is the best in the world to keep society from becoming fixed and settled. Look at those who were originally overseers in Virginia and Kentucky at their first settlement. They have become the proprietors of the very estates upon which they were first employed as overseers. And their descendants now fill the halls of legislation and the courts of judicature of the country, whilst the descendants of the original proprietors have descended to a different level in the scale of society."

Mr. President, we read a melancholy lesson truly in the above remarks. What higher evidence of the evils of slavery can mortal man adduce than are presented in the short paragraph quoted. What does it say sir? What is the moral that we are to learn from it? It is sir, that slavery encourages laziness, extravagance and prodigality in our children—that it unfits them for the cares and labors of life—that those who are born to affluence and reared and educated amidst the enervating dissipation of slavery, live to see not only their slaves, but their homes, and the homes of their fathers pass away from them and into the hands of strangers, and themselves cast out upon the world homeless and homeless.

Again: the gentleman remarks in the same speech, "I believe that they who are raised up where the institution of slavery exists, with some exceptions, are uniformly distinguished. Who has ever seen such a constellation of great

men as the southern states have produced since we have achieved our liberties. Look at the great men of Virginia, South Carolina, and Kentucky, and where are the men who are worthy to be compared with them in the free states of the north? We have had, it is true, an Adams or two, a Webster and a Wright, but they are few and far between. Sir, there is a nobleness of spirit, a feeling above littleness, a greatness of soul that grows up where the institution of slavery exists, that is scarcely to be found in any other country."

Sir, I am behind no man in a just appreciation of the talents, the learning, and the claims of Kentuckians, to distinction in any and all respects. And I am fully aware that when we look to the intellectual jewels of our country, Kentucky, thank God, can boast the possession of some that shine with peculiar brilliancy, and will sparkle throughout all coming time upon the brightest pages of American history, and will be the pride and boast of every American heart and tongue. Yet, sir, I fear that when the intellectual and literary claims of the south are contrasted with those of the north, that the balance will not preponderate in our favor. I need not sir, institute the comparison—every intelligent Kentuckian knows what the result would be. Admit that our statesmen are equal to those of the north; yet, sir, the south gave not to fame a Story, a Kent, a Greenleaf and an Irvine—names that are imperishably interwoven with the laws and standard literature, not only of America, but the civilized world. This sir, I am sure, is a branch of the subject that we need not desire to see investigated, and consequently I will leave it.

The following beautiful, metaphorical, and eloquent language occurs in the speech of the delegate from Mason, (Mr. Taylor,) of the 11th of October: "Did you ever, sir, in midsummer, about night-fall, look upon a clover field and see the fire-flies rising out of it? Just so when the people had determined to have constitutional reform, were our emancipation friends seen, springing up and giving light and hope to each other."

Sir, to whom did the gentleman refer? Was it to Clay, to Underwood, to Breckinridge? the most gifted spirits that Kentucky boasts! Clay, Underwood, and Breckinridge, bear fire-fly lights! Rather say sir, that they burst forth like brilliant suns upon the world, and that the light they then shed upon the blind and benighted eyes of Kentucky will not be lost to humanity, but that after they shall be gathered to their fathers, the words of wisdom they uttered at the time referred to, shall be seized upon by a grateful and admiring country, and in their names the shackles of slavery shall fall, and universal freedom be proclaimed.

I was forcibly struck with a remark that fell from the President of this convention, in a speech upon this floor some weeks ago. He said: "there is a time when slavery will cease. The Indian has receded before the Saxon and still recedes."

Gentlemen, cast your eyes forward to the time when the prediction is to be verified. I take it for granted that if another generation passes by without the preliminary steps being taken to

emancipate and send off our slaves, that there will be only one practical mode left by which they are to be relieved from their bonds. Sir, slavery must constantly increase in Kentucky—it is inevitable unless the two hundred thousand slaves now in the state are used to rear supplies for southern markets; and I will not, I cannot believe, that those who are to shape the destiny of my country will devote her energies to any such unhallowed purpose. A few days since, I heard a distinguished member of this body remark that twenty years ago, twenty eight happy and prosperous families were living upon a tract of land in the county of Clarke, that is now owned by a single man; and that he is the only voter now living upon the entire tract. As a man's slaves increase he must extend his possessions for their employment; and thus it is that slaves drive from your country the poorer white population, and this process will continue to go on and to grow worse and worse, until whole counties in the end, which now support hundreds of freemen, will be owned by a few nabobs and occupied by their innumerable slaves; and sir, when such comes to be the case, the cessation, the end of the institution will indeed be at hand. I shall never live to see that day, thank God, Mr. President, but your children and my children's blood may enrich the soil we are consecrating to slavery in its defence. Our graves, the graves of our fathers, when our posterity shall have died in their defence, may be trodden over and dishonored by the descendants of the degraded race we now hold in bondage, and this glorious land of ours, (old Kentucky,) become the home and heritage of the slave. May Heaven avert such a catastrophe and incline the hearts of those who are to come after us to wisdom's ways.

Mr. PRESTON. I will not vote for the two resolutions now before the house, for the simple reason, that I believe the true principles are already contained in the sections to the bill of rights, which have been added by the gentleman from Henderson, (Mr. Dixon,) and the gentleman from Bourbon, (Mr. Davis.)

I will not undertake to answer the arguments of the gentleman who has preceded me, as they relate rather to the wisdom of retaining the slave property of Kentucky than to the subject of the propriety or impropriety of inserting these clauses in the constitution. He has drawn a comparison invidious to the state of my birth, invidious to her mother, Virginia, invidious to all the slave states, and has chosen to compare the greater wealth of Massachusetts and Connecticut, their greater population, and all the greater advantages which he alleges they possess, when placed in the balance with our state of Kentucky. I feel in no spirit to enter into controversy with him on this subject; but I will ask him to turn to the twenty thousand paupers of Massachusetts, a state smaller than Kentucky; to the one hundred and thirty or forty thousand paupers of the state of New York, where every individual is compelled to contribute to the maintenance of this large amount of poverty, the support of which costs half a million a year. He has drawn an alluring picture of the state of their public education, but he has not thought fit to show us the reverse of the medal. He has not shown us the squalid

misery and degradation, and the absolute subjugation of labor to the iron tyranny of capital. Now, sir, it has been my good or bad fortune, (I don't know which to call it,) to have spent five years in these states. I obtained my education in these states, which have elicited the gentleman's admiration to so great an extent; and I never would consent to exchange the condition of the people I now see around me for that of the people whose condition has been dwelt upon in such glowing colors by the gentleman from Knox. I do not say that the wise and great men of the North have not done all that they could do to relieve and alleviate distress and prevent misery and poverty from springing up around them; but I do assert that it would be the most difficult thing in the world to go into one of the counties of Kentucky, and find anything to be compared for a moment with that degradation and misery which meet you at every step in the North. If you see a house you think it is a palace; you ask what it is, and they tell you it is a "poor house." Does the inmate fare like the inmate of a palace? Does he enjoy the comfort and the luxury which the exterior of the building would seem to indicate might be the happy lot of him who dwells within? No, sir. The town officer is there; and he obtains the greatest reputation as an economist who solves the grand problem upon how little the soul and body of man can be kept together. The greatest proof of ability in a town officer is when he is able by his schedule to show at how little cost the pauper can be kept; and thus he goes on till the miserable pauper stands trembling on the brink of starvation, under the legalized system which is pursued in these states towards their poor.

Sir, there was one Miss Dix, an Englishwoman, who, some three or four years ago, came into the state of Kentucky to inquire into the statistics of poverty and jails; and I recollect an anecdote that occurred which may serve to illustrate the point under discussion. She went to the town of Danville; and, among other enquiries of the landlord of the hotel, she asked where was the poor house of the county. He replied that there was none. She asked if there were no poor in the county. The landlord replied that there were a great many very poor persons. She enquired what was their condition; and was informed by the landlord that the poorest of them lived upon seventy or eighty acres of land, not worth more than from three to four dollars an acre; that they raised their two or three hundred bushels of corn, and as many bushels of potatoes; that they kept their horses and their cows, and if they did live in a log house, they generally contrived to keep out the cold and have enough to eat and wear. Said she, "are these your poor?" "Yes," replied the landlord; "and as for a poor house, we hav'n't such a thing in the county." That degree of poverty, sir, is about the greatest we ever see in Kentucky. You will find that the "poor man" has his horse to ride to court on; you will find that his corn crib is filled with corn; and you will find that we are not reduced to that miserable system which prevails in the Northern states, of calculating on how little the miserable people can live. Let the gentleman then, examine closely that part of the machinery of the state of Massachusetts, before he makes



this invidious distinction between it and his native state. In looking at the comfort of the people I feel proud; I feel proud in remembering her patriotism, for every battle field in the country can count among the slain the patriotic sons of Kentucky. I feel a degree of pride, sir, in looking at our chief magistrate who now fills the presidential chair of this union—a son of Kentucky. And notwithstanding all our alledged want of intelligence, our delegations to congress have been the boast and the pride of this union. I repeat it, sir, that I feel a degree of pride in looking at that gallant old soldier who now fills the highest office in this republic; and that pride swelled still more when I remembered that, despite all the boasted education and intelligence of the men of the North, they have had to look to the South and the West for men to fill the highest and most responsible offices of state—to lead their armies, protect the country, and administer the government.

Sir, there are then, two sides to this picture; and when we come to examine them both, and place them side by side, I must confess that it does not appear to me that we are placed in that inferior position which the gentleman seems to suppose. I for one am contented with the condition of Kentucky. I for one am content to let a comparison be instituted between Indiana, Illinois, Ohio and Kentucky; and what man in this hall, what citizen of Kentucky, if he were put upon a northern railroad, or canal boat, if a promiscuous company of gentlemen were together, and the question were asked of each, "to what state do you belong,"—what man among you, what citizen of this state would hesitate to announce "I am a Kentuckian." What man among you would deny his state to claim a birthright from Indiana or Illinois? What man among you who would not rather hail from this, his native state, as the more favoured spot of the Union.

Sir, we are not in a condition so unfortunate; the prosperity of a free and happy people around us falsifies the statement; the gallantry of the people among whom we live, is the best test of their education. Cyrus boasted that he taught his people three things—to speak the truth, to ride, and to draw the bow; Kentucky may equally boast that she teaches her sons to speak the truth, to shoot the rifle, and to stand by the state in peril. We may not be so well educated in regard to this or that particular Sunday school tract; but if ever the Union is in danger, my word for it, if the shock of arms should come, and Kentucky should be called upon for troops, you will not see our young men shrinking and hiding themselves, to avoid the contest; no sir, you will see them in front of this hall, contending for the honor of being first on the list to answer their country's call. If five thousand are wanted you may rely upon it that fifteen or twenty thousand will be offered, as was the case in the recent war.

But sir, I will not pursue this subject; I say this much only in defence of our actual condition, and in order to destroy the invidious comparison my friend has drawn between the north and the south.

Mr. WOODSON. I would ask the gentleman, if he denies the truth of the statistical statements I have made.

Mr. PRESTON. I do not deny the accuracy of your statistics, but I deny the deductions you have drawn. When the first resolution of the gentleman from Henderson, was presented, I happened to make a statement which I wish to refer to again. I observed, about the first of October, when it was presented, that I did not believe that full and plenary power was possessed by this convention; that I did not believe we came here invested with all the power of a sovereignty; that if we came here one hundred and fifty in number, instead of one hundred, we would not come as a legally constituted convention. This is what I said:

"I do not believe myself that we are in a state of revolution. I do not believe myself that full and plenary power is possessed by this house. I do not believe that we came here with all the powers of sovereignty. I do not believe, but if this house consisted of one hundred and fifty delegates instead of one hundred, we could come here as a legally constituted convention. I believe we were called here in accordance with the provisions of the constitution, which provides for its amendment, which stipulates that it should be done in a certain manner, and that when we do come together for that purpose, we are not in a state of revolution, not at liberty to carry power to the extreme limit which the gentleman from Nelson seems to think; but that we do come here for the purpose of carrying out the views of the people, under the implied obligation which is set forth in the resolution of the gentleman from Henderson."

But the gentleman from Nelson took this ground—that this convention was supreme, uncontrollable and uncontrolled, except by the constitution of the United States. That proposition I differed from at the time, and I differ from it yet; and I think I can show that I am right, if not I am willing to be convinced. The gentleman from Nelson, (Mr. Hardin,) took issue upon that proposition, at that time, thus:

"We come here to make our government just as we please—and how shall we do it. We can adopt the present constitution as it now stands; we can alter and change it as we please, or make a new one out and out. I do not care if we are in a state of revolution, still we retain that power, and I shall not be driven under the bed like a cross child by this raw head and bloody bones outcry."

The idea I then had was this: that there are two sorts of conventions, one a constitutional convention, such as I hold we are, the other a revolutionary convention such as I hold that of France was. I believe that if we were to order the seizure of any man's private property, and the public sentiment of a majority were to acquiesce in such a seizure, I believe that single act, if carried out, would put us in exactly the same situation as when, in the great revolution in France, every man's property was seized, and in a moment of infatuation, liberty was proclaimed to all the West India negroes in the French colonies; that that would make us a revolutionary convention; that if we were to order our sergeant-at-arms to seize upon the property of any citizen as a lawful prize; if we were to order any physical force under our control to take possession of a single man's property, even

though it was done by the unanimous order of this convention; I believe that that would be a revolutionary act, that we should then transcend our power, and that every citizen in this state would be justified in resisting even to the death. I said so before, and I say so now. I recognise, then, two sorts of conventions—a constitutional convention, and a revolutionary convention. God forbid that we should become the last.

Sir, I maintain that when, under the inflammatory appeals of Brissot, every slave in the West Indies was declared free—I maintain that that act constituted revolution; and I say now, that if we were here as an emancipation body, instead of a constitutional body under the law, if we were to confiscate that property, and declare that we could destroy it by our arbitrary act, I do declare that such an act would throw Kentucky into a state of revolution; and though eighty thousand of the citizens of Kentucky were to declare in favor of such an act, and a minority of seventy thousand were against it, that minority would have a perfect right to take up arms, to do battle for the principle. What, sir, is it asserted here that this convention has absolute control over the lives, liberty, and property of the people of Kentucky! It cannot be that any one can put forth a proposition so monstrous with any degree of seriousness. Put the case in another point of view. Here is a convention composed of a hundred members: say you are fifty-two democrats and forty-eight whigs. Suppose the majority order that every member should take a test oath in support of the principles of democracy, (and the thing is not unprecedented, for we have heard of test oaths even in late times in England,) would not such a resolution be a restraint upon our liberty? Would we not have the right of resistance? Would it not be a restraint upon one of those fundamental principles upon which our liberty rests? In the resolutions of the gentlemen from Henderson and Bourbon, we assert the great principle of the security of property, another of those fundamental principles on which the tripod of liberty is erected. It is one of the chief ends for which civilized government was established. Infringe it and the social contract is violated. The right of property is based in the exertions of labor and industry, and is antecedent to written constitutions. Robinson Crusoe, on his island, was entitled, and had property in his fields, his flocks, and his harvests, which no subsequent community could, in the establishment of government, rightfully rob him of, nor plunder, without giving him the right of resistance.

Sir, I am not unsupported in these views. I have a book here, and good authority to sustain me. Here is an author who could not have been influenced by the institution of slavery. I speak of Vattel. Let us see what he says of the right to change constitutions. He says:

"In virtue of the same principles, it is certain that if the nation is uneasy under its constitution, it has a right to change it.

"There can be no difficulty in the case, if the whole nation be unanimously inclined to make this change. But it is asked, what is to be done if the people are divided? In the ordinary management of the state, the opinion of the majority must pass without dispute for that of the

whole nation, otherwise it would be almost impossible for the society ever to take any resolution. It appears then, by parity of reasoning, that a nation may change the constitution of the state by a majority of votes; and whenever there is nothing in this change that can be considered as contrary to the act of civil association, or to the intention of those united under it, the whole are bound to conform to the resolution of the majority. But if the question be, to quit a form of government, to which alone it appeared that the people were willing to submit on their entering into the bonds of society,—if the greater part of a free people, after the example of the Jews in the time of Samuel, are weary of liberty, and resolve to submit to the authority of a monarch,—those citizens who are more jealous of that privilege, so invaluable to those who have tested it, though obliged to suffer the majority to do as they please, are under no obligation at all to submit to the new government; they may quit a society which seems to have dissolved itself in order to unite again under another form; they have a right to retire elsewhere, to sell their lands, and take with them all their effects."

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"By the fundamental laws of England, the two houses of parliament, in concert with the king, exercise the legislative power; but if the two houses should resolve to suppress themselves, and to invest the king with full and absolute authority, certainly the nation would not suffer it. And who would dare to assert that they would not have a right to oppose it? But if the parliament entered into a debate on making so considerable a change, and the whole nation was voluntarily silent upon it, this would be considered as an approbation of the act of its representatives.

"But in treating here of the change of the constitution, we treat only of the right: the question of expediency belongs to politics."

This, sir, is in regard to the word introduced by my friend from Henderson, that we have no right, &c. Vattel's remarks are not in regard to the expediency but in regard to the right of the thing. Now, sir, under the authority there read, the right of resistance is warranted, if we, uncurbed by the constitution of the United States, were to erect ourselves into a monarchy. I declare, that if the whole people of the United States were to go for a change in the constitution of the federal government and declare for a monarchy, the right of resistance would belong to the minority. When the whole fundamental principles of the act of association is assailed, I say that the constitution does not bind us. Adopt a different principle, and you wrong yourselves in all time to come. The free states are growing. Suppose they grow large enough to change the constitution in the prescribed method, and then some northern senator gets up and says, "we are uncurbed by the world—we are sovereign—and we do declare that from this hour henceforth slavery shall not exist in the United States;" in other words, should abolish slavery by an act perfectly constitutional in the manner in which it is done, but destructive of the objects for which we entered the confederacy. Suppose the requisite number of three fourths of the states have

assented to the change, have the remaining fourth any right of resistance? I say we have, for by that act they have stricken down the fundamental right which society was made to guard; and, amend it as they may, to Kentucky and every other slave state remains the right of resistance. These are my reasons for having gone for the two clauses proposed by the gentleman from Henderson and the gentleman from Bourbon. I tell gentlemen again that this whole book (Vattel,) is nothing but a series of principles, higher than written constitutions and above them, and an evidence that all civilized nations acknowledge and obey them. I say that the great principle of the right to life, liberty, and property, cannot be interfered with. I assert it to be true, that we have no more right to interfere with slave property than we have to interfere with any other kind of property in Kentucky. Grant this, sir, and you carry confidence to every slave owner in Kentucky. Grant that the will of the majority has a right to take away your slave, and you grant that it has a right to take away your land; grant this, and you grant that it has a right to imprison you without offence—nay, even to deprive you of liberty and life without a cause. I deny that they have any right unless it be by an act of tyranny. Let them fix it by law. They have a right to make laws; and if a man with his eyes open incurs the penalty he must bear the penalty. But no right exists to make an *ex post facto* law; no right exists in the United States to interfere with the principle acted upon by every civilized community. I therefore firmly believe that this convention is not an unlimited, uncontrolled sovereign power. How far is it curbed? I say it is curbed by the constitution of the United States and by a code of laws still higher—the custom of civilized states in establishing governments. You ask me where that custom is; I tell you these commentaries and the practice of the world are the evidences of it. If a man, for instance, should go to Russia on the faith of these established rules and law, and his property be seized and he be sent to Siberia by the Emperor, that would be a breach of customs existing between nations and would be a just cause of war. If some subject of the United States has had his property confiscated without cause and is sent to Siberia, will our government not demand redress? And how will it demand it? By the recognized customs and established laws of the civilized world.

Now, sir, these are the reasons why I believe that the doctrines asserted in these two resolutions are true—that the arbitrary absolute right to take life and property exists no where in a republic—not even in the largest majority. I also believe in the corollary deduced from the proposition of the gentleman from Bourbon—that slave property stands upon the same basis as all other property in this commonwealth, and that to invade it, by seizing it, is unjust and contrary to the fundamental purposes for which society was constituted. I, however, do not deem it necessary to go further. So far as I have gone, I am willing to abide. I want to say to those who entertain abolition views, who assert that the people of this state have no right to hold this species of property—I want to say to them that we have asserted in the two features

we have put upon the constitution, that the “absolute and arbitrary right” does not exist; and that slave property is upon precisely the same footing as all other property. If you assert that this absolute arbitrary power does exist, you assert the right to seize the property of every citizen, and that slave property, and its increase, are not upon the same footing.

These are the reasons which induced me to give my vote—a vote I will stand by, both here and before the people of this state, and anywhere, where law is recognized and justice pursued. I believe that I am right; but if I were convinced, this moment, that I am wrong, no man would more willingly retire from his position than I would do. I challenge a reply; I ask if it is not in conformity with the principles established by the act of association? I say again, sir, that if I am wrong, no man will more readily, more cheerfully, retrace his steps than I; but until I am convinced, I must retain and advocate the sentiments to which I have given utterance this day.

Mr. TURNER moved the previous question, and the main question was ordered to be now put.

The question was taken on the amendment of the gentleman from Simpson; and it was rejected.

The question recurred on the amendment of the gentleman from Jessamine.

Mr. A. K. MARSHALL called for the yeas and nays, and they were—yeas 2, nays 75.

YEAS—Jas. W. Irwin, Elijah F. Nuttall—2.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Jas. S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Jas. Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thos. J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, William Hendrix, Andrew Hood, Thos. J. Hood, Alfred M. Jackson, Wm. Johnson, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, Wm. D. Mitchell, Thos. P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, Thos. Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—75.

So the section was rejected.

Mr. GHOLSON moved the following, as an additional section:

“At the first session after the adoption of this constitution, the legislature shall appoint not less than three, nor more than five persons, learned in the law, whose duty it shall be to re-

wise and arrange the statute laws of this commonwealth, both civil and criminal, so as to have but one law on any one subject, all of which shall be in plain english. Also, three other persons, learned in the law, whose duty it shall be to prepare a code of practice for the courts, both civil and criminal, in this commonwealth, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall act at as early a day as practicable, report the result of their labors to the legislature for their adoption and modification, from time to time."

Mr. TURNER moved the previous question on the reports, and the main question was ordered to be now put.

Mr. TRIPLETT called for a division, as the proposed section was susceptible of division.

The yeas and nays were taken on the first branch, as follows:

"At the first session after the adoption of this constitution, the legislature shall appoint not less than three nor more than five persons learned in the law, whose duty it shall be to revise and arrange the statute laws of this commonwealth, both civil and criminal, so as to have but one law on any one subject, all of which shall be in plain english."

And were, yeas 68, nays 11, as follows:

YEAS—Mr. President, (Guthrie,) John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, William N. Marshall, Richard L. Mayes, David Meriwether, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, John L. Waller, John Wheeler, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—68.

NAYS—Richard Apperson, John L. Ballinger, Ben. Copelin, Ninian E. Gray, Ben. Hardin, Alexander K. Marshall, Nathan McClure, William D. Mitchell, Hugh Newell, Wm. R. Thompson, Squire Turner—11.

So that the first branch was adopted.

The question was next taken on the concluding portion of the section, and the result was, yeas 48, nays 31.

YEAS—Mr. President, (Guthrie,) Wm. K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, Wm. C. Bullitt, Charles Chambers, William Chenault, Wm. Cowper, Edward Curd, Garrett Davis, James Dudley, Benjamin F. Ed-

wards, Milford Elliott, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thos. J. Gough, James P. Hamilton, James W. Irwin, George W. Kavanaugh, Peter Lashbrooke, Thos. N. Lindsey, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Richard L. Mayes, David Meriwether, Thos. P. Moore, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, Thos. Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Howard Todd, John L. Waller, John Wheeler, Robert N. Wickliffe, Wesley J. Wright—48.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Francis M. Bristow, Thos. D. Brown, Jas. S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Lucius Desha, Chasteen T. Dunavan, Nathan Gaither, Ninian E. Gray, Ben. Hardin, William Hendrix, Andrew Hood, Thomas J. Hood, Alfred M. Jackson, William Johnson, Wm. N. Marshall, Nathan McClure, William D. Mitchell, James M. Nesbitt, Hugh Newell, Johnson Price, William R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, George W. Williams, Silas Woodson—31.

So that the residue of the section was adopted.

The question was next taken on the reports of the committee on miscellaneous provisions, and they were adopted as amended.

#### EDUCATION.

The convention next proceeded to the consideration of the report of the committee on education.

The first section was read, as follows:

"SEC. 1. The diffusion of knowledge and learning among men being essential to the preservation of liberty and free government, and the promotion of human virtue and happiness, it shall be the duty of the general assembly to establish, within \_\_\_\_\_ years next after the adoption of this constitution, and forever thereafter keep in existence, an efficient system of common schools throughout this commonwealth, which shall be equally open to all the white children thereof."

Mr. TAYLOR moved to fill the blank with the word "two."

Mr. PRESTON moved to substitute "five."

The substitute was agreed to.

Mr. HARDIN. I did expect to have heard from the chairman of the committee, (Mr. Taylor,) some explanation of this system of common schools, and it may be that he designs to give us one yet. I am as much a friend to the diffusion of education, and perhaps, according to my means, have done as much towards that end, as any man in the state; not only in educating those I feel bound from nature to educate—my own children—but others. Yet I am unwilling to have any provision of this kind adopted in the constitution. We have now packed it very heavy, and I do not believe it will carry this additional load; particularly after what we did a few moments since, in relation to these commissioners to revise the laws.

I desire to offer, for the consideration of the convention, a few facts and figures, in explanation of my course upon this subject. When the

United States distributed to Kentucky her proportion of the surplus revenue, amounting to \$1,433,757 39, Kentucky pledged herself to herself, that she would set apart \$850,000 of that money for common school purposes. The school fund, as a fund, never had an existence, except in that mere pledge of the state to herself; there never was a dollar appropriated to the common school fund, except in this instance of \$850,000. That money we borrowed—we call it borrowing—for thirty-five years. The following table explains how this was done:

## SCHOOL FUND.

Composed as follows, viz: seven bonds of the commonwealth of Kentucky:

No. 1—At 30 years date, bearing 6 per cent. interest, and dated August 9, 1840,	\$24,000 00
No. 20—At 30 years date, bearing 6 per cent. interest, and dated January 16, 1840,	21,500 00
No. 21—At 30 years date, bearing 6 per cent. interest, and dated January 1, 1840,	22,000 00
No. 22—At 35 years date, bearing 5 per cent. interest, and dated January 18, 1840,	500,000 00
No. 23—At 35 years date, bearing 5 per cent. interest, and dated January 22, 1840,	170,000 00
No. 24—At 35 years date, bearing 5 per cent. interest, and dated January 22, 1840,	180,000 00
No. — Bearing 5 per cent. interest from January 1, 1845, and made payable at the pleasure of the legislature, and dated Dec. 20, 1848,	308,268 42

Total bonds, - - - \$1,225,768 42

## BANK STOCK.

735 shares of stock in the Bank of Kentucky, at \$100 each, 73,500 00

Total school fund, - - - \$1,299,268 42

Interest due school fund, January 1, 1849, and not included in above, - - - \$51,223 29

There was appropriated out of the surplus revenue, which was laid out in bonds Nos. 22, 23, and 24, - - - 850,000 00

Bonds Nos. 1, 20, 21, and —, dated December 20, 1848, are all given for interest, amounting to, - - - 375,768 42

Surplus revenue received from the United States government, - - - \$1,433,757 39

The amount of interest upon the whole debt would be something like \$72,000 or \$73,000. Some at five per cent. and some at six per cent. I give it round numbers, not having stopped to make an accurate calculation. Now, under a vote of the state, we levied last year a tax of two cents on the taxable property in favor of the school fund, which will fall, perhaps, about

two-thirds or three-fourths of one cent below the sum required; a tax of one cent would yield about \$25,000 or \$26,000. The gross amount would be perhaps near \$30,000; but the sheriffs' fees for collecting and the delinquencies are to be deducted from it, however. To raise the amount this section proposes would require a tax of near three cents. Now, has there been any vote in the state upon this additional tax? I know of none; and for my own part, I should prefer this matter should be left open to legislation. It is not worth while for the convention to do all the legislation of the country right at once. Let us leave some little for the legislature to do. Are you afraid of the legislature? Surely not. If it is necessary, they will do it—if not, they will do as much as is convenient. According to this report, we are to have an addition to the present tax of one cent, or perhaps more; and as the result of what we have already done, we shall have to put on another cent to pay the state debt. So we may fairly calculate, that taking the two sums together, our taxes will reach twenty cents on the hundred dollars. It is nineteen cents now, but two cents of this were levied last year, for this convention, which is of course only temporary. Now, I know that the people, or a majority of them in the whole state, did vote for the two cents for school purposes; but I do not believe that they fairly understood the question. I saw the sheriffs when they opened the polls, and a man came up, put the question to him, "do you vote for the schools?" He would say "yes," unless he was taken out, and the matter explained to him. In another county, I understood it was in the county of Hardin, the sheriff put the question fairly, and it was the only county in which it was fairly put to the people, as far as I know, and that was, "are you willing to vote for an increase of two cents on your taxes for free schools?" A dead majority there voted against it; and whenever and wherever I saw the question fairly put to each man, a large majority said no. I believe, then, that the large majority of the people did not understand the question. In my county, the sheriff never put the question fair, until some time, I think, about the latter part of the second day. I then went up to him, and told him to put the question fairly to the people, and let them understand it. I voted no, and as soon as I did, I turned around and explained the matter to the people, and divers men said to me, that they regretted they had not understood it before they voted. And I think a majority after that went against it. I know my constituents do not want this in the constitution, and I know they did not understand the question. I am as perfectly certain of it as a man can be of anything, in regard to which he has, to a certain extent, to indulge in conjecture. On the three cents proposed to be levied, we would pay perhaps \$1500 or \$2000; and yet we have never had a free school, nor will we ever have one in Nelson county; and I will challenge any county in the state, to produce an equal population, with only equal means, that expends more money on colleges and schools of various kinds, than we do in Nelson county. I am bold to say, there is not a county equal to it. We have the catholic college of St. Joseph, the catholic incorporated school of Nazareth, a first-rate

Presbyterian school, on which some \$10,000 or \$15,000 have been expended, and a first-rate Methodist school; we have also another catholic school establishment, carried on by the nuns; and I will add that to the honor of these schools, and it ought to be to the pride of the people of Nelson county, there are not now, I believe, less than fifty free scholars in the schools at Bardstown. Some are in the Catholic, Methodist, Presbyterian, and some are in the primary schools; and I never knew or heard of a poor child being refused admittance in either of these schools. When a little Mexican boy, who was left by a captain, and whom I picked up, poor, naked, and hungry at a tavern, carried him home and clothed him, fell into my possession, my good lady sent word to the president of St. Joseph's college, that if they would teach him for nothing, we would board and clothe him for nothing; he said that he could not exactly do that, but that if the boy would dress, and make himself clean, and come to church before the service commenced on Sunday, then they would teach him. And the boy pays for himself on Sunday, and commences even on Monday morning. And I verily believe in that college, and in the Nazareth school, and the female catholic school at Bardstown, there are not less than fifty free scholars; and I have never heard of a single instance where they refused a free scholar, that could not pay. The same may be said of the Presbyterian and Methodist schools. They never refuse a free scholar. I know we never had a free school; and I for one am unwilling to put it in this constitution, that my constituents shall be taxed for their support.

I have no opinion of free schools any how—none in the world. They are generally under the management of a miserable set of humbug teachers at best. The very first teacher that a child has, when he starts with his A. B. C.—or is learning to spell bla, or baker, or absolute, should be a first rate scholar. He should know exactly how to spell and pronounce the English language; and should understand the art of composition, and the construction of sentences. In the language of Dean Swift, he should have "proper words, and they should be put in proper places." The worst taught child in the world, is he who is taught by a miserable country school master; and I will appeal to the experience of every man here who ever went to those schools, to say how hard it is, to get clear of the habits of incorrect reading and pronouncing, they have contracted, at these country schools. For myself, I will say, it cost me nearly as much labor as the study of the legal profession itself, to get clear of this miserable mode of pronouncing, contracted before I went to a collegiate school—at the age of 17—your would, and could, and should, and all of that. I knew a man in Grayson who was to prove a settlement between two litigants, in a case where a small amount, some thirty, forty, or fifty dollars were involved; he gave in his testimony, and every now and then he would throw in a word of four, five, or six syllables, utterly inappropriate to the sense; like putting a magnificent, guilted saddle, and splendid bridle, with plated bit and curb on a miserable broken down poney, or an ox; there was just about as much propriety in his application

of these words; and I saw at once he was a country school master; he had proved the making of the settlement and said I, "when did it take place?" "On the 39th of October," said he. "Oh! the 39th of October you say." "Yes sir." "Are you not mistaken; was it not the 29th?" "No sir. I know the use of words as well as you do, Mr. Hardin, and say it was the 39th." I then asked him how many days there were in October. He said, he did not exactly recollect, but somewhere between forty and fifty. "How many months are there in the year?" "Oh! there you are a little ahead of me, but I know there are over ten and under fifteen." You are a school master? "Yes"—said he, placing his hands on his hips, and looking very self-important—"thank God that is my vocation, and I am making an application for a free school up here, and I want you to help me if you will." "Sir," said I, "I will do it with all my heart, for you come exactly up to my notion of a free school teacher." Delegates will perhaps talk to us of the free schools of New England, Massachusetts, for instance; she has a greater white population than we, but viewing the number of our slave population, we have about as many representatives, as she has. She does not cover a space of more than about seven thousand square miles; and her population is crowded together, so as to render her schools accessible to all; there she had large donations set apart by individuals of great and overwhelming wealth to that object; while we have no such means—we must collect by direct tax, from the labor of the people every year; at an expense and loss incident to passing through the sheriff's hands, of from ten to twelve per cent. I once made out an estimate of what it cost to get direct taxes into the treasury of the United States, and I had a table made out showing that it would take \$14 72 on the \$100, to cover the delinquencies and defalcations and collecting commissions of the revenue officers. Now and then it will happen in Kentucky, as the same thing happens elsewhere, that the sheriff sends his money up to this place and the man he sends it by unfortunately gets robbed. Nobody knew who did it; but it is so reported, and sooner than break the sheriff up the legislature indemnifies him. This thing may happen again, and I have no objection to its happening again, to save as clever a man as any on this floor from utter ruin.

After this money had been raised at a loss of ten or twelve per cent. how is it to be laid out? I know it can be, to the advantage of towns, and that as you increase the size of the town, there is a greater demand for it. And I do not blame my friend who is taking notes, (Mr. Root,) for what I suppose will be his position. He lives in a town that needs these free schools; the increase of population proportionately of poor children entails a tax upon the towns; unless you can collect it from the people of the country, and oblige them to aid in supporting the poor children that are thrown there, sometimes by the death of parents, who depend upon their daily work for a living; and sometimes in one way and sometimes in another. But as to how the teachers of these free schools in these towns and cities, take care of the morals of the scholars male and female, I would like my



friend from Louisville, (Mr. Rudd,) to give his experience. According to what he has told me it would be a most melancholy tale that he would relate. Now, Kentucky embraces over 40,500 square miles, and free schools cannot educate scholars, upon a larger theatre than nine square miles; and if we scatter them all over the state fairly, it would require a number of schools beyond what the means of the state, after paying the expenses of government, could provide. Not less than 4,500 free schools would be required; or if we do not do that, the result will be, that the poor and thinly peopled counties, although taxed for, would not have the benefit of those free schools; that will be the result. I would not send a child to a free school, and would rather pay for his education myself. At this day I send some half dozen children to the Methodist, or Catholic colleges, and would far rather do that, than see the poor children thrown into these miserable free schools; and every body who knows me, knows that besides my own children, I am at all times educating not less than five or six others. Not even the gentleman from Mason, (Mr. Taylor,) is a firmer advocate of the doctrine, that the dissemination of a good education, is necessary to the prosperity and perpetuity of a free government like ours. In the reports that have been made upon this subject, most manifest and palpable injustice has been done the state of Kentucky. We heard to day, and I was glad to hear the young delegate from Louisville, (Mr. Preston,) disdaining a comparison between the talents of the northern states and the state of Kentucky. I do not believe that there is a state in the Union, that possesses so great an amount of talent and information as Kentucky. I recollect very well that some thirty-seven or thirty-eight years ago, that the celebrated James Buchanan, late secretary of state under Mr. Polk, commenced the practice of law, in the town of Elizabeth, and county of Hardin. There I became acquainted with him, and at that time I discovered in him a man of fine education and respectable talents. In the course of a few months he began to look unhappy, and as if he was experiencing some disappointment. His father had given him a large landed estate in Hardin county, about which there was some difficulty; and at last he made me his attorney at law, and attorney in fact, and went back and settled in Pennsylvania, where he was raised. Ten or fifteen years afterwards, I met him in congress, and over and over again have we laughed when he told me this remarkable story. "I went to Kentucky," said he "expecting to be a great man there; and every lawyer I met at the bar there was my equal, and more than half of them my superiors, and I gave it up."

I recollect the first time I ever saw Daniel Webster, and heard him speak. And the conversation we had about it, we have laughed over twenty times since; and we did so the last time I saw him. He went off as cold as an icicle and as pure, as if it hung from the temple of the maiden goddess Diana. His language was pure, his manner was cold; and I remarked to him, "Sir, if you will come and settle in Kentucky, and learn our mode of speaking, you will be an orator equal to any Greece or Rome ever pro-

duced." And I heard him say, the last time I ever saw him, "would to God I had taken your advice." We are a happy medium between the north and the south. The southern men go off something like the fellow in the doggerel song, Jim Crow, I believe:

"There was a hoosier come to town,  
And swallowed a hoghead of molasses down;  
The hoops flew off, the hoghead bust,  
And he went off in a thundergust." (Laughter.)

I do think that Kentucky has produced, not only the best and happiest style of oratory of any state in the union, but—I may be mistaken—the best in the world. And I do think there is as general a diffusion of education among the people of Kentucky as in any other state. I recollect a gentleman, and I think his name was Smith, who was taking notes as to the number of those who could not read and write, and he had reported every man on a certain grand jury, as not being able to write his own name. They had been quizzing him, for there was not a man among them who could not read and write. I said to him, "These men are quizzing you, don't put it in your book; for if you do, I shall have to make a speech and tell the people they are quizzing you."

This thing will be manifestly unjust in its operations upon the country, as compared with the towns and cities, on the Ohio border particularly. It is manifestly unjust as to a large portion of the people of Kentucky, in a religious point of view. There is a catholic population of perhaps sixty thousand in Kentucky. We know that they devote more money, time, and energy, to the education of their children, than any other religious denomination in the state; and I say it, because coming from a protestant, I hope the admission will be taken as true. Do you believe that they will ever have the management of our free school system? Do you believe that they will ever send their children to a free school? No, never, never. I talked to the leading catholics, and they protested against it. And yet, some sixty thousand people are to be taxed for free schools, to which they will never send a child. And I ask who are to control these schools? Perhaps the men are to be appointed by the legislature; perhaps to be elected by the people; I do not know which, as I have not seen that portion of the constitution providing for it. If the choice is to be by either, we know that the catholics stand no chance; and yet that denomination comprise one third of the population of the county I represent, and one third of the counties of Marion and Washington. And I venture to say that in the counties of Nelson, Washington, Marion, Spencer, Hardin, Larue, Grayson, Meade, and Breckinridge, there is not less than three thousand voters who are members of the catholic denomination; and yet they are to be taxed for the support of this system without realizing the least possible benefit therefrom. And I will tell you more; you will not get good teachers, and the teaching will be thrown into the hands of men, perhaps, that even we Methodists would not like to stand to. I am not a methodist, but I am a lobby member, and I believe a good deal in that doctrine. I believe good works go a great way towards getting a man into heaven; and that they are the best

turnpikes and railroads upon which they can travel to it. There is a doctrine, once elected, always elected; that I do not understand. I do not believe a methodist would ever be elected to the post of superintendent of these schools. And who would be? Why, perhaps only such a class of men as Robert J. Breckinridge, who, instead of attending to the duties for which he was elected, and paid by the people, is going about making speeches, the tendency of which is to incite our negroes to cut our throats, and to burn our houses and villages. That is the tendency of the doctrine preached by the superintendent of education during the last year.

Will the members of this convention, by the adoption of this report, fix its provisions upon the people as long as this constitution shall last? You are to pay the interest on the several sums to which I have referred, amounting to something like 75 or \$76,000, for all time to come, if you do that. Then, no matter how unpopular or how objectionable it may be to the people, they cannot get rid of it without calling another convention. I beg of the convention to bear this in mind, and not put it in the constitution. Leave it open to the legislature. In the name of God, are we to leave nothing open to the legislature? We have taken from them their last quarry—the granting of divorces. They were powerful in that. A certain gentleman in a lower county was once pleading a chancery suit, in which he had to demur to a part, and plead to a part, and answer to a part, and in making his speech he got very much tangled up in it. At last, clapping his finger to his nose, he said, may it please your honor, this chancery business is a little over my hooks, but I am terrible upon petitions and summons. So with the legislature—they were terrible on divorces, and we have taken that away from them. They were equally good in changing Betsy to Polly, and Tom to Harry, and Dick to Tommy. They were perfect masters of that subject, and yet we have taken that away from them. And we have also taken away from them the right to say that a stream is navigable, which God Almighty said was not. Leave them a little to do—let them decide what shall hereafter be done as to these free schools. I had far rather that this tax of three cents should be appropriated to the endowment of colleges and academies, for the education of young men capable of teaching, than see it thrown away, as is here proposed. Some of us I know, have taken up the idea that the people are remarkably well educated in the New England states, in Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, and Vermont, or as the yankees call it, "Varmount;" but it is a mistake. And to sustain the idea, there come to us from those states numbers of young ladies as teachers. I know what brings them here—ostensibly for teaching—it is really for husbands. And they are generally successful too in getting very respectable husbands. Teaching is the pretext, but a husband is the object. Like your professed gamblers, who come to town dressed in their fine clothes and jewelry, gambling is their pretext, but it is only until they can discover where the strike is to be made, for robbery and plunder is their real object.

For my own part, I am against this system

being adopted in the constitution, and so far as I can collect the public sentiment of my county and the counties in the neighborhood, it is against it also. I do not believe we can carry the constitution with it in. Already to-day have we, on the motion of my friend over the way, (Mr. Gholson,) adopted a provision which will entail on the people an expense of \$30,000 or \$40,000, before we get through with it. If we go on to pack the constitution in this way, do you believe we can carry it before the people? I do not, and I know we cannot. How can I, when I go home, commend this constitution to my people, and to those of the neighboring counties where I am in the habit of speaking, and where a large portion of the people have some faith in me. I cannot do it, if it shall contain a clause taxing them at least three cents on the \$100, and from which they cannot get clear of, so long as this constitution may last. When the gentleman first stated this thing—I do not know whether it was my friend from Carter or from Mason—I thought it was all a kind of a joke. I felt a good deal like the gamblers at Vicksburg, when the people were going to hang them up. They thought first that the whole proceedings on that occasion were a joke, merely intended to scare them off. When they were placed into the wagons that were to carry them to execution, they asked, "come boys, hav'n't you carried this joke far enough?" "A little further," was the reply. When the music struck up, and the wagons moved on, and they in them, they asked, "in the name of God where are you going?" "To the top of the hill," was told them. "Oh, hav'n't you carried the joke far enough now?" said they. "A little further," was again the reply. When they got to the top of the hill, and saw the gallows, "Lord Jesus," they exclaimed! "have you not carried this joke far enough?" "A little further," was again the reply; and when they were made to mount the cart, and the rope was around their necks, they were told "the joke had gone just far enough," and cracking the whip, the wagon started ahead and there they swung.

I had thought gentlemen were merely joking in this matter and had carried it far enough, but it seems now as if they, too, were disposed to crack the whip and leave us all swinging together. I am confident that the country will not approve of the system. It may be an advantage to the towns, but it will be a great burden on the country, to which they should not be asked in justice to yield. The towns should remember, as the old saying is among the women, "if, when you go to market you expect to get meat, you must expect to get bones also;" and they must expect to get their share of inconveniences as well as advantages, by living in town. I hope, therefore, we shall not adopt this report.

Mr. GHOLSON. I beg leave to correct my friend. He sometimes charges us with going off half-cocked, but I think he has erred on this occasion. He seems to think that I am in favor of engrafting this section which has been reported by the gentleman from Mason, (Mr. Taylor,) on the constitution of this state.

Mr. HARDIN. I do not mean any thing of the sort.

Mr. GHOLSON. If the gentleman does not

mean that, I am at a loss to know what he does mean. He either means that, or he means nothing. I am as much in favor of common school education as any gentleman on this floor, but it is well known that we have no school fund, unless we take it out of the pockets of the people. If we put into this constitution the provision now before us, the money will have to be raised by additional taxation; and to this I cannot consent. But I am willing to leave it to the representatives of the people, to say what shall be done on the subject of education.

It is true,—and it is perhaps to that that the gentleman from Nelson alluded—that I am in favor of a revision of the law. I hope the gentleman from Nelson does not mean to move a reconsideration of the vote adopting the reports of the committee on miscellaneous provisions, for the purpose of getting rid of the section that was adopted on my motion, to provide for a codification of the laws, which is so necessary to the state at large. The laws now in existence are so complex, and scattered over so many books, that the farmers of the country are not able to ascertain what the laws are. This being the case, I trust the gentleman will not meddle with the provision which we have adopted, for if there is anything for which my constituents are willing to be taxed, each his respective pittance, it is to know what are the laws under which they live.

On the subject of education, it cannot surely be that this convention will tax the people against their will. Let us pass it by, and leave it to the people's representatives.

Mr. PROCTOR next obtained the floor, and on his motion the convention took a recess.

#### EVENING SESSION.

Mr. PROCTOR. Whatever has been often said, when repeated, I am aware, falls like snow upon the water, and is soon blotted from the recollection of man; and I know, sir, that in days past and gone, there has been so much said by politicians when candidates before the people for office, in favor of education and common schools, that any thing that could now be said in favor of the system, is apt to be looked upon by the people as a familiar story, only re-told to gull and deceive them. But, Mr. President, as I promised my constituents, when a candidate for a seat in this convention, that if elected, I would use my best exertions to secure the incorporation of a clause in the constitution, which would permanently secure to the people of this commonwealth not only the fund set apart by the general government for the purposes of education to the State of Kentucky, but that also, which the people, in their magnanimity, had voted to tax themselves with at the August election, 1848, for that purpose. I will, therefore, ask the indulgence of the convention, for a short time, while I make a few remarks upon the report of the committee of education, and while I attempt to reply to some of the remarks advanced by my venerable and talented friend from Nelson, (Mr. Hardin.) I know, Mr. President, the difficulties a young man like myself has to contend against, when attempting to reply to arguments emanating from a gentleman of his age and experience. I know, too, sir, the

ingenuity of that gentleman's mind when brought to bear against any proposition which he is opposed to seeing engrafted in the constitution which we are engaged in making; and, sir, I have not been a little amused to see the adroitness of that gentleman when any proposition was introduced into this convention which was not in keeping with his own peculiar views. No sooner is a proposition brought forward here, to which the gentleman is opposed, than all the mighty powers of his intellect are brought to bear against it, and that, too, upon the ground that it will encumber and endanger the adoption of the constitution by the people. Now, sir, I do not believe that the adoption of this report in the constitution will at all endanger the adoption of the constitution by the people, for I believe that if there is any one question that has been settled by the people, and any one subject upon which they require prompt action on the part of this convention, it is, that the school fund shall be permanently secured by a constitutional provision; and my venerable friend who has in his remarks to-day so much dreaded our entering into detail in the constitution upon this subject, has, upon former occasions, urged, with all the powers of his great mind, the adoption of propositions in the constitution which, in my humble judgment, were not demanded by public sentiment, and which should have been left to be settled by the legislature of the country. Yet, sir, whenever any gentleman brings forward any proposition which does not meet with his own peculiar views of propriety, that gentleman's voice is ready to raise the alarm, and to warn this convention of the danger of entering into detail in the formation of the constitution that we are engaged in making. For my own part, I am not to be frightened from what I consider to be my duty upon this or any other subject, by any such a course of reasoning.

Sir, the position of my venerable friend upon this subject, reminds me forcibly of an anecdote told by a distinguished friend of mine during last summer, of an old bachelor who was in love with two very beautiful girls, one of which had black and the other blue eyes, and being anxious to conceal from each his partiality for the other. Happening to be in company with them both one day, he first remarked to his black-eyed Mary that his heart was with her; then turning to his blue-eyed Susan, he remarked that his heart was with her. In a short time afterwards the girls walked into the garden to pick roses, and while there they compared notes and found out where the old fellow's heart was. So, returning to the parlor, they walked up to him and demanded to know of him where his heart then was. Glancing an eye of devoted love first to one, and then to the other, he exclaimed—

“The modest black, and the piercing blue,  
I cannot decide betwixt yet two.”

Said he, my heart is just like the pendulum of a clock—now tis here, now tis there, and as you are fair and lovely, if you have no objections I will take you both.

Just so it is, Mr. President, with my venerable friend. (Laughter.) One day when some favorite project comes up for the consideration of

this convention, which he approves, though it may enter ever so much into detail, we find him battling with all the powers of his great intellect, in support of his proposition. But sir, no sooner is the proposition submitted to this convention to secure to the people of this commonwealth the school fund of the state from the control of the legislature, than the herculean voice of my venerable friend is raised in opposition to that proposition; and because the proposition does not meet the views of that gentleman, he is ready to proclaim at once, that its adoption will be fatal to the adoption of the constitution.

Mr. President, I believe that the adoption of a provision in the constitution, for the permanent security of the school fund of this commonwealth is demanded by the people of the state; and, sir, I have the strongest arguments to predicate this belief upon; for if you will turn to the vote cast in favor of the additional tax of two cents, in 1848, you will find that there were seventy-four thousand six hundred and twenty eight votes cast in favor of this proposition, and but thirty-seven thousand seven hundred and forty-six votes against it; being a majority in favor of the tax, of thirty-six thousand eight hundred and eighty-two votes. By a reference to that vote it will be seen that the county which I have the honor of representing in this convention cast one thousand and fifty-seven votes in favor, and but two hundred and seven against this proposition; and in supporting the report of the committee, I feel, therefore, that I am but obeying the will of my constituents, as expressed by them at the polls. But my venerable friend tells us that the people voted upon this subject ignorantly, and that they did not understand the nature of the votes which they were giving; and that if they had understood the effect of it, they never would have cast their votes in favor of this additional tax. Sir, if that argument of the gentleman is correct, it is one of the strongest reasons, to my mind, why we should adopt in this constitution a clause providing for a system of general education. If, sir, the people of Kentucky were so ignorant as to be gulled and deceived in voting for a proposition that they did not understand, it is high time that the representatives of the people were taking some steps to enlighten their understandings. But, sir, I believe that the people did understand this measure, and that they require and expect of this convention, that we will secure, by a constitutional provision, not only the fund set apart by the general government to the state, for the purposes of education —

Mr. HARDIN. The gentleman is mistaken. Congress did not declare to what purpose this fund was to be applied.

Mr. PROCTOR. My friend informs me that congress did not designate the object of this fund, at the time of setting it apart to the states. Well, sir, it is known to all that it was the general understanding of congress at the time of setting apart to the states the surplus revenue, that it was to be applied to the purposes of education; and our legislature, acting upon this understanding, at its first session after congress set this fund apart to us, dedicated it, by a solemn act, for that purpose alone. But, sir, in viola-

tion of every principle of justice and equality, we have seen that the legislature has disregarded her own solemn acts, and instead of appropriating this fund, as it was originally intended it should be, they have squandered it in wasteful and extravagant expenditures for internal improvements, which have been local and partial in their beneficial influences. And now, sir, when my constituents come up and demand of this convention that justice may be done to them, they are to be told by the gentleman from Nelson that they must be left to the mercy of the legislature—that body which, in days that are past, has been so just in all its acts. For my part, Mr. President, I am anxious to see this report adopted in the constitution, and I shall, by every act of mine, endeavor to secure this school fund by a permanent provision in the constitution.

That all free governments, Mr. President, are based upon the intelligence and virtue of the people, is an almost universally admitted truth; for we all know, sir, that constitution and laws, which are intended to protect the weak and well meaning against the strong and unprincipled, are but feeble barriers in communities where vice and ignorance usurps the place of wisdom and learning. But as I have remarked, while these general truths are admitted by all, it is to be greatly feared that we are not practically alive to the importance of these great truths on the operation of government; and the success of our great experiment in carrying on a republican form of government will depend in a great measure, upon the cultivated intelligence of the people. While, sir, we are engaged in making a constitution, which is to be thoroughly democratic in all its operations, and while we are throwing back into the hands of the people all political power, the solemn obligation is resting upon us as their representatives, to secure to them and their posterity the means of securing to their children the blessings of an education, in order that they may be qualified to discharge the duties that may devolve upon them. For one, I believe, with the first eminent law-giver of Pennsylvania who took care to incorporate in the frame of the government itself, which he prepared for that state so early as the year 1682, "that men of virtue and intelligence are requisite to preserve a good constitution, and that these qualities do not descend with worldly inheritance, but are to be carefully propagated by a virtuous education of the rising generation." And never, Mr. President, did man speak more truly than did that old quaker law-giver of Pennsylvania; and believing with him, that men of intelligence are requisite to preserve a good government, and that all attempts to build up free institutions without them must virtually fail, I shall vote for every proposition that will tend to the promotion of learning, and the diffusion of knowledge throughout the state, and that will be calculated to secure, upon a permanent foundation, a system of common schools. Sir, while we are making a constitution that confers on the people the power of choosing all the officers of the government, both civil and political, how important is it that we should also extend to them, as far as we can, the means by which they may inform themselves as to the nature and responsibilities of those high

trusts thus confided to their charge. Much, Mr. President, has been said upon the floor of this convention about the capacity of the people of Kentucky for self-government; and while I believe that the people of Kentucky will compare with any upon the globe for virtue, patriotism, and hospitality; and that they are perhaps, possessed of more native genius, and fertility of intellect than any people who have ever lived in any age or clime; yet, sir, the fact is not to be disguised, that there are a large number of persons in Kentucky who are both ignorant and uneducated, and subject to be controlled by the vicious and unprincipled. It appears by the census of 1840, that there were in Kentucky, of males and females over the age of five and under twenty years of age, 233,710 persons. Of this number, there were in colleges and universities 1,419; in academies and grammar schools 4,906; in common schools 24,641; making a total of 30,966, leaving over 200,000 children between the ages of five and twenty not at school. And most deplorable of all, Mr. President, is the fact, that there was at the same period of time in this proud old commonwealth of ours, of which we boast so much, over forty thousand free white citizens over the age of twenty years, who could neither read nor write; a fact that is not very flattering to our vanity as Kentuckians.

Now, sir, while I would go as far as any gentleman in this convention in extending to the people all political power and sovereignty, I am not one of those, who will either flatter the vices or the ignorance of the people, for I hold that extravagant and fulsome adulation is as false and ridiculous, when applied to the people, as it is when applied to the monarch on his throne. Let me say to this convention, that the labors of the divine, the moralist, and the legislator, will avail but little in this country towards the preservation of liberty, unless the great mass of the people themselves are made intelligent. If they are not educated, the demagogue and political aspirant to office will still continue to inflame their passions, and excite their prejudices.

While, however, these great and important truths are recognized and admitted by all, it is to be feared that gentlemen are not practically alive to the important influence of these truths on the operation of our government. The gradual extension of the privilege of free suffrage, in the provisions of the constitution which we are about to adopt, and which is to place in the hands of the people the selection of every officer of the government, imposes on the members of this convention, the solemn duty of making a corresponding effort to extend with these great privileges the lights of knowledge, and the means of cultivating the minds of those who are to come after us. For, sir, if we mean to preserve our free institutions, we must watch over them; we must learn to know and number our great political rights; we must study the tenure by which we hold them; and we must also qualify ourselves to discern from afar off, the dangers that threaten us—for the rights and liberty of man are always in danger from some quarter; they are always a prey to the worst passions of the human heart. Ambition, in its eagle flight, is always hovering over the nest where our dear-

est blessings are, and ready at any unguarded moment to seize upon them; and the serpent guile of avarice, is ready at any unguarded moment, to invade the asylum of our most sacred rights. If, then, we would guard those rights, we must qualify ourselves and those who are to come after us, to discern from "afar off" the dangers that threaten us; and we must learn "to trace the serpent by his slime, and to know the eagle by his portentous scream." I therefore, Mr. President, stand here demanding it as but an act of justice to my constituents, that the fund mentioned in the report of the committee, be secured to them by a constitutional provision. And when I make this demand—a demand so just—am I to be told that we must look to the legislature for our rights; and that we are to be denied the protection of the constitution? Sir, is it right that my constituents, who have contributed to the expense of your government—who have been taxed to build your railroads and your turnpikes—who have contributed towards the slack watering of your beautiful Kentucky and Green rivers—and who will be compelled to contribute to the payment of your state debt, which was created for the purpose of completing these works—in plain terms, are we of the mountains, who are poor, to be taxed to improve the rivers and roads of you who are wealthy? And then, sir, when the general government has set apart to us a fund, for the purpose of general and equal education, and when we, by our generosity, have voted to tax ourselves for the purpose of raising an additional sum, for this same purpose, is it right for us to be told that there is no constitutional security for us, and that our rights are to be disregarded? I hope, sir, that this convention will act with that wisdom and foresight, that have controlled the action of nearly all the conventions which have met for the purpose of amending the different state constitutions, for the last ten or twenty years; and that we will, by a provision in our constitution, place the school fund beyond legislative control.

We are creatures of imitation and example. It was the example of Washington and Bonaparte, that made them so successful in their battles. They did not, on the eve of some great battle, harangue their soldiers on the importance of valor, and the necessity of victory, and then return to the rear, and send on their men to brave danger alone, and toil in the conflict of battle. No, sir; but with a nerve and valor commensurate to the occasion, they braced themselves up to the great emergency, and with an eye that beamed hope, and courage, and confidence, they marched to the front ranks, and bade their soldiers to follow. Sir, there was not a soldier in their ranks that did not feel the electric influence of their noble example; and who did not grasp his sword with a double vigor, and swear come life or death, to follow his glorious leader? Let us, then, show to the people of Kentucky, that we, as their chosen representatives, delegated by them to perform the high and honorable duty of making for them a constitution, estimate and prize intelligence and virtue. For, sir, if the representatives of the people exhibit an indifference upon this great subject, it cannot be expected that the people will manifest anything but indifference themselves.

In the report, which the committee has presented to the consideration of the convention, they have entered as little into detail as possible; and for my own part, I am willing to leave to the legislature the power of carrying into practical operation this system. But, sir, I shall ever be opposed to leaving to the legislature the control and management of the fund itself, without throwing around them those restrictions which will prevent them from appropriating one dollar of this fund for any other purpose than for that of education. And let me ask the gentleman from Nelson, what objection can he have to incorporating the article reported by the committee in the constitution. By that report we do not propose to tax the people of Kentucky one dime. We merely propose to set apart and dedicate forever what has already been raised by a tax for that purpose, together with the fund which has heretofore been set apart by legislative enactment, for educational purposes. But the gentleman insists that we must leave the whole matter to the control and management of the legislature, and why? Because gentlemen say that it will encumber and endanger the constitution. Is this the argument, Mr. President, that we are to be gravely met with, by old and experienced statesmen? If it is right that the people should be educated—if it is right that the fund which the people of the state have so generously voted to tax themselves with, for the purposes of sustaining a system of common schools, should be sacredly applied to that purpose—if sir, it is right that the money which was set apart to the state of Kentucky—by the general government, and which was originally intended for the purposes of education, should be applied to that purpose alone—why I ask, should we leave the matter to the future control and management of the legislature? If the thing is right, why should we not take the responsibility and act upon it? Why leave to others to do that which we are required to do ourselves? Why put off the good work, a work in which our children and our children's children are most deeply and most vitally interested. Mr. President, there is no doubt this day—many a "mute Milton" in the mountains of Kentucky, the energies and powers of whose mind have been repressed and checked by "chill, penury, and want," yes sir, minds which if early cultivated, might have "commanded the applause of listening senates" and who might have raised themselves above the common level of mankind, and have achieved honor for themselves and glory for their country. But from the situation in which they have been placed, the grandeur of nature has availed them nothing, and their mountain homes, which under the proper state of intellectual improvement might have echoed the song of the poet, or the eloquence of the orator, has remained as a sterile and uncultivated waste.

There is, Mr. President, abroad in this goodly land of ours, a spirit of inquiry and investigation, mysterious and all powerful in its operation, which hears the sigh of the oppressed in every land, and whose march is from nation to nation, dispensing joy and life to all, and which is setting the prisoner and captive of ignorance and idolatry free. Already has this spirit of in-

quiry freed our religion of its century-grown corruption. Already has it started into being, a principle of freedom in Europe, which is doing its work, and has erected its glorious monuments of freedom on the out post of Oregon and California; and it is to be hoped that the day is fast approaching, when the tree of liberty which was planted by our fathers upon American soil, will take deep root, until it shall rise and spread over the face of the habitable globe. But this great day in the history of man will be remote, unless our people are instructed and qualified to discharge the duties which in the remote history of their country, may devolve upon them.

Mr. President, I have thought it due to myself, and to those whom I represent, to say this much. And sir, whatever may be the action of this convention, I shall console myself by the reflection that in my humble efforts, in behalf of a system of common schools, to the best of my ability, I have discharged my duty, to myself, my constituents, and posterity.

Mr. C. A. WICKLIFFE. I hope whatever the decision of this convention may be, we shall be able to settle this question to night, in some shape or other. I am extremely anxious that we shall close our labors by the seventeenth. I think we can do so by devoting our time to the few objects which are now before us. One of them which seems to excite a great degree of interest is this of common schools. I am the friend of education, and claim the responsibility of an agency in setting apart the \$850,000 from the United States revenue, for the purposes of education, when the country is prepared to appropriate it.

The gentleman from Lewis, (Mr. Proctor,) is wrong in supposing that there was any setting apart of this revenue for the purpose of education by the general government. It was left free for the states to decide, and as I remarked the other day, when the fund was subject to the control of our treasurer, there was a contest in the legislature, at a time when I occupied a seat in the other end of this capital, as to the disposition of that fund.

There was a strong disposition on the part of some, to throw the whole in the fund for internal improvement. Others were disposed to invest it in Bank stocks. A compromise was made by which \$850,000 was set apart for the school fund. The balance was invested in stocks. What has become of the school fund since that time, I do not know. But I am opposed to adopting as a part of the constitution, this common school system, sometimes called the free school system. I use the term common, as opposed to individual or private schools.

As I know the chairman of the committee desires to be heard on this subject, I will only offer an amendment which I shall propose for the whole of the report. If we have a school fund secured, and set apart by the legislature of the country, I want to leave that fund to the disposition of the legislature for educational purposes. If they shall hereafter create a fund by the continuance of this two cent tax, or by additional taxation, or in any other manner, I want the constitution to lay hold of it and devote it to education. But the mode and manner, and time when,



and the possibility of carrying it out in every county in the commonwealth at the same time, seems to me to be questions which it is utterly impossible for us to decide. I see by one of the sections of the report that if a county shall fail within ten years, to place herself in the position which has been, or may be provided in the school law, and fails to draw the fund, and appropriate it to educational purposes, it is to be withdrawn from her and her population forever, and thrown back into the original fund. Thus every ten years, a portion of each county whose population is not prepared to appropriate the fund, is to lose the benefit of it, and cannot have it when prepared to appropriate it. I wish to secure the fund from legislative distraction, or abstraction, and for that purpose I offer the following substitute:

"All the funds which have been, or which may be collected, and which have been set apart for common school purposes, shall be held sacred, subject to be regulated by the general assembly, and applied and disbursed as shall seem best to effect the object of general education."

Mr. TAYLOR. I announced to the convention when I first addressed it, that I was now, for the first time in my life in a legislative assembly. I come here from the humble, and to me fascinating obscurity of private life, and I ask of this convention that they will not judge of the importance of the subject now under consideration, nor of its inherent justice by the humble and unpretending weakness of its advocate. Exclamations of surprise and astonishment have been so frequently made in reference to the course and conduct of some gentlemen here, that they have indeed become common substantives. I sir, too, have to-day been indeed greatly surprised by the action of some gentlemen in reference to the great subject now under consideration. When the president rose from his seat to put the question upon the adoption of the first section of the report, I firmly believed it would be passed "*nemine contradicente*"; I so believed because I thought the same feeling pervaded the representative which did the represented. But in an expectation so just and reasonable, so consonant with the hopes and interest of our common constituency, I am likely to be sadly disappointed.

The gentleman from Nelson (Mr. Hardin,) propounded to us a singular question, one which I dare answer, and which I will make the record before me answer. Said he, are you afraid to trust the legislature?—I am. He asked it with great emphasis and confidence—I answer it in the same spirit—I am afraid to trust the legislature; and the reasons for that distrust, I will give, drawn from legislative records on this subject. I hope the convention will bear with me whilst I unfold the reasons of that distrust, and defend the action of the committee, of which I am chairman, from the most singular arguments with which it has been assailed by the elder gentleman from Nelson. You may talk to me about the changes which we are making in the existing constitution; great as they are, and demanded as they are, alike by public necessity and sentiment; you may hold up to the people the elective principle which we are about to incorporate in the new organic law; but I tell you, in the

language of holy writ, "the last shall be first, and the first shall be last;" and although the report of the committee on education is the last on the calendar, yet you will find that this subject of education is the first in the affections and hopes of the people of this commonwealth. I resided for many years in one of the new and western states of this confederacy; and when I moved to it, my first object and duty was to become acquainted with its constitution, its political history, and internal polity. Among the matters which attracted my attention was the fact that the general government had given to the state every sixteenth section of land for the promotion of knowledge, and consequently of human virtue and happiness. Congress had not only given to Indiana, but to all the new states most liberally of the public domain for the purposes of education, while Kentucky and most of the elder states of this confederacy had not received any thing. In the year 1836 there had accumulated in the treasury of the United States about twenty eight millions of dollars beyond the demands against it, the most of which had arisen from the sales of the public lands, the common property of the people. Congress determined that this large amount of surplus revenue should not lay there idle and unproductive; nay, sir, fearing perhaps that it might be devoted to bad and sinister purposes, passed an act ordering it to be distributed among the several states in the ratio of their representation in that body, and thus, sir, the most singular spectacle was exhibited to the world, of a government making among the governed, a parental distribution of twenty eight millions of dollars which had accumulated in its coffers, a spectacle never before seen, and which I fear will never be seen again, at once the noblest and most cheering commentary upon free government, and the integrity and justice of its administration.

Kentucky accepted her share upon the condition imposed by congress; and upon the 23d day of February, 1837, passed an act in which I find the following section:

"Be it further enacted, That the profits arising from one million of dollars of the surplus revenue of the United States, deposited and to be deposited with the state by virtue of the act of congress of the 11th of June 1836, be and is hereby set apart and forever dedicated to founding and sustaining a general system of public instruction in this state."

Sir, to what nobler purpose could such a fund have been dedicated. The legislature of Kentucky felt then as we now feel; being the just and proper reflex of public sentiment, what did the representatives of the people do? They set apart one million dollars and forever dedicated it to a general system of public instruction. In the tenth section of this act it is further provided "that until such system shall have been devised by law, the profits shall be placed under the direction and control of the commissioners of the sinking fund, who are thereby directed to discriminate the same from the other ingredients of said fund, with a view to the abstraction thereof, together with the accumulations thereupon, as soon as the same shall be required under the contemplated system." Now, sir, this looks most beautiful and fascinating on paper. This term

*forever* is a strong one, but much I fear 'tis like lover's vows, written on a running stream. It exhibits a great deal of legislative anxiety for the safe custody of this fund. It is to be kept always ready—they want no days of grace for its payment. The commissioners of the sinking fund are required to discriminate it from the other ingredients, with a view to its *abstraction*. They are to keep it in a separate stocking, just as the frugal and provident old woman keeps her garden seed ready to plant in the spring; nay, the *accumulations*—meaning as I presume the *interest*—that too is to be kept separate and apart; one would infer that the children of the commonwealth had but to knock and it should be opened unto them—that 'twas but necessary to cry “open sesame,” and the cave in which was placed this sacred deposit, would give its golden treasures to the promotion of human knowledge. Well, sir, what has become of this fund and of its *accumulations*? Permit me to read from the report of the superintendent of public instruction:

“In the midst of such circumstances as these, the state of Kentucky found herself embarked in an extensive system of internal improvements, designed to develop her resources and increase the general wealth. The funds necessary to carry on her extensive operations, were raised by the public credit, exhibited in the form of state bonds, which were issued and sold to a large amount; and in order to sustain the credit of these bonds, and provide the means for the regular payment of interest accruing on them, and the final discharge of the bonds themselves, a sinking fund was created, and a large portion of the proceeds of the taxes, annually handed over to the commissioner of that fund. The bonds held by the board of education represented \$850,000, which the state having first consecrated to the cause of education, subsequently used in prosecuting its plans of internal improvement. The board of education stood, in regard to the bonds it thus held, precisely in the relation of any other fair holder of these internal improvement bonds; unless, indeed, the peculiar nature and origin of the school fund, thus invested, should have given a peculiar sacredness to the debt thus held by that board. Yet, it is most painful to be obliged to state, that the legislature of the state, for the year 1844-5, took a view of this matter so entirely different, that by the 4th section of the act, approved February 10, 1845—chapter 264, of the laws of that session—it required all the state bonds held by the board of education, to be delivered to the governor of the commonwealth, and to be, by him, burnt in the presence of the high officers of state! As if to mock the great cause which had thus been betrayed, the act proceeded to declare, that lists should be made out of the evidences of debt thus burnt, and that these lists, though deprived by the act itself of all value in the way of delivery, transfer, or assignment, and practically robbed of all advantage, thenceforth, from the sinking fund, which had been created to sustain and finally discharge just such bonds, should, nevertheless, be held and taken, as in the place of the bonds that had been burnt, and be as sacred as they had been! Practically, that is, sacred enough to be burnt themselves, whenever the ex-

igences of the public credit might seem to render such a proceeding desirable against the defenceless creditors.”

So sir, we see this fund was first dedicated to the improvement of the head and heart, the morals and the intellect of the country, to the noblest of all improvements—to the accumulation of that wealth “which taketh no wings and flyeth not away”—of which no adverse fortune can ever deprive us, and against which no commission of bankruptcy can ever issue. “Who so knoweth the things of a man, save the spirit of the man that is in him?” The legislature have not spread on the record the reasons which induced them to order those bonds to be burnt. They were afraid, I infer, that they would be put in market. They directed them to be listed, and if the auditor's office should be burned, the tangible evidences of this large debt to the children of the state would be gone; there are no bonds as I understand in existence. Has the interest on this eight hundred and fifty thousand dollars been paid, and kept ready (to use the language of the act of 1837,) for abstraction? No sir. On the 20th day of December, 1848, a bond for \$308,768 42 cents, being the arrears of interest due upon said \$850,000, was executed by the state. There is also \$51,223 29 cents of interest due for the year 1848. So it will be seen that the interest has not been paid; and this large interest bond of \$308,768 42 cents is payable at the pleasure of the legislature. Should not, I ask, the people be justly jealous of the legislature? Have they not a right to be so on this subject; and being so, I as one of the friends of education, am for placing in the constitution which we are now forming a clause, dedicating this great fund to this still greater cause. It is honor enough to be a delegate on this floor; but it is a still higher honor to have been instrumental in securing this fund to the glorious cause of education.

Mr. President, in the year 1848 the legislature passed an act authorizing the governor of the state to execute a bond, payable to the board of education, for the interest and dividends which was due from the state to said board up to the 1st of January, 1848, and that bond, as I have stated before, amounted to \$308,768 42 cents, payable at the pleasure of the legislature. I once read of a man who bound himself to build a house of given dimensions for a widow, and after setting forth in the written contract the style and material in and of which it was to be built, he added, that in the construction of said house “he was not to be hastened”—so in the payment of this large sum the legislature is not to be hastened. Sir, am I again to be asked if I am unwilling to trust the legislature? I do distrust them, when they order their bonds to be burned; when they give one for the interest, and say it shall not be assignable, and make it payable when they please; when they play the game of *tie and loose*. Credulity is folly—nay, 'tis moral and official treason against the children of this commonwealth. I promised an old friend of mine when I came here not to vote for a divorce, (he thinking we had the power and right to do so.) I promised him I would not; but I am going to violate that promise, and to vote to divorce the legislature from the power to control

or destroy this fund. I know my old friend will excuse me; he was an intelligent man and a good democrat, but he had the good sense and patriotism to vote for me, whig as I am.

The legislature sustains, (or rather the state in reference to this fund,) the singular position of debtor and creditor. They have made their bonds payable to the board of education. They have ordered them once to be burned. They have not paid the interest, nor provided the means for its payment. They may destroy, for aught I know, the creditor—the board of education, the corporate body who hold their bonds in trust for the children of the state—and I have cause to be jealous of legislative integrity and honor. The gentleman from Nelson (Mr. Hardin) has attributed to me the paternity of this movement here upon the subject of common schools. Not so. The gentleman from Carter (Mr. T. J. Hood) introduced the resolution for the appointment of the committee by whom this report is made. Sir, I honor the gentleman from Carter for it, and shall forever. When this convention first met, I took my seat where I now am, and looked out of the loop-holes of retreat, (for I am on the outer tier of seats,) at the delegates, talking to myself about men and things. I was appointed by the president, most unexpectedly to myself, chairman of the committee on education, an honorable position, and I am trying to merit his confidence, and that of my constituency, by the protection of our common right to and interest in this great matter of education. What does this report propose? First, it enjoins it on the legislature to establish and keep in existence a system of common schools throughout the state, open to all the free white children thereof; 2nd, to secure the fund heretofore mentioned by me; 3rd, to prevent the legislature from diverting the interest which may become due on said fund to any other purpose than common schools. It further provides for the election by the people of a superintendent of public instruction. This is a profile of the report. It has been denied on this floor that there is any necessity for interference by this convention with this subject. Let the report of the auditor, in reply to a resolution which I had the honor to introduce, answer:

“A statement showing the total number of parents and guardians, with the amount of their property, and the number of children between 5 and 16 years of age, taken from the commissioners' books returned to the second auditor for the year 1849:

	Parents.	Child'n.
1st. Those that have no property entered for taxation and number of children,	8,028	19,467
2d. Those who are worth less than \$100 in property and number of children,	13,755	36,764
3d. Those who are worth from \$100 to \$400 in property and number of children,	12,757	35,035
4th. Those who are worth from \$400 to \$600 in property and number of children,	5,904	16,409
5th. Those who are worth over \$600 in property and number of children	30,263	85,315
Total,	70,707	192,990

There are in Kentucky ninety-one thousand children whose parents are mostly unable to ed-

ucate them, and yet we are beseeched not to interfere. Great God, can it be possible that we shall be non-combatants in the great battle of life—for knowledge is life. I ask, if gentlemen can look upon this barren and unproductive field, and not desire to plant and nurture within it the tree of knowledge, (perhaps of life also,)—to lead through it those fountains of living water, which slake not but rather increases the thirst of him who drinketh; who does not desire to cast upon this still and unfruitful pool bread with the cheering assurance that it shall indeed be gathered after many days; to sow broad-cast over this land the seeds of knowledge, which shall germinate and produce forever. With the startling facts presented in this report of the second auditor, how can gentlemen hesitate about the absolute necessity of constitutional provision for some system of general education? It cannot be that this convention will adjourn without the expression of some solicitude on this great matter.

Mr. President, I threaten no gentleman on this floor with his constituents—I point no one to the reckoning which will be made with him in reference to the custody and use of this great fund. Home sir; 'tis the most beautiful and fascinating word in the English language, doubtless on account of its associations—grouping within its circle, wife, children, and friends. I dare any man here to go home and look the mother of his children in the face, and tell her, who is the partner of his joys, his troubles, and anxieties, that he opposed the constitutional devotion and security of this money for the education of her children. I want every mother to know that if the father of her children shall be taken away, that there is a fund set apart by the constitution of her country, for their education—that though they are indeed orphans, yet their moral and intellectual culture has been provided for by the state, whose rulers they are to be in a few short years. Yes, gentlemen, when you shall return home, and sit down at your own firesides, rendered festive by your presence, and secure and happy by your presence, when your children—the buds and blossoms along the pathway of human life—shall be throwing their little arms around your neck, and telling you, in their artless simplicity, the little domestic incidents that have occurred in your absence, can you, in such an hour, tell the wife and mother that you have had an opportunity of providing a system of schools for them, and have not done it? Will you throw over this sunshine of the heart the pall of neglected and violated social obligation and duty, by your failure to protect and secure this fund from legislative rapacity and duplicity?

No man can estimate the value of knowledge. I would not exchange my opportunities of information, and the means of its acquirement, for all else this world can give. Knowledge is, indeed, power, every where; but in a government organized as ours, 'tis so socially and politically. The right of suffrage, as a mere right in itself, is not of such inestimable value. It is as the guaranty of the safety and security of other rights that its value and power is demonstrated:

"It is a weapon sharper set  
Than either sword or bayonet;  
It comes down as light and still,  
As snow flake on the sod;  
And executes the freeman's will,  
As lightning does the will of God."

Its intelligent exercise is every thing; 'tis indeed the sword of the spirit of freemen, and it may, indeed, be used as well for wo as weal. Intelligence generally diffused is necessary to the stability of free government. Patriotism is part and parcel of the moral and social inheritance of our people; 'tis a noble and common virtue; it may be said "to grow with our growth, and strengthen with our strength." But 'tis the educated patriotism of the country that is to walk amid the conflict of the social and political elements, and amid the winds and waves of human prejudice and passion, and bid them be still. We have been told by the gentleman from Nelson (Mr. Hardin,) that the catholics are opposed to this system of common schools, and that if we put it in the constitution they will oppose its adoption. And he has conjured up "spirits from the vasty deep," for the purpose of frightening us from our duty on this subject. He seems to think it will array the whole catholic population against the new organic law. Sir, I do not believe it. I will not do them the injustice to believe this imputation upon their patriotism and intelligence. I understand they have some of the best schools in Kentucky—I know they have been esteemed the steadfast friends of education. They will not send their children, 'tis said, to free schools. Be it so. Let them educate their own children; they have the right to do so, and the ability, too. Is that any reason why the friends of education should neglect to provide for such a system of public instruction as will hang up, at every man's fireside, the lamp of knowledge? We bring it within the reach of all—saint and sinner, protestant and catholic; and if the latter does not choose to embrace the advantages of the system, the fault is not ours. We have erected the lamp—if I may use the figure—like the brazen serpent in the wilderness, and invited every man to look and live; and if he will not, we have the consolation that it is not our fault, or our neglect. But, sir, if the catholics oppose a constitutional system of public instruction, that very opposition is, with me, the strongest reason why the system should exist; and the very declaration that they oppose it, has but increased my anxiety to incorporate it in the constitution.

Sir, what an immense and frightful amount of ignorance there is in this country. The profession, of which I am a member, brings me into contact with a great many persons who can neither read or write. Not long since I was upon a visit to a friend in a county not far distant from mine, when a man, who had purchased a small tract of land of him, came to pay for it; he paid a portion of the purchase money and gave his note for the balance. When he came to sign the note, he placed to it his mark, and I attested it. My friend told me that the father of that man kept him whilst a boy at home at work, whilst he, the father, taught other people's children. What a singular and mortifying spectacle is here presented of a parent bestowing knowledge upon the children of others

and denying it to his own. I hope for the honor of human nature that such instances are rare. Why, sir, if I believed in total annihilation after death, still I would do all I could for the diffusion of knowledge, because of its present value and enjoyment; but believing as I do "that this spirit of ours is not as perishable as the telescope through which it looks, as 'twere, into the very gates of heaven," believing as I do that it carries with it beyond the grave all its acquisitions and its powers of acquisition, it becomes doubly important and interesting to me. I know 'tis a trite remark that education is the ladder which leads "from barbarism to civilization, from ignorance to knowledge, from darkness to light, from earth to heaven." If so, 'tis our duty to furnish that ladder to every man, and while we have an opportunity let us do it. I know that in the rich counties of the state 'tis difficult to establish a system of common schools; there has been in the county which I have the honor in part to represent, but a partial adoption of the present system—in many of the counties no organization whatever has been had. A friend who sits by my side—the intelligent and sensible delegate from Green—informed me a few days ago that in the county of Pulaski there has been quite an extensive organization of schools under the present law. She has 1264 parents and 3590 children. She is a democratic county, but she has sent to the senate of Kentucky a whig—a northern man by birth and education, and who has devoted much time and attention to the promotion and organization of these schools in Pulaski, and the best return which the people could make to him for his interest in their welfare was to elevate him to a more extended theatre for usefulness. Sir, the election of this man from a democratic county, (and he a whig,) is honorable to my democratic friends. It exhibits that there are interests and motives above party success and party triumph; and that though in a minority in the state, that they can forget, yea, sir, elevate themselves above party prejudices and come up to the rescue of their children and the country from the consequences of ignorance and folly.

I feel, sir, that I have trespassed on the attention and indulgence of the convention. I could not have said less—perhaps I ought not to have said so much.

This is a subject which comes home to every citizen: it so commends itself to our kind consideration and regard; it so challenges our attention now, and so inspires our hopes for the future. Sir, if you desire to engraft in the constitution, which we are now making, an element of success and triumph over all opposition, you cannot better do it than by the adoption of the principles of the report of the committee. I thank the house again for their kind indulgence. I attribute their patient attention not to the manner in which my remarks have been presented, but to the intrinsic importance of the subject now under consideration, and of which I have ever been the faithful friend and humble and zealous advocate.

Mr. ROOT. I rise to make a few remarks, not that I expect to shed any light on the subject before the convention, but because I feel that if I do not avail myself of this opportunity, it

may never occur to me again to make the peculiar views of the people of my county known to this convention. I feel that if I were to let this opportunity pass, I should disappoint the expectations of a respectable portion of the people of this commonwealth. If there was any one subject on which I was thoroughly and fully instructed, it was to rescue from the vacillation of the legislation of the state, the common school fund, solemnly dedicated to the purposes of education by the representatives of the people in 1837, and place it beyond the control of the legislature of the country. I know a little about the legislation of the commonwealth, and its changeable character, as exhibited in 1844-5-6, when the question of common schools was under consideration. Strange to say, there was a majority of the members then on this floor, in those years, who were disposed to vote more money to procure wolf scalps or wild cat skins, than for the purposes of promoting general education. The people, with all their virtue, intelligence, and chivalry, are not fully and fairly represented by their representatives. The honorable representative from Fayette, a few years ago, introduced a bill imposing a tax of two cents on each \$100 worth of property in the commonwealth in aid of common schools, provided the people should, at the next election thereafter, vote for the tax. The people did most freely ratify and confirm that law by an overwhelming majority—a two-thirds vote.—From the whispering I have observed in this house, I think there are some gentlemen here who are behind the sound intelligence of their constituency, and prepared to throw the common school fund overboard, floating as it were, upon the Atlantic waves of uncertainty, without a rudder or helm to guide it, save the periodical whims or ignorance of the representatives who come here, disregarding the best interests of the state. For, is it not its best interest, and do they not mistake that interest when they vote against the establishment of the common school system—when they throw their influence against it? Why is it that here, to-day, we are assembled in a free government? Why was it that the thirteen colonies were enabled to obtain their independence? Why was it they were able to throw off the shackles of Great Britain, and declare themselves free and independent? Because the Puritan fathers, who landed on Plymouth rock, and those pioneers who came to Virginia, were educated men. It was because the fathers of this country understood their rights, and understanding those rights, were prepared to vindicate them. Why is it that the dark mantle of superstition and tyranny hangs over the Russians, one of the most powerful nations of the earth, who are governed by the arbitrary will of the Czar? It is that universal ignorance, darker than Egyptian night, predominates in that land. Why was it that in 1789, Ireland, a proud and chivalrous nation, was not able to obtain her independence and throw off the shackles of Britain? It was on account of the ignorance and superstition that prevail among that people. And it is ignorance, in short, that upholds thrones and all the tyrants of the earth. In proportion, therefore, as we advance in establishing universal education, in that propor-

tion shall we render permanent and perpetuate American liberty. Liberty is a jewel which cannot be preserved without education. Education enlightens, ennobles, and elevates man, and qualifies him for that sphere he was destined to occupy.

Would to God that the powerful talents of the gentleman from Nelson—for his talents must be felt wherever he shall take a part—could have been exerted, at this late hour of his life, upon one of the greatest and most ennobling theatres, that would crown every other act of his honorable career. Sorry am I, as he is about to descend to his grave in the due course of nature, that that venerable man should endeavor to put out the lights which are destined to cheer us along our pathway. And, for what reason? Is it to be borne with; is it to be tolerated, that in this crisis of affairs in Kentucky, that, by mere fun, or the recital of anecdotes, that may be true—for if the gentleman vouches for it, I am bound to believe it—we are to be diverted from the fulfilment of our purpose? Because the gentleman has found one solitary schoolmaster who supposed there were thirty nine days in September—which fact is enough to create laughter among the unthinking; and it might do to relate at some cross road, by way of perpetrating a joke—but would it be right if it were to have the effect of cheating the great mass of the children now born, and to be born in the commonwealth, out of their birthright? If there be one subject higher than another, one subject holier than another, one subject that calls for more intellectual exertion than another, it is to plant the common school system in Kentucky permanently, and upon a sure basis. What I may say, being unknown to fame, may have little weight or force here. But I will read what I deem an offset to the opinions of the gentleman from Nelson, with all his weight of character and powerful talents. The father of his country, after he had fulfilled the measure of his country's glory, in his parting address to his countrymen, held the following language:

"We should promote, as an object of primary importance, institutions for the general diffusion of knowledge."

Again: I will give you another good authority. And I proclaim here in my place, there is not a revolutionary patriot among all the patriots of the land, greater than the good old John Adams. That great patriot, seeing the importance of general education, declared this sentiment:

"The wisdom of the legislature in making liberal appropriations for the benefit of the public schools, is portentous of great and lasting good."

Again: I will say to my democratic friends on this and that side of the house, that I will bring up high authority, authority to which they have been accustomed to bow in adoration, the great apostle of the democratic party, Thomas Jefferson, the bright morning star of the democracy of the land—the man who penned the immortal declaration of independence, and knew upon what basis that declaration rested. What does he say?

"That education is mostly to be relied on for

promoting the wisdom, virtue, and happiness of the people."

Again: Mr. Madison said, and he was another patriot, whose authority ought, at least, to have some weight in this assembly:

"Learning affords the best security against crafty and dangerous encroachments on our public liberty."

Again: James Monroe says:

"We should promote intelligence among the people, as the best means of preserving our liberties."

Again: That great oracle of the law, chief justice Marshall, says:

"Intelligence is the basis of our independence."

Is not this sentiment true? Intelligence is the basis of American independence. Now, have all these men conspired, these worthy patriots, these learned statesmen—have all these worthy men conspired to bear testimony to a certain fact, and are they all deceived? Is intelligence the basis upon which American liberty rests? Is it the only basis? Is it the sure basis? Is this the northern star to which every eye must turn in time of greatest peril to republican freedom? It must be admitted by all, and yet I am afraid you will find some delegates here so cowardly as to shrink from the contest of freedom and fall back in reserve. These men would not have done to have entered a breach on the bloody field where our fathers achieved our liberties.

Again: Dr. Benjamin Rush says:

"We can only prevent crime and render our republican form of government durable by establishing and supporting public schools in every part of the state."

I was struck with the remarks of the learned gentleman from Nelson, as he may be called, when he supposes he could substitute two hundred thousand children, now in the commonwealth, to be educated, as a fair offset, because now and then a gentleman chooses to take three or four orphan children and educate them. Is this meeting the question like a statesman, like a philosopher? Is this coming up to the question, and meeting the expectations of the people of Kentucky? I will venture, for one, to prophecy, if there are any gentleman's constituents opposed to establishing a fund for universal education, the reason is, they are ignorant of its value. And if the gentleman himself understands the wants of his constituents, he should go it blind, and in less than ten years, when the little prattlers throughout the commonwealth shall begin to prattle, the little things which they have learned in the common schools, then there will be a statute erected to that gentleman's memory, in the hearts of the children of the commonwealth. He ought to lead public sentiment, and if he is not prepared to do it, he ought not to have come here.

Here are assembled a hundred wise men, not of the east, but of the west, engaged in a work which is to affect the destinies, for good or evil, of the people of this commonwealth, perhaps for a century to come. They have the great public interests in their hands. Will they let the opportunity pass of acting in accordance with it? Will they do it? Is there a man here who is prepared to do it? I believe that the people are

prepared for a general system of education. I believe, according to the report of the honorable chairman of the committee on education, we ought to dedicate that entire fund to the founding of a system of general education. I think the people will concur in the adoption of that measure, and I believe that every man who votes for it will be hailed by his constituents as a benefactor of his race.

I look upon a system of general education as the very Kremlin of American liberty, without which there is no hope of perpetuating the liberties of this country. Think you that the little band of patriots who fought at Bunker's hill, or Saratoga, or Yorktown, or wherever our victories were achieved against England's military power, would have succeeded, but for the intelligent and patriotic spirit of the people of this country? It was owing to their being educated and well informed. It was their ministers who educated them—the Puritan ministers, who brought school-masters from England, and whose first act was to establish a church dedicated to the worship of Almighty God. Their next act was to look to the intellectual growth of the rising generation; and looking to that, they made themselves and their descendants impregnable to, and unconquerable by the mighty hosts of England. There has been a ban placed here on quoting anything from Greece or Rome, but the struggle of Thermopylae, the battles and victories at Marathon, Plataea, Micalle, and Salamis will stand as imperishable monuments to show what a virtuous and enlightened people can achieve. The time will soon pass by—it will be gone from us, in which to lay the foundation for the future grandeur, glory, and prosperity of our beloved state. Let us therefore address ourselves to the work—dedicate the fund. Let the fostering fiat of our new constitution go forth, announcing to the people, that ample provision has been made to bedeck the old commonwealth with those jewels of prosperity, intelligence, and religion, common schools, and my word for it, the great heart of Kentucky will welcome and sustain them.

I call on the democrats now in the majority in this body, and I call upon the whigs, who in times gone by stood up for education, and I call in the name of the mighty dead, whose sentiments I have uttered to-day, to come up and dedicate the fund. You will make your constituents all-powerful, you will make them rich in all that is virtuous and glorious, and you will aid in the perpetuation of human liberty. Let him who chooses dodge this question.

In conclusion, permit me to say if there is a delegate here who wishes to erect a monument to his name more enduring than brass, more lasting than the eternal hills, let him devote the few hours remaining of this session, if it be necessary, to the advocacy of the establishment of a school fund, which shall throw light and knowledge to the darkest corners of the commonwealth, and gladden the heart of every mother and child in this land. Vote this dedication, and you will have done something for the poor. It is the duty of a republican government to educate its children. It is said by all writers upon republics, that education is the birth-right of



every child born in a republic. Leave this subject to the legislature, judging from the past, the schools will never go into operation, and the funds will be squandered and re-squandered, abstracted and re-abstracted, and nothing will be permanent. And finally, as ignorance always grows with ignorance, and there being no light in the commonwealth, save and except that which is confined to the colleges and academies, the great body of the people will become so ignorant as not to appreciate the benefit of a common school education, and their representatives will be but the re-echo of their ignorance. What a state of things! What political doctor will undertake then to cure the evil, when the representatives but reflect the ignorance of their constituents.

Here we have a learned body of men, understanding the great interests of the commonwealth; now strike for the ininterests of your constituents, and my word for it, if you do die politically in the attempt to do the people good, your praises will be echoed, and your names eternized, when a new generation shall arise and call you blessed.

Mr. BARLOW moved to amend the amendment by adding the following:

"Provided, That each county in this state, under any general system of education, shall be entitled to the due proportion of the school fund thus dedicated, according to the number of children therein; and each district in each county shall be entitled to the due proportion of said fund according to the number of children therein."

Mr. MACHEN. The subject of education is one of deep and abiding interest with all of us. The question, however, is not whether education shall prevail, but as to the means by which it is to be done. It is proposed to set apart \$1,225,768 42, which is to be a sacred fund for all future time; but I ask where that fund is? Is it in the vaults of the treasury? Is it in a tangible shape anywhere? If not, are we to levy a tax on the people of Kentucky, without their mandate to do it? I stand here with as little fear as any gentleman on this floor, but I wish the all-powerful voice of the people to come up on this subject to their representatives in a legislative capacity. I am not willing to say to the people of Caldwell county, I have fixed a tax of three cents on the \$100 upon you, without consulting you about it. I know they feel an interest in education; and when I see the children of my constituents, from five to fifteen years of age, destitute of an education, I feel willing to come up and give them the means of education. But shall we, without giving them an opportunity to say a word upon the subject, fasten upon them a tax from which they will not be able to extricate themselves? I trust no gentleman will be deluded into such an act. I am not prepared to do it. I am unwilling to vote this three cent tax, and rivet it on the people, without leaving them the privilege to shake it off. I know the people have voted a two cent tax, but in that case it was left to their free volition. They came up and did it for themselves; and I am willing to leave it to them in the future. When they see that we have secured that which has already been provided, I believe they will come up and

loosen their purse-strings, and diffuse education through every nook and corner of the land; but I am for letting them do it for themselves. I suppose the \$73,500 of stock in the bank of Kentucky is available. I also suppose that the \$51,223 29 is available, but I suppose the other sum is not available, and I am not willing to say that the people shall pay \$60,000 or \$70,000 annually without consulting them on the subject. When it is their will, they will instruct their representatives to do it. When we have secured the common stock, we have done all that we shall be justified in doing; and this they have required to be done. We are here to make an organic law, and not to impose taxation.

There is another objection to this. Although the people are in favor of education, this system has not worked well. It has certainly not worked well in my county. It does not accomplish the purpose that was expected. It is true that this may, in some measure, be attributable to the smallness of the sum disbursed; but we should not exercise a power which has not been confided to us. Let us not go beyond that which the people have delegated to us. Let us leave the subject of education to the legislature, for they can either accomplish the object or leave it alone, as the people may determine; for the representatives will be bound to obey the instructions of the people. Let us secure the sum which remains, and do no more. Because Washington, and Madison, and Monroe, were in favor of education, will not justify us in taxing the people where they have not authorized us to do it.

Mr. BOWLING. I have been a most patient listener, and I will add a most interested one, since the assemblage of this body. I think I may say sir, that not a speech has been delivered in this hall since the first day of our session that I have not heard. Nay, more; I have carefully read every one of them, as they were published—I have derived no ordinary pleasure and instruction from this, to me, new and varied source of knowledge, and I feel grateful to the various gentlemen who have participated in the discussions for whatever each has contributed to the general fund.

I had not intended sir, to trouble the convention with any remarks, but being a member of the committee on education, and feeling a deep and abiding interest in its promotion, I could not forego the opportunity offered by the occasion to put in requisition my humble abilities in aid of that sacred cause.

Sir, however high the claims of education to the profound consideration of the philanthropist, yet, to the politician in a government like ours, these claims are enhanced a hundred fold, and in a government, such as we now propose for this commonwealth, it becomes a *sine qua non* to the intelligent discharge of the high political duties which is conferred upon the citizen. It is a government which presupposes an exalted patriotism and intelligence blended in happy association in the electors, and as education is the only recognized substratum of these conservative elements, it is peculiarly to that basis that the eye of the far-seeing politician should be directed.

It shall be no part of my purpose in my discussion of this hacknied subject, to analyze the

beauties of education in the abstract, nor to dwell in rapturous eulogy upon those fitful, but gorgeous, those evanescent but intensely brilliant intellects which it has gemmed and embellished, as with light from Heaven, for the wonder and admiration of mankind. These *chef d'ouvres*, resulting from a felicitous combination of God's mightiest touch, and man's noblest effort, I shall leave undisturbed in their glory, and confine myself to the less ambitious, but more pleasing task of pointing attention to common sense, in the common and multifarious affairs of man, disciplined alone by common school education.

Mr. President, a government which entrusts the appointing power of all of its departments, its checks, its balances, its agents, its *vis conservatrix*, or innate, inherent power of self-protection, or self-perservations, directly to the discretionary exercise of unrestricted electors, and which at the same time makes no provision for the common education, and consequent elevation of this appointing power, surely acts as unwisely as the man who built his house upon the sand. The house, when the winds are shut up in their northern home, and sunshine cheers and gilds, its fair proportion will be hailed by the superficial as an emanation from the most skillful of architects—its massive masonry protected by a garniture of corinthian pillars surmounted with elaborate capitals, point significantly to a durability of ages. But when Boreas unleashes the demons of storm from their polar caves, and Neptune lashes the sea into wild commotion, and Jupiter belches liquid fire from his throne, and the world is threatened with a second deluge, then the foundation of sand is dissolved and the noble superstructures tumble headlong into a mighty mass of ruins. So of such a government. When party fury shall be lashed into madness, and demagogues, like the storm-demons, shall penetrate every hill and hollow and cranny of the commonwealth, and infused into the wildly excited inhabitants their own fell spirit of disorder and desolation—if the conservatism of educated intellect is not there to resist and roll back the threatening tide, the foundation gives way, and the government is a thing that was, but is not! To guard against such political, and consequently such social disaster, sober-minded men ought not to hesitate to introduce into the government that sole basis of conservatism which wisdom and experience conspire to indicate as alone adequate to meet the emergency. This element of safety is common school education diffused throughout the commonwealth. The children of the commonwealth are the most sacred of her possessions, and demand her fondest solicitude. It is her first duty to provide for them, not gold, but that which gold cannot purchase, omnipotent as it is, virtue and intelligence.

When a wise man undertakes to build a house, said one who was the impersonation of wisdom, he first estimates the cost, and if he find his means insufficient to accomplish that object, he abandons it; and in like manner wise statesmen will not undertake any improvement or public charity in the absence of the means to prosecute it to a successful completion. In obedience to this wise rule, I have collected some statistics, and made some estimates in elucidation of the

practicability of establishing a system of free schools in this commonwealth, and I propose to invoke their aid to enable me to prove the following propositions:

1st. That it is utopian to hope for a general diffusion of school instruction in the commonwealth of Kentucky, unaided by the government.

The report of the second auditor, now upon the journal of this body, shows the whole number of parents in the state to be 70,707. Of this number 34,540, or nearly one half, do not average in worth \$100—eight thousand are worth nothing, and 21,783 less than \$100, and none of them worth as much as \$400. These parents have an aggregate of children between the ages of five and sixteen, amounting to 91,266. Now so long as the rule is true, that nothing can produce something, I hold it to be utterly impossible for parents so circumstanced to provide education for their children, and in the absence of a munificent provision upon the part of the government, they must of necessity be permitted to grow up in ignorance. Allowing one half of these children to be males, and we have the basis of a voting population amounting to 45,633, or more than a third of the entire voters of the state, who in a few years are to be entrusted with the selection of officers at the polls, upon whose integrity depend the life and liberty of a million of people and two hundred and seventy millions of property. These statistics need no illustration. They exhibit upon their surface an argument that he who runs may read. Sir we are not to shut our eyes to the fact, that largely over a moiety of our people are totally without the means of educating their children, and a majority of the future voters of the commonwealth, to whom I, and you, sir, propose to restore the power of appointing at the polls all the functionaries of a complicated apparatus of government, are threatened from the adverse circumstances by which they are encompassed with abject ignorance. To avoid the political calamities necessitously incident to such a condition of things, can any of us say we have done our whole duty to the commonwealth, who has not to his utmost, endeavored to provide the only means of prevention? Social compacts have existed for ages, and are now struggling in the old world, like a condemned felon for a few additional days forfeited by a long career of crime and infamy, where the ignorance of the governed was so great as to blind them to oppression, and whose only knowledge existed in the traditional records of unrequited toil and patient endurance. But in the new world freedom is the birth-right of man, and he instinctively comprehends the right which it confers, though he may be ignorant of the duties which it imposes, and in his ardour to avail himself of the one he may trample ruthlessly upon the other. Now as he is compelled by a necessity of his very nature to exercise those rights, how important is it that wise legislators should provide schools for training and disciplining him, to enable him so to use as not to abuse them. Sir, we know that they will be exercised, and in the absence of previous training we can have no reasonable hope that they will be exercised with prudence and discretion.

I know, sir, that exalted patriotism, associated with a kind heart and sound head, in the absence of any training, will point the correct path; and the subjects of this happy combination are above any position that schools or any other contrivance of man could secure, and of such of nature's noblemen I do not speak. I know further more, that patriotism and honor in the humblest Kentuckian, are always prominent, being the common inheritance from a glorious ancestry, and which have made their lovely home a theme of oratory, of poetry, and of song throughout the civilized world—yet these lustrous elements which now enter so largely into the composition of our people, and make glorious the very name of Kentuckian, unless cherished by a diffusion of knowledge, and thus perpetuated, cannot be expected to endure forever. Darkness in all ages and in all countries, when protracted through successive generations, has been found fatal to these ennobling qualities of humanity, and our sages and patriots ought not to hope that our beloved commonwealth would miraculously prove an exception to the general rule. I enquire, secondly. Can this moiety of the fathers of the future voters of Kentucky, under the circumstances which retard and embarrass their will, bestow upon their children even the rudiments of the humblest education? I am, sir, not unapprised of the thousand and one exceptions to the argument which associates poverty and ignorance, and no one knows better than myself that many of the parents of this list are among the most learned, worthy, and accomplished of our citizens, and in the list of the wealthy many will appear of pitiable ignorance, not being able to read or write. But my inquiry is in reference to the ability of poor fathers to educate their children. Now, sir, the facilities for the acquisition of book learning, with a rural population, is precisely in proportion to its density. If the proximity of thirty families to a central point be within the traveling distance of children to school, there each parent will enjoy double the opportunity, of his procuring some school instruction for his children, of his less fortunate neighbor, who resides in a district of equal territorial extent, but just half as densely populated, because the former districts will possess double the means to build a school house and employ a teacher.

The State of Kentucky contains forty five thousand square miles; seventy thousand seven hundred and seven parents, with one hundred and ninety two thousand nine hundred and ninety nine children between the ages of five and sixteen. But when the number of parents resident in large towns and cities is deducted from the aggregate number of the state, the latter, it will be found, will suffer a reduction of ten per cent., leaving sixty three thousand parents to be diffused over forty five thousand square miles—a fraction less than one and a half families for each square mile. Now the area of a school district ought not much exceed four miles square, and could not, with any pretensions to convenience, exceed six miles square. This area, on an average, would contain fifty four families, with a fraction less than one hundred and sixty two children. Here, sir, I am pleased to acknowledge, that the raw material exists in abundance for

those factories, which add more to the glory, the political and social blessings of a commonwealth, than all the mules, and jennies, and throstles, that have been invented since the discovery of cotton seed. I mean, sir, the county school houses. But it requires means to erect these factories of embryo statesmen, patriots, and divines, and means to keep the school master housed, not abroad. These statistics show that our state is fitted with peculiar adaptation to a system of free schools, and that the only reason why her children ever grow up in ignorance is, that the condition of the parents is such as to deny them the happiness of educating them: and it is to supply this desideratum that I plead in their behalf.

Let us now examine the extent of the provision already made by the state towards the accomplishment of this object, and enquire to what extent it is capable of accomplishing it.

The fund called and known as the school fund, consists of \$1,225,768 42, secured by bonds given by the state, and payable to the board of education; \$72,500 of stock in the Bank of Kentucky, and \$51,223 29, balance of interest on the school fund for the year 1848, making, in the aggregate, the sum \$1,350,491 71. The interest upon this fund, on which the state pays five per cent., amounting to \$67,524 58, when added to the two cent tax voted by the state upon each \$100 worth of taxable property, which amounts to \$56,000, would constitute an annual school revenue of \$123,524 58. This sum when divided among 192,999 children, the total number of the commonwealth, would give to each per annum, 64 cents only. At first blush it would appear that a sum so inconsiderable was too small to lay even the corner stone of this benign system. Yet a further enquiry will demonstrate its sufficiency to perpetuate an efficient system of free schools in the commonwealth, for nearly five months in every year. Allowing an area of six miles square to a school district, it would require, in the whole state, twelve hundred and fifty teachers; whose services at \$20 per month, (and that amount, when it was known to be certain, at the end of the session, would procure good ones,) for five months, would amount to \$125,000—a sum only \$1,475 42 over and above the annual school revenue—so that if the state were to seal hermetically, her coffers to the cries of her children for mental bread and the light which shineth in darkness, the system of free schools would still find an efficient basis in the national donation, and the charity voted by the people, if once this holy fund was secured against the fingers of a time-serving legislature.

But the gentleman from Caldwell, (Mr. Machen,) would not force the state to pay the interest on this national gift, made sacred by a solemn act of the legislature forever, to educational purposes. He thinks it might be inconvenient. That is her concern, not mine. It will not be denied that she justly owes the money, for she has, through her legislature, ordered the evidences of the debt to be listed. A listed debt, I understand from the lawyers, is not assignable, and does not, therefore, require the baptism of fire to stave off its payment until a more convenient season. But my friend

further thinks that the phraseology of the report of the committee might make it obligatory upon the legislature to lay an additional tax to keep up an efficient system of common schools. I think sir, his fears are groundless, and that he totally miscomprehends the object of the committee. If the school fund in practice was found insufficient for the achievement of the beneficent purposes contemplated by the committee, I should think there ought to be nothing startling to the guardians of the people's rights, in the proposition to compel the legislature politely to ask the people if they would submit to an additional tax. There could be nothing alarming or extraordinary in constraining the legislature to doff their beavers to the sovereign and enquire, "by your leave, gentlemen."

But suppose sir, upon trial, to make the school all that the ardent friends of the universal diffusion of knowledge desired, an additional tax of from four to six cents upon the \$100 worth of property was demanded, is it probable the state would vote it? Why, sir, the state of Indiana, on our border, has just voted a tax of ten cents upon each \$100, to give additional tone and energy to her system of free schools. Will Kentucky consent to take rank in the rear of Indiana, and submit to have it thrown in her face that her institution of slavery presses her down to that point of humiliation? I wot not: her legislature might do it, her people never. Let our people no longer be mocked by the legislative legerdemain of free schools upon paper. They have had enough of the shahow, and as it is said coming events cast their shadows before, let this body now take of the legislature a forthcoming bond for the substance.

I know very well that thousands of poor boys will cut their way through all these inexorable difficulties; and it rejoices my heart that it is so—set fate itself at defiance, and carve for themselves a proud niche in the temple of Pytho; for the genius of our institutions is filled with peculiar and characteristic relevancy to the generous aspirations of man, and to nerve him for the achievement of mighty ends, to essay which would be madness, in less favored lands. But, of the myriads of the noble and generous, who, inspired by the enthusiasm of hope and youth, enlist in this forlorn hope against the opposing asperities of a cold, calculating world, we hear alone of those who have made for themselves a history and a name—of the unnumbered throng who perish by the wayside, "unwept, unhonored, and unsung," unsustained even by the smiles of that country for whose glory they would at any time have offered up their hearts' warm blood—of them, of their struggles, their hopes, their disappointments, the world hears not; nor does the eye of man trace in the durable witchery of the sculptor's art the wreath for which the heart so ardently panted in life, to find oblivion in the charitable mantle of the unturned sepulchre.

Sir, it is utterly absurd to expect—unless, indeed, honest Dogberry is right in supposing "reading and writing comes by nature"—that it is within the pale of conceivable things that a population surrounded by such circumstances can, as a general rule, secure the blessings of education to their children, unaided by the state.

They cannot, and they must, of necessity, grow up in ignorance. We all know that the wealthy themselves cannot, in rural districts, from the size of their landed estates, and their consequent remoteness from each other, support a good school for any length of time, and that they have to send their children from home and board them near academies and colleges, at an enormous expense, to secure to them an education.

But the convenience to a school house is not the only difficulty with the poor man. The loss to him of the labor of a son while at school, is enormous, and greatly enhances his own labors and difficulties, and diminishes his ability to pay the fee of tuition. And let no one imagine that this trifling fee of five or six dollars is with that father a small matter. Sir, I tell you, to a poor man, who is straining every nerve to pay his rent, and to provide the absolute necessities of life for a growing family, it is an estate. Yes sir, an estate nearly five fold greater, as I have shown by indisputable statistics, than the son for whom the outlay is contemplated is heir to. Many a poor boy has been denied the blessings of a tolerable education, and been compelled to grope his way through the world in ignorance and self-abasement, because it was impossible for his parents to spare the means to pay the fees of the teacher in his neighborhood.

I know that wealth, especially in a slave state, is constantly and rapidly changing hands—one blessing, at least, which looms up amid the evils which gentlemen imagine incident to slavery, like an oasis of the desert; but the rule will still prevail, though I know its tendency will be manfully resisted by those who have felt and know the power and influence of learning, but have lost the means of securing it to their descendants: still, to "that complexion must it come at last"—an association of ignorance and poverty.

Mr. President, aside from interest, should it not be the glory of the empowered deputies of a great and chivalrous people, to fix beyond the power of evanescent legislation, a means of rescuing their unfortunate descendants from the evils of ignorance, and its kindred associations? But, sir, an appeal to interest, it is my experience, touches much more eloquently, the delicate, responsive chords in the moral mechanism of our fallen nature, when braced and indurated by that resisting tonic which wealth so conspicuously imparts, than when addressed, even in accents of the most euphonious pathos, to patriotism and philanthropy—those rare, but most ennobling attributes of man.

Sir, in any government not a despotism, it is emphatically the interest of the rich to employ their best endeavors to elevate the character of their less fortunate fellow-citizens, but in a government not only elective in the technical interpretation of the political theorist, but in very truth, as will be the government that Kentucky now demands of this body, in a voice that we dare not miscomprehend, it should be the object of sensible men, to make ample provisions to enable every voter to discharge faithfully those high trusts confided to him. I maintain, in the absence of reasonable mental culture, that this is impossible. All the fine-spun speeches that

have been uttered in this hall in the last two months, in reference to the virtue and intelligence of the people, and their name is legion, and all that may follow, though they go on "till the crack of doom," can have no other effect than to excite the pity of the wise, and to pander to that vain-glory and self-sufficiency which so peculiarly and characteristically distinguish the ignorant, but will never fit one poor and friendless boy for the discriminating exercise of the elective franchise. I know, sir, that this method of treating this subject, may betray to some timid gentlemen, upon my part, to indulge a much hacknied expression, a distrust of the intelligence of the people for self-government. But that is a very superficial view of the matter. My object is, by the elevating influence of education, to place the most unfortunate of them beyond the suspicion of the most fastidious stickler for patrician supremacy. Our people are, I do most conscientiously believe, amply qualified to discharge those high trusts involved in the exercise of the appointing power, and the summoning of this convention, charged to restore back that exalted privilege which they had by contract delegated to agents for half a century, may be cited in demonstration of the assumption. But, sir, your qualifications, or mine, in this behalf, cannot be plead in favor of the qualifications of our descendants. Their qualifications, like ours, will depend upon their opportunities or exertions. It is to provide for them the former that I plead.

I have said, sir, it was the interest of the rich to provide means for the education of the poor. If it be conceded that knowledge conduces to virtue, and to the development and elaboration of that sentiment of the human mind called honor, and, conversely, that ignorance is the fruitful source of vice, immorality, and licentiousness, it follows that those who have most to lose by the prevalence of the latter among a voting and tax-laying people, are most interested in the dissemination of the former.

And, sir, in thus providing these means it may be that we are entertaining an angel unawares—it may be that we shall be engaged in rearing a bulwark against the ignorance of the descendants of the rich. How immeasurably would it add to the sum total of human happiness, in any given organized municipality, for each individual to know that the main-spring of that organization, secured his offspring against that frightful train of vices, of which ignorance is the common parent.

Sir, in the long exercise of the healing profession, it has been my misfortune often to be compelled to perform the sadly soothing rites of Æsculapius over the dying pillow of the parent of a numerous and helpless offspring. 'Tis then, ere tottering reason forsakes forever its crumbling throne, that the observer sees man as he is, as God fashioned him for his own wise purposes. 'Tis there alone can he be studied, unassociated with the hopes, the fears, the ambition, the patriotism, the heroism, the daring, the world, and all that for which the world struggles with wary, sleepless energy; these, one by one, fade from the kaleidoscope of his mental vision as death approaches, until but one sole, absorbing passion remains of that huge bundle

of which he is composed, in the pride of his health and the pomp of his power, and that is a love of his offspring, blended in harmonious union, with a single desire, that they may be saved from the vices of an immoral world, and fitted for a felicitous association with redeemed and kindred spirits in the home of a common father.

'Tis in that dread hour that poverty is felt in all of its biting and blasting force, because the sufferer feels that he leaves nothing to secure his children against the world's vices. Had his country, in the exercise of an enlarged philanthropy, provided means for the education of his children, and thus secured them against the grosser immoralities of a wicked world, oh how it would have soothed and supported his departing spirit, and smoothed his passage to the grave!

Was patriotism not an instinct, as it is, it were impossible for one to feel much love for a country that could thus coldly neglect its beggared orphans. Surely nothing were better calculated to fan and enlarge that noble instinct than a permanent provision to foster, to protect, to educate, the whole people of the country.

Let it not be said it cannot be done; for whatever man has done, man can do, and we know that in many of the sovereignties of this proud confederacy this has been done, and an education secured to all, and there, whatever remorse or regret may haunt the dying father, this suffocating night-mare, of children grown up in ignorance and vice, which makes death hideous, is at least removed.

It has been said, and a truer observation was never made, that the people are more generous than those who represent them; and the true reason of this is not to be sought for in the abstract parsimony of the representatives, but in the fact that the representative feels that he is, in making appropriations, operating upon funds not his, and therefore that he ought to consult rigid economy. But the people operate on their own, and are always generous. We have every reason to believe that the people of this great state desire a well regulated system of free schools. In every way in which the question has been tested, they have so decided; and even when the question was put to them by the legislature, whether or no they were so much in love with the contemplated system as to vote a direct tax upon themselves for its maintenance, they voted aye with great promptness and unanimity. It is true the tax was small, but it was all that they were required to lay, and it ought not to be doubted that it would have been quadrupled with the same generous promptness if it had been required of them.

Sir, we ought not to hope to raise a fund so large by legislative legerdemain, as that the bare interest would suffice for the accomplishment of this great and generous object. It cannot be done. The committee on education have reported that the school fund amounting now to \$1,350,491 75, should be consecrated to educational purposes, and remain a perpetual fund, and that the interest thereof alone should be employed. All over this, required for this great and humane object, must be raised by a tax upon the property of the commonwealth, for it is mani-

festly utopian to hope to raise it in any other way.

I have shown that if we secure what we have, it will be sufficient to keep a complete system of free schools in operation for nearly five months in every year. This is not so long by a month, as I would have desired; but as the property of the commonwealth is constantly increasing and the number of school houses will remain stationary, in a few years the same tax will enable the schools to be kept open an additional month. I have not entered upon details—it is not my province. I have desired to show that it was entirely practicable; and it is my honest conviction that the people desire that a system of free schools should be fixed in the constitution. It has been the fashion of gentlemen in this hall to volunteer prognoses as to what would gain votes for the new constitution, or militate against its reception by the people. But, sir, let these hundred chosen delegates go home and tell the anxious thousands that will greet their return, that a part of our labors here, insures to the descendants of this land of heroes and of song, the keys to the temple of knowledge. That henceforth, under the new organization, schools are to spring up in every neighborhood, and to be as free as the gush of waters from the mountain rock. In the beautiful language of my friend from Mason, (Mr. Taylor,)—who is indeed imbued with the spirit of the beautiful—that they will arise like fire-flies at summer sunset, giving life and hope to each other—light to the young, hope to the middle-aged, and consolation to the old. That their light will discover the monster

“————— of such hideous mien,  
Which to be hated needs but to be seen,”

and exterminate him.

Tell them that the mountains and the valleys and the plains of this heavenly heritage are to be studded with school houses, which like the temples of the living God, are to be free to all, without money and without price.

Tell the children of the poor and unfortunate that hope, heretofore, that mystic shadow of good, which receded as they advanced, and whose home was the fabled terminus of the rainbow has been made to receive substantive proportions, and to become a smiling reality.

Tell them that fountains of living water have been opened up, in which the budding desire for knowledge may lave its thirst, and where all are invited to come and partake freely. Let this be told them sir, and a voice redolent of thanksgiving and benediction will go up from half a million of the best of our people, to the God of the widow and the fatherless.

Sir, I endorse every word of the following, from a deep thinker and pungent writer: “We should make no distinctions, but the banner of education should be proudly unfurled

“Like the wild winds free,”

allowing all alike to enjoy its advantages. The child of the woodland cottage, and that of the princely mansion should, if possible, be educated together, that all might have an equal opportunity of rising to eminence and fame. It is a cardinal principle of republicanism that there is no royal road to distinction; it is held to be accessible to all—none are born to command or

to obey. In the order of nature God has made no distinctions; he has not provided for the poor a coarser earth, a thinner air, or a paler sky. The same glorious sun pours down its golden flood as cheerily upon the poor man's home as the rich man's palace. The cottager's children have as keen a sense of all the freshness, verdure, fragrance, melody and beauty of luxuriant nature, as the pale sons of the wealthy. Neither has he stamped the imprint of baser birth upon the poor man's child than that of the rich, by which it knows with a certainty that its lot is to crawl, not to climb. Mind is immortal. It is imperial. It bears no mark of high or low, of rich or poor; it heeds no bounds of time or place, of rank or circumstance. It requires but light.” Yes, sir, it requires but light. The delicate mechanism of intellection is but a series of mental processes. In the educated brain they are combined in wondrous harmony and multiplied to infinity; and systematized thought is the result of their operations. Thought, that mysterious essence which connects man with the spirit world, has its laws, to which it is as obedient as is the lightning, in obedience to its laws, in bearing the messages of man, by a flash, across the continent. The latter is an illustration of the former, and the former suggested the latter. If thought, when disciplined, was capable of planning mighty deeds, and a complicated system of means which pointed prophetically to their achievement, why should not its type in the physical world, which had, when untrained, but shown the omnipotence of its power in the desolation that marked its path. So, also, the thoughts of man, which were evil continually, when unsubdued and unchastened by educational discipline sought, glory in the desolation of the works of his fellow-man and of God. But the latter, under the ameliorating influences of education, found increased power for good, with diminished desire for evil, and, perhaps, attained its acme in discovering the laws of its great physical type, and compelling it, in obedience to them, to become subservient to man's uses. And that mighty and terrific power, whose appalling displays the ancients confided to Jupiter, the chief of their gods, and of whom their greatest poet sung,

“— ah qui res hominumque Deumque  
Aeternis regis imperiis, et fulmine terras,”

is now, by educated mind, disarmed of its terror, and made to bear soft messages of love from absent swain to the confiding, anxious heart of his lady love, in another and far distant commonwealth.

Mr. C. A. WICKLIFFE. I barely desire to explain the amendment which I have offered, and I return the gentlemen who have so ably and so nobly advocated the cause of education my thanks. I subscribe in the main to all that has been said, or can be said, in favor of the necessity and the importance of such a duty.

Some of the expressions of the gentleman from Campbell might perhaps have been somewhat softened, because they seem to imply that all gentlemen who differ with him, fall within his universal condemnation.

There is no substantial difference between the amendment I offer and the second clause of the report. I go with the committee, and every



friend of education on this floor, to set apart and dedicate the fund for educational purposes, which has either been accumulated by taxation, or which was originally set apart by the law of 1837. A part of this fund is composed of the interest on the bank stock, when interest was paid on the bonds. As the fund accumulated, the system went into operation, the commissioners of the sinking fund having charge of it at first, and the commissioners of the school fund vested the interest accruing from the \$850,000, in the purchase of bank stock in our own state. Hence, there is the item of \$73,000 bank stock

There has been levied by the approbation of the people, two cents upon a hundred dollars, which constitutes a part of the school fund.

What does the amendment which I propose contemplate? It is, that the fund which has been collected, the \$850,000, the \$73,000 of bank stock, and any other and every other fund which may be collected for educational purposes, shall be devoted by the legislature to that object, and when so devoted, it shall remain secure, and be appropriated to no other purpose or object than the diffusion of a general system of education. When we have thus secured the fund, and provided, as in the latter clause of the committee's report, that the superintendent of the school system shall be elected by the people, I propose then by my amendment, to leave that fund to the legislature, to be directed, regulated, and disbursed as may seem best to that body for the purposes for which it was set apart.

If I understand the report of the committee, it is, that while they do the same thing which I propose, they make it obligatory upon the legislature to establish and keep in existence this system throughout the commonwealth. If that is complied with, taxation will be necessarily involved in it to the extent stated by my friend from Logan, (Mr. Bowling,) or nearly to that extent. I am unwilling to impose that on the legislature. I would leave that to the tax paying power in the commonwealth. The amount of this income now is wholly inadequate to establish a system of common schools throughout the length and breadth of this commonwealth, and the legislature must adopt such a plan as will invite to the support and aid of the fund local contributions, by a system such as they have in New York, and in some other northern and eastern states. I know that in some states the whole fund is furnished.

If you will secure the fund, and allow the counties adopting the provisions submitted to them from time to time, to appropriate whatever may be distributed to them, and others who do not wish to appropriate their proportion to have it reinvested, you will do all that our means will allow at present, and all that our constituents have a right to expect of this convention. But if you adopt the whole report of the committee, you impose necessarily the duty upon the legislature, from which they cannot escape, to put into operation this system within five years after the adoption of this constitution.

I offer no hostility to education in my amendment, for I appeal to the zeal I manifested originally in setting apart the sum of \$850,000. But I am unwilling to impose the taxation which

must be imposed, to put this in operation in five years.

Then the convention adjourned.

## TUESDAY, DECEMBER 11, 1849.

### CORRECTION AND EXPLANATION.

Mr. C. A. WICKLIFFE. If the convention will indulge me for a moment, I shall be glad to have an opportunity of correcting an error which has by a very easy mistake crept into the report of our proceedings. Had there been any other mode of making the correction I would certainly have adopted it; but the debates having been transferred to the volume of reports before I discovered the error, it is now too late to make the correction in any other way than by a note. When the resolution of the gentleman from Henderson was under consideration, the other day, in which it is declared that "absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic," I was necessarily absent, being called to other duties. I was not present when the vote was taken. The reporter has ascribed to me a remark made by my kinsman, Mr. R. N. Wickliffe. I do not disclaim the sentiment, but if any credit is due for it, I wish it to be ascribed to the right source.

While I am up I will take the liberty of saying that I should have voted against that section, had I been present, for two reasons—first, because a mob, however large it may be, has no right to take away my property, and therefore there was no necessity for declaring this principle in the constitution; and secondly, if that section means what some of the gentlemen say it means, I should have voted against it, because I do not agree with the position which they take. I hope the correction will be made.

### COMMITTEE OF REVISION

Mr. MOORE said he was directed by the committee on revision and arrangement of the articles of the constitution to ask leave to sit during the session of the house.

Leave was granted accordingly.

### CODIFICATION OF LAWS, PRACTICE, AND PLEADINGS.

Mr. MAYES moved a reconsideration of the vote, by which the convention adopted the reports of the committee on miscellaneous provisions, with the view of moving a reconsideration of the vote by which the convention adopted the section, offered by the gentleman from Ballard and McCracken, (Mr. Gholson,) to appoint commissioners to codify the law.

In order to act upon that subject at once he moved to dispense with the rule by which a motion to reconsider was required to lie over for one day.

The motion was agreed to.

The PRESIDENT stated the question to be on the motion to reconsider the vote, adopting the report of the committee.

The motion was agreed to.

The PRESIDENT then stated the question to be on the vote adopting the latter clause of the section.

Mr. MAYES. Mr. President, together with many other gentlemen, I voted for the adoption of the article offered by the gentleman from Ballard, as an additional section to the report of the committee on miscellaneous provisions. I gave this vote without having given to the subject much reflection, and I suppose others supported it, regarding it as a matter of but little consequence. I have, since the adoption of that section thought somewhat upon the subject and am satisfied that the vote by which the latter branch of the section was adopted, should be reconsidered and even should the first part of the section be retained, which I am sure should not be done, that part ought unquestionably to be rejected. I therefore move a reconsideration of that vote. The first part of the section provides that the legislature shall at its first session after the adoption of the constitution we are attempting to make, appoint not less than three nor more than five persons learned in the law, to arrange and revise all the statute laws of this state, whether of a criminal or civil character, and sir, that the revised code shall be in plain English. I do not suppose that it is intended that this revised code shall become the law of Kentucky, unless it be first submitted to the legislature for adoption, nor until it be in fact adopted as such by that body, for if these three or five persons are to enact the laws, then we would do well to do away with the legislature altogether, and appoint at once some three persons to enact all such laws as may be necessary for the good government of the state. But sir, why make a constitutional provision declaring it to be the absolute duty of the legislature to do this thing? Has not the legislature now the right to appoint persons to arrange and revise the statutes for re-adoption. It has that right, and has exercised it. That body in time to come will have the same right and will no doubt exercise it if it shall be thought prudent so to do. During the session of 1844-5, I believe it was, two eminent gentlemen, ("learned in the law") Ben. Hardin and Owen G. Cates, Esqs. were appointed by the legislature, to revise and get together the whole law of the state pertaining to its revenue—these gentlemen performed the duty assigned them, and reported the fruit of their labor to the succeeding legislature, of which I had the honor to be a member, for re-adoption.

This report, containing as it did the whole of the revenue law of the state, and having been prepared at the cost of much time and labor, was referred by the house of representatives to the appropriate committee, and was considered in committee, was reported back to the house with that committee's opinion, that the work had been well done; the result, however, was that the legislature declined to act upon it, and it lies now among the matter unacted upon by the legislature. An appropriation, however, was made—and properly too—of three hundred dollars, to pay for the revision of the revenue laws, and was drawn from the treasury. The gentlemen engaged in the work thought it too little. So, I presume, that should this section be retained, the three or five gentlemen must, under it, neces-

sarily be appointed by the legislature, and they must go on and arrange and revise the three large volumes containing our statute laws, and there are session acts undigested since Loughborough's digest was published, sufficient to make a fourth volume perhaps as large as either of the three, and after all this has been done, they are to report the arranged and revised statutes to the legislature, that they may be re-enacted or not, as may be thought best; for I repeat that it surely cannot be intended, that these revised statutes shall constitute the law of Kentucky, unless they first have the sanction of legislative enactment. But, sir, whether this work shall be re-enacted or not, it must be paid for. We had better, I think, count the cost before we place this section permanently in the constitution. I am satisfied that no good will come of it, and the cost will be very considerable. It will no doubt be a lucrative business for the gentlemen "learned in the law" who may receive the appointment; it will certainly be a losing business for our constituents. The legislature has ever had and ever will have the power to revise and arrange the law. There are at all times, gentlemen in that body possessed of high legal attainments, and of such are the committees on the judiciary of both houses usually composed. The second branch of the section is, in my judgment, still more objectionable than the first. It proposes that three persons, learned in the law, shall be appointed to prepare a code of practice for the courts; and these gentlemen are to abridge and simplify the rules of practice, but they are to report to the legislature from time to time, the result of their labors, for its adoption or modification. We all know that the legislature now has, and ever has had the power to abridge and simplify the rules of practice in our courts.

It is here, however, made imperative on the legislature to appoint these persons, and it will become their duty to abridge and simplify the rules of practice; but the legislature may refuse to adopt such rules as they may direct to be observed, or it may modify or change them in any way it may think proper. And these gentlemen are, from time to time, to report their labors to the legislature. This looks to me as if their appointment is to be permanent, and the state is every year to pay them for suggesting to the legislature such changes as they may think should be made in the rules of practice. These suggestions, I apprehend, would cause endless discussion in the legislature, as to the propriety of the changes proposed to be made in the rules of practice—would operate as a constant drain upon the treasury, and would result in no good to our common constituency. I am decidedly in favor of the principle contained in the section, but am satisfied that it cannot, with propriety, be introduced and made part of the constitution. It should be left with the legislature, where it properly belongs. The state should not be compelled to employ, at an enormous expense, some six or seven gentlemen, "learned in the law," to do this service, and still let it be left with the legislature to approve or disapprove it. For, although it may cost the state thousands to have the work done, yet after it has been accomplished, it may, and probably will, be rejected; and

the only persons who will have been benefitted by it will be such persons, "learned in the law;" as may receive from the legislature the appointment indicated in the section. I trust, sir, that the vote by which the section was adopted will be reconsidered, and that the section will be rejected, and the state save the heavy, and as I am satisfied, useless cost, which will inevitably result, if it be retained as part of the constitution. I do not know or believe, that the people, our constituents, desire that any such principle be incorporated into the constitution.

Mr. GHOLSON. I regret that the gentleman from Graves should now attempt to impose obstacles to the accomplishment of a work which is so loudly called for. What possible objection can there be to a provision like this? I appeal to the farmers of this body, who know the necessity of a codification of the laws, to sustain it. I appeal to the magnanimity of the lawyers of this house to sustain a provision which is clearly for the benefit of the commonwealth. When I charged it upon the gentleman from Nelson (Mr. Hardin) the other day, that with all his ability he could not find many of the statutes of this commonwealth, he did not deny it then, nor will he do it now. How then can the farmers and common plain citizens be expected to do that which an eminent lawyer admits his inability to do? With respect to the expense to be incurred, to which allusion has been made by the gentleman from Graves, I desire to say that I am willing to pay a proper compensation for the work that may be performed, and so I doubt not are my constituents. It cannot cost a tythe of what the gentleman supposes; but if it does cost it all sir, there is nothing that my constituents will more readily pay for than laws which they can find, and understand when found. And even if the legislature shall, as it is intimated they may, reject the digest that may be prepared, under this provision, we shall have the confidence of our fellow citizens for the attempt we may have made to make the laws plain and intelligible.

I protest against any alteration of this provision. I hope that all foreign and heathenish words will be dispensed with, and that the English language alone will be used. I wish also that every law shall relate but to one subject. Our code of laws will then be readily referred to, and easily understood, and justice may be dealt out equally to all. If it is the desire of gentlemen here that the laws shall be simplified, I trust they will sustain this section. I admit that the retention of this section may militate against the interests of lawyers, but it will enable the plain, unlettered men of the commonwealth to know what are the laws under which they live. Besides this, it will aid the administrator of justice, inasmuch as it will be the means of removing the difficulties under which justices of the peace, and even the judges on the bench, labor in consequence of the many conflicting laws and decisions which now perplex and annoy them, and render justice so uncertain.

Mr. NUTTALL. Chitty I believe is the best writer on pleadings, and if he has not been able to lay down clear, intelligible and useful rules I shall despair of obtaining them from any com-

mission that we may appoint. Eminent as many of our lawyers are, the task will be a herculean one to whoever may undertake it. As to the use of certain Latin words, I am of opinion that they have become so common and so well understood, and are from their use so very expressive, that we had better not interfere with them, and create confusion by the change.

Mr. TRIPLETT. My principal object in rising now is, to correct an error into which the gentleman from Graves appears, unintentionally, to have fallen. I remarked, when this question was before the convention on a former occasion, that I would vote for this resolution. The question is an important one, but in consequence of the previous question being called before the discussion was fairly opened, I had not then an opportunity of saying what I intended.

I do not believe that there are many members of this house who would not agree that the object aimed at is desirable, provided it can be attained without too much expense and labor. But are gentlemen aware, when they vote for that proposition, of the expense and labor it will cost? I will state a fact which is within the knowledge of more lawyers than myself, that the legislature of Louisiana, many years ago, under a clause similar to the one now under consideration, made a contract with Mr. Livingston, one of the most distinguished jurists in the United States, requiring him to prepare a code of practice for that state. Mr. Livingston was engaged in this work for three years. The original contract between him and the commissioners appointed by the legislature, was, that he should perform this duty for the sum of \$25,000; but in consequence of the immense labor, and the commissioners being satisfied that the compensation was wholly inadequate to the work which he had performed, and looking also to the probable benefit which the state would derive from that work, they agreed afterwards to give him the additional sum of \$15,000; and the legislature ratified that agreement by a majority of four to one. Forty thousand dollars, then, were given for what is now, in Louisiana, called the "Livingston code." He revised, it is true, the civil code.

The gentleman has made some remarks about special pleading. If he supposes that lawyers are more in favor of special pleading than other men, he is greatly mistaken. The great object that all lawyers have in view is to come at the truth. How are you to do it? Can you do it better by the civil code? If you can, take the plan of Mr. Livingston and adopt the civil code.

I will now tell the house what can be done at a very small expense. I would suggest a modification of the clause now under consideration to do away with the difference between chancery and common law proceedings, which can easily be got through with in three or four months. Take now the simplest kind of action—that of assumpsit. For example, A files in court a claim against B for the sum of \$500 for goods and merchandise. He calls upon B to say, "did you buy all the property named in that account, and at what price? If you did not buy it all, how much, and what articles did you buy? If you did not buy it at the price therein

stated, then at what price did you buy it? If you did not buy it at any specified price, did you buy it with the understanding to pay what it is worth, and, if so, how much is it worth?"

Now, B acknowledges that he bought all the articles, but without a fixed price on all. Very well; take a judgment for that. He acknowledges that he bought all except a pair of boots, which are charged seven dollars, for which he only agreed to pay five. Then you take a judgment so far. Now what would be the result of such a course as this? Why, you save a vast amount of time and expense, and you narrow down the question in dispute to the mere matter of two dollars. I only give this as a sample of the method by which our pleadings might be improved. Do away with the general issue, and require a man to answer to each particular of a bill. You compel the plaintiff to file a bill of particulars, and the defendant to make a statement of how much is true, and how much is not true. Can that be attained under the resolution now suggested? That will depend upon the construction which the legislature may give to the clause. I am inclined to think that the legislature will adopt some similar plan. Surely the gentleman does not intend that we should do away with our whole system of pleadings? I am inclined to think, sir, that if we wish to attain the great ends of justice, they will be much better attained by special pleading than by general pleading.

There is a law now on the statute book called Bob Johnson's law, which was framed especially for the purpose of reaching the ends proposed by the gentleman from Ballard. You cannot frame a broader or a simpler law than this. But has it ever been acted upon? No. Why? Because when it struck out one system of pleading it did not furnish another in its place; and we lawyers are generally safe, practical men.

Now, if I understand the gentlemen correctly, he complains not that the ends of justice are not attained, but that they are attained in a manner unintelligible by the great mass of the people. But, sir, the gentleman will certainly admit that it is better they should be thus attained than not attained at all. If you strike out one plan, give us another, that will be equally as intelligible, and more simple; otherwise you gain nothing by the change. Give us a plan that will answer the purposes of justice, and be more simple than that now in use, and I will go for it, provided that while you simplify the rules of practice, you render them equally certain in their operation. Certainty is more necessary than simplicity; in point of fact, Mr. President, the special pleading of the present day, is done as much as anything for the purpose of saving expense to the litigants, and the time of courts. What do you mean by special pleading? If you take an issue upon a fact, you must set it forth so that a court and jury, and the plaintiff and defendant, may understand what fact is to be tried—how much is admitted, and how much is denied. No man will deny that that end ought to be attained; all admit that it is attained by special pleading. Let the gentleman then take a plain, straightforward course, and leave this matter in the hands of the legislature, whose proper business it is to attend to such a matter as this. I stated when

I was on my feet before, that I voted against the second section, because I was afraid that, like the state of Louisiana, the legislature might go to great expense in this matter, which I think is altogether unnecessary.

Mr. TURNER. This is a matter which will never interest me much as a lawyer, as my days of practice are pretty much over; but I do regard this proposition as one of the most mischievous that has yet been brought under the consideration of this convention. The gentleman declines against latin phrases which are common to law books; but I would ask him, has not every art and profession its peculiar technicalities? Does not the doctor label his medicines in a language known only to himself? Does not the house carpenter and the ship builder each use terms peculiar to his vocation, which he alone, as a general rule at least, understands? If the gentleman will read the Bridgewater treatises, he will find in the various branches of science that he must study the technicalities peculiar to each, and he must understand them too, or he cannot understand the science to which they apply.

Something has been said, sir, about revising the code, and putting all law phrases into plain English. The people of New York undertook to do this, and how did they define a writ of *ne exeat*? Why sir, they said it was a writ of "no go;" (laughter,) and no man understands what "no go" means any better than he understood a "*ne exeat*."

Language, sir, is in a great measure arbitrary, and we may as well learn the meaning of one word as of another. But I would ask, why should we go down into this little business which the legislature have never descended to? Are we, the great constitution makers of the state of Kentucky, to spend our time here in determining how a man's boots shall be blacked, or in what manner his house should be swept? Sir, if we pass this resolution, we have not the power to carry it into effect. The legislature have all power to do this, and it appears to me that this interference is useless and unnecessary. If ever we are to finish the business of this session, it is time that we refrained from dwelling on these little matters, and set ourselves seriously to work to embody the general principles of the constitution which we are sent here to make.

Mr. STEVENSON. So far from regarding this as a matter of small importance, I think sir, it is a question demanding our serious consideration. We have met to put the ship of state upon a new tack. We have said that the legislature shall meet but once in every two years, and we have confined their duties to the passing only of general laws. We have made great alterations already in the jurisprudence of the state, and I think it is but wise that the question now before us should have the calm consideration of this body, and that with our new courts and new judges, we should have a new code and a new system of practice. One argument that has been used here in opposition to this course, is that it will involve the state in too much expense; but sir, in my opinion, it will not involve half so much expense as the present mode, besides obviating much delay and disappointment. There is a case reported in the pa-

pers to-day, which may serve to illustrate this assertion—the case of *Graves v Graves*. The case is something like this: The man died leaving a will by which he disposed of his property; the wife renounced the will and demanded that the executors should set apart a portion of the property for her benefit. Now, here are lawyers feed at high rates; the cost of witnesses and jury, and all for what? Simply to decide what the rule of law is in such cases. Now, how many hundreds of dollars are often spent in deciding this simple question; and how often do we find the very best judges and lawyers in the land differing most widely on the simple question as to whether one statute has the effect of repealing another.

I have no doubt, many gentlemen recollect a distinguished case from the city of Louisville, in which a suit was instituted for the recovery of a large amount of property. The case was carried to the supreme court of the United States, after having been tried in several of the courts below. The whole question was whether the mayor had the right to take the relinquishment of a *feme covert*, and the particular point decided by the supreme court, was whether one statute law of Kentucky had repealed another. The supreme court reversed the decisions of several courts here affirming that the law was not repealed; that so much of it only was repealed as was repugnant to the last enactment. I merely mention this to show that in the multiplication of statutes there is great difficulty in determining what the law really is, and hence the necessity of having some competent persons to arrange and classify, and digest our statutes. This is what I understand by the proposition of my friend; and I think there could not be a more appropriate time than the present to take this subject into our serious consideration, engaged as we now are in making a new constitution.

Mr. HAMILTON. A similar resolution to the one now under consideration was introduced by myself, in the early part of the session of this convention; and if I mistake not, one of like import was introduced in the legislature of 1821 or '22, but it fell in the senate, because, as some said, it was unconstitutional, and has never since been revived. Some gentlemen have spoken of what they term the great and enormous expense to be incurred by this revision, and they even go so far as to insinuate that the revisers would be clothed with the power of law-givers. It is unnecessary to combat such a notion as this. All that is asked for is, that they should revise and classify the statutes, and digest them if thought expedient, their labor to be submitted to the legislature for its approval or rejection. It is not going to cost the fearful sum which gentlemen imagine; and when we remember that Tennessee, and Louisiana, and New York (with the exception of the "no go," spoken of by the gentleman from Madison,) have adopted this course, and are enjoying the benefit of the change, surely the consideration of a little expense ought not to deter the state of Kentucky from adopting an arrangement which I do believe will contribute so much to facilitate legal business, and satisfy the community at large.

Mr. GHOLSON. When I introduced this proposition I heard no objection to it. It was so undeniably right, that I did not say a word in its support. I did not expect this stern opposition to it even now. Why the parliament of Great Britain, that country from which all our laws have come, has recently caused the laws of that country to be codified, for which purpose ten judges were appointed, and they are now practicing under their new code, while we adhere to that which is regarded as outlandish, and is discarded in the land of its birth. If it were now in order, I am prepared to remedy the defect in "Bob Johnson's law," to which allusion has been made, by another imperative provision. I am anxious to cause a reform in our present system because I am satisfied that it does obstruct the course of justice. The previous question was moved and cut off several other important provisions that I intended to offer, one of which was that every citizen of this commonwealth should have his cause tried upon its merits, and not be driven out of court, however just his claim, on a mere technicality which has nothing to do with the justice of the case. So exceedingly uncertain is our system of bringing suits and conducting pleadings, that even our best lawyers sometimes differ as to the form in which suits should be brought or pleadings conducted. This is the day of reform. Our sister states have set us a glorious example of legal reform; our constituents expect it, they demand it at our hands, and therefore I appeal to this convention to enforce a thorough reform and improvement of our laws, of our practice, and our pleadings.

Mr. PRESTON. I concur in the object which the gentleman from Ballard seeks to attain. There are only two considerations which ought to influence the house in adopting or rejecting the proposition. If it is right it should be done, and the expense of a few thousand dollars should not deter us, from adopting a plan which would render our legal proceedings more simple, and by which justice might be more cheaply and better administered. This convention should not start back from the sound of the word dollar, as if it were a spectre, to terrify and affright us from effecting a great good.

The codification, sir, of the law, is no new thing. It has been done in many parts of the world, and the advancing wealth and population of countries, and the mutations of civilization, will always render it periodically necessary. Lord Bacon tells us that when laws accumulate so as to render it necessary to revise them and collect their spirit into a new and intelligible system, that those who accomplish it are among the benefactors of mankind. In the profession of law there are two classes. One seeking to make the rules of justice exalted, and their application simple, and the other seeking to involve it in a labyrinth of perplexities. We know that when the laws of Rome became so immensely voluminous that justice was lost in its vast extent of rules, that Justinian directed the compilation of that code, which did more than any other single work, to restore Europe from the darkness of the middle ages, and shed abroad the illumination of legal science, and still forms the basis of European jurisprudence.

Napoleon, when he ruled the destinies of France, ordered that the laws should be codified and digested, and calling to his aid Tronchet, that courageous and illustrious lawyer, who intrepidly defended his monarch when all France declared his doom, and summoning Portalis and other distinguished jurists, entered upon this great undertaking. It was then, sir, that the First Consul, in the sessions held, displayed in the discussions that arose, a power and ability that astonished his associates and added new glory to his illustrious reputation. The code Napoleon was produced—a work that already constitutes the basis of the jurisprudence of more than half of Europe—a work that, as he himself said, will do more to perpetuate his name to posterity, than the ever memorable and brilliant campaigns in northern Italy, and Germany—a work that will survive, when the remembrance of all his victories, shall dwell dimly on the memory of after ages.

The progress of law-reform did not stop here. Lord Brougham, the most renowned orator, and one of the most accomplished jurists and statesmen of England, within the last ten years, undertook to procure in the House of Lords a similar reform. England has found the old and cumbrous forms of administering justice, transmitted from the darkness of the feudal ages, unsuited to the present progress of society, and within that time her code of practice and pleading has been revised, and simplified, and we in Kentucky, at this hour, cling with fondness to a system tinged with feudal barbarism after it has been exploded in the mother country. Statutory enactments and judicial decisions have done something to give it form and symmetry, and adapt it to our wants, but it still retains most of the crude features and barbarous characteristics of its origin.

Louisiana, which adopted the civil law as the basis of its jurisprudence, with great wisdom secured the services of Edward Livingston, in the arrangement of her laws, and what has been the effect? The minds of the jurists of America are gradually turning to the civil law, and they begin to give it the preference to the common law. The common law is not less enlightened than the civil, in the great principles of equity and justice, on which it is founded—is not less noble in morality; but the more simple mode in which justice is administered, the more philosophical apparatus for the application of remedies under the civil law, causes it to gain ground, day by day, upon the common law, which in the end will be destroyed and superseded by it, if it does not allow a simpler and less technical mode of procedure and practice. This has been the main reason of the increasing popularity of the civil law within the last few years, in the Mississippi valley.

In the state of New York, in the year 1846, a feature similar to the one now under consideration was engrafted on its constitution, appointing a commission to report to the legislature such reforms as were necessary in the law. Those gentlemen, who rank among the first jurists in the nation, executed that order. The result of their labors has been adopted by the legislature, and the people have derived the most solid benefits from it. They removed many of

the old inconveniences, destroyed many of the old obstructions which clogged the avenues of justice, and have substituted reforms which the people of that state will never relinquish. I have looked at that report, in which the whole present code of procedure and practice does not occupy more than a fourth of the space occupied by one of our volumes of the statutes, and it contains many great and wise alterations; but those alterations are now generally approved, both by the people and the profession. One, which I will give by way of illustration, is a change effected in the law of evidence. In a common law court the plaintiff cannot require the defendant to be sworn as a witness. In a chancery court you can. In both courts the object is the ascertainment of truth. If the rule is right in one case, it should be in the other. Yet a judge in one case regards the proceeding as entirely right, and in the other as entirely wrong. Such is the effect of arbitrary precedent—such its inconsistency. This rule they have destroyed, and the chancery rule, of the right of the litigants to each other's testimony is established in its stead. The rule was an anomaly in reason, and they have abolished it. Many other great and valuable improvements have been made—improvements demanded by the spirit of the age, in accordance with the opinions of the most learned lawyers—in accordance with the wishes of the people, and in accordance with common sense and true philosophy.

In Ohio, this subject has been urged with great zeal, ability, and perseverance, by Judge Walker, an eminent jurist, through the columns of the *American Law Journal*. And the attention of the legal profession in the west has been urgently and eloquently invoked, for codification and reform, resulting from the necessity which day after day presses itself upon the consideration of the public; and I venture to predict that it will, at no distant day, be carried out in most of the states of the confederacy.

I have said thus much. Mr. President, to describe the progress of law reform in other countries and in the United States, and to show that by the adoption of a provision such as that under consideration, we may attain some of those benefits which other governments have secured. I do not anticipate, however, by such a provision to obtain a panacea for legal difficulties, or strip the law of those technicalities which have prevailed, and will ever prevail in a science so complex. But that is no reason why we should not do all in our power to revise, arrange and simplify it, to make it as accessible as possible to the common understandings of men, and to make the administration of justice as plain as we can. It is desirable to remove the rubbish and set the house in order, though it is scarcely to be expected that it will always remain so. It is for these reasons I advocate the commission, and believe in its utility.

But, sir, the agitation in the convention this morning seems to spring not from a belief in the inutility of the measure, but from an apprehension of its costliness. Now, in my opinion, the mode indicated is not only the best, but greatly the cheapest. We do not propose, as some seem to imagine, to delegate the powers of legislation to these commissioners; but we merely authorize



them to report such reforms, in a digested and convenient form, as are proper, for the consideration of the legislature; this report will be subject to legislative sanction or disapprobation. Now, sir, what is the present mode of accomplishing this revision? The legislature is the committee, consisting of one hundred and thirty-eight members and their officers, costing the state six hundred dollars a day, in order to get the contemplated reforms into shape, when a committee such as is proposed, would do the same preliminary work far more skilfully, far more learnedly, and far more efficiently, for about twenty dollars a day. Is it better and cheaper then, for a commission of three men, or one hundred and thirty-eight, to do this preliminary work of revision? I believe that three good commissioners with a clerk, would be amply sufficient: that all the details should be left to the discretion of the legislature, and that provision should be made in this constitution for its commencement and completion.

It is my intention, Mr. President, while I concur in the object, to vote for a reconsideration of the question, but merely for the purpose of curing some objections in the details of the provision, as it at present stands, and not for the purpose of assailing the principle it asserts.

Mr. MAYES. I am not yet convinced that the section should form part of our constitution. I ask for the yeas and nays upon the question of reconsideration.

The yeas and nays were taken, and were yeas 46, nays 44.

YEAS—Richard Apperson, John L. Ballinger, John S. Barlow, Luther Bawner, Thomas D. Brown, Charles Chambers, James S. Chrisman, Benjamin Copelin, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Hugh Newell, Elijah F. Nuttall, William Preston, Johnson Price, John T. Robinson, Jas. W. Stone, Michael L. Stoner, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Squire Turner, Andrew S. White, George W. Williams—46.

NAYS—Mr. President, (Guthrie,) William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, William Chennault, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, James W. Irwin, Charles C. Kelly, James M. Lackey, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, David Meriwether, Thomas P. Moore, John D. Morris, Jonathan Newcum, Henry B. Pollard, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, Albert G. Talbott, Philip Triplett, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—44.

So the latter clause of the section was reconsidered.

Mr. MAYES moved to reconsider another and kindred branch of the same provision, which was not reached by the vote just taken.

Mr. C. A. WICKLIFFE was anxious that this clause should be reconsidered, although he had voted against the reconsideration of the other. He desired it to be reconsidered, that two or three words might be stricken from it, which, if they were retained, might embarrass the commissioners to be appointed under it. The section was designed to provide that the commissioners should strike out all technical terms from our laws and our pleadings. He was of opinion that words more intelligible could not be used. He inquired what term could be substituted for "replevin?" What would be so expressive?

Mr. GHOLSON undertook to find terms in the English language that would answer every purpose, or they might hang him as high as Haman.

The question was then taken on reconsidering the other clause, and the result was—yeas 46, nays 44.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chennault, Benjamin Copelin, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Hugh Newell, William Preston, John T. Robinson, James W. Stone, John D. Taylor, William R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, George W. Williams, Wesley J. Wright—46.

NAYS—Alfred Boyd, William Bradley, Luther Bawner, William C. Bullitt, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, William Cowper, Edward Curd, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, William Hendrix, Thomas J. Hood, James W. Irwin, Charles C. Kelly, James M. Lackey, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, David Meriwether, Thomas P. Moore, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, Howard Todd, John Wheeler, Silas Woodson—44.

So the convention agreed to reconsider the entire section.

Mr. TRIPLETT then moved to amend by striking out "three nor more than five," and inserting "not more than three persons." The object of the amendment was to limit to three the number of commissioners to be appointed.

Mr. GHOLSON said he had no objection to the amendment.

The amendment was adopted.

Mr. TRIPLET then moved to strike out the words "which shall be in plain English." Many terms in common use had become the baptismal names of things. He defied the mover of this section to provide names for writs more appropriate and expressive. The gentleman from Ballard and McCracken said he could not understand the terms that were used. Well, let him go into a doctor's shop, and he would not be able to understand the labels. Why were such terms used? Because they were expressive of that which would require a long sentence to express in any other way. Writs take sometimes the two first words as their name—for instance, *ne exeat* and *non assumpsit*. You may say for the latter, "I did not assume," but that would not be sufficient. You must say, "I did not assume to pay the debt," &c., and that becomes a long sentence. It will be much better to retain these technicalities, which are well understood, than to risk greater evil in attempting to find a remedy for the existing evil, if evil it is.

Mr. C. A. WICKLIFFE. And if you dispense with the word "replevin," which is well understood, you must say, "an action to take property from the defendant and give it to the plaintiff."

Mr. TAYLOR suggested that gentlemen should prepare a glossary to accompany law books, to explain unusual terms after the fashion of the glossary that accompanied Burns' Poems. He also stated that when he resided in Indiana, a young lady called upon a judge to commence a suit for her, and she said she wished him to issue a "writ of disappointment." (Laughter.) Doubtless the word came from her heart.

Mr. GHOLSON. I regret, sir, that it is necessary for me to consume further the valuable time of this body. As to the applicability of the insinuation of the gentleman from Madison, (Mr. Turner,) that being incapable of reaching up to the law, I am therefore attempting to bring it down to me, I leave others to judge. The reference of the gentleman from Mason, (Mr. Taylor,) to Burns' glossary, reminds me sir, of a saying of that inimitable author, which I will repeat for the general benefit of all concerned, and my humble self in particular. It runs thus:

"Oh wad some Pow'r the giffie gie us  
To see oursels as ithers see us!  
It wad frae monie a blunder free us,  
And foolish notion;  
What airs in dress an' gait wad lea'e us,  
And ev'n Devotion!"

Often, sir, have I put up this petition, and could I now see myself as others see me in this house, I doubt not it would be of great service to me, and perhaps, sir, a like of themselves might, for aught I can say, be of some small service to other honorable gentlemen on this floor. It might have cut short many speeches and saved much valuable time in debate here. Perhaps, sir, even now, I might be silent. But Mr. President, although I know I am not an interesting speaker, (and few farmers are,) yet I do not feel disposed to remain silent, whether I am the sole guardian of the farmers or not, and let this important measure be mutilated or defeated. The remarks of the gentlemen of the

bar show whence this opposition in reality springs. It is not the expense alone. No sir, this is the ostensible, but not the real cause; no sir, far from it. It is the effect, (as shown by the remarks of honorable gentlemen,) which they see this is to have upon that darling pet of the profession, "special pleading." It is I fear, because it seeks the abolition of that fruitful source of profit to the lawyers, and intolerable expense to all other classes of society, that causes it to be so violently opposed here by most of that class of the delegates. I did not propose, sir, in the clause as presented and adopted, to do away all outlandish phrases in pleading, as the section itself will show, the first part of it is as follows:

"At its first session after the adoption of this constitution, the general assembly shall appoint not less than three nor more than five persons learned in the law, whose duty it shall be to revise and arrange the statute laws of this state, both civil and criminal, so as to have but one law on any one subject, all of which shall be in plain English."

The second reads thus:

"And also three other persons learned in the law, whose duty it shall be to prepare a code of practice for the courts in this commonwealth, both civil and criminal, by abridging and simplifying the rules of practice and law, in relation thereto, all of whom shall report, &c."

From this it will be seen most clearly, that the laws only, and not both laws and pleadings that are to be in "plain English." I knew full well, sir, that it would not do to ask the lawyers in this body to do their pleadings in a plain, common sense, truthful English style. I knew they would not give up their fictions, falsehoods, and to all but themselves, unintelligible lingo. Hence all that I asked for was that the laws should be in "plain English."

I ask sir, who can object to this that does not intend to keep the people in ignorance of what the laws really are? I ask, emphatically ask gentlemen who propose to strike out this provision, why they do it? Why it is that they will present to the common farmer or mechanic, a law which, as an officer he must be called upon to administer, in a language which he does not, cannot understand? The thing is unjust and unreasonable, and can have no other effect (and for this it is intended,) but to produce erroneous decisions which lawyers will get fees to reverse. It is the interest of all others but lawyers, that the laws should be plain and easily understood. That justice shall in all cases be done in the first instance. It is their interest that justice be not done, that litigation be multiplied and increased, that the laws shall be doubtful, dark, mysterious, and uncertain, this sir, is their meat and their drink; from this source it is that they amass their princely fortunes. But sir, the day of retribution is at hand, a spirit of reform is abroad in the land. Some of our sister states have wiped these foul blots from their statute books, and God speed the day when Kentucky; my glorious old mother commonwealth; shall rise in her majesty, shake off the iron shackles which were forged in the dark days of feudalism and are now imposed by lawyer craft, and take her own true, proud, and republican stand along

side of New York and Missouri. Sir, I have said it elsewhere and I repeat it here, that the object and inevitable effect of the present mode of pleading, and the rules of evidence is to narrow down the case and prevent justice from being done. From the moment a case is docketed in court, the whole object of the lawyers on both sides, is to get the advantage in pleading, narrow down the case, exclude testimony, and prevent justice being done. So uncertain are the distinctive lines that mark the difference between trespass, and trespass on the case, and between common law and chancery suits, that the best lawyers in the land, are often at a loss, and bring their suits wrong. This is notorious, it is undeniably true sir, and yet honorable gentlemen, sensible men, oppose "legal reform." Again sir, a plaintiff's own witness, when showing as clear a case of wrong as words can show, often drive him out of court with all the bill of costs to pay; and for what sir, not because he has not been wronged, not because justice is not on his side, but because some old British form had not been complied with, or because an ignorant or inattentive lawyer had misapplied one of the various outlandish phrases by which suits at law are designated. And does these things need no reform sir? How long are we to bear these impositions? For one sir, in the name of the sixteen hundred freemen who sent me here, against their longer continuance I solemnly protest. These various forms of actions, these metaphysical distinctions between those forms, together with the various arbitrary and senseless rules of evidence, stand like driftwood in the channel of what should be the pure stream of justice. They pollute its limped waters. They obstruct its current. Nay, sir, they often turn it back and cause it to flow the wrong way. These things sir, destroy the confidence of the people in the courts of the country. To the common citizen, when he enters a circuit court all is as dark as the gloom of midnight; he neither does nor can comprehend what is going on before him. Ask for a reformation of these things, and what is the reply? It is, touch not the wisdom of a thousand years. Yes, sir, 'tis the wisdom of a thousand years devoted to the up-building of lawyer craft; to the manufacture of hair splitting and undefinable legal distinctions that have no common sense in them, that never was intended to, never did, never will, nor never can promote and facilitate the administration of justice.

Take for instance, the case above stated. The plaintiff, after having paid out an amount equal to the sum in controversy, he has a new suit to begin, and the same chances to run over again, in order to get justice, if perchance he ever does. And this, sir, is the glorious system of jurisprudence which honorable gentlemen on this floor advocate. This is the aggregate wisdom of a thousand years of which gentlemen boast, and which they would make us believe cannot be improved; and this, sir, is that glorious, nay, sir, venerated system upon which honorable gentlemen will admit of no innovation, and which they seek to fasten down and perpetuate upon a people, that some at least of those same legal gentlemen are wont to tell us are the most talented, patriotic, chivalrous, high-toned souls, that the sun ever shined upon in this

"Land of the free and home of the brave."

Yes sir, high-toned they are, and chivalrous they be, their mettle is up, their watch-cry is reform, and they will cease not until the last vestige of these out-landish phrases, these legal forms, fictions and falsehoods are swept from our statute books, disowned by all true-hearted Kentuckians, and our courts become in reality, what they are now only in name, courts of justice.

Mr. MERIWETHER suggested that if the words proposed to be stricken out were retained, the words "as far as practicable," should be inserted.

Mr. PRESTON and Mr. TRIPLETT briefly explained.

Mr. APPERSON thought they had wasted much time on this subject. It was a matter that might have been acted upon by the legislature, and yet from 1792 to 1849 it had been passed by; and why then had it become necessary that it should now be put in the constitution? He moved the previous question.

The main question was ordered to be now put.

Mr. GHOLSON called for the yeas and nays on the motion to strike out the words "which shall be in plain English," and they were yeas 45, nays 43.

YEAS—Mr. President, (Guthrie,) Richard Apperson, Wm. K. Bowling, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, James S. Chrisman, Jesse Coffey, Chasteen T. Dunavan, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Vincent S. Hay, Andrew Hood, James W. Irwin, Alfred M. Jackson, George W. Johnston, George W. Kavanaugh, Thomas N. Lindsey, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, Wm. C. Marshall, David Meriwether, William D. Mitchell, Elijah F. Nuttall, Wm. Preston, Larkin J. Proctor, John T. Robinson, John T. Rogers, James W. Stone, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Jno. L. Waller, Andrew S. White, C. A. Wickliffe, George W. Williams, Silas Woodson—45.

NAYS—John L. Ballinger, John S. Barlow, Alfred Boyd, Wm. Bradley, Luther Brawner, Wm. Chenault, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, William Hendrix, Thomas James, Wm. Johnson, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thos. W. Lisle, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, Thomas P. Moore, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Johnson Price, Thos. Rockhold, James Rudd, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, Henry Washington, Jno. Wheeler, Wesley J. Wright—43.

So the words were stricken out.

The question then recurred on the re-adoption of the section.

A division was called for, and the first branch was adopted.

Mr. MAYES called for the yeas and nays on the adoption of the second branch, and they were yeas 48, nays 40.

YEAS—Mr. President, (Guthrie) William K. Bowling, Alfred Boyd, William Bradley, William C. Bullitt, William Chenault, Beverly L. Clarke, Henry R. D. Coleman, William Cowper, Edward Curd, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, William Hendrix, Thomas James, Charles C. Kelly, Thomas N. Lindsey, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, David Meriwether, Thomas P. Moore, Jonathan Newcum, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, Albert G. Talbott, Howard Todd, Philip Triplett, John L. Waller, Henry Washington, John Wheeler, Chas. A. Wickliffe, Wesley J. Wright—48.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, Jas. S. Chrisman, Jesse Coffey, Benjamin Cope- lin, Lucius Desha, James Dudley, Benjamin F. Edwards, Ninian E. Gray, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, James M. Lackey, Peter Lash- brooke, Thomas W. Lisle, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Hugh New- ell, Elijah F. Nuttall, Johnson Price, James W. Stone, John D. Taylor, William R. Thompson, John J. Thurman, Squire Turner, Andrew S. White, George W. Williams, Silas Woodson—40.

So the second branch was agreed to.

The report as amended was again adopted.

#### SPECIFIC AMENDMENT.

Mr. KAVANAUGH offered the following res- olution:

"Resolved, That reason and experience teach that every constitution should be subject to some mode of specific amendment: That the consti- tution, now being formed by this convention, should contain a clause providing for specific amendments on all subjects but that of slavery; and that said clause should be submitted, sepa- rately, to a vote of the people at the same time the constitution itself is voted upon."

Mr. KAVANAUGH. A single word of ex- planation. I and the constituency I have the honor to represent, are in favor of specific amendments to the constitution, and when can- vassing that subject before them, I took no dis- tinction between slave property and any other kind of property, because I believed all would be perfectly safe under that mode of amend- ment, and am still of that opinion. It is now obvious, however, that no specific clause of amendment can pass the convention which will authorize any change in the constitution, unless the subject of slavery be excluded. Seeing that a general clause for specific amendments, not even with the proper guards cannot pass, I have submitted the subject in a qualified form, being willing to take a specific clause in that form, sooner than not have it at all. If I cannot get all that I am for, I will take all that I can get.

As a number of other resolutions have been submitted on the same subject, I should have offered none myself, if any of them had con- tained one of the propositions in those I have had the honor to submit; and that is to submit a specific clause for a direct vote of the people, at the same time of submitting the constitution. I admit that the people seem to have decided against any mode of specific amendments in all matters touching the subject of slavery, but I deny that they have so decided as to that part of the constitution not concerning slavery. Hence it is, that I am for a direct vote of the people on that subject, and have submitted the resolutions for the consideration of the conven- tion with that view.

He moved that it be laid on the table for future consideration and printed.

The motion was not agreed to.

The resolution was then passed over for the present.

#### EDUCATION.

The convention again resumed the considera- tion of the report of the committee on edu- cation.

Mr. WILLIAMS. I do not think the proposi- tion of the gentleman from Nelson, (Mr. C. A. Wickliffe,) is sufficiently specific. I desire that this convention shall, by the constitution, adopt such a provision as will clearly recognize the school fund which is in existence, as a fund for common school purposes; and I wish it to do that in a way that shall definitely point out what it is.

The proposition of the gentleman from Nelson does not embrace all the funds that belong to the board of education, and therefore I wish to offer a substitute, which I apprehend will meet the views of the gentleman from Nelson. My proposition will be a substitute for the whole bill of the committee; and if it should be adopt- ed, and the three sums set forth in the first sec- tion of this article shall be clearly and definite- ly recognized by this convention as a fund to be set apart for the purposes of education in Ken- tucky, I shall be willing to leave further action to the legislature.

The PRESIDENT informed the gentleman from Bourbon that his amendment was not yet in order.

Mr. C. A. WICKLIFFE briefly explained his amendment, and vindicated the legislature from the imputations which had been cast upon it in relation to this school fund.

Mr. T. J. HOOD. I introduced the resolution requiring the appointment of a committee on the educational fund, and had the honor of being placed upon that committee, as one of the ar- dent friends of common schools; but owing to cir- cumstances beyond my control, I was prevent- ed from meeting and consulting much with that committee while making up this report, and I do not concur altogether in its details, yet its general principles meet my entire approbation. It was my good fortune, or my foible, to have taken my seat in this body, impressed with a deep, strong sense of the propriety and importance of more securely establishing and protecting the fund heretofore set apart for common school purposes —of throwing about it that constitutional secu- rity and sanctity which seemed necessary to

render it effectual in accomplishing the high purposes to which it was originally dedicated. The policy of establishing free or common schools throughout the state, which should be accessible to the children of all classes of society, has taken a strong hold upon the feelings and affections of that portion of the citizens of Kentucky whom I have the honor to represent; and they testified their solicitude for the success of the enterprise by an almost unanimous vote for the two cents additional tax in aid of the school fund. So I shall feel authorized in lending my feeble assistance to every proposition which has for its object the security and protection of that fund, and the building up of an enlarged and liberal system of common schools in this state. The scheme of educating all the children of the country by means of such a system of schools is certainly a most magnificent one, and peculiarly marks the progress of the age in morals and in civilization. One, which if carried into successful operation, would contribute more, perhaps, than any other, to the advancement of the prosperity and true glory of our country. For I regard a development of the moral energies and intellectual resources of a people as conducing, far more to the purity and preservation of civil liberty than any other single enterprise, and productive of more true happiness and contentment to society at large.

In reference to education generally, as it affects the happiness of man in his individual capacity, I need not detain this house. I need not speak of the agreeable relaxation it affords from the perplexing cares and toils of business life, or fashionable dissipation. I need not speak of the consolation—the pure and elevated enjoyments to be derived from it when the dearest affections of the heart are wounded or depressed by adversity. The character of this body renders it unnecessary that I should dwell on these merits. Besides, I am persuaded that an enterprise like that shadowed forth in the report of the committee, which embraces within its comprehensive policy the social happiness—the civil and political well-being of all classes of society—will commend itself to the favorable consideration of this convention upon far more disinterested and patriotic grounds. Sir, what is this scheme, and what great ends do we propose accomplishing by it? It is one which seeks the amelioration of the condition of the rising generation—those who shall come after us to supply our places in all the varied relations of life. It seeks to enlarge their minds, to liberalize their sentiments, and to elevate them to a just appreciation of the true dignity and privileges of freemen. But there is another idea connected with this matter, which, it appears to me, must strike the mind of every delegate on this floor. Sir, we are about embarking on a system of universal elections. Those who shall hereafter fill all the various offices of government—those who shall exercise authority over the people—must be such as the virtue and intelligence of the people shall select. Is not the general diffusion of knowledge among the people then, an essential pre-requisite to the safe and discreet exercise of this high privilege? I maintain that it is. And could the curtain of the future be raised—and the veiled pages of

our country's undeveloped history be revealed to our visions—the political convulsions—the conflicts and struggles of factions—the triumphs, disasters, and mutations of policy, that must, and will arise under this new order of things—we should, in my opinion, clearly see that the future prosperity and happiness of our common country must depend upon the supremacy of reason—upon the general diffusion of virtue and intelligence, not only among a chosen few—the favored sons of fortune and of birth—but among that vast multitude who will hold in their hands, all the prerogatives of power. Sir, this universal elective system which I came here prepared to support, and which a decided majority of this body have concurred in adopting, is fraught with much of good or of evil to our state; and which of these shall preponderate, will depend upon the prudence, the discretion, and the purity with which these privileges are exercised. If we would insure the success of this experiment, we must furnish every possible facility to our citizens for exercising them aright. Sir, in an arbitrary or despotic government, where the people neither make the laws, nor are permitted to select those who legislate, the general diffusion of knowledge is not essential to the preservation of peace; but in republican governments, where the people fill all the branches or offices of government, their peace, liberty, and prosperity hang upon their intelligence and virtue. Who then are interested in the dissemination of knowledge among all classes of society through some system of general education? Are they merely those whose poverty affords no other means of acquiring it? Surely not; but every citizen who would preserve the institutions of his country pure and unimpaired. So, sir, I maintain that the true policy of every republican government requires the establishment of some such system. What is the leading idea in the theory of republicanism? It is based upon the presumed equality of all its citizens. And the true policy of such a government aims at the realization of that idea in its practical operations—the exemplification of that civil and political equality among its citizens, by opening up the road to professional or political preferment, to genius and merit however humble in its origin. It invites and encourages the bantling of the hovel to consecrate the energies of his mind to the attainment of eminence and distinction no less than the pampered cion of the palace. It holds the pride of birth and the arrogance of wealth as despicable distinctions when brought in competition with true nobility of heart or virtuous elevation of character and sentiment. Without any invidious distinctions, its comprehensive policy invites all to enter the arena, it proscribes none—but encourages all by diffusing, as far as practicable, equal opportunities to all, and honor's merit, wherever displayed, according to the degree of its excellence. Such sir, is the genius of republicanism—such the perfections of its theory—and yet its golden promises will vanish phantom-like, and cheat our fondest hopes unless guided, sustained and invigorated by a sound wholesome public sentiment. How shall that healthy public sentiment be engendered and kept alive? It can only be done by the dif-

fuson of virtue and intelligence among the people. But according to the auditor's report, a large number of our citizens have not the means of acquiring an education. Public policy then dictates the establishment of a liberal system of common schools sustained at the public expense, that shall be accessible to the children of this class of citizens.

Now, I appeal to every gentleman upon this floor, if the permanent success of the constitution we are about adopting, does not depend upon the intelligence and moderation of the people? We are about confiding, or as the more popular phrase has it, restoring to them all the powers of sovereignty. We are about entrusting to every citizen alike equal rights and privileges in the appointment of all the agents of government. These are high and responsible powers—upon the judicious and discreet exercise of which the future purity and prosperity of our institutions depend. Should we not therefore, along with this surrender of all power back into their hands, also furnish them with every possible facility for exercising it with safety to themselves and to the country?

Sir, this project of common schools has taken a much stronger hold upon popular feeling than some gentlemen seem disposed to think. And I believe, when we shall have once thoroughly embarked in the prosecution of it, public sentiment will exhibit a loftiness of tone, alike worthy of the enterprise and creditable to the state. But gentlemen pretend that we are not authorized, by any expression of the people, in incorporating any provision on the subject in the constitution. I would ask what clearer indication of popular feeling can they demand, than is to be found in the overwhelming majority who voted for the two cents additional tax in aid of the school fund? Near thirty-seven thousand majority of our citizens, by that vote, showed their willingness to progress with this work. All they ask at our hands is some guaranty that the voluntary tax which they impose upon themselves shall not be diverted to any other purpose. And I have no doubt but that an equal majority would submit to a much greater tax—ay, to five times the amount of that tax—rather than see so noble an enterprise abandoned, if they could but be assured that it would be faithfully applied, and would come back in the blessings of education to their children.

Yet we are gravely told, by the senior gentleman from Nelson, (Mr. Hardin,) that if we adopt any provision rendering the school fund permanent and secure, and the proceeds of the school tax inviolable, it will defeat the constitution before the people. Sir, I cannot believe it. I cannot believe that a mere act of good faith on the part of the state, towards its poor children, in securing to them the enjoyment of that fund,—not one dollar of which was ever collected from a citizen of Kentucky,—or of that school tax which their fathers have paid for their benefit, will ever drive the citizens of this magnanimous old commonwealth from the support of our constitution. I cannot believe that the incorporation of a provision, so deeply affecting the interests and happiness of the rising generation, will ever endanger our work in the hands of the fathers and relatives of those children. On the contrary, I

believe that a provision of this character would recommend our constitution to the confidence and patronage of a generous constituency, and would give strength and favor to it beyond that of any other single proposition.

We are also admonished by that same gentleman, and others upon this floor, to leave the school fund, and the proceeds of the school tax, to the guardian care and tender mercies of the legislature. Sir, the experience of some eleven years has demonstrated to the people of Kentucky the necessity of placing that fund upon more elevated grounds, and of securing it against that rapacious spirit of legislation which has not hesitated to lay violent hands upon it, whenever an emergency seemed to require a prostitution of its means. Besides, a rumor has gotten out, and obtained some credence among the people, that once upon a time, certain school bonds were burned by order of that same legislature, without any sufficient reason ever having been assigned to the country for the act; and that the interest upon that fund has frequently been permitted to accumulate for years, without any provision having been made either to secure or pay it; while at the same time the whole school system has been crippled and retarded in its usefulness for the want of adequate means. So, sir, the public have lost confidence in the stability or efficiency of a system which depends for a support, from year to year, upon the pleasure of a vacillating legislature. The people have now voluntarily imposed upon themselves a tax in aid of the school fund, and demand that high constitutional guarantees shall be given for the faithful application of its proceeds. Justice requires that these should be afforded, in as much as it would be a flagrant violation of the faith of the state, and a gross fraud upon the citizens, to divert this tax to any other purpose.

But as a last argument by the learned gentleman from Nelson, (Mr. Hardin,) against any constitutional provision, securing and establishing the school fund heretofore set apart, we are met with the startling announcement that there is no school fund; that at most it is but a debt which the state owes to herself, and which she may at any time cancel; that the money has all been expended, and so, in truth, and in fact, there is no school fund. That is, when the argument is analyzed and translated into plain english, (about which we have heard so much to-day,) we are to be told that the dedication of \$850,000, some years ago, to common school purposes, and its subsequent investment in state bonds, bearing interest, so that the fund might become productive, and the schools sustained, without trenching upon or destroying the principle, was all a splendid farce, to amuse and delude the people—while the money was being sunk in the bottoms of your rivers, and spread along your roads in various works of internal improvement; and now, sir, when the play is through, and the money all gone, the delusion is to be brushed away, and the eyes of the people to be opened to the fact that there is no school fund. This is a system of specious reasoning which, I trust, the great state of Kentucky will not subscribe to. Sir, those bonds were executed in good faith, and the honor and credit of the state were pledged to their pay-



ment, and to the payment of the interest upon them. The character of every citizen is, to some extent, identified with the honor and good faith of the state, and Kentucky will not, in my humble opinion, be true to herself and her past distinguished reputation, if she does not fully redeem the pledge given by these bonds to the poor children of her citizens. She must either pay those bonds or repudiate them. There is no other alternative. If she should choose the latter, then I confess the rising generation will be without a remedy. But what becomes of the fair fame of this good old commonwealth? Sir, Kentucky will not repudiate these bonds or any other honest debts she has ever contracted. Who in this house will rise up in his place and maintain that she should? Repudiation has ever been regarded as odious in her sight. And how infinitely more so would this appear when it is remembered that the poor children within her own borders are the ones who would most deeply suffer from the calamity? So I maintain that there is a school fund—one too secured by the highest of all pledges—the faith of a generous and chivalrous state. It is about this fund, now amounting to upwards of \$1,300,000, that the committee propose, by their report, throwing a constitutional mantle, which will perpetuate and protect it against the caprice, extravagance, and incendiaryisms of the legislature: and this report, if adopted, will accomplish that purpose much more effectually than any of the substitutes that have been offered.

But some of the gentlemen who favor the measure, yet find fault with that portion of this report which refers to the tax now paid, or which may hereafter be imposed for school purposes by legislative enactment. They have construed it to prohibit the legislature from removing the present two cents tax, or from repealing any law which may ever hereafter be enacted, imposing further tax for school purposes. They fear, that under it, the present law, and all similar laws hereafter passed, once being placed on the statute book, will be, like the laws of the Medes and Persians—fixed and unalterable—however unnecessary or oppressive they may become. Such, I maintain, is not the fair construction of the report; and such, I am assured by members of that committee, was not their intention. They intended rendering the proceed of the present school tax, and of every similar law which may be passed in future, inviolable for any other purpose, so long as those laws remain in force; but by no means to interfere with the right of the legislature to alter, amend, or abrogate those laws whenever the public good might require it.

The general principles of this report, as I before remarked, meet my cordial approbation. It consecrates and forever establishes the school fund, and places its principal beyond the reach of legislative abuse, while at the same time it secures the faithful application of the interest to the education of the children of all classes of society; giving to each county its fair proportion, according to the number of its children. It likewise sanctifies the proceeds of all laws imposing tax for school purposes, and guaranties its disbursement upon the same equitable principles. These are the great principles for which I contend, and which, if established, will give

efficiency and vigor, as well as stability, to the common school system. This being done, public confidence in the success of the enterprise will be restored, and we shall exhibit to the world, in the thousands of institutions of learning scattered over the country, the magnificent spectacle of a state marching on, with giant strides, in the high career of morals, civilization, and religion. Under the benign auspices of these extended means for intellectual development, we shall see loom out from city and country, from lowland and mountains, many an intellectual giant, with names gilded by no phosphoretic aureola borrowed from a distinguished ancestry, but with "minds swelling with energies," fresh, free, native, and vigorous, and owing their attractions and power alone to their own masculine proportions. Then, indeed, will Kentucky become what I would have her—as distinguished for the virtue and intelligence of her citizens as she is for the chivalry of her sons and the beauty of her daughters.

Mr. C. A. WICKLIFFE entered into some further explanations, and then withdrew his amendment (with which Mr. Barlow's also fell), and submitted a modified amendment, as follows:

"The capital of the fund, called and known as the common school fund, consisting of \$1,225,763 42, for which bonds have been executed by the state to the board of education, and \$73,500 of stock in the Bank of Kentucky; also, the sum of \$51,223 29, balance of interest on the school fund for 1848, unexpended; together with any sum which may hereafter be raised in the state, by taxation or otherwise, for purposes of education, shall be held inviolate, for the purpose of sustaining a system of common schools; the interest and dividends of said fund, together with any sum which may be produced by taxation, may be appropriated in aid of common schools, but for no other purpose. The general assembly shall invest said \$51,223 29 in some safe and profitable manner, and any portion of the interest and dividends of said school fund, which may not be needed in sustaining common schools, shall be invested in like manner. The general assembly shall make provision, by law, for the payment of the interest of said school fund: *Provided*, that each county shall be entitled to their proportion of the income of said fund, and if not called for, for school purposes, it shall be reinvested for the benefit of each county, from time to time."

Mr. TURNER moved the previous question, and the main question was ordered to be now put.

The amendment of the gentleman from Nelson was then adopted.

#### EVENING SESSION.

The convention resumed the consideration of the report of the committee on education.

Mr. TAYLOR, on behalf of the committee, asked leave to withdraw the second, third, fourth, fifth, and sixth sections, which were rendered unnecessary, by the adoption of the substitute of the gentleman from Nelson for the first section.

Leave was granted.

The seventh section was then read, as follows:

"SEC. 7. There shall be elected, by the qualified electors in this commonwealth, a superintendent of public instruction, who shall hold his office for years, and whose duties and salary shall be prescribed and fixed by law."

On the motion of Mr. TRIPLETT the blank was filled with "four."

The section, and afterwards the entire report, as amended, were then adopted.

#### SLAVERY.

The convention proceeded to the consideration of the report of the committee on the revision of the constitution and slavery.

Mr. C. A. WICKLIFFE moved that each member be limited to twenty minutes in the discussion of that report. It involved a subject with which they were all familiar, which had been amply discussed, both here and elsewhere, and hence a long discussion was unnecessary.

Mr. MERIWETHER intimated a wish to occupy a longer time.

Mr. C. A. WICKLIFFE was willing to exempt the gentleman from Jefferson, he being the chairman of the committee from which the report had come.

Mr. WALLER expressed his opposition to the adoption of the resolution.

Mr. DUDLEY said that subject had been discussed at very great length during the ten or eleven weeks that the convention had been in session, and it was now necessary that they should act, rather than talk, that they might adjourn at an early day. He saw no reason for indulging each gentleman in more than a few remarks.

Mr. CURD moved to amend the motion, by striking out "twenty," and inserting "ten."

Mr. BALLINGER saw no reason why the chairman of the committee should have greater latitude than the other members of the same committee, who entertained opposing views.

Mr. WALLER opposed the adoption of the resolution, because he was opposed to the application of a gag.

Mr. C. A. WICKLIFFE withdrew his motion.

The secretary then read the first section of the report, as follows:

"SEC. 1. The general assembly shall have no power to pass laws for the emancipation of slaves, without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated; nor shall they exercise any other or greater power over the after-born children of slave mothers than over the slaves then in being."

Mr. MERIWETHER. Before the vote is taken on the first section, I propose to make a few remarks on the general question of slavery. Permit me to remark, that I should not have occupied the time of the convention at all upon this question, but for the fact that the arguments and doctrines which have been employed here, have been seized on by the abolitionists of the north, for the purpose of advancing their views, and but for the remarks of my friend from Knox, which will no doubt be cited for the same purpose.

My friend from Knox, contended that slavery

retarded our population, without inquiring whether there might not be other causes which would produce the same effect, and which did produce it. I have been taught that like causes produce like effects, everywhere, and I ask, if slavery has retarded population in Kentucky, why has it not done it in Missouri and Alabama, and other states.

The gentleman drew a comparison between the states of Kentucky and Ohio, with reference to the increase of their population. If he will turn his attention to Missouri, and Alabama, he will find that they have increased in a greater ratio than Ohio. If slavery be the cause which has retarded the population of Kentucky, why has not that cause produced the same effect in these states? Will not the gentleman see that there are other causes which might produce it? I could refer to the condition of the land titles in Kentucky, in by gone days, and I might assure him that probably it will be found, every acre of land has been shingled over with as many as three different titles. I presume there is not a man in this body, who cannot point to some neighbor, who has lost his land, and who, fearful lest the same fate might await him again if he bought in this state, has gone to the western states. How many have thus gone, and how many emigrants have passed through Kentucky, without locating themselves, for fear of the land titles, it is hard to tell.

Here are causes enough to produce the effect claimed by the gentleman, when we recollect that in those western states, a citizen having lost land here, could get good land cheap, and have a good title. Some few years since, congress commenced holding out a bounty for immigration from the older states to the new, where the United States held nearly all the land for sale. If I recollect rightly, the price of the public land was fixed at two dollars per acre, and the purchaser was required to pay only twenty-five cents annually per acre till it was paid for, thus giving eight years to pay the whole. Congress afterwards reduced the price to one dollar and twenty-five cents per acre, and as an additional stimulus to immigration they provided that the public lands, when entered, should be exempt from taxation for five years, so that the immigrant, instead of locating in Kentucky, and the citizen of Kentucky, who had lost his land, went west and acquired good land with a good title and free from taxation for five years after he had become a purchaser.

I have been asked why Louisville, did not increase as fast as Cincinnati. And I have been told it is because she is within a slave state. But if gentlemen will cast their eyes to St. Louis, they will find that she, though in a slave state, has increased faster than Cincinnati. I again ask, if slavery has been the cause, why has it not produced this effect elsewhere? But Kentucky has been no laggard in population.

In 1790, when the first census of the United States was taken, there were eight free states having a larger population than Kentucky, one, Rhode Island, having a little less. There are now but two of these old states which have so large a population as Kentucky. These are New York and Pennsylvania.

The gentleman pointed to Ohio as a wilder-

ness sixty years ago, while Kentucky had 60,000 people, and now Ohio is in advance. In 1790 Massachusetts had a population of 370,000, and now Kentucky has more than she. Kentucky started in this race with eight free states in advance, but she has passed six of them, two only are ahead of her.

I maintain there are other causes which prevent the settlement of Kentucky. The premium offered to immigration west, and the difficulties in our land titles, have been the great causes which have retarded our population.

But it has been said, that slavery has retarded our internal improvements. Sir, if Kentucky had been as prodigal as Ohio, we should not have been behind her in internal improvements. Kentucky has a debt of between four and five millions, and Ohio has one of twenty millions. I ask those who have been opposed to internal improvements, if they can find no cause of rejoicing in that fact? Had we chosen to go into debt to that extent, we too could have had our railroads and canals. But is it better to have gone into debt as she did, or to have progressed upon a firmer foundation? What would be the situation of a farmer who would tear down an old, but comfortable house, and borrow money to pay for the erection of a more showy edifice to adorn and embellish his possessions, and in doing so deprive himself, by the payment of interest, of the means of carrying on his farm, having spent all on his dwelling? Would it not have been better to reside in the old fashioned, but comfortable dwelling until he had the means to erect a new one, than to subject himself to the payment of the interest upon the money borrowed to erect the new house?

Much has been said about taxation here. In Ohio the average tax for the last five years, has been fifty-five cents on the hundred dollars. We have got ours up to nineteen cents, which we think is an enormous sum, while Ohio is taxed nearly three times as high as Kentucky, more than half of one per cent. to maintain her system.

But my friend from Knox said slavery had prevented education, and he alluded to the numerous free schools in the free states, and their want in Kentucky. In answer to that argument, permit me to say, if Ohio was wholly indebted to her own resources for her prosperity with regard to schools, she would have been behind Kentucky. Where did she derive her means? Not from her own, but from external sources. The general government treated Ohio as its own, and Kentucky as a step-child, and we could not be expected to keep pace with her. What has the general government done for Kentucky? The gentleman will find that a portion of the prosperity of Ohio is owing to the liberality of Virginia, that mother of states, when she surrendered her title to such a domain as no other state ever surrendered. This is now thrown out as a matter of reproach to Kentucky by one of her own sons, that she has not kept pace with Ohio. Let me give the sources of the means which Ohio has enjoyed.

These are: the Virginia military school fund, the United States military school fund, the great western reserve school fund, school sections number sixteen, ministerial sections number

twenty-nine, the Moravian school fund, given by the Moravian society. In addition to that, Ohio received numerous donations of land from the general government; at one time 500,000 acres of land, and \$2,000,000 of the surplus revenue.

Mr. WOODSON. If the gentleman will allow me to explain, I will state that I said there was a difference between the number of children in schools in Ohio and Kentucky, but the greatest difference was between Massachusetts and Kentucky in proportion to the population. The gentleman has gone on to show that Ohio has had extraneous aid. I would be glad to have him state what extraneous aid Massachusetts has had, if any.

Mr. MERIWETHER. I have not been able to obtain documents with relation to that point. But does the gentlemen expect a new state like Kentucky, unaided, to keep pace with the older states in these respects. Why does he take an old state, densely populated, and with means and resources which a new state cannot have and compare them? I have chosen Ohio, because the comparison would be more just, as the two states are nearly of the same age and of the same size, the same climate, and similar productions; the only difference being the institution of slavery in Kentucky, and not in Ohio. As I before said, the general government has acted toward the younger states the part of a step-father; whilst prodigal toward the younger portion of the family, we have been left to struggle for ourselves. In addition to the benefits I have named as given to Ohio, look to the donations given, the colleges and academies founded, and the aid to internal improvements. Has Kentucky derived any aid from the general government, save the pittance from the surplus revenue? No, not one farthing.

I have adduced these arguments to show that there are other reasons besides slavery, which may have produced this effect. In addition to those advantages named, which Ohio has derived from the general government, there is three per cent. on the sale of public lands in Ohio, which is given for educational purposes and internal improvement. All together, as well as I can estimate it, the sum received by Ohio, amounts in land and money together, to some ten millions of dollars. Had Kentucky received one tythe of these benefits, had the difficulties of our land titles not existed, I imagine, the gentleman could have had no cause to reproach his native state with her laggard movements. But the arguments which struck me as singular, were that at the first commencement of his arguments he said slavery retarded population, and before he closed, he alluded to the time when population would be so dense that we would have to force the negroes off or give up the state to them. If slavery retards this evil day, let us keep it up.

Mr. WOODSON. The gentleman did not understand me. I said I did not think the white population would increase in Kentucky, but the black population would, and as they increase, they would force away the poor whites, and the lands would come into the possession of the rich.

Mr. MERIWETHER. I stand corrected un-

less I misunderstand the gentleman again. But now I will answer his present argument, and tell him that the white population has for the last ten years been increasing faster than the black, and therefore, the black population never can outnumber the white.

It has been said on more than one occasion, that slavery retards our wealth. In answer to this, permit me to make a few remarks. I recollect to have seen in the report of the commissioner of patents for 1847, and a comparison between the distributive wealth of two slave states, and two free states. The commissioner being a northern man with northern feelings instituted the comparison, and did not select from the slave states those which would have made the most favorable comparison, perhaps. He took Kentucky and Maryland. Maryland is not one of the most prosperous slave states. He took New York, and I think, Pennsylvania, certainly not the least prosperous of the free states. Taking the wealth of the two last and dividing it by the amount of the population, each individual in those states would have \$269 69 per head. Taking Kentucky and Maryland and dividing the wealth by the number, as before, and each person will have over \$400.

Upon this point I have gone into some calculations myself. I have taken Ohio, as certainly not the least prosperous of the free states, and I find if you take the taxable property of Ohio—and they tax as great a variety of property as we do—and divide by the population, and each person will receive \$270. Take the property of Kentucky, and divide by the whole population, including slaves, and each individual will have \$349, making a difference of \$79 for each person, in favor of Kentucky. This is including the value of the slaves as property and enumerating them as persons. Excluding them as property at an aggregate of \$60,000,000, and excluding them as persons and then each person will have \$350. Then count them as property and exclude them in the distribution, and each person will receive \$454, making a difference in favor of Kentucky of \$180 per head.

I wish it borne in mind that every figure, and every extract I shall quote, unless otherwise stated, will be from official documents. I find some statistics in a paper published in Cincinnati, whose editor cannot be supposed to be partial to Kentucky, which show the products of different states of the Union per head. I have taken and separated the slave from the free states, and I find the actual produce of labor in the slave states, is fifty cents greater than in the free states. This is a small amount in a single case, but in the aggregate it is about four millions of dollars. I have taken for a comparison Ohio and Kentucky, similar in productions and climate, but in point of soil Ohio has the advantage. The produce of labor per head for every soul in Ohio, is set down at \$42. In Kentucky it is \$49, giving us an excess of \$7 per head. The aggregate produce of labor in Kentucky, at this rate, is \$3,000,000 more than in Ohio. I have instituted a comparison between Tennessee and Indiana, and I find the comparison is still more favorable toward the slave states. Then I have taken them jointly, Kentucky and Tennessee on one side, and Indiana

and Ohio on the other; and taking the two, the difference is about eleven millions of dollars in favor of the slave states.

But let us go to the auditor's report in relation to two states. I made some remarks in the early part of the session on this subject, and I wish now to be precise. It must be borne in mind that Ohio has double the population of Kentucky. She should produce double the amount of wealth which Kentucky produces, yet I find that the increased value of taxable property within the last year has been \$18,131,545 in Kentucky. Now Ohio ought, at the same ratio, to have increased her taxable property \$36,000,000, in round numbers; but so far from it, the state of Ohio, with double the population, and double the hands to labor of Kentucky, has only increased \$10,304,831. Kentucky has increased \$9,826,714 over Ohio. Then take Indiana, having about the same population, and about the same number of hands to produce as Kentucky, how much has her wealth increased? Only \$4,351,831. Kentucky with one third of the population and one third of the hands to labor that Indiana and Ohio, has increased her wealth to the amount of \$5,474,883 more than both of these states together. I have been unable to get an official statement respecting Illinois, but I am informed that her increase is a little over \$4,000,000. If that be correct, all three of these states, have not increased their wealth as much as Kentucky, with all the evils within her borders to which the gentleman has alluded.

It has been said that slavery has been ruinous to our morals.

Mr. WOODSON. As the argument I adduced may be misunderstood, I would ask how is it, if Kentucky increases her annual wealth faster than all these states, that Ohio, being a much younger state than Kentucky, has now more than double her wealth?

Mr. MERIWETHER. Wealth has increased in this way in Ohio. Heretofore, as congress owned and controlled land there, it was not valued at all till five years after their entry. It has since come into the estimate, and is valued. Now the whole land is valued, which was not the fact at first. I take the present time, because the land is now principally occupied in both states.

I have been at some trouble to collect some statistics on the subject of crime to show the effect of slavery on the morals. I find that Ohio has thirty seven per cent. more convicts in her penitentiary than Kentucky. Illinois has nine per cent. more; Michigan has ninety three per cent. more, and New York ninety nine per cent. more. The only free state from which I could get a return which has less than Kentucky is Indiana; and she has I think eleven per cent. less, in proportion to population, than Kentucky.

I have collected some statistics also with respect to pauperism. That has been alluded to to-day. My gleanings upon this point have been only on a small scale, for but few states keep statistics on that subject. In Kentucky we have nothing of that sort. I have taken Shelby county as an average county. She has two representatives, and not quite the ratio of population for two. I find from information,

derived from the delegates from that county in this hall, that on that basis the paupers in Kentucky are about 400. I have taken the counties of Jefferson, Bullitt, and Shelby, and added them together, and on the basis derived from these, the whole number in the state will be about 1000. How is it in Massachusetts? Last year there were in Massachusetts 28,510 paupers. For these she had to erect 174 alms houses, and tax the people for their erection to the amount of \$1,056,000, whilst the annual cost of their maintenance was \$372,749 75, a sum nearly equal to the whole expense of the government of Kentucky.

Now, if I were to argue as my friend from Knox has done, in saying that because slavery exists in Kentucky, therefore population has been prevented, if it is prevented at all, might I not say that the absence of slavery is the cause of the pauperism in Massachusetts?

But I think I can show that where emancipation has taken place, it has not produced the good effects expected from it. I will read an extract or two from a lecture delivered in the hall of the house of representatives in Ohio, by David Christy, an agent of the American colonization society—a resident of the state of Ohio, with all his feelings in favor of emancipation, truth has forced him to acknowledge what I shall read:

"These results of emancipation in the northern states were watched with great interest by the philanthropic citizens of the slave states. The liberation of the slaves in the free states had fallen so far short of securing the amount of good anticipated, that the friends of the colored man became less urgent and zealous in their efforts to secure further legislative action."

Well he goes on and says that from

"1790 to 1800 emancipations were	37,042
1800 to 1810 emancipations were	56,414
1810 to 1820 emancipations were	14,471
1820 to 1830 emancipations were	33,772
1830 to 1840 emancipations were	—

"From 1790 to 1810 some of the most powerful minds in the nation were directed to the consideration of the enormous evils of slavery, and the effects of their labors are exhibited in the number of emancipations made during that period. The decline of emancipations after 1810, we believe to be due to the cause assigned above—the little benefit, apparently, which had resulted from the liberation of the slaves, and the consequent relaxation of effort by the friends of emancipation."

Now, I will give the remarks of the same author as to the effects in England.

"But the investigations which had led to the knowledge of the enormities of the slave trade, necessarily exhibited the evils of slavery itself. Public opinion decreed the annihilation of both, and the British government had no other alternative but to comply. The means to which she resorted for the suppression of the slave trade, and their failure hitherto, have been already noticed. The measures adopted for the emancipation of her West India slaves, have resulted still more unfavorably to her interests, than those for the extinction of the slave trade.

"It was considered absolutely necessary to the prosperity of England, that she should re-

gain the advantageous position which she had occupied, in being the chief producer of tropical commodities. But to effect this, it was necessary that she should be able to double the exports from her own islands, and greatly diminish those of her rivals. This could be accomplished only by an increase of laborers from abroad, or by stimulating those on the islands to double activity in their work. An increase of laborers from abroad could only be secured by a resort to the slave trade, which was impossible; or to voluntary immigration, from other countries to the islands, which was improbable. The only remaining alternative was to render the labor already in the islands more productive. This could not be done by the whip, as it had already expended its force, and could not afford the relief demanded. This position of affairs made the government willing to listen to the appeals of the friends of West India emancipation. They had long argued that free labor was cheaper than slave labor—that one freeman, under the stimulus of wages, would do twice the work of a slave, compelled to industry by the whip—that the government, by immediate emancipation, could demonstrate the truth of this proposition, and thus furnish a powerful argument against slavery—that the world should be convinced that the employment of slave labor is a great economic error—and that this truth, once believed, the abolition of slavery would everywhere take place, and the demand for slaves being thus destroyed, the slave trade must cease.

"Parliament, yielding to these arguments, passed her West India emancipation act, 1833, with certain restrictions, by which the liberated slaves were to be held by their old masters as apprentices, partly until August 1, 1838, and partly until August 1, 1840. This apprenticeship system, however, being productive of greater cruelties than even slavery, the legislative councils of the islands, coerced by public sentiment in England, were forced to precipitate the final emancipation of the slaves, and on August 1, 1838, they were declared free. This act at once brought on the crisis in the experiment. The results in the following official table, taken from the Westminster Review, 1844:

SUGAR EXPORTED	Average of 1831, 1832, 1833. Three years of slavery.	Average of 1835, 1836, 1837. Three years of apprenticeship.
From St. Vincent, -	23,400,000 lbs.	22,500,000 lbs.
From Trinidad, -	18,923 tons	18,255 tons
From Jamaica, -	86,080 hhd.	62,960 hhd.
From total W. Indies, -	3,841,153 cwt.	3,477,592 cwt.

  

SUGAR EXPORTED.	Average of 1839, 1840, 1841. Three years of freedom.
From St. Vincent, -	14,100,000 lbs.
From Trinidad, -	14,828 tons.
From Jamaica, -	34,415 hhd.
From total West Indies, -	2,396,784 cwt.

"This immense and unexpected reduction of West India products under the system of freedom was the cause of great alarm. The experiment which was to prove the superiority of free labor over that of slave labor had failed. The

hope of doubling the exports by that means was blasted. Five hundred millions dollars of British capital, invested in the islands, says McQueen, was on the brink of destruction, for want of laborers to make it available. The English government found her commerce greatly lessened, and her home supply of tropical products falling below the actual wants of her own people. This diminution rendered her unable to furnish any surplus for the markets of those of her colonies, and her countries which she formerly supplied. These results at once extended the market for slave grown products, and gave a new impulse to the slave trade.

"The government and its advisers now found themselves in the mortifying position of having blundered miserably in their emancipation scheme, and of having landed themselves in a dilemma of singular perplexity."

Here is evidence sufficient to establish the proposition with which I set out, "that emancipation has not, either in England or our northern states, produced the good results expected from it." Why need we look for better or other results here in our own state?

By a reference to the table which I have, it will be found that the products of these islands were reduced more than half, and they still remain so. I will read an extract from a paper published at Barbadoes last year. This describes their condition at this time. This island is said to be the most fruitful of all the West India Islands, so much so by way of distinction, they call it Little Britain:

"Here plenty of laborers can be employed for field labor at fifteen cents per day. They have now been free twelve years, and they find that the only way to get a living is to work. Even here the evidences of decay and coming ruin are conspicuous. One half of the estates in the island are in the hands of the provost marshal, who, as a sheriff, proceeds to sell them on judgment to pay creditors."

One half the estates in the hands of the sheriff, and, under execution, because of emancipation, and that too when laborers can be employed at fifteen cents per day. Is that the state of things you wish to see in Kentucky—labor at fifteen cents a day and one half the estates in the hands of the sheriff?

I will read an article from the London Times, further descriptive of the effects which emancipation has had upon England:

"The will of the people of England and the resources of the British nation have been applied, with absolute authority and ungrudging munificence, to the extinction of slavery in the British dominions. The northern states of America have no such power of altering the institutions, and the tenures of property in the slaveholding states of the Union: congress itself has no such power; but if it had, and, besides the power, if it had the will and the means to carry a general measure of abolition, we are constrained to admit that the experiment made by the British government, and the state in which the British West Indies are now placed by it, would be invoked by the most unanswerable argument against such a scheme."

If congress (and the same argument will apply to a state,) had the power to abolish slavery, we are constrained to admit, (says this organ of

England,) that the experiment made by us would furnish the most unanswerable argument against such a scheme—that is, the scheme of emancipation.

I will read one more short extract from the address before quoted from, and then conclude. Speaking of the effects of emancipation in England, the writer says:

"While therefore the ease, comfort, and welfare of the colored man was secured, the interests of the planters were almost ruined by emancipation, and the influence and power of England put in jeopardy."

Then, if we emancipate the slaves here, will it not produce the same result? Although it may secure to the slave ease and comfort, may we not expect that, as in the British islands, the white farmer will be ruined, and the influence and power of Kentucky destroyed? If this effect was produced by this cause there, why should it not produce the same effect here? If England was by it brought to the brink of ruin, why may we not also? Sir, these are the effects of emancipation in other countries. Need I ask, are we to expect a different result here if it is resorted to? England was shaken to its foundation. The gentleman, from whose address I have quoted, says, that in the northern states they have not realized their anticipations. Shall we hope they will realize our expectations from such a procedure? Is emancipation practicable? Is there a man here who is willing to see emancipation without colonization? Is that practicable? They point to New York and some other states. But did either of those states that have emancipated their slaves colonize them? New York, with all her power and wealth, could not colonize twenty thousand. Pennsylvania had less than fifteen thousand, and could not colonize them. Why is it expected then that Kentucky can colonize two hundred thousand?

Seven states of this union have abolished slavery. These states had less than fifty thousand slaves, and they had upwards of two millions of white population. But they, with all their wealth and power, could not colonize this small number. I again repeat, how, then, is Kentucky to colonize two hundred thousand? England, with an empire on which it is said the sun never sets—so that while it is broad noon day in one portion it is pitchy midnight in another—though she may emancipate her slaves, cannot colonize them. France, a nation that could whip all Europe combined, dare not undertake it. And can we do it? I know, whatever man can do, Kentuckians can do; but he who accomplishes this, is either more or less than man. It is not within the grasp of man to do it.

My friend from Knox referred to the opinions of Mr. Madison and others. Would he have us follow the example of Mr. Madison in all things?

Mr. WOODSON. I would, so far as he is right.

Mr. MERIWETHER. Then, if he be wrong, his example or opinion is worth nothing. Do we not find that Mr. Madison and General Washington both advocated a power in the President of the United States to veto a bill passed by congress, unless passed by a majority of three-fourths of each house of congress? And Mr.



Madison advocated the right of the federal government to veto the laws passed by state legislatures. Will the gentleman travel with him thus far? These great men often committed great errors. My friend alluded to Mr. Monroe, as well as Mr. Madison. These gentlemen were members of the convention which made a constitution for Virginia, recently. Can the gentleman find one proposition which these gentlemen offered in that convention, for the emancipation of the slaves? They refrained from making such a proposition, and it is, therefore, fair to presume they entertained the idea that I do: that it is impracticable. I have as great a veneration for the memories of these great men as any gentleman can, or ought to have; yet I cannot follow them when in error, as I believe.

My friend referred to the amount of manufactures in the northern states, and inferred that all these articles were produced in those states. If he had carried his investigation a little further, he would have found that the manufacturers depended on the slave states for a large share of the raw material. Where does their cotton come from? They get it from the south, and it, when they return it, goes as so much of their manufacture. Take out the expense of the cotton, hemp, and tobacco which they get from the south, and you will then reduce the amount about three-fourths.

My friend also alludes to the exports from the city of New York, as being greater than all the exports of the southern states. Does my friend not know that about one-third of the exports from New York are sent there from other states?

Mr. WOODSON. I did not say that the exports from New York were greater than from all the southern states. I said, I believe, that all the tobacco, rice, and cotton from the south was not equal to the exports from New York.

Mr. MERIWETHER. I will not make a question with the gentleman, as to what his position was. He may be correct. But were all these articles produced in New York. One-third of the cotton raised in Louisiana is shipped to foreign ports from New York—our corn and hemp goes from New York. Then, though her exports are so great, the question is, does she produce the articles exported herself?

Mr. WOODSON. I do not wish to interrupt the gentleman.

Mr. MERIWETHER. It will give me pleasure to receive any information.

Mr. WOODSON. It is true that many articles are exported from New York which are sent from the Mississippi valley. But all these articles are valued before they are sent. This shows that there is not an equal amount produced in the southern states.

Mr. MERIWETHER. I imagine my friend is in error. There is no value put on them till they leave the United States. Is there any valuation put on them at Louisville or New Orleans? When a vessel leaves for a foreign port, then a valuation is taken, but not when engaged in the coasting trade. There are no statistics which will give the amount of the coasting trade. But if it is otherwise, and you value these articles at New Orleans, and then again when re-shipped

from New York, will not this process tend to swell the exports from the latter city?

My friend concluded his speech with a little anecdote. If he had told the whole, I would not have noticed it. He compared the slaveholders to a boy who was late at school, and on being questioned as to the reason, said that it was so slippery that he went two steps back, to one forward, and my friend concluded we were sliding back in the same way. Now, if I recollect rightly, the school-master inquired of the boy how he finally got there, and he told him that he turned round and went backwards. If my friend will just turn right around, I think he will come to the right position on this subject. When the little boy to whom he alluded found that he never would get to school if he continued to travel as he had done, he at once turned about and succeeded. Let the gentleman, and all who travel with him, follow the boy's example, retrace their steps, withdraw all which has been said in disparagement of the institutions of their own state, and laudatory of others, and then, and not till then, will they arrive at the goal of truth, and their country's welfare.

Mr. A. K. MARSAALL. I move the following as a substitute for the first section:

"The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and providing for their permanent removal from this commonwealth; they shall pass laws to prevent slaves being brought into this state as merchandise: they shall have no power to prevent immigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, or to prevent citizens of this state from bringing in such as are obtained by marriage, gift, inheritance, or devise, so long as any person of the same age or description, shall be continued in slavery by the laws of this state; and they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity, to provide for them necessary clothing and provisions, to abstain from all injuries to them—extending to life or limb—and in case of their neglect or refusal to comply with the direction of such laws, to have such slave or slaves sold for the benefit of their owner or owners."

It will be observed that the substitute I have offered varies very slightly from the provision in the present constitution in relation to slavery. Gentlemen will remark that I have there stricken out the involuntary feature of it. If my proposition should be adopted, it will not permit the emancipation of slaves in Kentucky even by the payment of their value first to the owner. If we have been commanded to do any thing by our constituents—and I have understood the wants of the people in regard to the framing of a constitution—it is, that on the subject of slavery, we should so guard that property that neither in nor under the constitution there could be devised any plan of immediate or gradual emancipation. I have no disposition to argue the question of slavery even if I felt the propriety of doing so. It seems to me useless to argue it. It cannot do any good, and public sentiment has

shown there is every disposition to adhere to slavery. There can be no legal mode of emancipating slaves. It is absolutely necessary that we should remove the power out of the hands of the legislature, by which they can emancipate slaves by payment. And this telling me it never will be done, amounts to nothing in my mind. We know what may be done by those who have the power. Under the first section of the old constitution, a system of emancipation can be devised and carried out, and from what we see and what we hear, it is not an idle fear to entertain that from the frenzied state of feeling in this state, they may attempt to emancipate the slaves of Kentucky. Fanaticism does not stop; it knows no stopping place. Although they say they would not be in favor of emancipation, without paying the owners of the slaves for them, I believe the great aim and object they have in view is the emancipation of the slaves, and they will obtain it by any means. Leave that clause in the constitution, and the slaves can be emancipated without seeming injustice to the owner. It is absolutely necessary in a republic, that the power of special taxation and discrimination should be left to the legislature. If the emancipation party should get in the ascendant in the legislature, taxes can be levied, and the money appropriated to pay the owners of slaves. Suppose the legislature of Kentucky were to pass a law to this effect: that all female slaves born in this state should, at the age of six years be valued, and apprenticed out until they were twenty-five. It is perfectly competent for the legislature to apprentice out these female children for their value. Last summer I was traveling in Pennsylvania with a gentleman from Ohio, who wanted to buy a negro boy. He astonished me, and I said, "why do you wish to buy one?" He replied that he would take him to Ohio and have him apprenticed to him, as he knew he would be worth as much as his price before he was twenty-one years of age. Now, if you let the emancipationists have the power they desire, they might adopt a plan of this sort to emancipate our slaves. I do not apprehend it will be done, but all I know is, it can be done unless there is some prohibition placed upon the legislature. My constituents have commanded me not to vote for any constitution unless provision was made in it against the probability of exercising such power. Hence it is, I have offered my amendment or substitute.

**MR. MERIWETHER.** The only difference I can detect from hearing the report and the gentleman's proposition read, is, that the latter proposes to take from the legislature the power of granting compensation to the owners of slaves. That power is contained in the old constitution, and I am in favor of it. There will be no danger of the legislature emancipating the slaves, while they are required to pay for them.

**MR. GRAY.** So far as I know the sentiments of the people in my section of the state on this subject, they are as much opposed to emancipation as any body can be. They were satisfied with the old constitution as it stood, with one exception, and that was that there should be a provision inserted, that if any slaves were emancipated, they should be removed from the state. I therefore move the following substitute for the

amendment offered by the gentleman from Jessamine (Mr. A. K. Marshall.)

"Sec. 1. The general assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated, and providing for their removal from the state. They shall have no power to prevent immigrants to this state from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state. They shall pass laws to permit the owners of slaves to emancipate them, saving the rights of creditors, and preventing them from remaining in this state after they are emancipated. They shall have full power to prevent slaves being brought into this state as merchandise. They shall have full power to prevent any slaves being brought into this state who have been, since the first day of January, one thousand seven hundred and eighty nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity; to provide for them necessary clothing and provision; to abstain from all injuries to them, extending to life or limb; and in case of their neglect, or refusal to comply with the directions of such laws, to have such slave, or slaves, sold for the benefit of their owner, or owners."

**MR. A. K. MARSHALL.** I certainly am very well satisfied with the old constitution, but I prefer the proposition I have offered. The proposition of the gentleman will permit the importation of slaves to Kentucky. I am opposed to that, except those which are obtained by inheritance, marriage, gift, or devise. It will certainly lead to the agitation of slavery. There is a legal constitutional mode pointed out by which the gentleman can attain his object. I am opposed to the gentleman's proposition.

After some conversation, in which Messrs. WICKLIFFE, MORRIS, A. K. MARSHALL, and GRAY, participated.

**MR. GRAY** asked for the ayes and noes on his substitute, and they were taken, and were ayes 74, nays 14.

**YEAS**—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfiede, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, William Johnson, George W. Johnston, Geo. W. Kavanaugh, Charles C. Kelly, Jas. M. Lackey, Peter Lashbrooke, Thos. N. Lindsey, Thomas W. Lisle, Willis B. Machen, Geo. W. Mansfield, Martin P. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, Thomas P. Moore, Jonathan

Newcum, Hugh Newell, Henry B. Pollard, Wm. Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, George W. Williams, Wesley J. Wright—74.

NAVS—Alfred Boyd, Luther Brawner, William Cowper, Edward Curd, Nathan Gaither, James H. Garrard, Richard D. Gholson, Vincent S. Hay, Alfred M. Jackson, Alexander K. Marshall, William N. Marshall, William D. Mitchell, Elijah F. Nuttall, Silas Woodson—14.

So the substitute was adopted.

Mr. IRWIN asked for the ayes and noes on the adoption of the substitute for the first section of the report of the committee, and they were taken, and were—ayes 55, noes 36.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William Bradley, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Henry R. D. Coleman, Garrett Davis, James Dudley, Chasteen T. Dunavan, Selucius Garfield, Thos. J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, Martin P. Marshall, William C. Marshall, Thomas P. Moore, John D. Morris, Hugh Newell, William Preston, Johnson Price, John T. Robinson, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—56.

NAVS—John S. Barlow, Alfred Boyd, Luther Brawner, William C. Bullitt, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, B. F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, William Hendrix, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas N. Lindsey, Willis B. Machen, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, W. D. Mitchell, Jonathan Newcum, Elijah F. Nuttall, H. B. Pollard, Larkin J. Proctor, Thomas Rockhold, Michael L. Stoner, Andrew S. White, Silas Woodson—36.

So the question was determined in the affirmative.

Mr. WALLER moved that the convention do now adjourn.

Mr. HARDIN asked for the ayes and noes, and they were taken, and were—ayes 61, noes 29. The convention then adjourned.

WEDNESDAY, DECEMBER 12, 1849.

Prayer by the Rev. G. W. BRUSH.

#### BASIS OF REPRESENTATION.

Mr. LACKEY submitted the following resolution, and it was laid upon the table and ordered to be printed:

*Resolved*, That representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of representative inhabitants therein. At the first session of the general assembly after the adoption of this constitution, and every four years thereafter, provision shall be made by law that in the year —, and every four years thereafter, an enumeration of all the representative inhabitants of the state shall be made. The number of representatives shall be one hundred, and apportioned among the several counties in the following manner: Counties having the ratio shall have one representative; those having three fourths of the ratio shall have one representative; those having the ratio, and a fraction less than one half the ratio over, shall have but one representative; those having the ratio, and a fraction of one half over, shall have two representatives; those having twice the ratio, shall have two representatives; those having twice the ratio, and a fraction of less than one half the ratio over, shall have but two representatives; those having twice the ratio, and a fraction of one half the ratio over, shall have three representatives; and so on. Counties having less than three fourths of the ratio, shall be joined to a similar adjacent county, for the purpose of forming a representative district: *Provided*, That if there be no such adjacent county, then the county having less than three fourths of the ratio, shall be united with that adjacent county having the smallest number of representative inhabitants, provided that their united numbers do not exceed the ratio, and a fraction of one half the ratio over; but if they do, the county having less than three fourth of the ratio shall have a separate representative. The remaining representatives, (if any,) shall be allotted to those counties having the largest unrepresented fractions; but in no case shall more than two counties be united for the purpose of forming a representative district; but if there shall ever be an excess of districts, they shall be reduced to the proper number, by taking from those counties having a separate representative, with the smaller number of representative inhabitants, their separate representation.

Counties that will be entitled to one representative each, with an average vote of 1,680:

Adair, - - - -	1,560	1
Allen, - - - -	1,346	1
Boyle, - - - -	1,168	1
Bracken, - - - -	1,606	1
Bullitt, - - - -	1,218	1
Bourbon, - - - -	1,914	1
Breckinridge, - - - -	1,757	1
Boone, - - - -	1,958	1
Bath, - - - -	1,886	1
Campbell, - - - -	2,182	1
Caldwell, - - - -	2,016	1
Clarke, - - - -	1,691	1
Daviess, - - - -	2,112	1
Franklin, - - - -	2,024	1
Graves, - - - -	1,665	1

Greenup, - - - -	1,936	1
Grant, - - - -	1,212	1
Garrard, - - - -	1,624	1
Green, - - - -	1,352	1
Hopkins, - - - -	1,886	1
Henderson, - - - -	1,589	1
Henry, - - - -	1,862	1
Hart, - - - -	1,436	1
Harrison, - - - -	2,150	1
Jessamine, - - - -	1,335	1
Lewis, - - - -	1,409	1
Lincoln, - - - -	1,453	1
Logan, - - - -	2,179	1
Muhlenburg, - - - -	1,625	1
Montgomery, - - - -	1,459	1
Mercer, - - - -	2,093	1
Marion, - - - -	1,762	1
Morgan, - - - -	1,261	1
Nicholas, - - - -	1,792	1
Nelson, - - - -	2,035	1
Owen, - - - -	1,796	1
Ohio, - - - -	1,576	1
Pendleton, - - - -	1,336	1
Scott, - - - -	1,891	1
Todd, - - - -	1,499	1
Trigg, - - - -	1,417	1
Union, - - - -	1,448	1
Woodford, - - - -	1,314	1
Wayne, - - - -	1,443	1
Washington, - - - -	1,847	1
	<hr/>	
	75,620	45

Counties that will be necessary to join two together to form a representative district, with an average vote of 1,706:

Lawrence, - - - -	967	
Carter, - - - -	1025	
	<hr/>	
	1992	1
Johnson, - - - -	599	
Floyd, - - - -	986	
	<hr/>	
	1585	1
Pike, - - - -	812	
Letcher, - - - -	381	
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	1193	1
Breathitt, - - - -	612	
Perry, - - - -	502	
	<hr/>	
	1123	1
Estill, - - - -	1018	
Owsley, - - - -	671	
	<hr/>	
	1689	1
Clay, - - - -	866	
Harlan, - - - -	648	
	<hr/>	
	1514	1
Rockcastle, - - - -	842	
Lanrel, - - - -	865	
	<hr/>	
	1707	1
Hickman, - - - -	758	
Fulton, - - - -	705	
	<hr/>	
	1463	1
Ballard, - - - -	825	
McCracken, - - - -	986	
	<hr/>	
	1811	1
Livingston, - - - -	952	
Crittenden, - - - -	1059	
	<hr/>	
	2011	1
Grayson, - - - -	1108	
Hancock, - - - -	555	
	<hr/>	
	1662	1
Butler, - - - -	948	
Edmonson, - - - -	681	
	<hr/>	
	1629	1

Taylor, - - - -	1097	
Casey, - - - -	1051	
	<hr/>	
	2148	1
Russell, - - - -	940	
Clinton, - - - -	812	
	<hr/>	
	1752	1
Anderson, - - - -	1119	
Spencer, - - - -	1022	
	<hr/>	
	2141	1
Carroll, - - - -	993	
Gallatin, - - - -	883	
	<hr/>	
	1876	1
	<hr/>	
	27,296	16

Counties with less than three fourths of the ratio, which will be entitled to a separate representative, with an average vote of 1,048:

Simpson, - - - -	1,017	1
Larue, - - - -	1,013	1
Meade, - - - -	1,114	1
	<hr/>	
	3,144	3

Counties that would be entitled to two representatives, with an average vote of 1,392:

Barren, - - - -	2,959	2
Fayette, - - - -	2,649	2
Fleming, - - - -	2,316	2
Hardin, - - - -	2,419	2
Kenton, - - - -	3,406	2
Madison, - - - -	2,563	2
Mason, - - - -	3,114	2
Pulaski, - - - -	2,392	2
Shelby, - - - -	2,321	2
Jefferson and Louisville, - - - -	9,283	6
	<hr/>	
	33,422	24

Counties that would be entitled to two representatives, by the provision in favor of counties having the largest unrepresented fraction, with an average vote of 1,115:

Christian, - - - -	2,248	2
Warren, - - - -	2,215	2
	<hr/>	
	4,463	4

Counties having less than three fourths of the ratio, that would be entitled to one member each, by the provision in favor of counties having the largest unrepresented fraction, with an average vote of 1,098:

Calloway, - - - -	1,323	1
Marshall, - - - -	870	1
Cumberland, - - - -	973	1
Monroe, - - - -	1,247	1
Oldham, - - - -	1,104	1
Trimble, - - - -	1,084	1
Knox, - - - -	1,130	1
Whitley, - - - -	1,058	1
	<hr/>	
	8,789	8

The foregoing tables are based upon the number of free white males over twenty one years old, which will not vary far from the legal voters.

#### SPECIAL COURT OF APPEALS.

Mr. C. A. WICKLIFFE from the committee on the court of appeals, in obedience to a resolution of the convention, reported the following section, which was adopted:

"SEC. —. Whenever an appeal or writ of error may be pending in the court of appeals, on

the trial of which a majority of the judges thereof cannot sit; or on account of interest in the event of the cause; or on account of their relation to either party; or where the judge may have decided the cause in the inferior court, the general assembly shall provide, by law, for the organization of a temporary and special court, for the trial of such cause or causes."

#### SLAVERY.

Mr. CLARKE offered the following resolution:

"Resolved, That the general assembly shall have no power to pass laws prohibiting the citizens of this state from importing slaves for their own use, but may pass laws requiring the importer of a slave or slaves to take an oath that said slave or slaves are for his or her own use, and not for merchandise; and that he or she will not sell said slave or slaves, within this commonwealth, within        years after such slave or slaves are imported, under such penalties as may, from time to time, be provided by law: *Provided*, That the slaves thus imported shall not be such as have been charged with crime in other States."

This, Mr. President, is a resolution of compromise between those who are of opinion that slaves ought not to be imported, and those who think that the citizens of Kentucky ought to introduce them for their own use. It requires an oath to be taken by the importer that he imports them for his own use, and that he will not dispose of them for        years. It goes further, and provides that they are not to be imported from the prisons of other states, or from under the gallows. I offer it to test the sense of the convention, whether the citizens of Kentucky are to be allowed to import slaves for their own use. Before the passage of that resolution—which I will assume—it may be possible that I may make some remarks. So much has been said, so many speeches have been made, the subject has been so thoroughly examined, that I may not be inclined to make a speech, unless it may become necessary in my judgment. But as I have heretofore stated, I am convinced that the institution of slavery, both here and elsewhere, is a blessing to both races—the whites and the African race. I am satisfied, so far as property in slaves is concerned, that there is no distinction between property in slaves and property in lands or in horses. And while a citizen of Kentucky has the right to go to Virginia and to Tennessee and purchase horses or any merchandise for his own use, I can see no reason why he should not go there to purchase slaves, unless we are bordering on a spirit of emancipation, which seems to me to animate the bosoms of some gentlemen on this floor. I repeat, that I see not, while we are establishing in our bill of rights the elements of freedom, why a citizen of Kentucky should not go wherever he pleases to purchase slaves and merchandise for his own use and his own enjoyment.

The motion to lay on the table and print was then agreed to.

Mr. MITCHELL offered the following resolution, and on his motion it was laid on the table and ordered to be printed:

"Resolved, That the general assembly shall

have no power to prohibit the introduction of slaves into this state, by the citizens thereof, from other states, for their own use; but their introduction for traffic or merchandise, whether openly or covertly, by the citizens of this or any other state, shall be prohibited by the passage of such laws as the legislature may deem most conducive to secure that end."

The convention then resumed the consideration of the report of the committee on the revision of the constitution and slavery.

Mr. BULLITT. Whilst I am disposed to yield to the master the power of emancipation, the public good demands that this right should not be exercised to the injury of the community, of which he is a member. It is a cardinal principle of the common law, that no man shall so use his property as to injure another. This principle is peculiarly applicable to property in slaves. By the action of the master, they are capable of being rendered more detrimental to the community than any other description of property known to the law. Hence arises the necessity of a peculiar constitutional provision on this subject. For constitutional and legislative action, slaves are to be viewed in a double aspect—as persons, and as property. The master should not be permitted, whilst exercising his rights over the slave, as property, to enable him, as a person, to become a nuisance to society. From this peculiarity of slave property, also arises the necessity of, in some slight degree, deviating from what is clearly a correct general principle, that no law should be interpolated into the constitution.

This convention have, (save those of justice and humanity,) no restrictions to their action over free negroes, except such as are imposed by the constitution of the United States. This is not only the constitution of the United States, but that of each state; and Kentucky, when she entered the union as a sovereign state, adopted the constitution of the United States, as the paramount constitution of the State of Kentucky; and if there be any provision in that instrument, which confers citizenship on the free negro, it is binding on us.

The only provision which has the slightest bearing on the subject is contained in the fourth article, section the second, declaring, "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states."

The only inquiry is, what constitutes citizenship, or, in other words, what is the true constitutional meaning of the word citizen? If the free negro be not a citizen, although he may be a subject, he is not embraced within this provision. The term citizen, is derived from the Roman civil law. In the proconsular governments of the Roman commonwealth, the provincial subjects were governed by the arbitrary edicts of the governors. A Roman citizen who was entitled to the privileges of the city, carried with him, into all the provinces of the republic, his peculiar privileges of the protection of the Roman laws. In accordance with this principle, a citizen of the United States, going into any state of this union, carries with him the same right of protection, under the laws of the state, to which its own citizens are entitled.

In the progress of ages, after the downfall of the republic, Roman citizenship was gradually imparted to the provinces, and finally extended to the Barbarians, who had made lodgments in her territories. These, in their turn, inviting in others of their friends and relations, gradually acquired the ascendant, and finally overturned the empire. And to this abuse of citizenship is mainly attributable the destruction of the greatest power of ancient times.

In the dark ages succeeding the fall of the Roman Empire, the population consisted of the Feudal Barons, with their vassals and villiens, of slaves residing in the country, and the free artizans and merchants of the towns. The rural population were under the uncontrolled and absolute sway of the Barons, who maintained an almost uninterrupted warfare with the Princes. The latter found it to their interest to rear up a power of the middle classes in the towns, in opposition to the power of the nobility. To effect this object, the citizens of the towns were incorporated, with extensive privileges, exempting them from the arbitrary exaction of the Barons; and the term citizen, or citizenship, carried with it not only the right of exemption from oppression, but the right of sovereignty, in the town of which he was a member, in controlling its municipal regulations. From that class arose the British house of commons. Hence, in England, sovereignty has always been attached to the term "citizen," as contradistinguished from inhabitant or subject. An alien is a subject, but not a citizen.

At the time of the adoption of the constitution of the United States, free negroes were not citizens of any state in the Union. A large portion of the population was composed of African slaves and Indians. The broad and comprehensive terms used in the constitution of the United States, "we the people &c." must be construed to embrace whites alone, otherwise it would embrace all the slaves, free negroes, and Indians, within the then limits of the United States; thus making citizens of all the slaves of the southern states, in whom the right of property is guaranteed by that instrument itself, and who, as property are made the basis of taxation and representation.

At the period of the adoption of the constitution of United States, free negroes were not citizens of any state. The constitution was made by whites for their own benefit, and that of their own race. Some of the states then contained more Indians than whites; none of the Indians were citizens; and from a view of the entire context of the constitution, the conclusion is irresistible, that no power was intended to be granted to congress to make citizens of any others than white persons.

Congress, in carrying into effect that clause which provides that "congress shall have power to establish a uniform rule of naturalization" apply the power to white persons alone, excluding all others; thus giving a clear indication of their opinion—that to them alone it was applicable, according to the true meaning of the constitution.

The states have most of them given the same construction; for very soon after the adoption of the federal constitution, they began to pass

laws restrictive of the free migration from one state to another of the free blacks, showing that they were not then considered citizens. This practice has been continued to the present time. The executive of the United States has given the same construction, by a uniform refusal of passports to free negroes.

Congress alone have power of naturalization, and a state cannot manufacture a citizen of the United States.

It is a universal principle of construction adopted by our courts—that whenever the word "person" is used in the constitution or laws, it must be considered as applicable to white persons alone, and cannot be applied to blacks unless specially named.

Females and minors follow the condition of their husbands and parents, and are entitled to all the civil rights of the latter. The rights secured to the citizen, are wholly civil rights and not political.

The congress of the United States alone, have the power of making a citizen of the United States, and, although a state may grant every state right, civil and political, to an African, she cannot thereby make him a citizen of the United States, so as to entitle him to the privileges secured by that instrument to the citizen.

The reason why the state cannot exclude white foreigners from their borders, is, that the right of naturalization necessarily carries with it, the right of residence and protection, during the term of their probation.

The free negroes of other states having, under the constitution of the United States no right of citizenship, are left to the discretionary action of this convention, without restriction, except such as are imposed by humanity; he may be a subject; he cannot be a citizen.

It has been decided that free negroes are not citizens, within the provision of the constitution of the United States before alluded to. For free negroes are not, in any of the states entitled to all the privileges and immunities of citizens, and a state may constitutionally prohibit free persons of color from removing into the state to reside. *State of Tennessee vs. Claybourne*, 1 Meigs. 332—1 Litt. 327. Judge Bullock's printed opinions—also 2 Kent 70-71, *Hobbs vs. Fogg* 6 Watts. 556.

Mr. WALLER. Laboring under serious indisposition, nothing, sir, but a deep sense of duty to my constituents and myself could induce me to encounter the manifest impatience of the convention to hear any more speeches upon this subject. My constituents are content to abide by the old provisions of the constitution with an additional clause providing that no slave shall be emancipated to remain in the state. They have as deep an interest in this matter as any county in the commonwealth; and they are satisfied with the protection which their slave property has hitherto received. This is all they ask—it is all that is necessary.

But I am actuated by a personal reason for asking your attention. My position is more peculiar than that of any delegate here. Some have expressed a surprise that one of my profession should entertain the sentiments I do on this, emphatically the great question of the age. That the reasons for the votes I have given and which



I may give on this subject may appear, I now, under all the disadvantages which surround me, arise to speak. I trust, then, my offence, if it is so esteemed, in trespassing upon time which I know to be precious, will be considered in charity and forgiven. I do not speak because I love to speak. I would rather hear the voice of any gentleman here than my own. My conduct heretofore is my witness to justify this statement.

I am not prepared, sir, to go the full lengths which the language of some gentlemen would seem to imply. Indeed I feel confident they have not themselves critically considered the full force of their expressions. I cannot persuade myself that when gentlemen call slavery a blessing, that they intend to convey the impression that they consider it a blessing in the abstract—a blessing *per se*. If this were true, the necessary deduction would be, that freedom was a curse:—that the condition of all men would be better in a state of menial servitude! For it must be manifest to every mind, that if slavery is a blessing *per se*, that its opposite, freedom, must be a curse. And if we confine this remark exclusively to the negro race—if it be a blessing in the abstract to them, then every dictate of religion and philanthropy would urge us to use all possible means for the enslavement of the entire black population of the earth! A position so monstrous, I am persuaded, no member of this convention is prepared to assert, much less maintain.

But while I do not believe that slavery in the abstract is a blessing, I do affirm that slavery in the south, and in Kentucky especially, has been a great blessing to the negro—that the negroes now in slavery in the United States are in far better condition—more elevated in the scale of intellectual and moral being—than the same number of negroes, to be found any where upon earth, or that ever had a habitation or home in any other clime or country, in this or any other age. And if wrong has been done to the negro by bringing him from his African home, that wrong does not lie at the door of the south. The south did not bring him from his native land. We found him on the slave ship of the European or the New Englander. He was in chains, in the hole of the vessel, emaciated by disease and hunger. We protested against his being brought amongst us: but the cupidity of the mother country forced us to receive him. From the condition mentioned, we bought him. We clothed and we fed him as he had never been clothed and fed before. He was treated with a kindness and a consideration which he never supposed that persons wearing the complexion of those who had brought him across the ocean, could manifest. He felt indeed in a new world. His new bondage, contrasted with the heartless tyranny from which he had just escaped, was almost like the fruition of perfect liberty.

This is no fancy sketch. It is said, that when the poor negroes would be brought ashore from the vessels of the slave traders, they would often run and kneel to the planters, and with streaming eyes and imploring gestures—in the most meaning and eloquent language by which suffering and agonized humanity could give utterance to its wishes—would beseech them to buy them and thus save them from returning to the

chains and prisons and sufferings from which they had just been delivered.

Yes, sir, I repeat it: the abused and slandered south have been the great benefactors of the negro race. Compare the condition of that race here with their condition in Africa. And what was their condition in their native country? In every respect, they were the most degraded or all the human family. Dwarfish in stature, ungainly in person, in intellect but a remove above the ourang-outang, without law, without social comforts, cannibals, and sunk below idolatry into absolute feticism. In this country, they have been improved, physically and intellectually; all of them have been taught the true religion, and many of them are among the most pious christians in the land.

And as a general thing—if indeed it is not universally true of all brought into the United States—they were not taken from a state of freedom. A strange ignorance prevails on this point. The white slave trader obtained his slaves in Africa, from the black slave trader there. By the law of war every where recognized among the African tribes, the captive taken in battle was doomed to perpetual slavery. It was, then, in accordance with one of their own immemorial customs—by a law to which they had given their consent—that they were brought into bondage. Many of them were born in slavery. These were the persons usually purchased and brought into the south for sale, by the European and New England slave dealers. But scarcely had a stop been put to the importation of slaves to this country—scarcely had the last New England slaver disgorged its contents on the shores of the south, ere New England moralists began to discourse most sagely about the enormities of southern slavery. And I understood the distinguished gentleman from Fleming (Mr. M. P. Marshall,) to say, in his speech a few evenings since, that he esteemed slavery, as he supposed almost every delegate here did, to be a moral and social wrong!

Mr. M. P. MARSHALL. If the gentleman will allow me, I will correct him. I did not say that slavery was a moral and a social wrong; but a social and a political evil.

Mr. WALLER. I stand corrected; and am most happy to be thus corrected. At all events, the eloquent gentleman from Knox (Mr. Woodson,) quoted—I do not know that he endorsed—some Doctor of Divinity who maintained that slavery was contrary to the teachings of Holy Writ, and was a sinful relation. I do not intend, and in this perhaps I shall disappoint the expectations of some, to enter into any elaborate argument in relation to the Bible doctrine on this subject. It is certain, that many abolitionists of the north have discarded the Bible, because they could find in it nothing to sustain their wild extravagance on the subject of slavery. Besides, the Bible is in every body's hands, and the most ordinary capacity may readily comprehend what it teaches respecting this relation. I am not prepared, like my friend from Boyle, (Mr. Talbott,) to establish the connection between the slavery originating in the curse of Noah, just this side of the flood, and the slavery existing in this country. Nor do I feel it at all necessary that I should do so. I meet

the charge that the relation between master and slave is a sinful relation, on broader grounds. Taking the Bible as a standard of morals, and I affirm it inculcates no such sentiment. It tells us that many of the holy men of old were slaveholders; and it does not intimate that their being so involved them in peculiar guilt. Abraham, the father of the faithful and the friend of God, was a larger slaveholder, by far, than any in our country. When the Almighty descended upon Mount Sinai, attended by the flash of the lightning and the roar of the thunder, he did not esteem slavery a sinful relation; for then how could he have said, in the only document he ever wrote for man with his own hand—in the decalogue—that it was wrong to covet your neighbor's man-servant or his maid-servant? In the constitution which He gave to the children of Israel, if the relation was sinful, would He whose name is Holiness, have allowed them, as he did by express grant, to obtain bond-men and bond-maids of the heathen round about, which were to remain as the possession of themselves and their children forever? Aye, and when the Son of God, in the fullness of time came into the world, he found slavery existing throughout the then known world. He met it wherever he went. In his every day associations, it was before him. Did he denounce it as sinful? Did he at any time make an abolition, or even an emancipation speech? Did he tell the master that he was living in sin? Did he denounce it as a social and a moral wrong? Never, sir, never. Nor did his holy apostles. They were commissioned of him to set up his kingdom in the earth—a kingdom into which nothing impure or unholy was to enter. From that kingdom, by express statute, the drunkard, the liar, the swearer, the debauchee, and all that were unrighteous were excluded; and yet into it were admitted the slaveholder and his slaves. In view of these facts, whatever Doctors of Divinity may say, is it not most monstrous to suppose that slaveholding is a sinful relation? If so, why did not the Redeemer abolish it? If a moral and a social wrong, why did not He who is head over all things to the church, in banishing the idolater, the liar, the drunkard, &c., from the church, not also banish the slaveholder?

But, sir, it falls in "horrible discord" upon my ears, to hear gentlemen here or elsewhere insinuate, that slavery is sinful, and yet remain slaveholders. If I believed it a sin, I would not retain the relation one hour, for all the glittering ore of earth. What! persist in a known and admitted sin—to sin wilfully after that we have attained to a knowledge of the truth—with a life evanescent as the morning vapor and as the early dew—liable in a moment, in the twinkling of an eye, to be summoned before the judgment seat of God! What madness to remain an hour wittingly in a sin from which we might so easily disburden ourselves! If it be a sin, it is one we have no excuse to remain in. We may easily rid ourselves of it. We should prove our faith by our works. God abhors those who merely draw nigh him with their mouths, and honor him with their lips. This is a sin in which no one need remain. If his conscience is oppressed by it, he can and he ought to relieve himself of the burden under which he groans. He should not

think to excuse himself by urging the example of others. They are not so enlightened as he professes to be. Besides, he must give an account for himself, and not for another.

Nor does the charge of the sinfulness of slavery come with any better grace from the other side of Mason and Dixon's line. The worthy denizens of "the land of steady habits," with more than wonted nasal twang in the utterance, are accustomed to call the slaveholders of the south "man-stealers," and to quote as applicable to their circumstances, the denunciations of scriptures applied to that class of evil doers. If negroes were stolen from Africa, sir, the people of the north were the thieves, so far as this country ever furnished any such persons. True, as the present New Englanders say, it was their fathers and not themselves who were engaged in the African slave trade. Admit the excuse and allow it all its force, and what then? Why like those of old who lamented the sins of their ancestors, and built the tombs of the prophets and garnished the sepulchres of the righteous, our northern friends bear testimony that they are the children of men-stealers! It is like the admission of those who confess, that

"———their ancient but ignoble blood,  
Has crept through scoundrels ever since the flood."

And as their fathers did, so do they unto this day. They prove themselves worthy sons of such sires. For the citizens of the north even to this present speaking, will steal negroes, as all the south can testify.

But it is not only thus that the charge recoils upon them. Much of the wealth of New England was obtained in the negro trade. This "price of blood," to use one of their own patent expressions, has entered into all the business and institutions of the north. It has aided in building their cities, their colleges, and their churches. Their whole land is tainted with it, and its impurity adheres to the very garments of the abolition lecturers themselves. They have sold us the sin, and now want to force us to give it up while they retain the price! Whilst they are luxuriating in the profits of their iniquities, we hurl back their charges into their teeth, and tell them to learn that great lesson of christianity, to first cast the beams out of their own eyes, that they may see clearly how to cast the motes out of their brethren's eyes.

The gentleman from Knox (Mr. Woodson) indulges in comparisons between Kentucky and certain of the so called free states, showing their superiority in education, population and wealth. The gentleman from Jefferson, (Mr. Meriwether) so successfully and triumphantly met and exposed that argument, as to render it wholly unnecessary further to allude to it. It is a trite saying, that "comparisons are odious." For one, however, I am bold to say, that I know nothing in her present condition or in her past history, that would call a blush to my cheek in contrasting this my native state with any state of the west or with any state in this Union. She occupies a proud eminence in this glorious confederacy of states. The halo of her glory is as bright and as beautiful as that which encircles the brow of the first and the noblest of her sisters.

Look at Kentucky. Where are those eviden-

ees of decay and desolation, in morals, intelligence, or wealth, which some imagine to exist? Where is that moral, or social, or political blight which it is intimated prevails in our borders? Where upon the face of the whole earth can you find a people more prosperous, enjoying more of the comforts of life—more hospitable, generous and brave—more virtuous and intelligent, than in Kentucky?

True, we have not increased in population so fast as our neighbors. Many of our citizens have emigrated to other states; but it was not slavery that drove them away. This my friend from Jefferson (Mr. Meriwether) has incontestably shown. Kentucky is now the mother of states, but her children did not leave her because they abhorred this "peculiar institution." For if so, why did they not go to the states where it did not exist? Why did nine-tenths of them go to slave states? This meets and refutes the charge that slavery has driven many from our borders.

But population and prosperity are not always synonymous terms. If some of our neighbors are outstripping us in population, so they are in pauperism and crime. In several of the free states, pauperism is increasing in a ratio appallingly in advance of that of population. But sir, what sort of population does slavery keep out of Kentucky? Why, I suppose the abolitionists, who are so superlatively pure that they fear contamination if brought in contact with the slaveholder. And perhaps, too, we are deprived of those hordes of European paupers, vagabonds, and criminals, who constitute so large a portion of the boasted population of the free states. If so, I am content. I prefer that Kentucky soil should be owned by Kentucky's sons. At least, I am content with the character of the population which we now have.

We have been told that in almost every thing, the north is superior to the south. Sir, I love and honor the north. I envy not her greatness. I would detract nothing from the excellency of her institutions. The men of the north are our brethren—our fellow-countrymen; and we should all rejoice in the prosperity of any portion of our country. But a necessity is placed upon us to defend the south, especially when her own children assail and misrepresent her. I deny southern inferiority, as some have asserted it here. The north and the south have each their excellencies and their deficiencies. I need not now pause to point these out, and to present them in contrast. It is enough for all present purposes that we attempt to show from the history of our country, that the south is not that insignificant and unimportant portion of this confederacy, which northern fanatics and their sympathisers have asserted. What part of this country has contributed more than the south, to fashion and form this great republic, and to elevate her to that exalted eminence which she now occupies? The eloquent statesman who moved, and he who penned the Declaration of Independence, were southern men and slaveholders. The commander-in-chief of the armies of the revolution—"first in war, first in peace, and first in the hearts of his countrymen,"—was a southern man and a slaveholder. All the great presidents, those whom the people delighted to honor,

were southern men and slaveholders. For fifty years, the reins of government of this great nation have been held by southern men and slaveholders. Only twelve years were they held by northern men, and in every instance the people snatched them from their hands at the first opportunity. The most illustrious generals of the last war with Great Britain, as well as of the war with Mexico, were men born and nurtured in the south. No man acquainted with our history, but must be constrained to confess that the slave states, more than any other states, have contributed to render our country great at home, and illustrious abroad, both upon the battle-field and in the halls of legislation—that southern men have done most to make us the great and the renowned nation that we are. In what, then, consists that southern inferiority, of which so much has been said? Sir, the history of our country teaches no such inferiority. It has no foundation in truth—it is but the vision of a dream.

I do not profess to be blessed with a Seer's vision. I cannot tell, therefore, by what inspiration gentlemen speak, who so oracularly predict the certain downfall of slavery. I suspect, however, that the "wish is father to the thought"—that they are but giving utterance to the warm desires of their hearts. But I am wholly unmoved by those spectres of danger so terrible in the eyes of some. Kentuckians never take counsel of their fears. It is in vain then to tell them, that their state lies upon the border of the slave states; and that if a disruption of this Union should occur, (which God forbid!) that here would be the battle field, and that this would become again the dark and bloody ground. Suppose Kentucky were to become a free state, would she not still be a border state? Would she not be surrounded on three sides by slave states, and be separated from them in the main, by only imaginary lines; while now she has free states only one side, and they divided from her by the Ohio river? Her position would not be at all changed then, by this change of her institutions. She still would be on the borders. She would still have to mingle in the conflict supposed. And would she then more than now seek the sympathy and alliance of the north, and especially to subdue and destroy her sisters of the south? Would she ever enlist under the fanatical banner of abolitionism to wage war upon southern institutions? No, sir, she will not desert in the hour of danger the warm and generous south, bound to her by so many ties and dear to her by so many fond recollections. If that terrible conflict must come, and the south must fall, Kentucky will perish with her. The blood of the last of her sons will moisten the soil beneath which sleeps the bones of Washington, Jefferson, Marion and Jackson. Who that knows the character of our state can indulge a doubt respecting this prediction? Dead must be her heart to all its past impulses, to beat in unison with any other sentiment.

Even granting slavery to be an evil to the extent contended for by certain delegates, it is an evil into which the citizen has been involved by the action of the state. And I hold it to be a correct political maxim, that the state has no right to remove an evil of her own creation, at

the expense and to the injury of individual citizens. Inasmuch then, as by express grant of law, private property to the amount of more than \$60,000,000 has been suffered to vest in slaves, it would be unjust, it would be iniquitous to deprive those citizens of that property, without their consent or without compensation. It would be legalized robbery. By the laws of our state and of our nation, the citizen's title to slave property, is as perfect as that to any other description of property whatever. The right of property in slaves has been too long and too well settled to be called in question now. As before shown, it is recognized in the sacred scriptures. Great Britain acknowledged it, in providing compensation to the owners when she emancipated the slaves in the West Indies. The same doctrine has been recently asserted in the French Assembly, respecting the slaves liberated in the French colonies. It was admitted by the states that enacted emancipation laws; for in all of them the citizen was permitted to sell or else to remove with his slaves to another state. Very few negroes have ever been emancipated by northern philanthropy. They rid themselves of slavery by selling into the south. While more than two hundred thousand negroes have been voluntarily emancipated by the south, a far greater number have been enslaved by the north, and few, very few, if any at all, have ever been emancipated there.

Without multiplying examples, let these suffice to show that the right to slave property is unquestionable—it is guaranteed by all the sanctions of law. Thus far I feel safe in going. I am not prepared to lend my approval to certain sublimated abstractions which have been so warmly and eloquently advocated here. They are new to me. I can see very little benefit to accrue to the individual, before a court of justice who has no other title to his property than that which he claims to be above, and anterior to all law. It is enough for all practical purposes, to prove that the owner has a legal right to his slaves, to furnish this convention with a justification in saying, that he shall not be deprived of that property without his consent—that he shall be protected in it; and that it shall not be forced from him, either suddenly or gradually. Such I have hitherto supposed to be the true doctrine on this subject.

Sir, if emancipation ever occurs in this state it must, if righteously done, be by the operation of moral causes. The voluntary principle is the only just and safe principle. Moral power is the mighty engine which moves America on to greatness. It is that which gives stability to our government without standing armies. It is that which has raised and beautified our social, civil, religious and political institutions. It is the power which is fast marching to the empire of the world. It will regulate slavery in the way it ought to be regulated, and nothing else will or ought.

We have very few emancipationists in Kentucky. The world has been greatly imposed upon in this respect. It has fallen to my lot to meet with very few Kentucky emancipationists or even to hear of them. To emancipate the negro, is to make the negro a freeman. Now, who among all our prominent emancipationists,

so called, recommended any such measure? Not one of them, sir. Nothing of the kind was suggested by the emancipation convention, assembled in this hall last spring. On the contrary, their project of "gradual prospective emancipation coupled with colonization," was a most magnificent scheme of wholesale negro trading to the south. Besides, sir, nearly all of the redoubtable emancipation champions in Kentucky are slaveholders—some of them very large slaveholders. Have any of them emancipated their slaves? Do you suppose that any of them will? Judging of the fountain by the stream, who can possibly discern any appearance of emancipation in this very extraordinary gushing forth of purpose? They might ere this have set their negroes free. Nothing but their own will has hindered them. They are left without excuse. With most remarkable complacency, they have asked you to become emancipationists, while they have carefully abstained from becoming so themselves! They wished to force you into the system, while they would not take a step towards it. They would lay burdens upon your shoulders, and would not touch with the tips of their fingers! Never in the whole history of the language has a word been so perverted and abused, as this word emancipation, by the self-styled emancipationists.

It was no love of the negro which prompted this movement in Kentucky. No philanthropy or religion entered into its conception, or was to control its operations. It was a mere matter of political economy—a cold and heartless calculation of profit and loss. It is to redound to the benefit of the few at the expense of the many. The rich champion of emancipation would convert his slaves into cash. The operations of his system would for a time at least, so it was granted, reduce the value of land. He would vest the price of his negroes in land—enlarge his domains—surround himself with a dependent and cringing tenantry—and then what a man of consequence he would become!—what a number of votes he could control at an election! His poor negroes in the meantime, over whom he had shed so many tears of sympathy, would be laboring as slaves upon the cotton fields and sugar plantations of the far south!

I appeal to you if these are not legitimate inferences from the facts in the case. The whole plan was cruelty to the negro and injustice to his owner:—cruel to the former, because it would result in his being torn away from those with whom he had been brought up and with whom he had many sympathies, and sent off to be a slave among strangers; and unjust to the latter, because it robbed him of property to which he was as rightfully entitled as to any he possessed.

The colonization feature was all a mere pretence—calculated merely to mislead and bewilder. It was ridiculously visionary. To colonize in Africa some five thousand persons annually, for fifty or a hundred years, would exhaust the revenues of the nation. Besides to send that number there to encounter a wilderness and an unfamiliar climate—without any reference to character or constitution—would be but to send them to inevitable destruction. I am the friend of African colonization. The success which

thus far has attended that enterprise, to me furnishes unmistakable evidence of its future prosperity. Already the printing press is there. The forrest has been felled, and farms opened. Towns and villages have been erected. Common schools and churches abound there; and the high road to wealth and greatness lies open before them. I hope the time may come when all the liberated slaves of America will find a home in the land of their fathers—that they will return freemen and christians to those shores from which, in days gone by, their fathers were brought in slavery and heathenism—and thus become pioneers in the redemption and regeneration of that long lost and benighted continent. But the colonization enterprise is still in its infancy. We cannot yet foresee its exact future destiny. I believe, however, it is pregnant with good to the negroes of this country, many of whom are rapidly becoming qualified for citizenship there.

It is certain the negro can never be free in this country, and I trust that this constitution will forbid the mockery of his being called so again in this state. It is better for the negroes and for the whites, that while they stay amongst us they should remain in slavery. Their welfare and our own imperiously demand this. Let fanatics talk as they may about the natural rights of man, they cannot make the negro free in the United States. They may read to him the Declaration of Independence until they become hoarse, and still they cannot change the Ethiopian's skin. He is no where free in this country. In the north, he scarcely enjoys any other liberty but that of starving and dying. He is not admitted into the social circle of the whites. He cannot eat at the same table, or ride in the same coach with them. He is assigned a separate seat in the church and worships at a different altar; and when he dies, his body is placed in a graveyard at a distance from that in which repose the ashes of the whites. He is in a far worse condition in every respect than his brother in slavery at the south. No state wants the free negroes. Most of them have stringent laws against their admission. Every where they are spurned and trodden under foot. They are an unmitigated curse, as a general thing, in our state. There are honorable exceptions it is true; but even those exceptions do not furnish instances where they are free in any correct acceptance of that term. Policy and humanity then combine in urging that if the negro be emancipated, he should be sent beyond our borders.

I wish now to say a few words to the advocates of the law '33 and to those who are opposed to it. If I understood the views of my distinguished friend from Madison, (Mr. Turner,) he wishes to prohibit the importation of slaves, by declaring all free who may be imported. This is not the law of '33—it is more like the "Wilmot proviso." It might prevent the importation of slaves, but it would certainly favor the importation of free negroes. For instance, a man in a neighboring state, having a negro he wished to emancipate, all he need do would be to send him to Kentucky, and he would be free! \*Now I am

opposed to all this. And I am equally opposed to a constitutional prohibition of the passage of such a law. Let the constitution remain unchanged on this point. Leave it to be regulated by the people through their representatives. I hope, therefore, that my friend from Simpson, (Mr. Clarke,) will not press his motion to grant liberty in the constitution to any citizen to import slaves for his own use. It is important that Kentucky should not be distracted and divided now upon the slave question. It is important that our state should stand firm upon her old platform. The slavery question is now shaking our national government to its foundation. Hitherto Kentucky has acted as a mediator between the contending parties of the north and the south. Her voice has more than once been potent in staying the agitation of the waters of strife, discord and disunion. If she would maintain her position as peace maker, she must stand firm where she has ever stood in relation to this question—avoiding alike northern and southern extremes.

We are particularly interested in maintaining the integrity of our national government, as handed to us by our fathers. Let us unite our voices with that of the hero of New Orleans, in vindication of the sentiment: "the Union—it must be preserved." The states of this, no longer western, but central valley, are united together by the indissoluble bonds of nature. The "father of waters" flowing through its midst, stretches his arms from the Rocky mountains to the Alleghennies, and encircles in one fond embrace all the states of this great valley. Our disseverance then cannot be accomplished without political suicide. The slave question and no other question can separate the western states. It seems then a sacred duty of ours not to let this question divide other states.

All the recollections of our history ought to endear this Union to every American heart. Look at the declaration of our independence; and to that document are signed promiscuously the names of northern and southern men. Go to the battle fields of the revolution, and in the same grave mingles the dust of northern men with the dust of southern men, and there let them rest in quietude until aroused at the resurrection. The same historic page which records the deeds of Washington, Sumpter and Marion, of the south, in the war of the revolution, also records those of Putnam, Warren and Greene, their illustrious compatriots of the north. Let him who would destroy this confederacy first obliterate the evidences of the union which existed among those who gave us our liberties and founded this government. Let him tear the declaration of independence so as to separate its northern from its southern signers. Let him violate the graves of the illustrious dead, and permit no longer the soldiers who died for our liberties to sleep in the same grave. Let him read the page of history on which are the recorded deeds of Warren and Washington—of northern and southern heroes—so that the one shall not stand connected with the other; and then let him demolish the work of their hands! Who would

\*I think it due to Mr. Turner to state, that there was a provision in his plan which had escaped my memory at the time of speaking. It is as follows: "But any

slave who shall become free by being brought to Kentucky shall be sold into slavery, and the proceeds paid into the public treasury."

have torn asunder the "star spangled banner" which has waved so long over "the land of the free and the home of the brave?" No sir, if that proud eagle, the emblem of our country's union and liberty, which has soared so high and so gloriously, the wonder and admiration of the world, is ever to be struck down, God forbid, that a Kentuckian's arm should wing the shaft which is to arrest the noble bird in his etherial flight.

I beseech gentlemen to yield their preferences on the law of '33 and its opposite; that we may, as in times past, speak peace to the troubled elements of the country. Let us say to the north, we occupy now on this subject, the ground which we did when our fathers on the battle field fought and bled for northern rights; and let us make the same appeal to the south, and it may be, our voice will be heard. For one, I am content that this subject shall remain as it has ever been in the organic law of our state. Let who else may, I am not ashamed of my state, no matter with what other state compared.—Twice I have stood upon other soil than that over which floated the stars and the stripes of my native land; and I trod the ground of the stranger, feeling prouder than ever, that I was an American. I have been in nearly all the free states of this union; I have scanned inquiringly, their moral, social, and political condition—I have walked the streets of their greatest cities, and examined the elements of their wealth and prosperity, and never yet did I feel the least disposed to shrink from the declaration, that I was a Kentuckian. Kentucky is no mean state in the estimation of her neighbors. The chivalry of her heroes and the eloquence of her statesmen have carried her fame to the utmost bounds of civilization. There is nothing in her present condition, nothing, I am sure, in her past history, which should make her sons ashamed to call her mother. I would not disturb her social relations. I want her still to remain the land of hospitality, and of noble and generous impulses. In behalf of my constituents then, I beseech you let this institution stand wholly undisturbed, without any change.

Mr. CLARKE. I should not at this time detain the convention with any remarks, were it not that the gentleman last up, (Mr. Waller,) and others who have recently spoken, gentlemen who claim to be pro-slavery men, say—and they look over in this direction when they do say it—that upon the subject of slavery they cannot go so far as some other gentlemen go, but that they are still pro-slavery men, and profess to argue for the perpetuation of the institution in the state of Kentucky.

The gentleman from Fleming, (Mr. M. P. Marshall,) a few days ago, stated that he regarded the institution of slavery as a moral and a social evil. That gentleman, Mr. President, declined voting for the resolution offered by the gentleman from Henderson; he also declined voting for the resolution offered by the gentleman from Bourbon; in both of which the principle was asserted that property existed anterior to governments or the formation of constitutions; that "arbitrary and absolute power over the lives, property, and liberty of freemen, existed nowhere in a republic, not even in the largest majority." That gentleman declined voting for either of

these propositions, both embracing the same principle; and having declined voting for either of these propositions, it seems that that gentleman believes that the power does exist in a republican government to take away, by a majority, the life, liberty, and property of the citizen, against his consent, and without making him compensation. Now, if the gentleman from Fleming entertains opinions of that sort, and does believe that the institution of slavery, as it exists in Kentucky, is a moral and a social evil, then, if I were he, I would stand up in this convention, and before the world proclaim that there was power in this convention to get rid of that evil, and that it ought to be exercised. I would go for emancipation, direct and immediate, if I entertained such principles. The gentleman last up, (Mr. Waller,) declares that he cannot go so far as other gentlemen go; that he does not believe that the institution of slavery, in the abstract, is a blessing to both races. Now, sir, I have never attempted in this house to advance any opinion on the subject of slavery in the abstract. I, for one, have expressed no opinion on that subject. "Sufficient for the day is the evil thereof." When it becomes necessary for me to express an opinion upon that subject, I will do so; but I will say, as I have said time and again, that the institution of slavery, as it exists in Kentucky and the other slave states of the union, is a blessing to both the white and the African race. I will not, sir, after so much has been said upon the subject of slavery, and at a time when the opinion of every gentleman has become a "fixed fact," detain this convention with an argument to prove that the institution of slavery, as it exists in Kentucky and in every slave state in the union, is a blessing to both races. I will content myself by referring the gentleman from Woodford, (Mr. Waller,) to the able lecture of Mr. Elwood Fisher, of Ohio, "on the north and south," a lecture to which, if I understood his speech aright, he is indebted for most of the facts, arguments, and figures, which compose the very lengthy speech just delivered by him.

If the historical facts and statistics embraced in that able lecture, are not sufficient to convince one who professes to be a pro-slavery man, that the African slave in Kentucky is happier and better than in any other condition in which the same race has ever been placed or can be placed—if the same admirable address does not uncontestedly show the superiority of the Kentuckian, in self-sacrificing patriotism, in morals, in chivalry, and in wealth, over the white race in any free state in the union, then, sir, I will not tax myself, or this convention, by "casting pearl" before such pro-slavery men.

Mr. DUNAVAN moved the previous question and the main question was ordered to be now put.

The question was taken on the adoption of the section, and it was rejected.

Mr. C. A. WICKLIFFE offered the following, to supply the place of the section just stricken out.

"The general assembly shall have power to pass laws to punish free negroes, for crime or misdemeanors, in such mode as is now prescribed by law. Or, may substitute as punishment for crime or misdemeanors, banishment and trans-



portation out of the state, or a sale into involuntary servitude."

Mr. HARDIN. There is a difficulty in this, Mr. President, which I do not see how we can overcome. How can we send these negroes out of the state? We have no jurisdiction in this matter. We know that if a man commits murder in Virginia or Tennessee, by a requisition from the governor of either of these states upon the governor of Kentucky, the criminal would have to be surrendered; but I do not see that we have any power to banish a man, and if we had we have no place to which to send him.

Mr. C. A. WICKLIFFE. I should suppose Mr. President, that although we have not exercised the same power which some of the states of this Union have by the purchase of, and the maintaining a colony upon the coasts of Africa, it is not because we do not possess that power, but because no emergency has hitherto arisen rendering it expedient that such a power should be exercised by Kentucky. It may have been thought by some, that under the existing constitution of the state, this power is not vested in the legislative department. We know that Maryland, as a sovereign state of this Union has owned and governed a colony upon the coast of Africa, which for a series of years, was called the "Maryland colony." I am not prepared to say, and I will not go into a discussion on the point at this moment, that the state of Kentucky cannot, in her sovereign capacity, own and control such a colony, if she chooses to do so. I cannot admit that she is not able, as a sovereign state, to own property, real and personal, within any territory but her own state. She may acquire and own real estate on the Rocky mountains if she pleases; she may own real estate in any of the governments of Europe, if there is no law in such government against it, subject to the eminent domain of the foreign government. There is no inhibition in the nature and structure of our government against such a power; but what my amendment contemplates is this: without undertaking to decide whether there can or cannot be exercised, a power, by any legislative enactment, of holding a territory beyond our own state, is to give the general assembly power to adopt some means of transporting beyond the jurisdiction of this commonwealth, a free negro convicted of crime. I want to leave the field open to future legislative action upon this subject. If the legislature does not, and cannot possess such power, then it only remains for them to make such regulations for the punishment of crime, as may come within the limit of their power—such as have heretofore been exercised. Sir, we deny to this portion of the population of Kentucky—free negroes—the enjoyment of any political or social rights, nevertheless they are human beings, they have civil rights; and it is the duty of government not to invade those rights, or to treat them with cruelty. But if, when the evil of crime has grown so intolerable as to render it necessary for us to take some steps towards effecting a remedy; if, under these circumstances, we cannot exercise the power of banishment as a punishment, let us at least give to the law-making power the choice of determining whether this class, when guilty of crime, shall, upon the second, third or

fourth conviction, either be punished by banishment or sale into involuntary servitude, or whether by imprisonment in the penitentiary for life. Confinement in the penitentiary, of a free negro, presents but little terror to a dishonest free negro; and we all know, that with him at least, it is not considered any degradation of character. Let it be understood that if a free negro should be convicted of any crime he will be liable to be seized and sold into involuntary servitude, or be banished to some other country, beyond the United States. Let that be understood as the law of Kentucky, and instead of being annoyed with free negroes coming into the state, they will be very apt to keep away, and all the vicious ones we may now have, will leave the state as fast as they can. That is my amendment. I leave it with the convention to adopt or reject it as it may deem best.

Mr. A. K. MARSHALL. I move to amend the amendment, by striking out the words "banishment and transportation out of the state."

The objection urged against this proposition by the gentleman from Nelson, (Mr. Hardin,) that Kentucky has no power to banish her felons to another state, is met by the mover of the section with the suggestion that Kentucky might establish a colony upon the coast of Africa, or use some of those already in existence as a place of banishment; and seems to indicate that the colony of Liberia would be a fit receptacle and an appropriate place of punishment for the negro felons of Kentucky.

The colony of Liberia, sir, was established by the philanthropist and the christian to afford to the free blacks of the United States an asylum from that state of degradation, inevitable, so long as they remain in this country, and to furnish a home in the land of their fathers where, while we are relieved from the course of their presence among us, they can enjoy the blessings of civil and religious liberty. It would not be possible to induce the free blacks to go to that country—a thing, in my opinion, much to be desired, and that which would be of infinite advantage to both white and black, to bond and free—if we convert it into a place of punishment instead of a place of refuge, a country, and a home.

The christian looks to this colony as tending to the fulfillment of that promise, "that I will give thee the heathen for an inheritance and the uttermost parts of the earth for a possession." And it is true, that to shed the light of religion and civilization upon the dark sons of Africa, has been the most difficult task of the christian minister. They have ever known the white man as the enemies of their race, and cannot, and will not, receive them as ministers of mercy. From those of their own color who even in their degraded condition—the condition of slaves—have been elevated in intellect and morals far, very far, above them, they must receive their first lessons in civilization and christianity.

And when we see the sons of the desert, cannibals, whose fathers were forced from their home—if home it could be called—returning to their father land, fitted by their masters for the work, carrying the "glad tidings" to their benighted brethren, well may we exclaim, "just and true are all thy ways thou King of saints."

I cannot, for one, agree to do that which would have a tendency to defeat the objects for which this colony was instituted; and it cannot be questioned, that to send the worst of our black population—men destitute of all moral restraint—criminals—to force these upon the colony, would subvert the great ends of its institution; and I desire to see the free blacks remove from this country; I wish them to be willing to go; and I cannot say to them in our laws, that the home to which we invite them is worse than a penitentiary. Sir, it is not so. I look upon these colonies as the only bright spots on that benighted coast—Oases, from which the streams moral and intellectual may flow, to make the “desert bloom and blossom as the rose”—a home for the black man in that climate congenial to his nature, where alone he can enjoy those social, civil, and religious blessings, which here he has loved and wishes for, though not fully enjoyed. I cannot cast a shade, a suspicion upon these colonies, by pointing to them in our laws as fit only for criminal stations.

I hope that the gentleman from Nelson, who is both a statesman and a christian, will agree to strike out of the section the words I have proposed to strike out.

Mr. HARDIN. I want to strike out those words because I do not think we have the power to expel a free negro from this state. The free negro, sir, has a vested right to his freedom, and a vested right to his residence here. You may pass laws prohibiting a man from setting the slaves he may now own, or their increase, free; you may pass laws providing that if he does, that they shall not remain in Kentucky; you may pass laws prohibiting free negroes, from other states, from coming in here; but you cannot pass a law, according to my understanding, to compel a free negro who is here to leave; and, to convict him for refusing to do that, is, in my opinion, to convict him for what is no offence. He has, it is true, no political rights in Kentucky; and we know that he is excluded by public sentiment from many social rights; but he owes us allegiance, and we owe him the corresponding right of protection. He is bound to obey our laws; he is bound to contribute towards the support of our government according to his property, and we owe him, in return, what is called local protection.

Sir, the Spanish government once put in jail a man of the name of Richard Meade: they had no right to do this, because he had been a long time a resident of Spain, and Spain owed him protection. He had not become a subject of Spain, but she owed him local protection because he owed to that government, while there, local allegiance; and upon that state of the case being represented to Spain, they released him. If you look into the decisions of the supreme courts of the United States, and those of the admiralty of Great Britain, you will find that an American citizen, domiciled in Great Britain when war is declared, is entitled to protection, and their vessels then in British ports cannot be captured, because Great Britain owed them local protection; and the same rule applies to British subjects and British vessels in this country under similar circumstances.

Now we owe to the free negro, local protec-

tion, and he owes us local allegiance. That allegiance is to submit to our laws, to obey our laws, and to pay taxes according to the property he may possess. I would submit to this honorable convention that these negroes are poor human beings, and upon the score of humanity, I would ask, would you treat them thus? Prevent, if you choose, the owner from setting his negro free; but every precept of humanity, every law of christianity forbids that we should treat them worse than we would treat dogs. They have a right to enjoy their freedom, when free, as we have to enjoy ours. They have no political rights, but they have every civil right that we have; and what is more, their skin will not be black when they go to heaven, and stand before the judgment seat of Christ; there sir, they will be robed as white as we are, and we are to answer for our treatment to them here. I hope my colleague will not press that amendment; it is at war with every feeling of my heart. They have the same inheritance in the blood of Christ that we have, and we are bound to treat them with humanity.

Sir, what does the amendment propose? That you have a right to send them into banishment, or involuntary servitude for crime. Then sir, if you carry that amendment we have a right to define crime. Now, I deny the policy of that, and I deny the right of it. And you are to sell them out of the state, not as a punishment to keep them from crime hereafter, but you are to subject them to slavery upon what we, the whites, call crime. Sir, I object to this.

But it is said we may transport them. I deny it. Can you send your officers with a human being beyond the limits of this state? Have you jurisdiction to send a gang of negroes to any place in the United States? No sir. But the gentleman says we may send them to some country which we may acquire. But we cannot acquire any country. If we acquire any country from foreign nations, it is forbid by the constitution of the United States, which provides that “no state shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, omit bills of credit, make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.”

Now sir, no state can make any treaty with any foreign nation. There is no reservation of power. Can we make any negotiations with any lawful prince or king of Africa to which we may banish negroes and make it a kind of Botany Bay? No sir, we cannot do it at all. This is a matter which congress itself cannot do. Congress cannot appropriate money for the purpose of colonizing negroes; it is not within the power of congress to do it; and that is the reason why the federal government has never taken up the subject. It is provided in the federal constitution that “congress shall have power to levy and collect taxes, duties, imposts, and excises,” to pay the debts and provide for the common defence and general welfare of the United States, but it has no power to appropriate money for the purposes of colonization at all; and that sir, has been decided over and over again. She can pay debts and provide for the

general welfare of the nation. By the "general welfare of the nation" is meant an implied power given to the general government for the purpose of carrying the expressed powers into effect. That is the whole of it; and whenever you go beyond that, congress is as omnipotent as the British Parliament consisting of king lords and commons.

But, sir, congress has no power to appropriate money to send negroes to Liberia. I again repeat, I beg, I beseech, I conjure my colleague not to press this amendment. He may have the power, and the house may agree with him, but I do think it would be a reproach to this convention in the eyes of posterity for hundreds of years to come. Suppose, sir, a negro gets drunk; you call it a crime, and you sell him into servitude. Suppose he steals a chicken; you call it a crime, and you sell him into servitude for life. Suppose he goes a fishing on the sabbath; you call it a crime, and you sell him into servitude. Why, sir, you may make anything a crime if you please. Let the free negroes take the same laws that we have. If they commit murder let them be hung; if they commit other crimes let them go to jail or the penitentiary. Debar them of any political rights—I am against that; debar them of social rights—I am against their intermixing with the white population at all. When you have done that, you have done all. They have no political rights or power; and when we have the power we are bound to protect them. In the language of Ulysses, when he bowed in his rags,

"A suppliant bends, Oh! pity human woe,  
'Tis what the happy to the unhappy owe,"

Mr. TURNER. I would go for striking out the word "misdemeanor" in that resolution, and also part of what the gentleman from Jessamine has gone for—the selling into perpetual servitude. Now, sir, it is known that we hang negroes for a great many crimes for which a white man is only sent to the penitentiary. I would chose the least of the two evils. If a man commits a crime, send him into banishment; get clear of him in this way instead of hanging him. Now it is true, that the state of Kentucky has no jurisdiction beyond her limits; but as there is a colony organized by a society in the United States, a man has a right to transfer his negro to that society, and they have power to transport him. The younger gentleman from Nelson maintains nothing more than this. The court of appeals has decided that an individual wishing to emancipate his slaves has a right to do so; and the government has power to see that that will is executed, and that the slaves are sent off. If the government has power to do that, certainly it has power to avert a greater evil by giving a negro to this society instead of hanging him.

The elder gentlemen from Nelson has taken a position which I deny. How does the government of the United States get the power to purchase, and man, and sustain vessels to catch those engaged in the slave trade? Would not the same power which authorizes them to do this, authorize them to take away slaves from every state of the Union if they were willing to go? This would comport with the good of the whole states if congress would exercise the power, of sending all free negroes to the coast of Africa.

How would the government get the power to appropriate half a million of dollars to relieve the distress of Ireland; and yet it passed one branch of congress. Much might be said of this provision if we had time to discuss it; but I will ask, sir, what are we to do with free negroes here? I do not wish to act unkindly towards them, but they are not entitled to the protection of the constitution against their crimes. I am opposed to their being sold into slavery for a mere misdemeanor, but I am in favor of using the banishing power by framing laws to suit the state of the case, and to deliver them over to a society recognized by the federal government. I have no doubt that such a course would be productive of good, and I sincerely hope we shall have some such provision adopted in the constitution.

Mr. BRISTOW. If the legislature have not already the power to banish free negroes guilty of crime, it occurs to me that we cannot confer that power. I understand that under our government the legislature have all power where they are not restricted. If we could confer this power, I, as one of the delegates to this convention, would be willing to do so; but it is my opinion that this is a subject which we ought not to interfere with. I am sure if the delegates to this convention ever intend to go home they will see the propriety of confining themselves to legitimate business. We have been adopting measures not unfrequently, and then in a day or two, having seen their impropriety, have rejected them. This does not appear to me to be a matter of that crying importance which renders it necessary to make a provision for it in the constitution. I do not think the country demands it; and I would say that my feelings of justice corresponds with those of the elder gentleman from Nelson. They are, as he has said, a poor degraded race in our country; but they are here, and it is our duty to protect them. I would not, therefore, put such a clause into the constitution. There is no necessity for it. We would not make a provision in the constitution that a man should be hanged for any particular crime; this is distinctly the province of the legislature. That body has ample power to pass all necessary laws; and therefore, I hold it to be wholly unnecessary for us to make any such provision as this resolution appears to contemplate.

Mr. C. A. WICKLIFFE. From the remarks that have been made, it might be supposed that I was anxious to hang or transport every free negro in Kentucky, honest or dishonest; and that I have attempted to deny free negroes the blessings of the christian religion. No sir; I mean no such thing. What is the proposition I have offered? I do not propose to create crime or define it; I leave that with the legislative department of this government, acting under the influence of the high obligations which rest upon them as men and as christians. They will not deal with the subject of crime in the manner indicated by the opponents of this amendment; they will not declare that fishing on the Sabbath day by any one, bond or free, is an offence for which a man should be subject to expatriation or hanging, as my colleague apprehends. Our legislatures have not heretofore so legislated; and if we could imagine such a spirit of legislation to spring up in this commonwealth

under the unlimited power of that body—limited only in this respect by a general clause which says that cruel punishments shall not be inflicted—they might apply the same wild definition of the word cruel, as applicable to the white man, if unrestricted by this clause in the constitution? Now sir, as to the free negro population, no man has more firmly and uniformly denounced it, than my colleague, as thievish, dishonest and corrupting. I do not propose to lay violent hands upon them by the powers of the law, and without crime thrust them into prison, the good and the bad; or drive them from the commonwealth, and deprive them of institutions of the state under which they have acquired their freedom and their property. No sir; I propose merely to give to the legislative power of this commonwealth, the power of providing for the punishment of crime, and the constitutional privilege of discriminating between theft or felony committed by the free white man, and the same committed by the free black man. You now punish a free black man under the same law by which you punish a white man; and you do so because he is free. He is hanged for no other offences than those for which you would hang a white man. Not so with the slave.

Now I propose to leave to the legislature the power, under our constitution, of discriminating between the punishments to be inflicted in such cases, and instead of sending a free negro to the penitentiary for a term of years, or for life, to send him into banishment. If the word "misdemeanor" is in the proposition which I have made, I desire it may be stricken out, as it was not my intention to use it.

Mr. President, I had supposed that at this time of day, there was no necessity for a discussion on the high political question that a sovereign state of this union had no power to make treaties, or enter into alliances with any foreign power or state. I had supposed that American jurists understood the difference between a contract and a treaty and an alliance. The article of the federal constitution, read by my colleague, denies the power of the state to make a political treaty or alliance. It never has been, and never could be considered by any jurist, that a state cannot make a contract with an individual or a sovereign, either in or out of the commonwealth, in reference to a subject matter of contracts. My friend before me, (Mr. Nuttall,) has just suggested that if the construction of my colleague on this section of the constitution is right, we cannot sell a bond to an individual out of this commonwealth. If so how can this commonwealth enter into a contract to pay these bonds after she has sold them? How can she transact the various business of this commonwealth under our institutions? I will not waste the time of this convention in discussing this matter, because I know there is too much intelligence in this body to believe that the power is denied to a state to make a contract with a foreign nation or power upon a matter which can be the subject matter of contract; and it is under that power—under that incidental sovereign power which belongs to any sovereign—that the state of Maryland has had her colony before Liberia was in existence.

Nor do I propose, as the gentleman supposes, that we should make a sort of Botany Bay colony of Liberia. I have not said they should be banished to Liberia, or to any particular spot, or state, or territory; I leave all that within legislative discretion, if they should deem it necessary to exercise the power, when the crisis in our history has arrived that shall make it a matter of self-defence to protect our slaves from the corrupting influences of free negroes. Is there any thing in this so monstrous as to call forth so much eloquence, and to bring down even the tears from the eyes of my colleague in this house? I propose to banish free negroes for crimes for which your legislature may in mercy hang them. I would send them out of the country, if I could, instead of confining them in penitentiaries for life, or for a term of years. I would give the legislature the power, if they can find the means to do so, to transport them—to send them off somewhere. If it cannot be done then comes up the question, to be presented to the legislature, whether we will continue the present mode of punishment of free negroes for such offences as burglary and arson, or whether you will not permit the legislature to see what effect it will have on the morals of the free negro population, to sell an offender into involuntary servitude. I will not detain the convention longer.

Mr. TRIPLETT. I hope gentlemen will vote against this amendment. Are we here, I would ask, for the purpose of giving more enlarged powers to the legislature of Kentucky, or of restricting and confining them? I deny that the legislature either can be or ought to be trammelled, by powers of this sort. Will the gentleman deny that the legislature have now the power to do what this section permits? He is too good a lawyer to deny it. The legislature have all power, except that of which it is deprived by the constitution of the United States, or the state of Kentucky. I ask that gentleman to point out any provision in either of these constitutions prohibiting the legislature from the exercise of the power he seeks to confer upon them; and if they have all power except wherein they are restricted, and if in this respect they are unrestricted, where the necessity of engrafting upon the constitution such a provision as this? Was not this power used under the laws of England? Was it ever prohibited in Virginia; and when Kentucky was separated from Virginia, was there any provision prohibiting the legislature from punishing crime by transportation? The very name of Botany Bay ought to have recalled to his mind the fact that transportation for crime was a noted punishment in England, and the well known fact, that up to the present day, the legislature has never been deprived of that power, should have satisfied him they have it, without our conferring it on them by this section. I am opposed to this proposition, because I regard it as an entering wedge to open an interminable field of discussion. If you go on this way, where will you end? If you give the legislature power to transport a free negro, why not at the same time give them power to hang a white man? We are here not for the purpose of extending, but of curtailing their powers—of fixing the barrier beyond which they shall not go, but not to define to them the extent and limits of

those powers, within their legitimate sphere of action.

Mr. C. A. WICKLIFFE. If that is the principle by which we are to be governed in this instance, why did not the gentleman apply his own principle yesterday, when he spoke so eloquently in reference to the codification of the laws?

Mr. TRIPLET. If I answer that question to the gentleman's satisfaction, will he withdraw his amendment, and promise not again to pester the convention with abstract propositions? I will proceed to answer him. I proposed to put that provision in the constitution for the purpose of compelling the legislature to perform a duty which they have hitherto neglected; not because they had not the power, but as a compulsory provision, to compel the legislature to discharge a duty which they ought to have discharged twenty years ago. That is a sufficient reason; and the gentleman must now resort to some ulterior reason for inserting such a provision as this. Leave to the legislature some discretion, for God's sake, in the exercise of the almost unlimited power you give them. There is one other idea I would suggest. If you go into detail here, you must go into detail on this question, you must go into detail on every other subject. Why go into this subject? Why waste the time of the convention in such unprofitable discussion? Are free negroes of more importance than your white population, or your slaves, that you must thus legislate so specially for them? I say again, for God's sake, leave to the legislature some discretion, and let us proceed with the legitimate business for which the country has sent us here.

Mr. C. A. WICKLIFFE modified his amendment, by striking out the word "misdemeanors."

Mr. DESHA moved the previous question, and the main question was ordered to be now put.

Mr. A. K. MARSHALL called for the yeas and nays, on his amendment to the amendment, and they were taken, and were—yeas 57, nays 33.

YEAS—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William Chenault, James S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Thomas J. Hood, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, Hugh Newell, Henry B. Pollard, Johnson Price, John T. Robinson, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, John J. Thurman, Howard Todd, Philip Triplett, John L. Waller, Henry Washington, Andrew S. White, George W. Williams, Wesley J. Wright—57.

NAYS—Mr. President, (Guthrie,) Richard Apperson, Luther Brawner, William C. Bullitt, Charles Chambers, Beverly L. Clarke, William Cowper, Chasteen T. Dunavan, James H. Gar-

rard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Andrew Hood, James W. Irwin, George W. Kavanaugh, Martin P. Marshall, David Meriwether, Thomas P. Moore, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Larkin, J. Proctor, Thomas Rockhold, James Rudd, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, Squire Turner, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—33.

So the amendment was agreed to.

The question was then taken on adopting Mr. C. A. WICKLIFFE'S proposed section, as amended, by yeas and nays, and they were—yeas 34, nays 56.

YEAS—Mr. President, (Guthrie,) Richard Apperson, Alfred Boyd, William Bradley, Luther Brawner, William C. Bullitt, James S. Chrisman, Beverly L. Clarke, Garrett Davis, James Dudley, C. T. Dunavan, J. H. Garrard, Andrew Hood, T. J. Hood, J. W. Irwin, G. W. Johnston, Thomas N. Lindsey, Alexander K. Marshall, Martin P. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Elijah F. Nuttall, Thomas Rockhold, Ignatius A. Spalding, Albert G. Talbott, John D. Taylor, William R. Thompson, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams—34.

NAYS—John L. Ballinger, John S. Barlow, Wm. K. Bowling, Francis M. Bristow, Thomas D. Brown, Charles Chambers, William Chenault, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Thomas James, Wm. Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, John W. Stevenson, James W. Stone, Michael L. Stoner, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Silas Woodson, Wesley J. Wright—56.

So the proposed section was rejected.

#### EVENING SESSION.

The sections from the second to the ninth having been withdrawn by the chairman of the committee, (Mr. Meriwether,) the ninth section now became the second, and it was read, as follows:

"SEC. 2. They shall pass laws providing that any free negro or mulatto hereafter immigrating to, or being emancipated in, and refusing to leave this state, or having left, shall return and settle within this state, shall be deemed guilty of felony, and punished by confinement in the penitentiary thereof."

Mr. MERIWETHER called for the yeas and nays on the adoption of that section, and they were—yeas 72, nays 8.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown,

William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, Wm. Cowper, Edward Curd, Garrett Davis, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, James P. Hamilton, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—72.

YAYS—William K. Bowling, Francis M. Bristow, Thos. J. Gough, Ninian G. Gray, Ben. Hardin, Alexander K. Marshall, Ira Root, James Rudd—8.

So the section was adopted.

The third section (the tenth in the report,) was read and adopted, as follows:

"SEC. 3. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary; but the proceedings in such prosecutions shall be regulated by law, except that the general assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury."

Mr. GAITHER moved the following as an additional section:

"The general assembly shall not have power to prohibit the introduction of slaves into the state by the citizens thereof, from other states for their own use, but their introduction by the citizens of this or any other state, whether openly or covertly for traffic, or merchandize, may be prohibited by the passage of such laws as the legislature shall deem most conducive to secure that end."

Mr. CLARKE called for the yeas and nays, and they were, yeas 32, nays 53.

YAYS—Alfred Boyd, William Bradley, Beverly L. Clarke, Henry R. D. Coleman, William Cowper, Edward Curd, James Dudley, Green Forrest, Nathan Gaither, William Hendrix, Thomas J. Hood, Thomas James, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, John D. Morris, Elijah F. Nuttall, Henry B. Pollard, Thos. Rockhold, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, Philip Triplett, John Wheeler, Robert N. Wickliffe Wesley J. Wright—32.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, Luther Bawner, Francis M. Bristow, Thomas D. Brown, William Chenault,

James S. Chrisman, Benjamin Copelin, Garrett Davis, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, J. H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, William Johnson, George W. Kavanaugh, Thomas N. Lindsey, Thomas W. Lisle, Alexander K. Marshall, William C. Marshall, David Meriwether, Thomas P. Moore, Jonathan Newcum, Hugh Newell, Wm. Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, James W. Stone, Albert G. Talbott, William R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, George W. Williams—53.

So the amendment was rejected.

Mr. CLARKE offered the following as an additional section:

"SEC. —. That the general assembly shall have no power to pass laws prohibiting the citizens of this state from importing slaves for their own use, but may pass laws requiring the importer of a slave or slaves to take an oath that said slave or slaves are for his or her own use, and not for merchandise; and that he or she will not sell said slave or slaves, within this Commonwealth, within — years after such slave or slaves are imported, under such penalties as may, from time to time, be provided by law: *Provided*, That the slaves thus imported shall not be such as have been charged with crime in other states.

Mr. BARLOW. I profess to be a pro-slavery man. The contest in my county turned on that question, and I came here with a majority of three hundred and fifteen votes. I came here opposed to the act of 1833 or any thing like it, and to oppose a principle, such as is contended for by my friend from Simpson. I am gratified to see the zeal with which he insists on his proposition, and I have no doubt he is authorized to take the stand he does, and that he takes it because he has been instructed to do it. I have been differently instructed; and for one, although I have received the disapprobation of a portion of my fellow citizens, and perhaps a portion of this body. I took it on myself last winter, when it was said this act was not just to different sections of the state, to vote for its repeal, so that persons might bring in negroes for their own use, and that alone. I take pleasure in voting with the pro-slavery portion of this body, but I cannot vote for the gentleman's amendment.

Mr. WILLIAMS offered the following as a substitute for the proposed section:

"No persons shall be slaves in this state except those who are now slaves and their descendants: *Provided*, That persons removing to the state, and citizens inheriting slaves out of the state, may import them into the state."

The previous question was called for, and the main question was ordered to be now put.

Mr. NUTTALL called for the yeas and nays, and they were—yeas 9, nays 79:

YAYS—Francis M. Bristow, Garrett Davis, Selucius Garfield, Vincent S. Hay, Andrew Hood, James W. Irwin, Ira Root, Squire Turner, George W. Williams—9.

NAYS—Mr. President, (Guthrie,) Richard Ap-



person, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, Wm. Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Wm. Hendrix, Thos. J. Hood, Thos. James, Wm. Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, Wm. D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—79.

So the amendment was rejected.

Mr. GAITHER called for the yeas and nays on Mr. CLARKE'S amendment, and they were—yeas 32, nays 55:

YEAS—Alfred Boyd, William Bradley, Beverly L. Clarke, Henry R. D. Coleman, Wm. Cowper, Edward Curd, James Dudley, Green Forrest, Nathan Gaither, Wm. Hendrix, Thomas J. Hood, Thos. James, Charles C. Kelly, Jams. M. Lackey, Peter Lashbooke, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, William D. Mitchell, John D. Morris, Elijah F. Nuttall, Henry B. Pollard, Thomas Rockhold, Ignatius A. Spalding, John W. Stevenson, Michael L. Stoner, Philip Triplett, John Wheeler, Robert N. Wickliffe, Wesley J. Wright—32.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Jas. S. Chrisman, Benjamin Copelin, Garrett Davis, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Selucius Garfelde, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Andrew Hood, William Johnson, George W. Kavanaugh, Thomas N. Lindsey, Thomas W. Lisle, Alexander K. Marshall, Wm. C. Marshall, David Meriwether, Thos. P. Moore, Jonathan Newcum, Hugh Newell, Wm. Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, Jas. Rudd, James W. Stone, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, George W. Williams—55.

So the amendment was rejected.

#### ORGANIZATION OF NEW COUNTIES.

On the motion of Mr. C. A. WICKLIFFE, the committee of the whole was discharged from the further consideration of the report of the committee on the organization of new counties.

#### THE LEGISLATIVE DEPARTMENT.

The convention next proceeded to the consideration of the unfinished report of the committee on the legislative department.

The pending section was the sixth, as follows:

"SEC. 6. Representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein. At the first session of the general assembly, after the adoption of this constitution, and every eighth year thereafter, provision shall be made by law, that in the year —, and every eighth year thereafter, an enumeration of all the qualified voters of the state shall be made. The number of representatives shall, in the several years of making these enumerations, be so fixed as not to be less than seventy-five nor more than one hundred; and they shall be apportioned for eight years next following, thus: counties, cities, and towns, having more than two thirds and less than the full ratio, shall have one representative; those having the full ratio and a fraction less than two thirds over, shall have but one representative; those having the full ratio and a fraction of more than two thirds over, shall have two representatives, and increase their number in the same proportion; counties having less than two thirds of the ratio, shall be joined to similar adjacent counties for the purpose of sending a representative: *Provided*, That if there be no such adjacent county, then such county having less than two thirds of the ratio, shall be united to that contiguous county having the smallest number of qualified voters, and the remaining representatives, if any, shall be allotted to those counties, cities, or towns, having the largest unrepresented fractions."

When last before the convention, this section Mr. Hardin moved to amend, by striking out the words, "number of qualified voters therein," and inserting the following: "the number of free white inhabitants of such county, town, or city, and who shall be citizens of the United States, and residents of the state two years, or of the county, town, or city, one year next preceding the enumeration, or children born within one year, of mothers who are entitled to be enumerated."

Mr. PRESTON moved to amend the amendment, by striking out all after the words, "the number of free white inhabitants of such county, town, or city."

Mr. President, I am willing to take the question as it now stands. There are only three bases of representation that I know of. We might have a fourth possibly. I was willing, at first, to stand by the old rule of qualified electors, but some seemed to think it better to have a larger basis. I desired to have one of those three basis acted upon in the United States. The federal basis is property and numbers, including three-fifths of the negroes. The second may be called the federal white basis. There is a third basis, which is that of the free white citizens of the country. The objection I had to the amendment

of the gentleman from Nelson was, as I stated several days since, that it was of an heterogeneous character. We all know we have taken white males above twenty-one years of age, from the impossibility of ascertaining what was the qualification of citizenship. Now, if we adopt this plan, a plan I am unwilling to vote for, you invest the censor with unwarranted powers. We know the census taker has difficulties enough without this. And we all know that many a censor gets his head broken for being too inquisitive whilst in the performance of his duties.

A friend of mine says he once took the census, and had much difficulty. Another gentleman from another county says there is an old lady there who has broken the officers head three times, on account of the inquiry about the number of her children for she is unfortunate enough not to have any children; and when asked how many children she has, she turns the question into an assault and battery. We cannot make the census taker a judge of the qualifications of our citizens. The term qualified electors is sufficiently plain. I therefore, shall come down to one of the three bases. First, if you are willing to go the whole length, let us have free white inhabitants. Secondly, if we cannot have that, let us have free white citizens. If, not, let us stay where we are upon the basis of qualified electors. I probably have as much interest as any man in this house in this question, and I wanted a more extended basis, but so far as the welfare of this constitution is concerned, and its subsequent adoption, I feared we might have great difficulty in some of the interior counties. If we think it will give dissatisfaction on account of its taking some strength from them, we had better take the section as the committee have reported it. I want the yeas and nays on "white inhabitants," for by a parity of reasoning alone you cannot say that Paddy and Larry shall not be counted; the men who make your railroads, or labor on the public highways, and who may not be entitled to a vote, are to be counted as well as women and children. There are fourteen states of the Union, whose representative basis is on population, and the rest are arbitrary plans. I want the free white people of the commonwealth to form the basis of representation, if we vary from the old plan of enumeration which we have been accustomed to, and with which the people of the state have found no fault.

Mr. HARDIN. I offered an amendment to the proposition of the gentleman from Simpson on this subject, because he wished me to draw the attention of the convention to it. That is the way I came to offer the amendment. To be sure some gentleman was kind enough to say that I had suggested the thing to him. I had no communication with him. He was the first gentleman that suggested it to me, and asked me if I would vote for it, and I said I would. I would much rather have the basis as it was proposed by the committee than as my friend from Jefferson (Mr. Meriwether) proposes, that is, the qualified voters, instead of the white population. If the white population is to be the basis, it certainly should be that white population that are called citizens in the estimation

of our laws. It is the voting population, if you take the voters as a basis; and if you take the white population, it should be those who are citizens. The gentleman from Louisville (Mr. Preston) has always at hand the acts and doings of other states. It is the readiest change in this house.

Yesterday, when there was something said about appointing some of the commissioners, he alluded to the code-Napoleon. And now he says the practice of this state is so and so, and the practice of that state is so and so. I care not what the practice of any state is, the question comes up to this; if you take as a basis, voters, they must be citizens, or naturalized citizens. If you take white population, give it the same basis. The reason why the gentleman from Simpson, offered the amendment was, that on the river, and in towns and cities upon the river bank, there was a very large disproportion of foreigners from what there were in the interior of the state, because if it were not for that, you might as well have taken the basis of voters once. There is a greater proportion of men at the river, that is, the number of voters comes nearer to the number of white people than in any other part of the state.

But the gentleman's argument is based upon two objections, one being the insuperable difficulty of taking the number. Where is the difficulty? The assessor has to ascertain who are qualified voters and who are not. Last year, in Jefferson county there was a difference of five hundred and twenty.

There is no difficulty in the commissioners asking how many white children there are about this house. How long will it take to ask, what is your white family. He would have to go into an investigation as to the ages of the children. If you inquire as to the men, whether they are natural born citizens or not, have you not to do it now? You have to take a man's word now whether he is naturalized or not. The only other difficulty is that of the old lady, and the last account I had of her she was dead. However, I do not know whether it will make a serious difference whether you take qualified voters or citizens. I am very anxious to be done with this subject. I have been charged with too much speaking; and I think I have talked too much. If I have troubled the house too frequently, I beg pardon.

Mr. CLARKE. Mr. President: Before the final vote is taken on this section, I propose to submit some remarks.

The basis of representation, which I had the honor to submit in this convention, has been denounced by many as novel in its character, and hence I suppose wrong.

For the purpose of furnishing the convention and the country with the policy which has been pursued by other states in establishing a basis, I have examined the constitution of every state in the union upon this point, and the following is the result of my investigations.

There are but three slave states in this union which have adopted "qualified voters" as the basis of representation, and those are Kentucky (by her old constitution,) Tennessee and Louisiana.

The states of Mississippi, Alabama and Texas

have adopted "free white inhabitants" as their basis of representation.

The states of Maryland, Florida, Georgia, and North Carolina, have adopted federal numbers as the basis of representation.

The states of Arkansas and Missouri make "free white male inhabitants" the basis of representation, without regard to age.

The states of South Carolina, Virginia and Delaware make "territory and property" the principal basis of representation.

Thus, it will be seen, though the basis furnished by my resolution is declared a departure from a great principle, twelve of the fifteen slave states have adopted a basis different from the one I propose to change; and whilst many of them have adopted the liberal basis which I have suggested, a number have gone further, and planted themselves upon the basis of "federal numbers."

Now let us see how this great principle, a departure from which is to ruin the country and endanger the new constitution, (according to the opinions of some gentlemen,) has been estimated in the fifteen states.

And first: The states of Maine, Rhode Island, New York, with some restrictions, and New Jersey, have made population, or the inhabitants, the basis of representation.

The states of Massachusetts, New Hampshire and Vermont, make territory and those who pay taxes on property, the basis of representation.

The state of Connecticut, which seems to be laid off into towns, gives to each town a representative without much regard to numbers or property, thus seeming to make municipalities or territory the basis.

The state of Pennsylvania makes taxable inhabitants the basis.

The states of Illinois, Michigan, and Iowa, make "white inhabitants" the basis.

Whilst the states of Ohio and Indiana alone, make "white male inhabitants, above the age of twenty one years," the basis of representation.

Showing but five states out of the thirty, that have made "qualified voters" or "male inhabitants above the age of twenty one years," the basis of representation, whilst a number of the very best states in the union have gone far beyond that which I propose, by making federal numbers the basis.

So far, then, as precedents go, I am quite as well, yea infinitely better sustained than gentlemen who cling with so much tenacity to the old basis.

Mr. President: immediately upon the passage of the resolution by the legislature at its session of 1847-8, submitting the question of a convention or no convention to the people, a number of persons, particularly in the southern part of the state, who were sensible of the many manifest defects in our present organic law, entertained fears that the tenure by which slave property was holden, would be weakened, if the constitution were submitted to a convention. There were those, nevertheless, who had an abiding confidence in the justice and moral honesty of the great mass of the people, and who believe that it was impossible that a majority of the states could so far forget the rights of a Kentucky citizen, and the ties which infancy have

bound us to our sister states of the south, as to countenance, for one moment, any system of emancipation, or other act, by which property in slaves could, in any manner, be rendered insecure.

This latter class stepped forward, and, by public addresses, and through the press, exerted themselves to allay every apprehension of danger. Their efforts were crowned with unparalleled success. A more complete and overwhelming victory over the friends of a radically defective constitution, never was achieved by any body of men in any age.

At two successive elections, by unprecedented majorities, the people declared in favor of the call of a convention; and in confirmation of the judgment of those who had confided so much to the public justice, the very legislature which declared that a convention was demanded, measurably wiped away the last foul stain of emancipation from your statute book. I allude, sir, to the modification of the law of 1833, by the last legislature of Kentucky.

No sooner had the act of 1833 been modified, than the emancipation party in the state seemed to have received a new impetus. In some parts of the state they declared in favor of engrafting upon the new constitution the provisions of that law; in other parts they declared in favor of leaving the constitution open upon that subject, and for perpetual agitation until the law was restored or some policy of emancipation adopted. Backed by many powerful minds in the state, occupying high places in the public confidence, during the last summer that party came to the charge with an apparent well-founded hope of success. They held a convention at this capital, displayed their colors, and in some sections of the state inscribed upon it this execrable motto: "If we can't force the strong to bow at our feet, we will throw our weight in favor of the weak," and thus disgrace the state by securing an imbecile constitutional convention.

Under circumstances like these I was nominated—without distinction of party, in a national point of view—as a candidate for the seat I now have the honor to hold on this floor. In accepting that nomination, I avowed my unalterable hostility to the principles of the law of 1833, either in the new constitution or in our statutes, together with every species or description of emancipation whatever. Thus going forth, as I believed armed with truth, and fired with the love of equal justice, I was placed in my present position.

When I examined the returns, after the August election, I felt satisfied, from the political complexion of the delegates returned, that the confidence of the pro-slavery party had not been misplaced, and that the relation that existed between master and slave would in no wise be disturbed. I had supposed, Mr. President, that there would not be twenty dissenting voices in the convention to securing to the citizen, by constitutional guaranty, the right to bring into this state, for his own use, property from another state. Under this conviction, I consented to that part of the report from the committee on the legislative department which so changed the present constitution as to allow to cities a representation in the senate of the state upon

the basis of "qualified voters." When that section came up for action in convention, I made a few remarks in its favor; but, sir, when upon further examination I ascertained that the law of 1833 had invariably received its warmest support from the existing cities, and such points upon the Ohio river as will, in the course of a short period, grow up into cities, I deemed it but just to my constituents, and to the whole pro-slavery party in the state to pause, and give no further assistance to such an increase of power in the law-making department of the government, until the rights of property were secured against invasion. Influenced by considerations of this sort—believing that in no other way could I redeem my solemn pledges to my confiding constituents, and carry out my own convictions of propriety and justice, I offered a substitute for the section which conferred this additional power upon cities. By my substitute I allowed a city as many as two senators, when her voting population would justify it; whereas under the present constitution she is entitled to none. At the same time, I provided that the citizens of the state should be secured in the right of importing slaves for their own use, under certain regulations and restrictions. I did this with a view, that whilst a power hostile to slave importation was strengthened, it would be impotent to do mischief to my constituents. Before the final vote was taken upon the section to which I have referred, I saw indications of disapprobation of the substitute I had proposed, and in some instances, from quarters where I had least expected it.

I could never get a vote on my substitute. By some strange fatality it was never in order, and it slept the sleep of death upon your table. Its spirit was resurrected this morning, but was again folded in the cold embrace of defeat. The vote was ultimately taken upon the original section without amendment, and it passed. I voted against it. I saw at a glance that you had strengthened that party in the state who had always favored the law of 1833, and I believed that unless the rights for which I had contended were secured by constitutional provision, that law would again disgrace the state in less than three years. It was then, Mr. President, that I cast about for some plan to avert the impending calamity. I availed myself of the thought and investigation of my esteemed friend from Caldwell, (Mr. Machen.) I examined the most accredited authorities, upon the laws which govern population, its increase and diminution, and I found it to be the concurrent testimony of all countries, in all ages, that a people spread over a large territory of country, and engaged in agricultural pursuits, increase their population in a much greater ratio, than those confined to cities, and pent up in narrow circles. From these high authorities, and the very nature of things, I knew that there must be more qualified voters (in proportion to the white population) in cities than in the rural districts. I knew it, for the reasons, among many others, which I assigned a few days since in this convention. No one can shut his eyes to the fact, that hundreds, yea thousands flock to our cities and engage in day labor, whose income will not justify them in bringing, or in accumulating a family, nor do

the morals of cities generally impose restraints so rigid as to encourage marriage.

In the country the case is different. Both sexes, as soon as they arrive at sufficient age, enter into the matrimonial state and soon become tax payers and the heads of families. Not more than one in ten, fifteen, or twenty, who are engaged in labor upon your streets, your wharves, and in your heavy manufacturing establishments in cities, have families at all; whilst if "qualified voters" be retained as the basis of representation, they in a short time are enumerated, not only in ascertaining the number of representatives to which a county, city, or town may be entitled, to the exclusion of the wives, daughters, and sons of our sturdy farmers, but they actually control the election of those representatives at the ballot box. To be added to these, sir, all the young men, men without families, engaged in mercantile pursuits, and laborers employed upon your public works.

I but assert a fact known to all, that a country life is more conducive to the connubial state than a city life; that with a given number, population will increase more rapidly where the institution of marriage is encouraged, than where it is not. The experience of past ages comes down to us pregnant with incontestible evidences of the truth of this declaration. Then, with a knowledge of the further fact, that the immigration to cities was composed principally of male adults, I offered the resolution which recognizes white inhabitants as the true basis, believing that to be the only means by which the rural districts, or agricultural portions of the state, and particularly their peculiar institutions, could be shielded from the overshadowing power of the cities, and many of the Ohio river counties in the legislature. The number of slaves at those points is already greatly disproportioned to the number in most other parts of Kentucky, and with few exceptions, the number of women and children is much below the number of male adults, the latter of whom flock thither from the neighboring free states to engage in the labors of exportation and importation, in building ships, steamboats, flatboats, and other craft; in wood chopping, and in making actual or temporary improvements in navigation.

I think I cannot be mistaken, when I state, here in my place, that the basis of white population, as I have proposed, will accomplish the end at which I aim, and meet the approbation of ninety-nine hundredths of the true pro slavery party in this glorious commonwealth.

Mr. President, I am aware that what is called the "blue grass" section of the state has been called upon to resist the proposed basis of representation. It has been argued that upon the basis of white population, they lose a part of their political influence and power in the law-making branch of the government. To some extent this is true; but it is equally, if not more certainly true, that they must lose as much, if not a greater amount of their power, if the basis of "qualified voters" shall be established; and what is still worse for them, if the latter basis shall be adopted, the power which leaves the blue grass region will be transferred to that very portion of the state, in which their slave property (upon the security of

which depends their pecuniary salvation,) will be rendered less secure.

There is no basis except the basis of "federal numbers," which can enable that part of the state to retain its present power, and in all candor, I submit to their sense of justice, and their sense of self-preservation, if it be not best to leave the permanent security of their slave property in the hands of the rural districts, than in the hands of the cities and such counties bordering upon the free states, as may in a short period be supplied in population by those states, and who are now, many of them, leaning to emancipation. Sir, it is for the representatives of that portion of the state, to make their own choice. That they will make a judicious choice—one consistent with the preservation of their rights, and their best interests, I will not allow myself to doubt for one moment.

Mr. President, there is yet another great principle that enters into this question of fixing the basis of representation. The fact does exist, that you have so changed the old constitution as to give to cities and towns an increased power in the state legislature. I have assumed the fact that the basis proposed by me, will operate as a check upon that increased power. Now, sir, suppose you refuse this restraint upon the increased and growing power of cities and towns in the law-making body. Have gentlemen weighed the effect, the consequences of this power, unrestrained in legislation? Why, sir, all know, the fact is incontrovertible, that cities subsist principally upon the product or interest of capital; whereas the agricultural districts of the state subsist by labor. Labor and capital have in all ages, and in all countries, been antagonistic the one to the other. Whenever capital gains the ascendancy over labor, in the power to create laws, then it is that you see the avarice of capital; and its demands upon labor become so great in cities, under municipal or police regulations, where capital, by its concentration, wields all power, that the operatives, the laborers, are often constrained to strike for higher wages, abandon the city, suffer indescribable want, or revolutionize. Even here, in our own America, where the demands of capital have not been gratified by legal plunder, as in the old world, reducing thousands, and tens of thousands, to a degree of destitution, want, and starvation, at the very contemplation of which humanity sickens, and from which the most savage heart would turn, if not with pity, with loathing and disgust—even here, within the circle of this glorious Union, we have melancholy instances of mobs springing up in your large cities to resist the oppressions of a monied power, erected into an engine of tyranny by operation of law. This is not at all strange, sir. Capital and monopolies have no souls. Capital sympathizes not with human want, nor feels for human misery, if that want or that misery can but increase its power.

Agricultural labor asks no protection at the hands of law-makers, except to be secured in the enjoyment of the fruits of its honest industry; nor can they render any. No law can stay the hand of a blighting frost, prevent the destructive ravages of the fly, furnish reviving showers to a famishing earth, or preserve the herds of cat-

tle from the effects of disease. Such is not capital. Capital, sir, is always asking, yea, and when it has power, demanding the prostitution of labor to its iron will.

This principle was illustrated by the resolution of the senior gentleman from the city of Louisville, (Mr. Rudd,) offered in this convention some days since. Whilst upon one occasion he contended with his accustomed ability that cities should be entitled to an equal representation in the senate of the state, he declared by his resolution that laborers who had but little means in the city, should not be allowed to vote upon any question involving city taxation under her corporation laws.

This is no new feature in the history of capital. It only shows its object and design, where it has the legal license to oppress labor by a restriction upon its privileges. I was struck by a remark made by another gentleman from the city of Louisville, a few days ago—I allude to the remarks of my esteemed friend, the younger delegate, (Mr. Preston.) He stated that cities had always taken the lead in struggles for liberty, and instanced several cases. Now, sir, this is true, to a great extent, but this fact does not grow out of any exclusive intrinsic love that the oppressed in cities have for liberty. Not at all. That gentleman would not for one moment maintain that those who inhabit your mountains and your valleys, would be less willing to offer up life, and all that is dear and sacred in existence upon the altar of their country's freedom. No, sir; upon the first sound of the war tocsin, the plow is left in the furrow, and the hardy planter followed by his patriotic offspring rushes to the scene of conflict, there to maintain the honor and glory of his country, or perish with them. Mr. President, if ever the freedom of this people shall be lost, which God in his mercy forbid, the last clang of arms in the deadly conflict will resound from your rural plains, and the last shriek of expiring liberty will reverberate from your mountain tops.

These revolutionary outbreaks in cities may be referred to another and a different cause altogether. They spring from the concentrated power of capital in cities, which by its perpetual oppressions upon, and exactions of labor, reduces the latter to want and misery, and in the despair of destitution the unfortunate sufferers are driven to madness, to insurrection, to rebellion. In many instances, those who engage in those tumultuous outbreaks have no conception of regulated liberty; and hence it is that in a short time you see them blindly following the blazing star of some military genius, who in the end conducts them into a state of despotism and oppression, perhaps almost equal to that from which they had just emerged. Sir, such calamities never mark the cool and deliberate action of a people spread over an agricultural region, secured as they are from the never ceasing, never satisfied requisitions of an accumulated monied influence. When they strike, they move with a matured but determined step, with a thorough knowledge of the end to be attained, and that end is regulated liberty with all its blessings, with all its glories.

Mr. President: in the remarks which I have had the honor to submit to the convention, I

have attempted to show that the basis of representation for which I contend is not a novel one in this country.

To "Malthus on population," to which invaluable work I invite the special attention of gentlemen, I am indebted in part for the laws which govern population, and the causes which in all ages and countries either restrain or encourage its increase. I have attempted to show that whilst the basis of qualified voters will increase legislative power in the cities and counties bordering upon the free states, the basis of white population would hold in check that power which in another part of this constitution we have augmented, by strengthening the arm of the rural districts.

I have undertaken to show that the institution of slavery, and the right of the citizen to import that species of property for his own use, would be more secure upon my proposed basis of representation than that contended for by other gentlemen. I have attempted to show that capital is continually striving to enslave labor, and that the means to accomplish this end is increased just in proportion as you shall concentrate it, and give it a preponderance of power in the law-making department of the government.

That cities are reared upon and sustained by capital—that you have increased city representation already in the legislature, and that with the present basis, the day is not far distant when the labor of the state will be brought trembling and in rags at the feet of a monied aristocracy, pampered into power and consequence by those very laws itself shall enact. To avert this calamity to public liberty, to the best interests and dearest rights of a generous constituency, whose kindness has bourn me to every position to which I have aspired, I have offered the basis of white population. If adopted I believe it will avert the evil I apprehend. I trust in God it may do so. Having now said all that I intend to say I leave to the good sense and better judgment of the convention its adoption or rejection as in their wisdom they shall determine.

Mr. MITCHELL. I had hoped when the debate on this question was resumed, as I esteemed it one of great importance, there would have been some discussion of the principles, some answer to the arguments which were advanced by several gentlemen, when the subject was heretofore under consideration, in support of the existing basis. So far, I do not regard the remarks which have been made by either of the delegates who have addressed the convention as tending to that point. It seems to me that this effort to change the basis of representation has resolved itself into a mere struggle for political power; and indeed the gentleman from Simpson who has just resumed his seat, says he was induced, from the fact that the territory along the river was increasing in population, to cast about for some means of enabling the interior rural districts to sustain their influence irrespective, as I understood him, of their political power, regarding the existing basis.

If that be true, if that be the motive which actuates him and others to sustain the principles contained in the resolution which was adopted by this convention, and which I must still esteem to be a novelty—if that be their ob-

ject, I say, we should look well into the matter. If sir, it has not been shown that injustice will spring out of the continuance of the present basis, if it has not been proved that it is predicated upon false principles, if it has not been demonstrated that the true basis of representation is generated by other influences than the political power of the country, if it has not been disproved that the political power resides in the voting population, then, before we adopt what I still call a novelty, we should look well into it and examine its consequences; we should look around and see whether it is sanctioned by the experience of other countries. Something is due to the existing state of things.

According to the showing of the gentleman himself, his proposition is a novelty. He says twelve states have adopted population as a basis of representation, but that is not the rule prescribed in the resolution offered by the gentleman. His is a complicated proposition. He does not propose population as a basis. You are to abstract, first the aliens. It does not stop there. You are to take out of the free white population those who having been citizens of other states, have not acquired a residence by living one year in Kentucky. Has the gentleman found, among the thirty states of this Union, a proposition tallying with his? He says there are three states which have adopted the principle upon which Kentucky is represented. Has he shown that one state has adopted his plan? If not, his proposition is a novelty.

To exclude aliens, to exclude a portion of the white inhabitants, nay, to exclude a portion of those who are born within the limits of the United States, and who have come into the state with an avowed purpose of making their residence in it, but have not been living here long enough to entitle them to vote—when you exclude them, and permit a child just born, to be represented—to do that, is, in my judgment to present to this convention, a novelty. But, like the elder gentleman from Nelson, I am disposed to look at a proposition when it comes up, and see what are its intrinsic merits. If I believe it correct, if I regard it as founded on correct principles, and for the good of the country, it receives my support.

One great difficulty growing out of the proposition of the gentleman from Simpson, is, that it places too much power in the hands of a few individuals—those whose business it would be to enumerate the population. They would have in their hands, to some extent, the political destiny of the country. How could frauds, in the enumeration made under such a rule be detected. A hundred, five hundred, nay, a thousand of representative population in some counties might be put down, or abstracted by way of increase or diminution as might suit the purposes of the officer, and yet the fraud could not be detected. There is no check, no means by which this thing could be detected.

But under the simple plan which now exists, if the vote at the polls does not correspond with the voting population reported by the officer, the fraud would be immediately detected, as in the nature of things, the one must nearly approximate to the other. Not alone because opportunity is afforded to practice frauds without detec-



tion; not alone because a door is opened wide for the foulest abuses and corruptions to intrude themselves and destroy the purity of our representative system, so essential to popular liberty; not alone because it might change the complexion of political parties irrespective of their strength, and thus defeat the popular will; not alone for these reasons, but for many others, is it objectionable.

I think there are difficulties on all hands which would beset the individuals employed in their efforts to carry out this enumeration. The elder gentleman from Nelson, in speaking of this matter, says there would be no difficulty. All the enumerator would have to do would be to inquire how many children the man or the woman might have. Would it be proper that irresponsible statements, made as these would be, should be assumed to possess statistical accuracy and become the basis on which we should predicate the representation of the state? Are we to place the political power of the state upon so uncertain a foundation?

But the amendment of the gentleman from Nelson, (Mr. Hardin,) goes further. The enumerating officer is to investigate and ascertain who are aliens and who are citizens. Is he to take the word of every man he meets as to his citizenship? Must he not examine, in order to exclude aliens, documentary evidence as to whether foreigners are naturalized? Must he not institute enquiries in order to ascertain the identity of the individual holding them, with the one described in the naturalization papers? Must he not be erected into a judge to be able to determine whether these papers are properly authenticated or not, for they are obtained and brought from every section of the Union? Nay, he must go on and inquire as to the residence of every individual; he must know whether that individual has had such a residence as by law may entitle him to vote. Upon this subject he must take testimony—must be empowered to investigate facts, or else he and the country will be left to the vague and frequently untruthful statements of irresponsible persons. These are objections which ought to constitute an insuperable difficulty to this new plan when contrasted with the simple one which now exists.

But the gentleman from Simpson says, that by the laws of population, as derived from the history of nations for ages past, it can be demonstrated that the population of the rural districts is greater in proportion to the voting population than is the population of the cities; and this he assigns as a leading reason for proposing this new basis. Other gentlemen entertain the same opinions. Statistical arguments and tabular statements have been introduced here to prove that the population of the interior comprises rateably a greater number of children; or that the representative population upon the plan proposed in the amendment of the gentleman from Nelson, (Mr. Hardin,) is greater in proportion to the number of voters in the interior and rural districts than in the cities and along the river border.

I have made some examination into this subject, the result of which is a decided opinion that no certain and reliable conclusions can be drawn as to the amount of the representative

population from the number of children. I believe that it is altogether uncertain what effect would be produced on the distribution of political power by the adoption of the amendment. I believe that it might vary that distribution from year to year as the uncertain tide of population ebbed or flowed, and that there is no fixedness about it. As a proof of this position, I will read from some lists which I have prepared, showing a comparison between the increase and diminution of the voting population in 1847 and 1848, and the like changes in the juvenile population for these years. These lists demonstrate that the children do not increase in the same ratio as the voting population does, and that there is no certain relation between them. Sometimes the voting population falls off, and the number of children increases, and sometimes the number of children falls off, and the voting population increases.

From this list, it will be seen that the counties of Bourbon, Boone, Bath, Caldwell, Casey, Cumberland, Edmonson, Fayette, Fleming, Greenup, Logan, Livingston, Pendleton, Spencer and Union, while they lose in their voting population, increase—and some of them very greatly—in the number of their children. On the other hand, it will be discovered that the counties of Crittenden, Franklin, Floyd, Grant, Hardin, Hancock, Letcher, Lewis, Marion, Marshall, Monroe, Morgan, Rockcastle, Todd, Trimble, Woodford, and Washington show an increase of voters and a decrease of children. It will also be observed, from an examination of the whole table, that it presents so much irregularity, as to forbid the construction of any rule by which the whole population could, with any approximation to accuracy, be estimated from a knowledge of the numbers comprising any particular class or description, or by which the whole could be resolved into its parts, so as to exhibit to us the effect of the new basis proposed, on the distribution of political power.

Table exhibiting a comparison between the increase and diminution of voting population, and the increase and diminution of juvenile population, in the years 1847 and 1848, in each county of Kentucky:

		Voters.		Children.	
		Increase.	Decrease.	Increase.	Decrease.
Adair,	1507	55		307	
Allen,	1413	185		108	
Anderson,	1086	88		72	
Boyle,	1136	24		79	
Bracken,	1586	76		14	
Bullitt,	1160	30		71	
Bourbon,	1769		50	118	
Barren,	2939	68		228	
Breckinridge,	1738	49		245	
Boone,	1861		2	295	
Breathitt,	588	41		242	
Ballard,	726	27		202	
Bath,	1823		38	112	
Campbell,	1447	165		47	
Caldwell,	1859		27	45	
Christian,	2132	46		83	
Clarke,	1715	50		41	

Casey,	937		23	16
Clinton,	807	47		86
Cumberland,	971		14	33
Carter,	908	80		215
Crittenden,	945	40		
Calloway,	1206	even		543
Clay,	750	53		136
Edmonson,	646		27	88
Estill,	1011	51		130
Franklin,	1713	120		
Fayette,	2584		19	240
Floyd,	961	41		
Fleming,	2310		11	167
Fulton,	631	29		163
Gallatin,	818	27		11
Graves,	1576	53		3
Greenup,	1551		1	183
Grant,	1098	47		
Grayson,	1127	52		113
Garrard,			13	
Green,	2357	44		7
Henderson,	1453		23	
Hardin,	2376	45		
Hancock,	557	34		
Henry,	1849	9		13
Harlan,	661	30		21
Harrison,	2056	55		142
Hickman,	656	23		88
Jessamine,	1323	43		123
Jefferson,	6774	37		41
Johnson,	569	20		66
Kenton,	2559	479		443
Knox,	1091	55		84
Larue,	981	62		74
Letcher,	365	26		
Laurel,	777	61		144
Lincoln,	1436	121		111
Lewis,	1324	96		
Lawrence,	956	79		76
Logan,	2016		31	161
Livingston,	822		14	77
Muhlenburg,	1529	52		74
Madison,	2549	32		249
Montgomery,	1391	39		155
Mercer,	2093		25	
Marion,	1755	45		
Marshall,	824	31		
McCracken,	735	132		176
Meade,	1022	16		116
Monroe,	1230	78		
Morgan,	1225	58		
Mason,	2845	116		338
Nicholas,	1713	126		70
Nelson,	2007	40		115
Owen,	1774	47		152
Oldham,	1073	35		99
Owsley,	566	40		339
Perry,	463	6		54
Pulaski,	2305	149		490
Pike,	807	26		7
Pendleton,	1207		7	23
Rockcastle,	798	8		
Russell,	916	48		129
Simpson,	919		33	
Shelby,	2317	18		41
Scott,	1839	32		497
Spencer,	1003		8	126
Todd,	1382	60		
Trigg,	1375	48		45
Trimble,	994	73		
Union,	1264		36	759

Woodford,	1255	11		54
Wayne,	1423		13	264
Warren,	2121	21		49
Washington,	1750	78		22
Whitley,	1021	36		241

These statements go to show that there is no certainty from the number of children, as to the entire population, or as to any of its parts. Sometimes we see them falling off while the voters increase, and sometime they increase while the votes fall off; sometimes we find the increase of the one altogether out of proportion with the other description of population, and *vice versa*; so no inference can be drawn from the data in our possession by which to determine what might be the representative population under the system proposed here. You have no certain basis upon which to predicate a calculation by which you can approximate to anything like accuracy as to the result of this system.

The gentleman from Caldwell presented an array of specious tables with which he attempted to show by a comparison between Louisville and various counties, how Louisville would gain and the counties embraced in his tables would lose under the present system; and how, if the present system were changed, and that embraced in the amendment adopted, Louisville would lose and these counties would gain. I have taken the gentleman's own figures and based my calculations upon them, producing very different results. According to that gentleman's showing, the representative population of Louisville in 1840, when the last census was taken, was 17,161.

By reference to the auditor's report for that year, we find the voting population of Louisville 3,086.

Now take the first block of counties contained in the table comprising Adair, Allen and Barren. The representative population, according to the table, is 26,292, their voting population for the same year is put down in the auditor's report at 4,548. Now institute a proportion as 26,292, the representative population of these counties is to 4,548, their voting population, so is 17,161, the representative population of Louisville to 2,968, the voting population to which Louisville would be entitled. But as Louisville, at that time, had 3,086 voters, she loses by this comparison 118 votes, or not quite four per cent.

Take the second block of counties and institute the same proportion assuming the figures of the gentleman from Caldwell, (Mr. Machen,) and its result as shown in my table, is 145 votes in favor of Louisville, as she would be entitled to 3,231 votes, or nearly five per cent. increase.

In the third block, Henderson, Daviess, Ohio, and Union, pursuing the same course of calculation, Louisville would be entitled to 3,037, or 49 less than her number, about 1½ per cent.

The fourth block, Washington, Marion, Franklin and Anderson, gives Louisville 3,165 votes—a gain of 79, or more than 2½ per cent.

The fifth block, Calloway, Graves, Hickman, McCracken, gives Louisville 2,916, which is a loss of 170, or a little over 5 per cent.

The sixth block, Bourbon, Clarke, Jessamine, and Woodford gives Louisville 3,429, an excess over her actual vote of 455, being upwards of 14 per cent.

The seventh block, Nelson, Shelby, and Spencer, gives Louisville 3,386 voters which is a gain of 300, or about ten per cent.

The eighth, Caldwell, Hopkins, Livingston, and Trigg, give Louisville 2,933, which is a loss of 153, or about five per cent.

The ninth, Wayne, Clinton, Cumberland and Pulaski, give Louisville 2,717, a loss of 369, or about 12 per cent.

The tenth, Christian Todd, and Logan, give Louisville 3,172, a gain of 66, or about  $2\frac{1}{4}$  per cent.

The eleventh block, Madison, Garrard, and Lincoln, give Louisville 3,334, a gain of 248, or about 8 per cent.

The whole table shows an excess of gain over loss of 434 votes in favor of Louisville.

Statement, showing the relative difference between the voting population and the representative population, under the resolution of the gentleman from Simpson, and the effect of this change of basis as applied to the table of the gentleman from Caldwell, calculated from the census of 1840:

Counties.	Voters.	Representative population.
Adair,	1,138	26,292
Allen,	1,033	
Barren,	2,377	
	4,548	
Louisville,	3,086	17,161
	26,292 : 4,548 :: 17,161 : 2,968.	
Bracken,	1,134	25,870
Pendleton,	733	
Harrison,	1,696	
Nicholas,	1,309	
	4,872	
	25,870 : 4,872 :: 17,161 : 3,231.	
Henderson,	1,111	23,374
Daviess,	1,112	
Ohio,	1,019	
Union,	896	
	4,138	
	23,374 : 4,138 :: 17,161 : 3,037.	
Washington,	1,371	25,812
Marion,	1,369	
Franklin,	1,233	
Anderson,	789	
	4,762	
	25,812 : 4,762 :: 17,161 : 3,165.	
Calloway,	1,544	26,893
Graves,	1,072	
Hickman,	1,225	
McCracken,	729	
	4,570	
	26,893 : 4,570 :: 17,161 : 2,916.	
Bourbon,	1,630	26,233
Clarke,	1,461	
Jessamine,	1,198	
Woodford,	1,153	
	5,442	
	26,233 : 5,442 :: 17,161 : 3,429.	

Nelson,	1,761	24,784
Shelby,	2,199	
Spencer,	931	
	4,891	
	24,784 : 4,891 :: 17,161 : 3,386.	
Caldwell,	1,380	28,500
Hopkins,	1,267	
Livingston,	1,235	
Trigg,	990	
	4,872	
	28,500 : 4,872 :: 17,161 : 2,933.	
Wayne,	1,171	27,405
Clinton,	632	
Cumberland,	795	
Pulaski,	1,741	
	4,339	
	27,405 : 4,339 :: 17,161 : 2,717.	
Christian,	1,682	24,040
Todd,	1,058	
Logan,	1,703	
	4,443	
	24,040 : 4,443 :: 17,161 : 3,172.	
Madison,	2,143	24,730
Garrard,	1,403	
Lincoln,	1,294	
	4,840	
	24,730 : 4,840 :: 17,161 : 3,334.	

In this colocation, Louisville, by the new proposition, assuming the census of 1840 as the basis of the calculation, gains aggregately 1,293 votes, Loses aggregately, 859 "

Excess of gain over loss, 434 "

In 1840, as I have before stated, the voting population of Louisville was 3,086, and that of the whole state 108,539, a little over one thirty-fifth of which belonged to Louisville. Her free white population was 17,161, and that of the whole state 590,253—one thirty-fourth part and a fraction less than a half over, belonged to Louisville. So that population would have given her more power than political numbers.

In addition to the foregoing, I have a statement showing that twenty three counties, having a slave population of only 5,191, would be entitled to fourteen representatives, making the qualified voters the basis, but assuming the juvenile population as the basis, and fixing the ratio at 1,834, these same counties would be entitled to sixteen representatives.

	Slaves.	Voters.	Children.
Breathitt,	146	588	966
Clinton,	230	807	1,320
Campbell,	205	1,447	1,974
Carter,	256	908	1,480
Floyd,	167	961	1,599
Harlan,	88	661	1,030
Johnson,	21	569	922
Letcher,	49	365	550

Laurel,	161	777	1,266
Lawrence,	91	956	1,590
Marshall,	221	824	1,344
Morgan,	157	1,225	1,815
Owsley,	99	566	878
Perry,	125	463	762
Pike,	91	807	1,308
Whitley,	155	1,021	1,692
Clay,	448	750	1,340
Estill,	492	1,011	1,583
Grant,	475	1,098	1,395
Grayson,	293	1,172	1,730
Pendleton,	469	1,207	1,072
Rockcastle,	395	798	1,066
Russell,	377	916	1,493
	5,191	19,852(14	30,195(16

This table is exhibited not from any belief that these counties are more inclined to emancipation than other counties of the state, but to meet the assertion that the present basis has an anti-slavery aspect.

These tabular statements which I have prepared with care and accuracy, show that no reliance can be placed upon the number of children, as given in the auditor's report, in digesting a plan for the distribution of political power, and that in stepping off the ground we now occupy, we take a leap in the dark.

The laws of population, as they have been deduced from observation and study of the progress of nations in the old world, or even from the condition of that portion of our own country which lies along the Atlantic slope, and was therefore the earliest peopled, afford no certain criteria by which to estimate the popular growth and increase of a country, so recently settled as Kentucky. Any attempt at analysis, of the component parts of population conducted in accordance with these rules, and predicated upon a knowledge of the numerical whole, would exhibit results, in all probability, at war with the truth. On the other hand, an effort to calculate the entire population from an enumeration of one particular description, or to ascertain the strength of the remaining parts by collation or comparison with such as are known, would be equally futile. The social elements are thrown together too loosely, social combination is too much the result of extraneous agencies to admit of the application of theories eliminated from popular phenomena exhibiting themselves under circumstances altogether different.

This country has increased in population beyond the previous experience of mankind, and is, in this respect, without a parallel among the nations of the earth. Agencies have been at work to bring about these results, which do not exist, and which never did exist, in any other country. It has been the grand rallying point on which immigration from all parts of Europe has centered. Kentucky is even now in the transition state so far as population is concerned. Where is the pioneer race which wrested this country, when it was a wilderness, from the stern grasp of the savage? Where are the strong hands and bold hearts, who, planting the standard of civilization in a virgin soil, clothed in the habiliments of its primeval grandeur, amid the wild war whoop of the merciless Indian and the death groans of his murdered victim, laid

the foundations of Kentucky emulvalry? They are gone, sir; they have passed away with the heroic circumstances which generated and developed their noble peculiarities. Their dauntless courage, their peerless daring, their self-sacrificing spirit consecrated in blood, are the proud memories which survive them, and the rich heritage which has descended to their posterity. These are the leaves—the green, the unfading leaves which compose that glorious chaplet that encircles the brow of Kentucky.

They are gone—the race which won this fair land from the savage dominion of nature—a land now teeming with population, now studded with proud cities, whose christian spires pierce the heavens—where is heard the welcome sound of the church-going bell, and where industry and commerce are achieving their wonderful results. They are gone, sir, I say—swept away by the mighty tide of population which has been rolling onward to the far west, and whose waves will continue to roll till they break on the shores of the great Pacific. Here, nothing is stationary. Every swell of the flood brings—not a new generation—but a race as different from the one which preceded it, as one generation is different from another. And now, months and years are accomplishing results in social transformation, which generations and centuries scarcely achieved in the old world. The surging torrent, bearing race after race, and class after class on its heaving breast, rushes onward, and under its resistless influence countless thousands are swept away, to be succeeded by other thousands, who in turn give place to others, and “the cry is, still they come!” Verily, sir, it may be said of us, that the places which now know us, will shortly know us no more, forever.

What though a few may linger on the green islets that gem this sea of population; they stand in a changed and changing scene, themselves unchanged—monuments of the past, strange and curious specimens of an extinct race in the antiquity of progress—Salathiel, who, with the visage of youth bear the impress of age—of age not counted by time, but by the lapse of progress and change.

Our country is unlike any other on the face of the globe. It is, emphatically, a moral, and political, and a social anomaly. Leaping as it were into existence, like Minerva from the brain of Jupiter, fully grown and fully armed, at a period when all Europe was shrouded in political darkness, was down-trodden under the iron heel of conscript patricianism, she dared, in the face of all the adverse circumstances by which she was surrounded, to proclaim the rights of man. A new star arose above the horizon of nations, and flocking myriads, guided by its light, came from the east, as did the wise men of old, to worship at the shrine of this new political divinity, which had been indicated by the rising light. Her onward progress has outstripped the wildest dream of enthusiasm, and no rule has yet been elaborated by which the problem of her destiny can be solved. Her popular increase is not restricted to her own self-creating energies. She draws her resources from the whole area of civilization. Her population is not divided into castes. Hereditary serfdom and hereditary degradation, from which no energy, no ability can

escape, are unknown. Men here do not come into the world with the stamp of their destiny upon them. We have not among us those who are born peasants, and therefore must die peasants; nor is it the case here, as in Europe, that men, born in the crowded precincts of a city, must almost necessarily breathe its fetid atmosphere during their whole lives. The scope for enterprise is so great, and the means of living so easily attained, that men may vary their locations or their pursuits at the prompting of inclination, or even caprice. Hence mobility is a striking characteristic of our population, and hence our cities, unlike the cities of the old world, resemble those straits hard-by the pillars of Hercules, where there are two currents, the one setting to the sea and the other to the ocean. The country is continually pouring into the city and the city pouring out its population upon the country. These changes are going on so constantly as to defy all effort at calculation, based on the statistics of other countries, or even those of our own.

Why, then, should gentlemen talk about Malthus, and about the laws of population? Why should they attempt to establish a rule, the effect of which cannot be anticipated? Why take this leap in the dark? Why depart from the known and simple, to adopt the complicated, the difficult, the untried, and the unknown? Shall we abandon the firm ground on which our fathers stood—upon which they reared their representative system, that powerful element in popular liberty? a system so simple, and so beautifully appropriate—simple, because easily ascertained and promptly acted upon—beautifully appropriate, as exhibiting at one view, not only the measure of political power, but the just scope of representation. Until something can be shown as a reason for abandoning the high ground which our fathers took when they framed the present constitution—a ground which placed them far in advance of the other states—when they declared the great truth, that political power, which resides in political numbers, should be the measure of representation—I say, unless it can be shown that that ground is false, I shall protest, by my vote, against the change.

And then the convention adjourned.

THURSDAY, DECEMBER 13, 1849.

Prayer by the Rev. STUART ROBINSON.

#### APPORTIONMENT.

Mr. IRWIN. Mr. President: I desire this morning to present a minority report from the committee, raised by a resolution presented some days since, by the honorable gentleman from Nelson, (Mr. C. A. Wickliffe.) The report of that committee is so objectionable, so unequal in its operations, that I cannot find it in my heart to sustain it. I feel satisfied that if the report which I now offer, and which I intend at the proper time to offer as a substitute for the report of the majority, could be adopted, the question

as to "basis of representation," would be at once settled. I voted for a resolution some days since, which by some is called the "baby basis;" and so far as I can see, there seems to be great difficulty in the house coming to any definite action on the subject. I would be willing to compromise upon this subject, and if my report shall be adopted, I think it would be perhaps the most satisfactory arrangement that at present can be secured. I wish it to lie on the table. There is no use in its being printed, as it can be had by any gentleman in the old constitution.

The report was as follows:

Sec. — Representation shall be equal and uniform in this commonwealth, and shall be forever regulated by the number of qualified electors therein. In the year eighteen hundred and , and every fourth year thereafter, an enumeration of all the free male inhabitants of the state above twenty-one years of age, shall be made in such manner as shall be directed by law. The number of representatives shall, in the several years of making these enumerations, be so fixed as not to be less than seventy-five, nor more than one hundred; and they shall be apportioned for the four years next following, as near as may be, among the several counties and towns in proportion to the number of qualified electors; but where a county may not have a sufficient number of qualified electors, to entitle it to one representative, and when the adjacent county, or counties, may not have a residuum, or residuums, which when added to the small county, would entitle it to a separate representation, it shall be in the power of the legislature to join two or more together for the purpose of sending a representative: *Provided*, That where there are two or more counties adjoining, which have residuums, over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to that county having the largest residuum: *And provided further*, That the general assembly, in making said apportionment, shall commence either at the county of Fulton, or the county of Greenup.

The minority report was laid upon the table.

#### MODE OF REVISING THE CONSTITUTION.

Mr. TALBOTT offered the following resolution, and moved that it be laid on the table and printed:

*Resolved*, That whenever two-thirds of both branches of the general assembly shall deem it necessary to call a convention to revise this constitution, or agree in the necessity of making a specific change, alteration, or amendment, such proposed call for a convention, or specific change, alteration, or amendment, shall be read and passed by a majority of two-thirds of each house respectively, on each day, for three several days, and for two successive sessions. Public notice shall then be given thereof by the secretary of state, at least six months preceding the next general election, at which the qualified electors shall vote directly for or against such call of a convention, or specific change, alteration, or amendment; and if it shall appear that a majority of all the qualified electors in the state, shall have voted for such proposed call of a convention, or specific change, alteration, or amendment, then,

but not otherwise, the general assembly, at its next session, shall insert the specific change, alteration, or amendment, so approved, as part of this constitution, or call a convention, so voted for, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen in the same manner, at the same places, and at the same time that representatives are to be voted for, by citizens entitled to vote for representatives, who shall meet within three months after said election, for the purpose of revising, changing, or amending this constitution: *Provided, however,* That no specific change, alteration, or amendment, shall ever be made to any article, section, or part of a section in this constitution, involving the right of the citizen in his life, liberty, or property, without the call of a convention.

Mr. TALBOTT. I have never been in the habit of public speaking, Mr. President, and it is always embarrassing to me to attempt it. But it is peculiarly so on the present occasion, as I am conscious of my inability to do that justice to this great subject, which I feel its importance demands. I would not attempt to say a word at this time, in favor of the proposition presented in the resolution just submitted, but for the fact that I know there exists, in the minds of delegates, a prejudice against this mode of amendment which is wholly unfounded and erroneous. I have the honor to represent a district here where the two great parties—the emancipation and the pro-slavery party—have as much zeal, energy, and discrimination, as any other; and wherever position and proposition has been, throughout the late canvass for seats on this floor, as cautiously and as thoroughly investigated and scrutinized, as in any section of the State. After I had been a candidate for about five months, and after many warm and enthusiastic speeches had been made on both sides, party spirit aroused to the highest pitch, victory desired by all, every mind upon the alert, I was called on to give my positions in writing. I did so. I assumed the position set forth in this resolution. I was immediately assailed by my opponents, and by the whole emancipation party, as drawing invidious distinctions, and granting exclusive privileges. But, sir, before the subject had been investigated a week, there seemed to be a unanimous concurrence of opinion among pro-slavery men, that the ground was not only just and fair to all parties, but that it was the strongest pro-slavery ground in the world; and I was elected, beating my emancipation competitor upwards of four hundred votes, with other pro-slavery candidates upon the track. This much, sir, I have thought it necessary to premise, before I proceeded to the full investigation of the subjects embraced in the resolution, in order to show that the same objections do not lie everywhere to this mode of amendment, as seems to rest in the minds of some gentlemen in this house. I desire, Mr. President, to embrace, in the remarks I am about to make, the whole ground occupied, and the plan contemplated by the emancipationists, for the abolition of slavery in Kentucky without compensation; and show, if I can, as briefly as possible, how, by incorporating any portion of that plan in the constitution we are about to frame, the institution of slavery, as I

believe, will be placed in their hands and subject to their disposal. Their plan is, first to get inserted in the new constitution the law of '33; then specific amendments upon all subjects, or the old mode of calling a convention. I know, sir, there will be in some of my remarks a slight digression from the point immediately before the mind, as presented in this resolution; but as I will not be able to show its full force and effect without, I hope the house will indulge me for a very short time, while I attempt to examine their whole ground.

Before I proceed, sir, to show the great advantages, as I think, to be derived to the pro-slavery interest, by adopting the mode of amendment indicated in the resolution I have had the honor to present, I will endeavor to show, very briefly, some of the very great disadvantages that will, in my judgment, necessarily grow out of the adoption of any other mode, hitherto presented. Take then, first, specific amendments upon all subjects. Say that your constitution may be amended at any time specifically upon any and every subject. Say it shall require a majority, and if you please, say the largest majority; say two-thirds of the legislature and a majority of all the qualified voters in the state; and what, sir, would be the practical result? Put, then, a clause in your constitution, that slaves shall not be taken from their owners, except upon any condition you please—put it upon the hardest terms. Then, sir, make it amendable specifically upon all subjects, and what would your prohibitory clause avail? What protection would it extend to the slave property, or how would it tend, in the slightest degree, to the suppression of agitation upon that subject? Put any condition you please in the constitution in regard to slavery. Throw around it such guards as you deem best; protect it in any way you think proper; say they shall not be taken for one hundred or one thousand years; require emancipation upon the hardest possible terms. The very moment you admit the constitution may be amended specifically upon all subjects, by even the largest majority, you have opened the field for and invited the agitation of the very question we came here to settle, and if possible, to place beyond the reach of controversy.

Say what you please sir, in the constitution about slavery, but the very moment you agree and insert in it, this mode of amendment, you have done all the emancipationists now wish or ask, and you yield for ever, the question, the great question, the question I never intend to yield, that they may take our slaves without our consent, or without compensation. Sir, the most ultra emancipationist in Kentucky, has never asked, has never dared to ask, to set the negroes free, upon any plan, or at any time whatever, unless a majority of the whole people of the commonwealth were in favor of it. And I ask you sir, if it would make any difference with them, or if it would protect the slaveholder for a moment, no matter what was said about it in the constitution, if they had the privilege to change that clause, as soon as they could procure the majority required by the constitution. Not a moment sir. It is all they ask. They have never asked more than to say, they might free the slaves, if they could get a majority in favor of



it, and a clause of this sort would certainly give them that privilege. Sir, what is the difference in effect, between saying to a gentleman, "I will not invite you into my house," and saying "the door is open, you can do as you please about going in." What is the difference I ask, between saying to the north, we will not put it in the constitution, that you shall set our negroes free, but here is the constitution with a clause, that you may change it as you please. What I ask you sir, would be the difference in effect, between the two propositions, in their practical results? No difference whatever. Then sir, the mode of specific amendment upon all subjects is objectionable on another account. It would invite discussion, agitation, and eternal contention, on this most dangerous and exciting subject, the subject of slavery. All officers, now, are to be elected by the people, directly. The emancipation party throughout the state would therefore have their candidates in the field for every office in the commonwealth. Their plan would be, to keep up agitation, for organization, and organization for effect and ultimate success. Hence they would keep a candidate in the field everywhere, in order to circulate their abolition and inflammatory documents throughout the state, and thus excite discontent and insubordination on the part of the slave, and insecurity and uncertainty upon the part of the master. This sir, would be their plan under this clause. I ask you sir, if it would not be so? If it would, how long I ask you Mr. President, could we live under such a state of things? Let us suppose a state of case, sir. Let us suppose for a moment that ministers of the gospel, of the best talents and first respectability in the country, to be constantly preaching, in private and from the pulpit, to the master and to the slave, to one and to all, that slavery is a sin in the sight of God, a great moral and social evil, a corroding cancer, and ruinous to the best interests of the state? Then sir, in addition to that, suppose the abolitionist to be thus licensed, going forth and sowing broadcast, throughout the length and breadth of the land, the seeds of dissension, insurrection, rebellion and revolution, into the ignorant minds and corrupt hearts of our slaves. Teaching them that they were born as free as their masters—that they were held in bondage improperly, and by no other law than the law of tyranny and oppression—that God, religion and the abolitionists, were all for them—to strike, and strike now for their liberty—that heaven would smile upon, and crown them with success, and that the whole civilized world would justify their effort at freedom upon any terms and at all hazards? Sir, I ask you how long we could live under such a state of case? Where would be the guaranty for human life? Where the security and protection of property? There would be no security, no protection. The slave who is now in many instances your best friend, might then and thus be induced and stimulated to become your deadliest enemy. Insurrection, rebellion and revolution would ensue, and the whole affair would wind up in a tragedy too horrible even to contemplate—one that would cause even the stoutest heart to shrink and weep over the bloody scene. I ask you sir, and I ask this house, if they will, when

they have come up here to settle this great question, and have it in their power to do so, thus afford to the emancipationist, the men and money to prosecute a war of extermination against an institution, involving an interest of sixty millions of dollars, and the lives and destiny of two hundred thousand slaves. I urge you sir, and I urge this house to think seriously upon this subject before you act. There is much to be gained, or much to be lost by our decision upon this mode of amendment.

Now sir, I will consider but for a moment another mode of amendment. The mode adopted in our present constitution.

The objection I have to the mode there prescribed is, that combinations will be formed between the fragments of all parties, similar to those that have called this convention, and thus emancipationists will be able to form new and strong alliances, by running candidates for every office in the country, and keep up the same ceaseless agitation, as under the mode of specific amendments upon all subjects or the open clause—and by coalescing and fraternising with all the fragments of all the different minority parties in the country, they would soon be able to call a new convention, with the full determination and for the express purpose upon their part, of destroying the very interest we came here to secure. Is there any way, do you ask sir, to prevent this? There is a way to settle this question in my judgment, and settle it forever without doing injustice to any, while we distribute equal justice to all parties; and that is by inserting, in the new constitution the specific mode of amendment which I have had the honor to present. By incorporating in the constitution a clause to amend its specifically upon all subjects, not involving the right of life, liberty, or property, upon the recommendation of at least two thirds of both branches of the legislature for two successive sessions, and then a direct vote of all the qualified electors in the state, a majority of all voting for it, you would give sufficient strength and stability to the constitution, upon all other subjects, and put to rest forever, the great question of slavery. The emancipationist could then free the negroes, at any time, with compensation, without a convention, and they never should, and they never shall, by my consent or my vote, free them without compensation, with a convention. I ask you, sir, and I ask the house if this is not the time to settle this question? How, then sir, do you ask me, will this mode accomplish that great and so much desired end. Why sir, if you have the constitution amendable in the manner indicated, the politician would never want a convention, he could accomplish his object by specific amendment. The anti-elective party would want no convention, they could accomplish their end in the same way. No minority party or fragment of a party, would wish a convention, for they could not hope to gain anything by a convention, which could not be obtained without. The pro-slavery man would not wish a convention, for he could not possibly gain by it; he would have everything to lose and nothing to gain. For slavery would thus be settled, and settled forever, without a convention. Who then sir, would want a convention? There certainly would be no ne-

cessity for any. The emancipationist would not and could not complain, unless he wanted our slaves for nothing. They could reach them at any time, when they could get a majority in favor of paying a fair and full compensation for them. Surely, sir, there is no one here who wishes them freed without. Sir, while I might be willing to give them up at any time with compensation, I would not be willing to say that they might call a convention in two thousand or two hundred thousand years, to take them for nothing without the consent of the owner. Where then the necessity of a convention? Where the objection to this mode of amendment? How could a convention be called? There could be no improper combinations, for none would be necessary. All could reach their ends, except the emancipator, by specific amendment. And so could the emancipator if he would only pay—he never should without. Will it not then, I ask, settle this question forever, and settle it justly.

But, sir, I have been told that this mode of amendment is objectionable—that it draws an invidious distinction between the different interests in the country. Sir, I deny that it makes any such invidious distinction. It places every man of every party, and every principle of every party, and every species of property of every party, upon an equal footing in the new constitution. Is that wrong, sir; is that drawing invidious distinction? Is it drawing invidious distinctions, to say to the people of this commonwealth, that if they do not like electing judges by the people, you may change that mode to some other you think better, and to the emancipationist, you shall not have the negroes, bought and paid for by the toil and sweat of the owner, unless you compensate him for them? Is that drawing invidious distinctions? I think not, sir. I think the man who comes to me and demands all the property I have, without money and without price, and at the same time declares that the constitution should and does protect all his; I think, sir, that is the man who is drawing invidious distinctions, and drawing them with a vengeance. I ask you if it is right to take a man's property of any kind for nothing? Is it doing unto others as you would have others do unto you? Is it loving your neighbor as yourself? Is it doing good for evil, or evil for good? Is it not, sir, a total perversion and subversion of all God's holy law? Is it not, sir, after men have formed a social, religious, and political compact, and pledged themselves to each other to protect every man, in life, liberty, property, and the pursuit of happiness, a violation of, and an outrage to every principle of moral, religious, and political justice, under such circumstances, to deprive the citizen of his property of any kind without his consent, or without compensation? I ask you, sir, if it would not be an outrage of all a man's natural and legal rights, thus to strip him of the fruit of the toil and sweat of many years. It may chance to be, sir, that a father dies and leaves two sons; to the one he gives ten thousand dollars in money, to the other ten thousand dollars in lands. The one who gets the money vests it all in slaves, the other retains his in lands, all acquired and held under the same government and laws, and paying tax for

the same guarantee of protection. Now, sir, suppose the majority, under a wild and fanatical delusion, start up, and in a freak, impelled by the spirit of revolution, declare that it is wrong for any man to hold the right, title, or possession to any particular tract or parcel of land whatever, and that as far as land is concerned, it shall all be in common, and actually rob this man of his land without his consent, or without compensation, and leave his brother in the full enjoyment of all his slaves. I ask you, sir, if this would be right? Suppose then, sir, we reverse it. Suppose the same majority under the influence of the same mad delusion, rise up in a similar freak, impelled by the same spirit of revolution, and declare that slavery is a sin, a great moral and social evil, a blight and mildew on the body politic, and ruinous to the best interests of the state; then swear that every slaveholder should surrender up his slaves without money and without price, immediately or prospectively, and actually take the slaves from the other man, and leave his brother in the full enjoyment of all his lands. I ask you, sir, if this would not be wrong? Would it not be a violation of every thing that is pure in religion, correct in morals, and just in government. If so, then I ask sir, where is the injustice done, where the invidious distinction drawn by my mode of amending the constitution we are about to frame? It draws no such invidious distinction. It puts all lives in the same category, all liberty in the same category, all property in the same category, all parties upon an equality, and settles forever the much vexed and all absorbing question of slavery. It will put it forever beyond the reach of the emancipation party unless they change their position, and go for emancipation with compensation. If they do this, sir, then I say yea and amen. We live in a republican government, where, if there is no violation of right, no violation of justice, no compromise of truth and principle, no outrage of morality and religion, no sacrifice of human life or human liberty, majorities should rule, and all should submit without a murmur.

I do hope Mr. President, the house will sustain the proposition I have had the honor to present. But while I am up, I will say a few words upon another branch of this subject—the law of '33. I am opposed to its insertion into the constitution. I hope it will not be done. I do not believe sir, that public sentiment demands it. The people, so far as I know anything about public sentiment, desire to see in the constitution, neither the law of '33, nor the proposition of the gentleman from Simpson, (Mr. Clarke.) I think, so far as both propositions are concerned, they desire to see the constitution left as it is. There has been much said here Mr. President, in the course of debate, about parties and party ties—about the whig, and about the democratic party—the convention and the anti-convention party—the elective and anti-elective party. There has been sir, some crimination and recrimination, all of which I have been pained to witness; but sir, I hope, before this convention adjourns, to see all the belligerents convert their spears into pruning hooks, their swords into plowshares, and study war no more. I hope to see the lion lie down

with the lamb and the leopard with kid, so that when we adjourn and submit our work to the people, we may come up, as one man with one voice and one hand, against the common enemy, to the labor of our hands. I trust Mr. President, that while we all know there are parties existing in the country at war upon the great principles that separate them, I hope sir, there is but one party and one feeling here—a party and a feeling for the country—a party determined to secure to every citizen in the commonwealth, protection in his life, liberty, property, and the pursuit of happiness. So far as it concerns myself Mr. President, I came here untrammelled by party ties, and unbiased by party prejudices. I have no spleen to vent, no political ambition to gratify; no interest to secure but the rights of our citizens, no end in view but the happiness of our people, and nothing to serve but our common country. I stand here sir, pledged to no party but the people, to no being but God, to no principle but truth and justice. I stand pledged to do that which I think is right in itself, and I intend to discharge that pledge firmly and fearlessly, regardless of all party ties. I intend to do nothing for which I do not expect, and am not willing to be held responsible here and hereafter. Sir, I feel, as I trust every delegate here feels, ready and willing to lay my hand upon my heart and ratify and confirm the just judgment of our blessed redeemer when he said, "render unto Cæsar the things that are Cæsar's, and unto God the things that are God's." These sir, are the motives by which I hope to be actuated—these the principles by which I intend to be governed. We have a great task to perform, important interests to secure. We are here, not as school-fellows, to decide upon some favorite amusement—not as lawyers to wrangle and dispute about silly and absurd technicalities—nor yet as politicians to divide and devour the spoils. We are heresir, as men, I trust as patriotic christian men, with the fear of God before our eyes and the love of our common country in our hearts, to decide questions at once great and grave, exciting and absorbing, and fraught with the most important consequences to ourselves and our posterity. Questions, which in their bearings and effects, not only involve the interest and future destiny of our own state, and of this great republic; but sir, questions which involve also, the future destiny, for weal or for woe, now and forever, of two whole, distinct and separate races of men. Surely then sir, we should not talk about party spirit or party ties; but should come up to the charge in this peaceful struggle for truth and justice, regardless of party, coolly and calmly, with none other than the spirit of kindness, moderation, and forbearance. I know sir, the great questions of man's natural and legal rights of civil and religious liberty, of slavery and emancipation, or the abolition of slavery, are questions at all times fraught with the deepest and most intense interest; and when discussed by persons, and in a community interested on both sides, are calculated to produce the deepest and most dangerous excitement.

But, sir, if ever there were men who should, if ever there was a subject upon which they should, and if ever there was a time when they should

be cool and calm, upright and honest, we are the men, this is the subject, and now is the time. By our decisions here, we may fix the fate and seal forever the destiny of both the Anglo-Saxon and the African race. Kentucky is the great key-stone southern slave state. It is here, sir, sooner or later, the great battle is to be fought between abolitionists, emancipationists, and pro-slavery men. The banner has been unfurled already, and although the passing breeze has, for the present, rolled it out of sight, it still rustles in the distance. We should let no syren song of peace on the one hand, or note of policy on the other lull us to sleep on our post. We should come up to the charge like men. If the proposition I have submitted draws an invidious distinction, it is to meet an invidious distinction. There can, therefore, be nothing improper or impolitic in it in any aspect of the case. Emancipate the slaves of Kentucky, and you ruin and shake hands with the south forever. Incorporate the law of 1833, or the resolutions of the gentleman from Madison, which were offered some weeks since, and you have taken the first step towards it. Insert then specific amendments upon all subjects, and the work is complete. It is all that is asked now. If they want more, give them these and they will soon get all they want. I know honorable delegates protest and say it is not so; but they are mistaken, and the emancipationists know it. They know, if you wish to dry up the stream, you must first cut off the fountain. If you wish to abolish slavery in Kentucky, you must first stop the importation which the honorable delegate's resolution proposed to do. Get it a fixed fact in the constitution that no more slaves at any time, or under any circumstances, are to be purchased and brought here, and you have unlocked the door of the ante-chamber. Then, sir, insert specific amendments on all subjects, and you have completed the entrance, and thrown open the halls. This is all the emancipationists now want—this is all they are now contending for. Give them these, and what then would be their policy. Why, sir, give these, and, as I have said before, you yield the principle, and settle forever the question that they may take the slave without the pay or consent of the owners, provided they can only get the majority required to change the constitution. Give these and what then would be the policy. They would at once go to work to secure the desired majority, and get it they would. And how? Why sir, the first step would be agitation—agitation at home and agitation abroad—agitation in the north—agitation in the south—agitation in the east—and agitation in the west. Why sir, all this agitation—this constant, ceaseless, eternal agitation? To produce first disobedience and insubordination on the part of the slaves, and then to let the envying abolition world know that Kentucky was in the market, and could, in this respect, be purchased for nothing—yes sir, for nothing. The two clauses referred to would give the money. All then they would want would be the men. Yes sir, Kentucky with the law of 1833 and the open clause in her constitution, with all her slaves, though allied to the south by both interest and institutions, would thus be offered to

the north, without money and without price. What sir, do you suppose would be their decision? They would come here not by scores, not by thousands, but by scores of thousands, and in ten years, in my judgment, Kentucky would be, at least, on the very verge of a free state, and that, sir, without any sort of compensation for the slave. Who, sir, I ask, could or would be willing to live under such excitement for ten years. You may say there will be no excitement, you may cry peace, peace, but, sir, there will be no peace under the circumstances I have named. Gentlemen may think so, but they are mistaken. Sir, as I said a few days since, there is a party in this country—a formidable party—a party weak in numbers it is true—but powerful in intellect. A party organized, skilful, enthusiastic, and determined on the abolition of slavery in Kentucky. Give them the law of 1833, as a fixed fact, and then specific amendments on all subjects in the new constitution, and my word for it, sir, the days of slavery would be numbered in our state. If so the whole south might clothe herself in mourning and sound the knell of slavery. Adopt these measures, and we will soon get rid of our slaves, willing or unwilling, pay or no pay. Sir, to borrow a term from my honorable friend from Madison, a homely term—a term in which there is very little music—and under the head of agitation, they would “bedevil” us so, that we would soon be willing to give up our slaves, and be glad to get rid of them. This is their object, and these their measures for attaining it. I will, therefore, sir, vote against them both.

But sir, I have said there was a formidable party in this country determined on these measures and in favor of emancipation. I will cite you sir, to some of its members, and leave you to say yourself if it is not a formidable one. Look then sir, to Lexington, to Louisville, and to Danville, and you will there see three intellectual giants, all leaders of a church, learned, enlightened, pious; truly great in goodness and good in greatness. Look again, and you will see a Tomasson, a Taylor and a Tompkins. Look again, sir, and you will see a Dudley, a Pirtle, and a Nicholas, a Robinson, a Beaty, and a Boyle, and a host of similar spirits, all men of great ability and unexceptionable characters—men of fortune, reputation, and influence—calm, cool, collected, firm, energetic, and determined on success. But sir, these are not all. Where then shall I bid you look? Shall I cite you to Ashland? I wish I could not, but I will. Look there, then sir, and what do you see? A frame—weak it is true, and somewhat on the wane, and in the eventide of life. But sir, you see the sage of Ashland, the star of the west, a bright a glittering star, far above them all. An intellectual sun, and centre of the American system, who, when in his meridian altitude, was the light, the heat, the glory of the world. One sir, whose systems and principles will live to do honor to their great projector long after the sceptre shall have passed from the throne of his intellect, and his mighty mind gone down o’er the hills of eternity. He too sir, is against us; he is with the emancipationists. In this I think he has erred. I will not censure. He is passing away. All I will add, is, *sic transit gloria mundi*.

Mr. PROCTOR. Mr. President, I have prepared a substitute for the resolution of the gentleman from Boyle, which I now submit for the consideration of the convention, and on these propositions I move the previous question.

WHEREAS, the people are looking to the time when this convention shall bring to a speedy close their labors: and whereas, the time of this convention has heretofore been taken up by the discussion of abstractions—therefore,

Resolved, That every member of this convention who may have a desire of presenting his abstract views to the convention be permitted to write out his views and hand them to the reporter, which shall be published in a separate book of debates to be called a “Book of Abstractions.”

The main question was ordered to be now put.

The question was then taken on the motion to print and lay on the table, and it was negatived.

On the motion of Mr. C. A. WICKLIFFE, the several propositions were referred to the committee of the whole, by a majority of 38 to 24.

#### KENTUCKY RIVER NAVIGATION.

Mr. LINDSEY. Mr. President, I rise to give notice of my intention, at the proper time, to move a reconsideration of the vote rejecting the sections proposed by the gentleman from Christian, (Mr. Gray,) in relation to specific taxation. I will however frankly admit that my intention is simply to obtain an opportunity to make an explanatory statement to the convention.

On the eight hundred and thirty-second page of the debates the elder delegate from Nelson (Mr. Hardin,) has made an error, in stating the amount paid into the treasury from the slack-water improvements. I here give an accurate table of the amounts received from, and paid out for, the Kentucky river navigation, from the opening thereof, in 1843:

For 1843, collections,	- - -	\$7,852 49
Expenditures,	\$1,658 26	
Paid into treasury,	6,194 33	
		<u>\$7,852 49</u>
For 1844, collections,	- - -	\$19,044 34
Expenditures,	\$10,475 12	
Paid into treasury,	8,569 22	
		<u>\$19,044 34</u>
For 1845, collections,	- - -	\$34,345 61
Expenditures,	\$8,888 65	
Paid into treasury,	25,456 96	
		<u>\$34,345 61</u>
For 1846, collections,	- - -	\$35,977 63
Expenditures,	\$13,446 55	
Paid into treasury,	22,531 08	
		<u>\$35,977 63</u>
For 1847, collections,	- - -	\$49,638 77
Expenditures,	\$17,746 75	
Paid into treasury,	31,892 02	
		<u>\$49,638 77</u>
For 1848, collections,	- - -	\$46,279 01
up to Dec. 19,	- - -	
Expenditures, same		
time,	\$13,531 22	
Paid into treasury,	32,747 79	
		<u>\$46,279 01</u>

It will be seen that the Kentucky river navigation, alone, paid into the treasury more than three times the amount stated by him.

In my friend's speech, published in the proceedings of the eighth of December, he alludes to opinions given by attorneys general of the state, and uses this sentence:

"There was once an opinion given by an attorney general, that the governor had a right to remove his secretary of state, but the court of appeals decided differently, and so did the legislature and the whole people of Kentucky."

This allusion is understood to apply to an act of the administration immediately preceding the present. Permit me to say that my friend has been wholly misinformed, in relation to the action of the then attorney general. He gave no opinion, nor was he called upon for one, as I am authorized to say. When the question was made between the secretary of state attempted to be removed, and the auditor as to a balance of salary, the attorney general, as it was his duty to do, attended to the mandamus on the part of the auditor, in the circuit court and court of appeals. These errors I have thought it my duty to the gentleman from Nelson, to the attorney general, a personal friend, as well as to the truth of history, to correct. I made the motion I did in order to make the statements submitted, and I now withdraw it.

#### REVISION OF THE CONSTITUTION.

Mr. THOMPSON submitted the following resolution, and on his motion it was laid on the table, and ordered to be printed:

"*Resolved*, That when experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly shall, within the first twenty days of their stated biennial session, concur in passing a law for taking the sense of the good people of this state, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other returning officers, at the next general election which shall be held for representatives after the passage of such law, to open a poll in which the qualified electors of this state shall express, by vote, whether they are in favor of calling a convention or not; and said sheriffs and returning officers shall make return to the secretary, for the time being, of the names of all those electors voting at such election; and if, thereupon, it shall appear that a majority of the qualified electors of this state, voting at such election, have voted for calling a convention, the general assembly shall, at their next regular session, direct that a similar poll shall be opened and taken at the next election for representatives; and if, thereupon, it shall appear that a majority of all the electors of this state, voting at such election, have voted for calling a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the house of representatives, and no more, to be chosen in the same manner and proportion, at the same places, and at the same time that representatives are, by the electors qualified to vote for representatives, and to meet within three months after said election, for the purpose of re-adopting,

amending, or changing this constitution. But if it shall appear by the vote of either year, as aforesaid, that a majority of all the qualified electors voting at such election, did not vote for a convention, a convention shall not be called. All cases of contested elections of delegates, and where two or more candidates for delegate to any convention, that may be called under this constitution, shall have an equal number of votes, shall be decided in such manner as may be provided by law."

#### CIRCUIT COURTS.

Mr. APPERSON submitted the following section, and having briefly stated its object and necessity, it was adopted:

"*Sec. —* In case of the sickness of any circuit court judge, or for other good cause, which may prevent his attending any of his courts, the general assembly shall be authorized to make provision by the general laws for the appointment of a special judge to attend such courts, and also for the trial of such causes as the circuit judge, when present, cannot try from any cause."

#### THE LEGISLATIVE DEPARTMENT.

The convention again resumed the consideration of the report on the legislative department.

Mr. KAVANAUGH. At this late day of the session, I am exceedingly reluctant to consume the time of the convention, with any remarks of mine, because we are all anxious to bring our labors to a close, and return to our homes, and the bosoms of our families. Besides, sir, there may be some danger of getting into the book of abstractions, we have just heard proposed. Nevertheless, on a question of this kind, I am for at least enough of examination and discussion, to enable us to vote understandingly. I am aware that some complaint has been indulged in, in some quarters, against the convention, because of the length of the session. Well sir, we have been here about seventy five days, and will, I am well convinced, be ready to adjourn, by this time next week, unless something may hereafter occur to prevent it; if so, we will have revised the constitution in a shorter time than the same work has been done by any convention of any one of the other states, which has recently been called—at least as far as my recollection now serves me. Quite a number of the states have lately called conventions, all of which, I believe, have taken more time than this body has done. It may have been that debate on some subjects, was to some extent, unnecessarily lengthened, yet I have at no time called the previous question. In fact, have never called it in my life; for I am for giving all an equal opportunity of being heard. But I take this occasion to remark, that if we should be so unfortunate as to be detained till Christmas, which I hope and trust will not be the case, I shall vote against taking a recess, even on Christmas day. It would make no difference with me personally, for I live, as it were, under the shadow of the capital; but I would do so, for the accommodation of those members who live at a distance.

I shall, Mr. President, vote against the amendment of the gentleman from Louisville, (Mr. Preston,) and in favor of that offered by the

gentleman from Nelson, (Mr. Hardin.) In opposition to that vote, it is urged, that this thing, of changing the basis of representation was never discussed before the people, and has never been demanded by them. I admit that the question presented by the amendment, was not in that precise form made before the people, yet the subject of apportionment was mentioned, and it was known that it would be before this body, and that and the basis of representation go together. There was another question connected with this subject which was not discussed before the people, except in some particular localities, which has, nevertheless, been acted upon by the convention. I allude to that clause in the old constitution, providing that no county should have more than one senator. That has now been changed, and each section of the state is now to have full, equal, and fair representation in both branches of the legislature, according to whatever basis may be established. This has been done, though it was never contemplated by the people at large, when they were voting a year or two since, for calling the convention. I make no doubt, it was looked to in the city of Louisville, and in some other portions of the Ohio border, and perhaps had a strong influence in those places in favor of calling the convention. But it was not looked to by the people at large, yet when the question was presented, and the justice of the convention appealed to, the change was made by a large majority. I was among those who voted for it. I did so, because I came to the convention to do equal and even handed justice to all, as far as my votes would go, irrespective of country or town, and I, with a majority of the convention, considered it right to give each section of the state, uniform and equal representation, upon whatever basis might be established. We are now to fix that basis; and are to meet the question, as to making it the qualified voters of the state, as in the old constitution, or the whole white population, excluding aliens. If the voting population of each part of the state bears the same proportion to the women and children, as it does in every other part, there is no necessity for making any change, for then the qualified voters of a county would always be a fair index to the whole population, so that whether the old, or the new basis were adopted, each county would, in either case, have the same relative political weight. On examination it is found that this is not the case, but that in one section of the state, the adult males bear a much larger proportion to the women and children, than they do in another, and different section. Are those parts of the state, thus having the greater number of women and children entitled to a correspondingly greater voice in the legislative councils of the state? It is insisted by gentlemen that they are not, and that the qualified voters of a state, holding and exercising as they do, all political power, ought alone to be represented.

The provision in the old constitution is pointed to, and invoked, as authority on this subject. It will be recollected, however, that there are now two important reasons in favor of a population basis, not then existing. First, at the time of the adoption of the present constitution, the number of adult males was, relatively, about

the same to the women and children in one part of the state, as in any other part. Qualified voters were consequently made the basis, as they then presented a fair index to the whole population. If that were the case now, it would be right and proper to continue the provision unchanged, for I admit that it may be slightly more convenient. Secondly, that tide of foreign population which is now pouring into one part of the state, and which has caused a difference in the relative numbers of men, women and children, did not then exist. The circumstances now meeting us on this subject, are hence materially different from those surrounding the framers of the old constitution, and must be met and treated as they now present themselves. I would not favor a change of this sort, if no material and substantial difference resulted from it. Nor would I favor it, if I did not believe it was demanded by right and justice. I would seek no advantage of any part of the state, but would endeavor to do justice to all, according to equal and correct principles, right within themselves.

For the purpose of ascertaining whether there is in fact a necessity for this change, I have taken some pains in comparing the number of women and children with the number of men; first in some of the Ohio border counties, where this foreign population is chiefly found, and then comparing their relative numbers in the interior and southern counties of the state. My investigation of this subject has brought me to conclusions widely different from those of the gentleman from Oldham, (Mr. Mhitchell,) who addressed the convention last night. He labored to show that the returns, as to the children and voters of the state, which we have before us, are inaccurate and uncertain, and not to be relied on. I, however, could not well comprehend how his tables and figures had any practical bearing on this question, or that any thing was, in point of fact, proven by them. For the benefit of my own judgment, I too have made out a set of tables which, by the indulgence of the convention, I will notice for a moment. These tables are made with the view of ascertaining the relative number of women and children, when compared with the qualified voters in the different sections of the state. The auditor's report for 1849, shows the number of children between the ages of five and sixteen in every county of the state, as well as the white males over twenty one in each county: and I take it as true, that the children under twenty one, and not included between these different ages, are relatively the same. But there is no means of ascertaining the proportion of adult females, when compared with the adult males of the different counties of the state, except by the census of 1840. I have, therefore, consulted the census of that year for this purpose, assuming, as fairly may be done, that the proportions now are the same as then. By these means we may arrive at results with sufficient certainty for present purposes.

The first block of counties lie on the Ohio and include the counties of Jefferson, and five others immediately below. They are—



	Males over 21, in 1849.	Child'n bet'n 5 and 16 in 1849.
Breckinridge, - -	1,757	2,250
Daviess, - -	2,112	2,240
Hancock, - -	554	747
Henderson, - -	1,589	2,003
Jefferson, - -	9,283	8,598
Meade, - -	1,114	1,620
	16,409	17,458

In this district the children equal the males over 21, with 1,048 only over. In other words, the children equal the males of 21 years of age, with a gain of six and four tenths per cent. over only.

Take another district, containing about an equal number of males over 21 years of age, and lying on or near the Tennessee border, and opposite to the above district, consisting of counties, and having males and children, as follows, to wit:

	Males over 21, in 1849.	Child'n bet'n 5 and 16 in 1849.
Allen, - - -	1,346	2,225
Barren, - - -	2,959	3,664
Butler, - - -	948	1,437
Christian, - -	2,248	2,801
Cumberland, -	973	1,502
Logan, - - -	2,179	2,822
Monroe, - - -	1,247	1,737
Simpson, - - -	1,017	1,375
Todd, - - -	1,499	2,048
Warren, - - -	2,215	2,794
	16,631	22,405

In this district the children equal the adult males, with 5,774 over, or again upon the voting population, of thirty-four and eight-tenths per cent.

The latter district has 4,715 children more than the former, and consequently gains, in the single item of children between the ages of five and sixteen, more than half the ratio of a representative.

Pursue the inquiry a step further, and compare the adult male with the adult female population of the same districts. To do this, it will be necessary to resort to the census of 1840, that being the only source of information we have on this subject. I have, accordingly, made a table showing separately, the whole number of white males and females over twenty years of age in 1840, in these two districts respectively.

The table is as follows:

	White males over 20.	White females over 20.
Breckinridge, -	1,503	1,335
Daviess, - -	1,402	1,209
Hancock, - -	485	392
Henderson, - -	1,466	1,144
Jefferson, - -	7,881	5,871
Meade, - -	901	749
	13,638	10,700

Excess of males, 2,938.

Allen, - - -	1,248	1,170
Barren, - - -	2,704	2,627
Butler, - - -	691	657
Christian, - -	1,959	1,836
Cumberland, -	902	871
Logan, - - -	1,877	1,800

Monroe, - - -	1,136	1,115
Simpson, - - -	963	978
Todd, - - -	1,330	1,231
Warren, - - -	2,004	1,816
	14,814	14,101

Excess of males 713 only in 1840.

It is here shown, that in the Tennessee border counties, there is but a very slight difference between the adult male and female population, while in the Louisville district, there is a marked and wide difference. This great difference, is owing chiefly to the city of Louisville itself; for the difference in the single county of Jefferson is 2,010. By a reference to the census, any gentleman will see that it is made up in the city of Louisville, and no where else.

In that city, it stood thus in 1840:

Males over twenty,	5,341
Females over twenty,	3,880
Difference	1,461

It is but fair to conclude, that the number of these two classes of population is relatively the same now as in 1840. If so, as the population of the city has more than doubled in the last nine years, so, proportionally, will this difference be increased, and the next census will show it.

It will be further seen by reference to these tables, that in every county in the Louisville district except Jefferson, the number of children is greater than the number of adult males. In that county they are 635 less; and while the number of children in the whole district, as before stated, only equal the number of males, with six and four tenths per cent. over, the children in the Tennessee border counties equal the number of adult males, with thirty-four and eight tenths per cent. over; and that, according to the figures of 1849.

Compare now the white males over twenty one years of age, with the children between the ages of five and sixteen in two other sections of the state, also, according to the reports of 1849. Begin with a block of river counties above Louisville, to-wit:

	Males over 21.	Child'n betw'n 5 and 16.
Mason - - -	3,114	3,340
Pendleton, - -	1,336	1,219
Campbell, - -	2,182	2,204
Kenton, - - -	3,406	3,413
Boone, - - -	1,958	2,323
Gallatin, - -	883	859
Carroll, - - -	993	1,080
Trimble, - - -	1,084	1,406
Oldham, - - -	1,104	1,316
	16,060	17,160

Difference, 1,100. Here the children equal the adult males, with six and eight-tenths per cent. over.

We will now take a block of mountain counties:

	Adult males.	Children.
Morgan, - - -	1,261	2,014
Breathitt, - -	621	1,019
Floyd, - - -	986	1,754
Pike, - - -	812	1,320
Johnson, - - -	599	992

Perry, - - -	502	807
Knox, - - -	1,130	1,760
Harlan, - - -	648	1,086
Whitley, - - -	1,058	1,735
Clay, - - -	866	1,384
Laurel, - - -	865	1,414
Rockcastle, - - -	842	1,219
Letcher, - - -	381	611
Wayne, - - -	1,443	2,387
Casey, - - -	1,057	1,592
Russell, - - -	940	1,479
Adair, - - -	1,560	2,323
Clinton, - - -	812	1,371
	<u>16,381</u>	<u>26,267</u>

These counties, either of the mountains or contiguous, come out with children, equal to the adult males and fifty five and six-tenths per cent. over.

These two blocks of counties contain about an equal number of adult males; but in comparing the children, the river counties are distanced, being only 9,107 behind! Which, to the mountains, is considerably over one representative, in the item of children alone between five and sixteen.

The gain of the mountain on the river counties in women, is as great proportionally, or nearly so, as in children. According to the census of 1840, these counties, respectively, had men and women over the age of twenty, as shown in the following table:

	Males over 20,	Females over 20.
Adair, - - -	1,357	1,351
Breathitt, - - -	386	347
Clay, - - -	747	695
Casey, - - -	821	852
Clinton, - - -	714	713
Floyd, - - -	1,070	1,011
Harlan, - - -	529	513
Johnson, (formed since 1840.)		
Laurel, - - -	602	580
Letcher, (formed since 1840.)		
Knox, - - -	968	938
Morgan, - - -	877	747
Pike, - - -	636	595
Perry, - - -	480	486
Rockcastle, - - -	630	570
Russell, - - -	742	735
Whitley, - - -	842	835
Wayne, - - -	1,271	1,214
	<u>12,612</u>	<u>12,182</u>
Excess of males 430.		
Boone, - - -	1,887	1,549
Campbell, - - -	1,339	907
Carroll, - - -	779	651
Kenton, - - -	1,710	1,358
Gallatin, - - -	775	624
Mason, - - -	2,811	2,375
Oldham, - - -	1,210	997
Pendleton, - - -	938	732
Trimble, - - -	833	746
	<u>12,282</u>	<u>9,939</u>
Excess of males, 2,343.		

In the mountain counties, the women nearly equal the men, while in the river counties just enumerated, they fall 2,343 behind.

There is no means of ascertaining the relative difference between the number of minors in

these different sections of the state, not embraced, between the ages of five and sixteen. But it is obvious, that when they too are enumerated and taken into the estimate, that the interior will be still more strengthened, and the cities on the Ohio border correspondingly weakened.

Why is it, that the women and children, on our northern border, are fewer than in the interior? It is because that border receives the foreign population with which our common country is teeming, and a less number of that population have wives and children. It can be accounted for in no other way.

Some of the counties on the Ohio border, and included in the above tables, will lose nothing, but will rather gain, by making population the basis of representation, as the counties of Daviess, Meade, Hancock, Boone and Trimble.

I admit that my section of the state would gain something more of weight, in an apportionment on the population basis; for example, the counties of Anderson, Marion, and Washington, are swarming with women and children.

	Males over 20, in 1840.	Females over 20, in 1840.
Anderson, - - -	924	843
Marion, - - -	1672	1637
Washington, - - -	1576	1548
	<u>4142</u>	<u>4128</u>

Nearly as many females as males.

	Adult males in 1840.	Children in 1840.
Anderson, - - -	1,119	1,473
Marion, - - -	1,762	2,221
Washington, - - -	1,847	2,456
	<u>4,728</u>	<u>6,150</u>

Difference in favor of children, 1422.

It hence seems clear, that the effect of the population basis, will be to lessen the weight in the legislature, only of those sections of the state holding our foreign population—one or two of the blue grass counties may lose something by it.

The interior, the new, and the southern border counties, will correspondingly gain.

For the purpose of perfecting these tables, I have made an estimate of the present white population of the state in this way.

In 1840, the white males over 21 in the state numbered 109,360  
Whole white population 590,253  
We have now adult males 152,234  
If the male population over 21, now bears the same proportion to the whole population, as in 1840, our present white population would be 812,000, and a fraction over.

But owing to the influx of the foreigner, the male population now bears a greater proportion than in 1840, so that our present white population cannot be over 800,000.

The ratio would then be to a representative 8,000

In this way we may, with sufficient certainty, get the present population of any county, or section of the state.

Take for example, the mountain counties already mentioned, with the county of Lawrence, which I add, because Johnson was partially ta-

ken from it. In these counties the white males over 21, in 1840, was 12,243  
 White population in 1840, 71,886  
 Adult males in 1849, 17,344  
 This would give a present population of 101,837.

Make qualified voters the basis, and these counties would have eleven members, with a residuum of 602. Make population the basis, and the same counties would have 12 members, with a residuum of 5,837. In other words, in the one case they would have a fraction over 11 members, in the other, a fraction under 13.

These tables conclusively show that the number of males over twenty one in that part of the state, now receiving our foreign population, for the reasons already given, is much greater in proportion to the females and children than in the other sections of the state. That the difference is attributable to this cause, is further shown by taking another block of counties, some of which lie on the Ohio, but in which there are but few foreigners. The first congressional district, for example, to-wit:

	Males over 21 in 1847.	Children between 5 and 16—1849.
Ballard, - - -	825	1,270
Calloway, - - -	1,323	2,207
Crittenden, - - -	1,059	1,336
Caldwell, - - -	2,016	2,491
Fulton, - - -	705	974
Graves, - - -	1,665	2,816
Hickman, - - -	758	902
Hopkins, - - -	1,886	2,868
Livingston, - - -	952	1,090
Marshall, - - -	870	1,507
McCraeken, - - -	986	1,215
Trigg, - - -	1,417	1,947
Union, - - -	1,448	1,545
	15,910	22,168

Difference, six thousand two hundred and fifty eight; or a gain of thirty nine and one third per cent. The children in this district equal the males over twenty one, with a gain of thirty nine and one third per cent. This district, in the way of children, comes nearer to the mountain counties than any other in the state, and is consequently entitled to the second premium. The mountain counties of course get the first. For want of time, I have not ascertained the number of women, when compared with the men in this district, but they are undoubtedly about as numerous as the men, for it will be seen that in every county where the children are numerous, there the women are numerous. Wherever you find children in abundance, there the women abound. And in this state, wherever you find the women numerous, there you have plenty of children. It is not so every where. In some countries the condition of the female population is such that the number of children raised by them is much less than in this. In our own state, however, such is the happy condition of the masses of the people, as far as average wealth and prosperity are concerned, that all may, with safety, in obedience to one of the first commands of heaven, "multiply and replenish the earth."

The gentleman from Oldham, (Mr. Mitchell,) insists that we have no example for this popula-

tion basis. Such is not the case. The constitution of New York has the following provision on this subject:

"The members of assembly shall be apportioned as nearly as may be, according to the number of inhabitants, excluding aliens and persons of color not taxed."

Mr. MITCHELL explained.

Mr. KAVANAUGH. The constitution of Pennsylvania has a similar provision. They afford examples at once, and show at least, this much: that there is not that difficulty in taking the enumerations, as contended for by both the gentleman from Oldham and the gentleman from Louisville, (Mr. Preston.) Why sir, there are examples in many of the constitutions of the union, perhaps a majority of them make white population the basis of representation. But if no other state in the union had adopted this basis, it would afford no reason why Kentucky should not, if the thing is right within itself. The question is presented to us and must be decided. In that decision, justice should be done. But these gentlemen urge, as an objection, that the assessor, or other officer who makes the enumeration is made a judge, as to who should be enumerated and who not—as to who is the alien, and who the naturalized citizen. Why sir, does not the present constitution make qualified voters the basis of representation; and are not these officers required to distinguish between those who are qualified voters, and those who are not? Such has been the constitution and laws up to this time. If the officer does his duty under the present constitution, he reports the naturalized citizen as a qualified voter, and the aliens not qualified. Nor does that inconvenience result which has been urged. It is now the duty of the assessor to take down every male over twenty one years of age, and every unmarried female of that age, if for nothing else, to take a list of her property. It is also his duty to take lists of the children between five and sixteen. The only additional trouble would be to have another column to take down the whole number of children under twenty one. It might, perhaps, require two additional columns. But in neither case would it require more than one minute of time for each list, because of these additional columns.

Mr. President, the effect of the new basis, when the population of the whole state is considered, will be to transfer a part of the political power enjoyed by those counties now receiving the foreign population to the interior; and, in short, to those parts of the state on which that tide is not pouring. We are told that the blue grass counties will lose by it. It is true, that a few of them would not number quite so high, yet they, in point of fact, would lose nothing. The county of Franklin would always have a representative; for she has a large residuum. The county of Fayette will always have two. Bourbon will lose one with either basis, but will always have one left. Woodford will always have one, because surrounded by residuums. So that these blue grass counties, as they are called, will, in point of fact, lose nothing, let the question be decided either way. My own county, in this respect, is most happily situated, for she also is surrounded by residuums, which

will always give her a representative. But I do not deny but that my section of the state would be something the gainer, for as the gentleman from Logan has told us, women and children are there found in abundance. But, sir, I do not want any thing at the expense of justice; but I maintain that every part of the state should be represented according to its whole population. It is contended that qualified voters only should be represented, because they exercise the whole political power of the state. It is true, that they have assumed and exercised that power, and this has been so in every country. But do they exercise that power for their own benefit only, or for the benefit of the women and children who are excluded from its exercise, as well as for themselves? If they exercise that power for the benefit of the women and children, with whom they are surrounded, as well as for themselves, then those women and children should be taken into the basis of representation.

Sir, when I go to the polls and cast my vote, if I am governed by the principles which ought to control a patriot and lover of his country, I will in that vote as much represent the interests of the women and children by whom I am surrounded, and with whom I am connected, as I, upon this floor, am bound to represent the interests of the voters themselves who have honored me with a seat here. These women and children are properly excluded from the exercise of political power, but they have interests and civil rights as dear and as sacred to them as ours, and which ought, therefore, to be protected and represented. If this is just and right, why deny it to them? For illustration, take this case, which in point of fact does not exist: Suppose the eastern part of the state were engaged in such mining operations as required male labor chiefly, and that they had but few women and children among them, but half the voters of the state, while the western part was engaged in such pursuits, as in some parts of Massachusetts, as required chiefly female labor, and though not having a majority of voters had double the population, and double the interests to be protected and represented; would it not be right, in a case of that kind, to give representation according to population, and the interests to be protected? If so, that is the principle here contended for, and nothing else. Sir, a few days since, we saw the Louisville delegation struggling for equal representation in the senate, and, as well they might, manifesting great zeal on behalf of their constituents. The question here presented is greatly more important than that; for the mountain, interior, and southern counties will gain by carrying it, much more than if they had placed in the new constitution the restriction by which no county could have more than one senator, as it is in the old. That restriction was changed, because in apparent conflict with principle. The change operates to the advantage of that part of the state on the Ohio, having the greatest foreign population, and that only.

The proposed basis would, on the other side of the question, give the other parts of the state additional representative strength. They insist on that basis, not to deprive any county of its just rights, but to give all equal representation,

according to the entire white population, aliens excepted. It would be only carrying out a principle, just and equitable to all alike. It is no struggle for political power, at the expense of principle. Nor need it be for the purpose of strengthening the institution of slavery, though such, to some extent, would be its effect. That institution is already sustained by public opinion, and will continue as it is. But the proposition presents itself as one of sheer justice. I am not for it because of any unkind feeling to the naturalized citizen. Such is not the case. As I regard the question as of some importance, and as it has not been discussed before the people, I considered it as proper to give here, and to my constituents, the reasons for the vote I shall give.

Mr. HAY moved the previous question, and the main question was ordered to be now put.

The question first in order was on the motion of Mr. PRESTON to strike out all after the word "cities."

Mr. CLARKE desired that the roll might be called, and it was called accordingly.

Mr. CLARKE then moved that the absent members be sent for.

The motion was not agreed to.

Mr. HARDIN called for the yeas and nays, and they were yeas 10, nays 84.

YEAS—Mr. President, (Guthrie,) William C. Bullitt, Charles Chambers, George W. Johnston, William D. Mitchell, Elijah F. Nuttall, William Preston, Ira Root, James Rudd, John W. Stevenson—10.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William Chennault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteeen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, Geo. W. Mansfield, Martin P. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—84.

So the amendment to the amendment was rejected.

Mr. HAY called for the yeas and nays on

Mr. HARDIN'S amendment, and they were—yeas 47, nays 48.

YEAS—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, Jonathan Newcum, Henry B. Pollard, Johnson Price, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John J. Thurman, Philip Triplett, John Wheeler, Silas Woodson—47.

NAYS—Mr. President, (Guthrie,) Richard Apperson, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Jas. S. Chrisman, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Andrew Hood, Mark E. Huston, Alfred M. Jackson, George W. Johnston, Peter Lashbrooke, Thomas N. Lindsey, Martin P. Marshall, Wm. C. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, William Preston, Larkin J. Proctor, John T. Robinson, Ira Root, James Rudd, John W. Stevenson, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—48.

So the amendment was rejected.

The question then recurred on the adoption of the sixth section.

Mr. DESHA moved to reconsider the vote by which the amendment of the gentleman from Nelson was rejected.

Mr. C. A. WICKLIFFE moved to lay the motion to reconsider on the table.

Mr. HARDIN called for the yeas and nays, and they were—yeas 48, nays 47.

YEAS—Mr. President, (Guthrie,) Richard Apperson, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Garrett Davis, Lucius Desha, Archibald Dixon, Jas. Dudley, Benjamin F. Edwards, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Andrew Hood, Mark E. Huston, Alfred M. Jackson, George W. Johnston, Peter Lashbrooke, Thomas N. Lindsey, Martin P. Marshall, Wm. C. Marshall, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, William Preston, Larkin J. Proctor, John T. Robinson, Ira Root, James Rudd, John W. Stevenson, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—48.

NAYS—John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Thomas J. Hood, James W. Irwin, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, Jonathan Newcum, Henry B. Pollard, Johnson Price, Thomas Rockhold, John T. Rogers, Ignatius A. Spalding, James W. Stone, Michael L. Stoner, Albert G. Talbott, John J. Thurman, Philip Triplett, John Wheeler, Silas Woodson—47.

So the motion to re-consider was laid upon the table.

The question again recurred on the adoption of the section.

Mr. APPERSON suggested that it was susceptible of division, and to the second branch amendments would be desirable. He also suggested that it might be found necessary to debate the principle involved in that branch, and he expressed a hope that, by common consent, the previous question be understood as not applying to it.

Mr. C. A. WICKLIFFE called for a division of the question.

It was divided accordingly, and the first branch, fixing the basis of representation, was adopted.

By unanimous consent the previous question was not applied to that branch of the section.

Mr. APPERSON then offered the following, as a substitute for the residue of the section:

"At the first session of the general assembly after the adoption of this constitution, provision shall be made by law, that in the year 1858, and every eighth year thereafter, an enumeration of all the representative population of the state shall be made. The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation, the state is hereby laid off into ten districts.

"The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg.

"The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson.

"The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart.

"The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln.

"The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson.

"The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley,

Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson.

"The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry and Shelby, and the city of Louisville.

"The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine.

"The ninth district shall be composed of the counties of Clarke, Montgomery, Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan and Breathitt.

"The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin.

"The number of representatives shall, at the several sessions of the general assembly, next after the making of these enumerations, be apportioned among the ten several districts, proportioned according to the respective qualified voters in each: and the representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern, to wit: Every county, town or city having the ratio shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns or cities having one or more representatives, and the largest number of qualified voters above the ratio, and counties, towns and cities having the largest number of qualified voters under the ratio, regard being always had to the greatest number of qualified voters: *Provided, however*, That if there should be any county not having a sufficient number of qualified voters to entitle it to one representative, yet it shall have a representative, if all the adjacent counties in the same district have a sufficient number of qualified voters to entitle them respectively to one representative: *And, provided further*, That when a county may not have a sufficient number of qualified voters to entitle it to one representative, then such county may be joined to some adjacent county or counties to send one representative, provided such adjacent county has not a full ratio. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of qualified voters."

Mr. IRWIN. I move to amend the amendment, by striking it out and inserting the minority report, which I presented this morning.

Having had the honor of presenting the substitute which will shortly have to be voted upon by the convention, I feel it an imperative duty to draw a comparison between its merits and the merits of the one presented by the committee on apportionment. I have examined the bearing of that report. I think I understand what will be its results, and I confess that of all the propositions to apportion the representation of the state, it is the most unjust, and of course the most unequal. Now, our great object is to apportion the representation among the several counties of the state as nearly equal as may be, without regard to political results, and acknowledging the difficulty of doing this with anything like exactitude, and in fact knowing that in some particu-

lar places it is almost impossible, I have only changed the section of the old constitution, so as to make it imperative on the part of the legislature to start at a particular point or points that shall be most agreeable to the convention. Now, if the legislature shall undertake to apportion the state according to the substitute which I have offered, I think one of the greatest difficulties resulting from the present mode of apportionment will be avoided, and as the public men of the state are accustomed to the present mode I incline to the opinion that it should be adopted.

What objectionable principles are contained in the substitute, that do not exist to a greater degree in the report of the committee? Is there more equality? Is there more justice? I ask gentlemen to show me in what particular has the report the advantage over my substitute? I venture to affirm, that in the application of the principles of the report, it will be clearly seen that an inequality exists which has never existed under the old constitution, and which is so manifestly unjust, that its adoption would do more towards preventing the adoption of the new constitution than any principle which, up to this period, has been incorporated in it.

To show the inequality of the committee's report, I shall give the result of the principles when applied to the counties, and I feel sure that it will conclusively prove to the convention, that the committee's report should not be adopted. Let us take the first district. Caldwell gets one member with 2,016; Crittenden gets a member with 1,059. The difference is 957.

Again, Hopkins gets a member with 1,886 votes, Calloway gets one with 1,323, and the difference is 563.

Let us examine the second district, where there are some cases of inequality of much greater magnitude. Christian gets one member with 2,248 voters, and Hancock gets one with 554 voters; the difference is 1,694. This is a startling inequality. Daviess gets a member with 2,112 voters, Meade one with 1,114 voters; the difference is 998. Breckinridge gets a member with 1,757 voters, Grayson one with 1,108 voters; the difference is 649 voters. Now, let us look at the third district—the one in which I live. Logan—according to the report, with 2,179 voters gets but one member, while Simpson gets a member with 1,017; the difference is 1,162 voters. Warren with 2,215 voters gets but one member, Monroe gets a member with 1,247 voters; the difference is 968 voters. These startling inequalities are, I think, sufficient to justify the convention in rejecting the report, whether they shall adopt my substitute or not. I will barely remark, that similar inequalities run through the entire report.

What are the chief merits of the substitute? In the first place, the mode of its operation is well understood. You commence at a given point in the state, and as soon as the ratio is supplied, you move on with your residuum, until the apportionment is completed. Does not every gentleman see that at what point soever the voters reside, there the representative will sure to be.

It has been objected to this system, that the state will be gerrymandered so as to suit the prin-



ciples of the dominant party, by throwing the residuums into those counties where the political opinions of the voters shall coincide with the majority making the apportionment. Now, to some extent this may be true, but I ask gentlemen to show me how this matter can be avoided. Suppose you adopt the system of districting the state, will not residuums have to be rolled about in the districts? And will not the same principle be put in practice, although the territory over which the application is to be made will be of smaller extent? I ask again, what is gained by a departure from the old system? Some gentleman here indicate, that I make this struggle because my county is likely to loose a member. Well sir, is there any thing wrong in that? The county of Logan—than which there is not in the whole state, one more to be relied on for the correctness of her political sentiments—is about to be shorn of her political power, by the application of principles in the mode of apportionment, and gentlemen taunt me with the remark, that I am only for Logan. I do not deny, sir, that I feel that she is about to be wronged, and I shall do all I can to prevent the application of a principle which is to militate in the least degree against her political power. Sir, she has honored me long; she has done every thing for me, and I will stand by her as long as I can raise my voice in her defence; and if she must loose her political strength, it shall be against my solemn protest, and my earnest appeal for justice. It is all I ask. I demand it not only for Logan, but for Warren, for Christian, Nelson, Shelby, and all that large class of whig counties whose political strength is to be demolished by this report, and whose strength is to be transferred to Scott, Hancock, and as I believe, ultimately to democratic counties, with less political strength, merely because they are more favorably situated in the districts in the committee's report. Sir, I have not much hope that my proposition will be adopted, but having done my duty to my constituents and to my country, I shall leave the subject with the convention.

Mr. TURNER. I have been here in the legislature when representation has been apportioned, and I understand perfectly all the difficulties that exist in the matter. The old constitution required the residuums to be rolled from one county to another, and thus it depended upon the point of commencement, whether justice was done throughout the state or not. It was under that principle that Warren had two members and Pulaski one, while the latter had three hundred more votes. Unless prevented by the constitution, the dominant party in the legislature will always exercise the power to their own advantage. This can be prevented by the adoption of the amendment of the gentleman from Logan, (Mr. Irwin,) with the addition of a slight amendment, which I shall propose. It is, that the representative shall go with the largest residuum, wherever it may be situated. Thus no county will be entitled to a member, if its population is less than that of some residuum in any portion of the state, and no county will get an additional member, unless its residuum is the largest in the state. The old system of apportionment was well enough, if controlled by a

principle of this kind, and would secure the nearest approach to equality of representation that can be attained.

Mr. IRWIN. I will accept of the gentleman's amendment.

Mr. GARFIELDE. Mr. President, I have a proposition which I desire may be read for the information of the convention.

The secretary read it as follows:

"The house of representatives shall, at all times, consist of as many members as there may be counties in the state, and each county shall be entitled to a separate representative, who shall be chosen by the qualified voters thereof. The state shall be divided into senatorial districts, in each of which a senator shall be chosen by the qualified voters thereof: *Provided*, That each representative and each senator shall be entitled to one vote for every one hundred electors in his county or district."

While up, sir, I will avail myself of this opportunity to investigate the report of the select committee, appointed to report a system of apportionment to this house, as also the report of the standing committee upon the same subject.

These reports set out with the broad principle that representation shall be equal and uniform throughout the commonwealth. This principle should govern us in our efforts to lay the foundation of apportionment. It should be our compass and polar star to guide us to correct results. But we may assert one thing and practice another. We may, in the same instrument, declare the rights of the people and take them away. The declaration of a principle, then, unless it be carried out in practice, remains a dead letter. Indeed it is worse than a dead letter, for it declares rights which it does not protect.

The plan reported by the committee upon the legislative department, is defective in this respect, as I have shown on a former occasion. It gives the small counties an undue power, as also some of the large ones, leaving the medium counties to be the sufferers. By that plan, one thousand voters in one section of the state, exercise as much power as two thousand do in another section.

One county will have largely over its due power, while another will be stripped of what little it is entitled to. A system thus radically defective cannot meet the approbation of the people of the state, and should not be incorporated into the constitution, loading it down, not only with an unpopular principle, but with an unjust one. I trust, sir, that the sense of justice which exists in this house, will not suffer the members to entertain such an objectionable proposition. I should regret to see the protracted and laborious efforts of this house terminate in such a monstrosity.

But, sir, the subject more particularly before my mind, is the report of the select committee chosen from each congressional district to report a plan of apportionment to this body. I regarded the organization of that committee as likely to produce favorable results, and was, consequently, prepared to regard the offspring of their labors with favor. I expected to see a system proposed which would do credit to the originators. In this I have been sadly disappointed. What is their plan? It is a mongrel,

neither fish nor flesh. It is the union of the systems of the gentleman from Montgomery, (Mr. Apperson,) and the gentleman from Harrison, (Mr. Desha.) It proposes to divide the state by counties, into ten districts and give each district its proportion of members according to its aggregate voting population, which shall be distributed among the counties of the district accordingly. Now, sir, let us examine the workings of this plan, and ascertain whether it metes out equal justice to each county and section of the state. In my estimate, I have taken the number of white males over twenty one years of age, as that was the most convenient basis, and would not materially affect the result. I wish to show the inequality which will exist among the counties composing the different districts.

I shall confine myself to a few counties in each district, so as to take as little time as possible. I have examined eight out of the ten districts, which will clearly show the injustice of the report.

FIRST DISTRICT.			
Counties.	Members.	Voters.	Difference.
Caldwell,	1	2016	
Crittenden,	1	1059	
			957
Hopkins,	1	1886	
Calloway,	1	1323	
			564
Caldwell and Hopkins,	2	3902	
Crittenden and Calloway,	2	2382	
			1520
SECOND DISTRICT.			
Christian,	1	2248	
Hancock,	1	554	
			1694
Daviess,	1	2112	
Meade,	1	1114	
			998
Christian and Daviess,	2	4360	
Hancock and Grayson,	2	1662	
			2698
THIRD DISTRICT.			
Logan,	1	2179	
Simpson,	1	1017	
			1162
Warren,	1	2215	
Monroe,	1	1247	
			968
Logan and Warren,	2	4349	
Simpson and Monroe,	2	2264	
			2130
FOURTH DISTRICT.			
Pulaski,	1	2392	
Taylor,	1	1097	
			1295
Russell and Casey,	1	1991	
Boyle,	1	1168	
			823
FIFTH DISTRICT.			
Nelson and Mercer,	2	4148	
Hardin,	2	2419	
			1729
Mercer,	1	2093	
Spencer,	1	1022	
			1071

## SEVENTH DISTRICT.

Henry and Shelby,	2	4183	
Jefferson,	2	2800	
			1383
Shelby,	1	2321	
Carroll,	1	993	
			1328
Henry,	1	1862	
Trimble,	1	1084	
			778

## EIGHTH DISTRICT.

Bourbon and Scott,	2	3805	
Fayette,	2	2649	
			1156
Bourbon and Scott,	2	3805	
Franklin,	2	2024	
			1781

## NINTH DISTRICT.

Greenup,	1	1936	
Lawrence,	1	967	
			969
Bath,	1	1886	
Carter,	1	1025	
			861
Bath and Greenup,	2	3822	
Fleming,	2	2316	
			1506

I have thus shown the great inequality of the plan proposed by the select committee. It works injustice in every district. I have not shown one fourth of its enormities, but sufficient has been shown to demonstrate its great injustice. I have selected the counties almost at random, yet every comparison writes condemnation upon the face of the proposition.

By reference to the table above, it will be seen that the little county of Hancock, in the second district will have the same power of Christian, and yet Christian has 1694 voters more than Hancock. So Greenup, with a voting population of 1936 has no more power than Lawrence, with 967. Thus the 969 voters in Greenup, comparatively exercise no power. It is not necessary to give any more illustrations. By reference to the table, any one can see the operation of the system at a glance.

I am satisfied the committee did not carry out the plan, and ascertain its mode of operation or they would never have reported it. Their own sense of justice would have prevented them from having advocated a system which has no equality in it and which strikes directly at the declaration in the first part of the report which says that "representation shall be equal and uniform."

The plan proposed by the gentleman from Trigg, presents the same inequality and is obnoxious to the same objection. He increases the number of districts to twelve, and thereby increases the inequality. I am satisfied sir, that the district system, while it obviates one difficulty, produces another of still greater magnitude.

I did not rise to make a speech, but to have my plan read for the information of the house, and to present some of the operations of the system of apportionment reported by the select committee. I may, at a proper time, discuss the subject more at large, but for the present am sat-

isified with having barely shown the great and crying injustice which would be produced by the adoption of this report. I hope sir, the convention will vote down a proposition which is fraught with so much injustice to the country generally.

Mr. APPERSON. The gentleman last up (Mr. Garfield,) says, that his proposition is the only one that meets out equal justice. Now, I shall be greatly disappointed if it gets a vote except his own, and if it does, I am quite certain it will be very few. As for the gentleman from Logan, (Mr. Irwin,) I shall convince him out of his own mouth, that the joint proposition of himself and the gentleman from Madison, (Mr. Turner,) presents quite as great inequalities as the plan of the committee. Caldwell having 1860 voters, and Crittenden having 947 voters, my friend from Logan, first refers to, as presenting a most striking inequality; and yet they have the same number of representatives, one each, and under the gentleman's own plan, they would stand precisely the same. Where then is the greater equality of his system of apportionment. The examples given by him, prove his argument, therefore, to be worthless. The gentleman from Fleming, (Mr. Garfield,) looked upon the first district as arranged by the committee as perfectly startling in its inequalities. Let us examine it:

The representation in the first district will be as follows:

Fulton & Hickman, 1,287 voters, 1 representative.

Graves, 1,576 voters, 1 representative.

McCracken & Ballard, 1,470 voters, 1 representative.

Crittenden, 947 voters, 1 representative.

Colloway, 1,206 voters, 1 representative.

Marshall & Livingston, 1,632 voters, 1 representative.

Trigg, 1,381 voters, 1 representative.

Caldwell, 1,860 voters, 1 representative.

Hopkins, 1,813 voters, 1 representative.

Union, 1,264 voters, 1 representative.

Thus showing a most striking instance of equality in representation under the report of the committee. The gentleman said that in this district the inequality was so great as to be startling; he certainly did not examine the matter, or else he is an indifferent judge of this matter.

Go a little further, to the fifth district, to which the gentleman from Fleming, also referred, as presenting great inequalities. He says that Anderson & Spencer, with 2,093 voters, get a representative each, whilst Nelson & Mercer, with a voting population of 4,132, get but two representatives, or one to each county. By what rule the gentleman thought himself authorized to take these two large counties to put together to prove his position, I know not, they are not adjacent, the county of Washington lies directly between them. Suppose the gentleman had said that Nelson and Spencer, united, had 3,014 voters, and the report gave them two representatives—that Mercer & Anderson, when united had 3,211 voters, and the report gave them two representatives—had he presented the state of case in this way, it would have been apparent, even to himself, that he was as unfortunate in his

complaints of the inequality of the fifth as he was of the first district. I believe that Spencer, was taken from Nelson, or at least in part, and that Anderson, or a great part of it, was taken from Mercer, and the feelings and wishes of the people of these small counties, coincide to a great extent with the larger ones to which I have attached them.

Some gentlemen have been led into mistakes, by taking as a basis the white males over twenty-one, as reported by the auditor, instead of the qualified voters, who are less numerous than the white males, as they will notice when they come to see the figures written down. Under that system, Jefferson, including Louisville, would have 9 or 10,000 voters, when if the basis of qualified voters was taken it would be but 6,774, a considerable difference certainly.

So far as I am concerned, I am not wedded to this report, and the committee who reported it, so far as the number of districts is concerned, were far from being unanimous. But I will further say, that there cannot be any system of apportionment devised but there will be hard cases occurring under it. Allusion has been made to Hancock, as having a separate representation on a voting population of not more than five hundred and sixty. The counties of Daviess, Ohio and Breckinridge, are the only counties adjacent to Hancock, and they have all over the ratio; and would it be just to say to Ohio, Breckinridge, or Daviess, with the residuums they possess, that they should also take Hancock under their wing without an additional representative? Why, the residuums of these three counties will be vastly more than enough to give Hancock a member, when they are added to her voting population. What are you to do with Hancock if she should not get a member? Her electors must be represented in some way; and it is clearly not fair to Ohio to attach Hancock to her. How would it be under the proposition of the gentlemen from Logan? Why the two counties of Ohio and Hancock would be continued together, in all time to come, as they have been since the last apportionment of representation.

It will be found, that in adopting the district system, as you increase the number of districts, so do you increase the number of these hard cases.

Mr. TURNER. With the gentleman's permission, I will present the proposition of the gentleman from Logan, as I have modified it with his consent.

The Secretary then read it as follows:

"*Provided*, That after the apportionment is ascertained, as above, it shall be modified and changed as follows: Those counties having a smaller voting population which shall be entitled to one representative, under the above mode, than other counties not having one, shall yield up the same to the latter, and the former shall be attached to adjacent counties. Those counties having a smaller voting population which shall be entitled to two representatives, under the above mode, than other counties not having two, shall yield up one of the same to the latter, so that no county with a smaller voting population shall ever have a representative where a county of larger voting population has not, and

so that no county, with a smaller voting population, shall ever have two representatives when a county of a larger voting population shall have but one representative."

Mr. APPERSON. What becomes of Hancock under that proposition?

Mr. TURNER. Can she not be joined to any smaller county?

Mr. APPERSON. No.

Mr. TURNER. Then she will have to be attached to some larger county. If then the residuum of the county to which she was attached was larger than her number of voters, or if the two united came nearer to the ratio than any other county or union of counties, they would get an additional member under my proposition.

Mr. APPERSON. I am glad the gentleman has made this explanation, as now there is presented some justice in his proposition. But to swallow up a small county in that way would be unjust to it, and the large county to which it may be attached, would always have the control if it desired to do so.

I was going on to say that as you increase the number of districts, so you increase the number of hard points or inequalities. For instance, Gallatin will have a representative because she is adjacent to no county in the tenth congressional district but what has a residuum. She has but 813 voters, and yet she must have a representative, because she has a greater number of voters than would be included in the residuum of any of the counties in that district.

Again: the little county of Breathitt, with a little more than five hundred and sixty voters, (just five hundred and ninety,) will be entitled in a short time to a member, and why? Because, being in the 9th congressional district, she lies adjacent to Morgan only of all the counties in that district which is increasing rapidly, and before a second apportionment shall be made, will, in all probability, possess the full ratio for a member. Then we shall have to give a member to Breathitt, because she lays adjacent to no other county to which she can be attached. And by laying the state off into four districts, I know of but one solitary case of great inequality, that of Hancock, which could occur. The rule in the legislature in the apportionment of representation has been to lay off the state into three districts, the northern, middle, and southern, and to divide the representation among them. But even then it has always been a matter of great difficulty to get through with. One other hard case, if you lay off the state into small districts, that will occur is this: the county of Scott, with one thousand eight hundred and thirty nine voters, will be entitled to two representatives, because the residuums over the ratio which she has is greater than any other in that district, whilst Pulaski with two thousand three hundred and five voters will have but one representative, because her residuum is not equal to the vote of several small counties in that district. This will occur when districts are small. This is an extreme case perhaps, and I instance it only to show that whatever mode gentlemen may adopt, the hard and the soft spots will occur. Why, according to the resolution and mode of apportionment of the gentleman from Harrison,

that county would have two representatives with only two thousand and sixty voters, because it would have a residuum greater than any other of the adjacent counties or any other county in the district. But by adding Gallatin to that district, she having a greater number of votes than that residuum, she would have the representative, and Harrison would have but one.

I believe it best to have the state laid off into districts, and that the fewer the districts are the nearer equality can be attained. I prefer the system of districts, because if you take the state at large there will ever be complaints as to the manner in which the apportionment is made. Accompanying the proposition which is submitted by the committee, a principle is laid down that representation should be equalized according to the number of voters. The proposition is, that in the first instance all the counties having the full ratio should have a representative; next, that those counties having a full ratio and the largest residuum compared with the number of voters any county has under the ratio, should have an additional representation, but if a smaller county has more voters than such residuum, then she shall have the member. This principle was proposed in reference to four districts, but it governs with equal justice whatever may be the number. By adopting four districts, as I first proposed, each would have between thirty five and thirty six thousand voters, and there would not in any one of them be three hundred voters more than in another, and I still think it would be preferable. However, I prefer the report of the committee to any proposition yet presented as an amendment to it, and shall adhere to it as against them.

Mr. TRIPLETT. I rise to point out an incongruity in the gentleman's own report, and to show that it is impossible to carry it out. If he will turn his attention to the thirteenth line, he will find that it reads thus:

"Provided, however, That if there should be any county not having a sufficient number of representative population." What is to be done with it? "Yet it shall have a representative."

But to come to the second proviso. It is as follows:

"And provided further, That when a county may not have a sufficient number of representative population to entitle it to one representative, then such county may be joined to some adjacent county or counties to send one representative, provided such adjacent county has not a full ratio."

Now it turns out that in the second district there are counties which are under the ratio. Therefore they would not be provided for by the first proviso, because there are three different counties under the ratio. Two would be provided for by the second proviso. That covers the counties of Butler and Edmondson. Hancock does not join either of them, but is still in the same district.

Mr. APPERSON. Hancock is adjacent to three counties, and all three have a full ratio. Hancock gets one representative, because the adjacent counties are entitled to one. Butler cannot get one. Why? Because she lies adjacent to a county not entitled to one. Butler and Edmondson neither being entitled to one.

Mr. TRIPLETT. The explanation is right, but the bill is wrong, and if the explanation is put down in the bill, it will be right. But there is another difficulty. Suppose Butler shall come up to the full ratio, what will become of Edmonson? There will be two in the same district not provided for. The first is provided for by the first section, and yet there is another in the same district not provided for.

Mr. GRAY. Notwithstanding the argument of the gentleman from Montgomery, and the estimation in which he holds his proposition, I must say I think that proposition one of the most abominable and objectionable that ever was presented for the consideration of any deliberative body. My friend from Daviess is right in his statement of the character and operation of the proposition. It gives a certain number of representatives to a district. Suppose there are ten districts, and each has eleven counties. Then suppose Butler or Edmonson come up to the ratio, where will you get a representative to give to either? Hancock is surrounded by three counties which have the ratio, therefore Hancock must have one. Then if Butler or Edmonson comes up to the ratio, can you give a representative to the other if it should come up to the ratio? Such a difficulty may occur sooner or later in every district in the state. Shall we put in the constitution, which we hope to have last forages, a proposition so absurd. Of all the propositions which have been presented, this is the most abominable and the most unequal, because a county, if it has only representative population of five hundred, will have a representative. Does that correspond with the principle of an equal representation for all. It would be a perfect contradiction of the principle in that very district, and would be in many others. There is no equality in it at all. That district runs from the Tennessee line to the mouth of Salt river, nearly one hundred and fifty miles. How is the voting population of that district distributed. In the northern end, the gentleman gives the counties of Meade, Hancock, and Grayson, three counties which do not join. To these counties with a population of males over twenty one years of age of two thousand seven hundred and seventy six, he gives three representatives. He gives to the county of Christian with two thousand two hundred and twenty eight voters one representative. Is not that beautiful equality? Is not that representation according to population with a vengeance? I trust in God this convention will never disgrace itself with anything so unjust as that. Take Hancock and Grayson, and how many males over twenty one have they? They have one thousand six hundred and sixty two, and by this gentleman's beautiful plan they have two representatives in one end of the district, and in the other end, two thousand two hundred and twenty eight voters have but one. That would be beautiful justice, beautiful equality of representation. Apply this proposition all over the state, and the same results will be seen. Cumberland, Casey, and Boyle, with three thousand one hundred and ninety two voters have three representatives, but Pulaski with two thousand three hundred and ninety two has but one. I trust this convention never will adopt such a

proposition as that. I cannot vote for the constitution with such a proposition in it. We propose to have qualified voters the basis, and if so, let us carry it out. I hope we shall adopt the proposition of the gentleman from Logan, or that of the gentleman from Trigg, or that of the gentleman from Floyd, or the report of the committee as it first came forward. I can take any other proposition that has been offered sooner than this.

The amendment of the gentleman from Logan, at the suggestion of Mr. C. A. WICKLIFFE, was so modified as to have the districting commence with the county of Greenup, and the apportionment to take place once in eight years.

Mr. C. A. WICKLIFFE. I think the gentleman's proposition now will be more likely to do justice than any proposition we have, if the gentleman will just say that the legislature, in making the apportionment, shall divide the state into three districts, as near equal as may be, commencing and resting on the Ohio river. In this way, I think you will control this wild, and I will say unjust, method of laying off the state, which has been practiced.

Mr. TURNER. If you go by districts, you may still leave some one county with a representative, which has not as many voters as some other county in the district. According to my proposition this cannot happen in any part of the state.

Mr. GHOLSON. If the latter clause of the proposition submitted by the gentleman from Madison is added to the proposition of the gentleman from Logan, there can be no gerrymandering. I see no necessity for the first part. I think it is settled that the largest county shall always have the representative, and not that one having nine hundred and ninety-nine voters shall have one, while one having one thousand does not.

Mr. TURNER. I will show the necessity of the former part. According to the proposition of the gentleman from Logan, residuums will be produced. My proposition is, to apply those residuums so that no small county shall get a representative, while a large one has not any.

Mr. MORRIS. I feel no disposition to occupy the time of the house, when I do not feel that duty requires me to speak. But as this question is one of the most important of any we have had before us, and is particularly important to my constituents, I feel it incumbent on me to say a few words respecting the proposition of the select committee, and that submitted by the gentleman from Logan.

At the suggestion of Mr. IRWIN, Mr. Morris gave way for a motion to take a recess.

#### EVENING SESSION.

Mr. CLARKE. Having voted for that portion of the sixth section of the report, I now give notice that I will move a reconsideration of that vote. I do it for this reason: that it establishes the basis of representation, and makes the qualified voters that basis. This morning, the vote was taken upon the amendment offered by the senior gentleman from Nelson, which amendment embraced the principle in regard to the basis of representation which I had had the honor

to submit, and which had once been adopted by this convention. The vote stood—ayes 47, noes 48. Immediately upon the announcement of the vote, a motion was made to reconsider it, and then a motion was made to lay that motion upon the table. There were but four members absent at the time the vote was taken, who have been here during the session. I will not pretend to say that those who have attempted to preclude any further action upon any branch of this section hereafter, were aware that three of those absent members were in favor of the amendment; but I do undertake to say, with a personal knowledge of the fact, that three of the four were in favor of the amendment offered by the gentleman from Hardin.

A minority of this convention, then, have committed a direct and flagrant violation of the rights of the majority, and fastened, as far as the vote of to-day can fasten, upon this constitution a principle which the majority of this body is opposed to. I assert if every gentleman who voted for the amendment shall adhere to his vote, that there are yet three gentlemen, who are in town, but absent from sickness, who will vote for the proposition of the gentleman from Nelson, and thus make the vote in favor of it fifty, clearly showing a majority in favor of the basis of white population, and against the basis adopted. I am aware that the motion I have made must lie on the table till to-morrow. I would not have made it if there had been a clear, palpable, and satisfactory indication of disapprobation of the proposition. But when I was convinced there was a majority of the convention against the basis established by the vote to-day, and saw the attempt made to stifle their will, I could not, in justice to myself and that majority, forbear moving to reconsider the vote by which the section was adopted.

Mr. C. A. WICKLIFFE. On this question of basis of representation, I admit that the convention is nearly equally divided. Without having any particular feeling with regard to its operation on that part of the state which I represent, I still rejoice that the vote resulted as it did, because I thought the basis of representation which had been fixed by our fathers in 1792, and again in 1799, and which had been approved by the people of Kentucky for sixty years without murmur or complaint, was just and right. I challenge any member of this convention, even the delegate from Simpson, to say whether he ever heard in the halls of legislation of Kentucky, or out of them, from the citizens of this commonwealth, any complaint of the principle upon which our political power was apportioned. Was it a cause of calling this convention; was it a grievance; and does it operate as a grievance? Then why change? The object of the change, as avowed by the mover and its advocates, is for the purpose of operating upon one particular section of the state injudiciously.

Mr. CLARKE. I beg to inquire whether it is in order to debate this question now.

The PRESIDENT declared it to be in order.

Mr. C. A. WICKLIFFE. I do not intend to go into any extended argument as to the propriety of the change. The alteration proposed is calculated, in my humble judgment, in the progress of time, to do great injustice to portions of

the country, not designed now to be injured. The great tax paying portion of the commonwealth will feel its effects. We may as well call things by their right names. Gentlemen speak of strengthening the rural districts by this operation. Our fathers made a basis of the free voting population, with which I am content. Our habits and agricultural pursuits, and the situation of our agricultural region are such, that the tendency of our population is to the extremes. Natural causes—our agricultural pursuits—are forcing the political power from the centre of the state. While I disclaim the idea of uniting property, either land or any other kind of estate, as an element of the basis of representation, as unjust in a free and equal government, I disclaim the idea of uniting any matter, though animated, which is inactive in the expression of sentiments, necessary to the choice of a representative in the legislative department of this government. Why should I, because I may be worth five thousand dollars more than my neighbor, in casting my vote at the polls, exercise a greater political weight in this government? I do not exercise it, and will not give a vote that shall authorize it. But shall I exercise less weight? No. Why should one man exercise more political power than I do, because his lot has been cast in a part of the country which God has blessed with children, not his own, and over whom they would not, if permitted to vote, select him as a guardian or public agent? Why should my accidental residence among women and children, to whom I am bound by ties of blood, kindred, or relationship, give me more political power in this Union than a man who may not be blessed or surrounded by that description of population?

Mr. CLARKE. I will withdraw my motion to reconsider now, and I give notice that I shall make a motion to reconsider to-morrow.

Mr. C. A. WICKLIFFE. Very good, sir, I will be present whenever it is made.

Mr. MORRIS. It is with great reluctance that I ask the attention of the house to a few remarks which I deem it my duty to make upon this system of apportionment reported by the committee. It is one of the most important and delicate subjects which has occupied the attention of the convention; one which has attracted the attention and occupied the time of some of the ablest men in our body; and I can venture with safety to say, that no man has yet been able to fix up a plan of apportionment which even to himself would seem to be entirely just and impartial. I was a member of the legislative committee to which this subject was referred. The committee worked at it faithfully and for a long time; and the plan submitted in the report was adopted as the best we could make, though not entirely satisfactory to any of us.

I should not say one word upon this question, and should have submitted it to the vote of the convention without a remark, but for the fact that this report of the select committee presses more heavily, and, as I believe unjustly, upon the immediate interests and rights of my constituents than any thing which has been presented to us. It would seem, sir, that the committee had traveled out of the regular course of their report and attached a proviso, with no



earthly object but to strike a blow at the rights of the people in my county. Indeed, sir, the whole system, independent of this peculiar act of injustice, seems to me, by far, the most unequal and oppressive of all the various plans which have been submitted. The report sets out with the broad declaration that "representation shall be equal and uniform throughout the commonwealth, and shall be forever regulated by the number of representative population;" and yet when we look into its details, it would seem that the last of all objects which was sought to be accomplished, was that of representation in proportion to the number of qualified electors.

A plan of apportionment has been submitted by the gentleman from Logan, and amended by the gentleman from Madison. This plan, as I understand it, is pretty much the same with that of the old constitution, except that an attempt is made to prevent the rolling residuums from being made to fall so heavily upon those who may happen to be in a minority, and to establish some permanent rule by which the legislature shall hereafter be governed. It fixes a point at which the legislature shall hereafter be compelled to start, in apportioning the state; and the amendment of the gentleman from Madison provides, that after traversing the whole state, and giving to each county, with the full ratio of qualified electors, the representative to which it is entitled—it shall then take a survey and fix the remaining representatives upon those counties, either single or double, having the largest unrepresented residuum of qualified electors. The plan submitted by the select committee, lays the state off into ten districts, and not only sanctions but absolutely enforces a system of gerrymandering in those districts upon the legislature. The question now before us is, which one of these two plans shall be adopted? For my own part, although I am not particularly pleased with either of them, I think the plan of the gentleman from Logan by far the most just and desirable. Indeed, sir, I should much prefer the plan of the old constitution, odious, oppressive, and unjust, as it has been acknowledged to be, to this plan of the committee. The convention which framed the old constitution, conferred the power upon the legislature to gerrymander the state, and thereby inflict an act of gross injustice upon whatever party might perchance be in the minority. They placed it in the power of that legislature, by acting honestly and fairly, to render an act of justice to every part of the commonwealth. The convention now assembled, proposes by the bill reported by the select committee, to do the act themselves, and place it in all time, beyond the power of the legislature, to remedy the wrong which thereby they will have inflicted, to stamp it upon the constitution itself. The plan of the old constitution, by suffering the residuums to be rolled in any and every direction through the state, placed it in the hands of the legislature to confer the power, at discretion, upon any particular portion of the country which they knew to be most inclined to carry out the particular objects they might have in view. It was made to operate like the old woman's elder stalk, which, according to her idea, was the greatest medicine in the world—a great panacea for eve-

ry disease. If scraped up, it operated as an emetic; if scraped down, it acted as a purge: and truly, in the hands of a skilful legislature, its medicinal qualities have been so potently applied as to keep the poor patient, the minority party, in a most woful state of depletion. That system which was thus injuriously applied, was the act of our ancestors, who, in the honesty of their hearts, believed the legislature to be as honest as themselves. They had no intention of doing an act of injustice; they knew that, under their plan, justice could be done, and they believed it would be done. They were mistaken. We have assembled here, and one thing imperiously demanded of us by the people is, that we establish a certain, permanent basis of apportionment, which will render it unlawful, in all after time, for the legislature to act unfairly, and yet it would seem that we are prepared to fix an apportionment immutably upon our constitution, as unjust and unfair, as any which could be devised by the legislature. It seems to me that I would rather entrust the power to an unholy agent to do the unholy deed, whilst he had, at the same time, the opportunity to do right, than to myself commit the wrong. To prove that I am not mistaken—that I do not complain without ample cause of the report of the select committee, I will refer you to some calculations I have taken the trouble to make, which will, I think, most conclusively prove that this plan must operate with great inequality and injustice.

We find that the county of Caldwell, in the first district, with a population of 2,016 voters, is entitled to one representative. The county of Crittenden, in the same district, with 1,059 voters, is likewise entitled to one representative—difference in population 951. Hopkins has one member, with 1,886 voters. Calloway, with 1,323, has one—difference 563. Caldwell and Hopkins, with 3,902 voters, have two representatives. Crittenden and Calloway, with 2,382, have two—difference 1,520—quite enough, under the ratio, for one additional representative. Would this seem to be just and equitable? Does this indicate that representation is based upon numbers? I should say not. Yet this is the system which is sought to be forced upon us.

Again, sir; if we go into the second district, we find that Christian, with 2,248 voters, has but one representative. Hancock, with 554, has one—difference 1,694—more than 100 over the ratio. Daviess, with 2,110, has one representative. Meade, with 1,114, has one—difference 998. Christian and Daviess, with 4,360 voters, are entitled to two representatives. Hancock and Grayson, with 1,662, to two representatives—difference 2,698. These are some of the astounding developments made by a very slight examination of this most just and fair system of apportionment, recommended to this convention by the select committee.

If we go to the third district, we will see that Logan, with 2,179 voters, has but one representative—Simpson, with 1,017, to the same—difference, 1,162. Warren, with 2,215, has one—Monroe, with 1,247, the same. Logan and Warren, with 4,394 voters, have two representatives—Simpson and Monroe, with 2,264, have the same number—difference 2,130. In the fourth district,

and Pulaski, with 2092, has one member—Taylor, with 1097, the same—difference, 1295. Russell and Casey, with 1991, to one—Boyle, with 1168, to one—823 difference. Pulaski, Russell, and Casey, with 4383, have two—Taylor and Boyle, with 2265, have two—2118 difference. I could go on, and by reference to the tables I have made out, show you that the same, and perhaps even more startling instances of injustice and inequality will be found to exist in the other districts. But I will not weary the patience of the house, by going further with these details, when enough has been shown to convince any reasonable man, that the inequalities are too enormous to permit him to establish them in this constitution—that the attempt is made to fix the representation upon territory, bounded by imaginary lines, and not upon the number of voting population.

Some few weeks ago an effort was made to throw the representative strength of the state from those counties and sections which have heretofore, and should still possess it, on account of the larger amount of representative population which they contain, and the immense amount of revenue which they pay, into the smaller and poorer counties of the state. It was presented in the garb of this "baby basis" as it is called, making women and children, and not the free white male citizens over twenty-one, the basis of representation. It would seem that the report of the committee, is but a continuation of the same plan—an effort to carry the power of the state from the wealthier and more populous counties to the poorer ones, which have been ascertained to have a larger proportion of women and children. I find under this plan, that Christian, with 2248 voters, will lose a representative—that the counties of Logan, Russell, Nelson, and Bourbon, will each be deprived of a member in the legislature—and that these members will be transferred to the smaller counties with a less proportionate population. My friend from Henry proposed the other day, that territory and not population should be the basis of representation; that each county should be entitled to a separate representative. His plan was at once rejected with singular unanimity. An effort was made to restrict the cities, and after a long and fiery debate, this convention decided that they could deprive no portion of our voting citizens of the right to be represented. A vote was taken on yesterday upon the "baby basis," and the convention decided that men, and not women and children, should be represented. An attempt is again indirectly made by the apportionment, to secure, to a great extent, these principles which have been rejected—to transfer the power from the voting population into territorial limits, and into the hands of women and children, and I sincerely hope this indirect effort will meet with the same fate at the hands of this convention, with those more direct in their objects.

It has been found to be absolutely impossible, by any plan, to render entire justice to every part of the state—to present a system which shall give to every section the exact number of representatives to which it is rightfully entitled. This plan of districting was suggested as a remedy to the evil. It was supposed that by laying off the state into districts, each nearly approxi-

imating the others in population, that though in those districts the counties might not have their proper representation, yet the same sectional interests would be fully represented. Certainly, if we will look at these districts, we will find that the different parts of them are as widely separated in interests, as the remotest sections of the state can be. Take away the representative from the county of Christian, and transfer him to Hancock, and he will no more represent the views and interests of the people of Christian, than he would if transferred to Greenup or Fulton. By this plan of the committee, a great gain will accrue to the northern districts at the expense of the southern. No provision is made for future alleviation. The districts are made permanent, and I have no doubt that the evils now great, will increase as the country grows.

I much prefer the plan proposed by the gentleman from Logan. I think that, as amended, no great injustice can be done; and that it is much better calculated to secure the rights of the people, than this ten district plan, which I sincerely hope will be rejected by the convention.

Mr. DAVIS. I want as a basis of apportionment, that principle adopted, which will secure the nearest approach to equal justice to all the counties in the state, and leave the least discretionary power to the legislature. A great abuse heretofore, in relation to the subject of apportionment, has been, that the whole state has been a field upon which to gerrymander. I think a remedy may be applied by taking a part of the project of the honorable gentleman from Montgomery. If you make ten districts, and make no apportionment, but leave it for the legislature, it seems to me that such a system would work pretty well, because the gerrymandering must be on a small scale if done at all, being limited to each district. Then let the first apportionment be made agreeably to the proposition of the gentleman from Montgomery. This will prevent the inequality pointed out by the gentleman from Christian.

Mr. APPERSON. I want to say a word to the younger gentleman from Christian. He seems much alarmed with the committee's report on the apportionment. The one introduced by the gentleman from Logan he approves. Let us see how it works.

Mr. MORRIS. I did not state that the proposition of the gentleman from Logan met my approbation, but that I preferred it to the report of the committee.

Mr. APPERSON. I want to go on and see if I could do worse than that proposition would do. The first county the gentleman takes in his fault-finding of the committee's report is Caldwell. He says Caldwell has but one, and Crittenden would have one; and yet she has only half as many voters as Caldwell. How would it be under the amendment which he advocates? Just as the report of the committee would make it. Caldwell one, Crittenden one. This ground of his complaint is therefore unfounded. The old ratio fixed it the same way. But this is the gentleman's first illustration. I can tell you where the shoe pinches. It is the principle of taking away from the large counties. The gentleman has been but little in legislative bodies, or else he would not have talked about sweeping

away the representation from the counties where the wealth is. Woodford pays annually into the treasury, upwards of \$2,000 more than Christian. If wealth is to receive representation, and not voters, why not go to Woodford instead of Christian? Christian with 2,138 voters will get, he says, but one member, according to the report, and yet the small county of Hancock will get one. The county of Hancock is a solitary instance, when you take the whole state, there is no other county similarly situated. If he insist that Christian shall have two, Daviess and Hancock will get but one, yet their united vote—and they are adjacent—is nearly 2,500. Suppose you allow Christian to have one, it is all she ever will get unless Daviess and Hancock should have two. If the proposition of the gentleman from Logan should be adopted, with the provisos of the gentleman from Madison added, you will find that Christian is cut down to one representative. Is it not more equitable that Daviess and Hancock with 2,500 voters should have two, rather than Christian. Grayson with 1,127 voters has a member. Is there any disposition on the part of the gentleman to take away that one from Grayson and give it to Christian?

Let us see what the other gentleman from Christian says. He selects some counties which he supposes will have too great a representation, and contrasts them with some which he says will have too small a representation. Let me call the attention of gentlemen to the apportionment as it now stands under the present constitution, and which the elder gentleman from Christian advocates above all others. Five counties to-wit: Bourbon, Harrison, Logan, Christian, and Nelson, with nine thousand nine hundred and ninety two voters have ten representatives, and five other counties to-wit: Mercer, Pulaski, Warren, Daviess, and Caldwell, with ten thousand three hundred and forty-four voters have only five representatives. This is the apportionment which suits my friend, but can any thing be more unequal than this? The five latter counties have three hundred and fifty voters more than the five former, and yet have only one half the number of representatives.

The gentleman from Bourbon suggests that we lay off the state into ten districts without adopting any other principle, and leave the legislature to make the apportionment. So far as I am concerned, I have no objection to this proposition. The committee believed it best to lay off districts and then to lay down certain principles for the action of the legislature, so that they would have no discretionary power in making an equitable and fair apportionment. When I asked what would be done with Hancock, according to the proviso of the gentleman from Madison, I was told it would be joined to some other county, and the two counties together would have two representatives; but upon an examination of the proviso there is no such provision whatever—indeed there is no provision for the union of two counties to send two representatives. I want to call attention to the effect of putting counties entitled to one representative into one class, and those entitled to two into another class. Take Christian with two thousand one hundred and thirty eight voters, and Taylor with

one thousand and forty seven. There is to be no comparison between Taylor and Christian, according to the proviso of the gentleman from Madison, because Christian is a competitor for two representatives, and Taylor for but one; and there is to be no competition except between the large counties belonging to one class among themselves. The small counties of the other class may compete among themselves. The effect may be that two thousand two hundred voters can get two representatives, when a small county with one thousand cannot get one. Under the system proposed by the committee, the county having one thousand voters will have a representative before the other can get two. The county with nine hundred will get one sooner than the county with two thousand two hundred will get two, because nine hundred is greater than the residuum of the large county over the ratio—the ratio being one thousand four hundred and sixteen. The county of Montgomery which I represent, will not be affected by any proposition, for she has just the ratio. But it seems to me the smaller counties are deserving of something at our hands which I would be glad to give them. I will only add, with respect to the report of the committee, that we laid down certain principles from which the legislature could not depart. If the state should be divided into four districts, which I believe to be the best, I acknowledge there will be less opportunity for the evils which have been complained of.

Mr. NUTTALL. I think the proposition of the gentleman from Madison is the most just which has been presented, and I intend to go for it. Many counties have two representatives with less voters than others have which have but one. I think this will prevent anything of that sort.

Mr. DESHA. It is not my purpose to inflict upon the house a speech at this late period; and if I were inclined to do it, the fact that I witness inattention to the speeches which have been made for some days past, would prevent me from making the attempt. But having submitted the plan of ten districts, and having been a member of the select committee which reported this back to the convention, I feel that I should say something of the motives which influenced me in submitting this plan.

Much has been said by both of the gentlemen from Christian, as to the injustice of this report. I have endeavored to divest myself of prejudice, and they have failed to convince me that the system we propose will operate unjustly; but on the contrary, it is my opinion that it will operate more justly than any other which has been presented. What does it propose? It lays off the state into ten districts. The gentleman from Logan seemed to insinuate that political motives may have governed the committee and those who favor this report.

I wish to say that when I came here, I divested myself of political prejudices. I came not to represent one party, but both; and I regretted to hear the terms democrat and whig uttered in this hall, as often as they have been. I should consider myself unworthy of a seat here, if I could be influenced by such motives. I have seen the system of gerrymandering carried on in this

state, and in other states, so much, that my attention was called to the question, whether we could not prevent it. I do not say that the party in power for many years past, have done it, more than their adversaries would have done, if they had been in power. It is far from me to say so. The object is not to inquire what party may have a majority in the legislature, but to secure the best method of apportionment to each county.

So far as this report respects my county, it is a proof that I had no selfish object in view. Harrison has a large residuum, and if this report is adopted, she will be shorn of one member. When I first proposed the plan of ten districts, with a view that Harrison should retain her member, I presented the district system in a different form. I proposed that Carroll should be thrown to the seventh district, for Carroll and Gallatin have always been united, and sent one member. The vote of the two counties is only a little above the ratio. Carroll was struck off a short time since, and the two together, had one representative. I put them together, because they would be nearer on an equality. I am not particularly anxious about this plan, if a better plan, one which will secure to all parts of the state, a fair and just system of apportionment can be presented, I will vote for it. But it will have yet to be presented.

The gentlemen from Christian, deal in the terms abominable, unjust, and other opprobrious epithets as applied to this report. If it secured to the county of Christian, two members, I presume it would not have been so abominable and unjust. The position of Hancock is a peculiar one. It is bounded on one side by the Ohio river, and is adjacent to three counties, all of which have a ratio, and more than the ratio. We provided especially for Hancock, and I would suggest that there be a provision so that where a county is situated as Hancock is, having less than the ratio, and surrounded by counties having the ratio, it could be joined to one having more than the ratio.

I think the amendment of the gentleman from Logan, as amended by the gentleman from Madison, is worse than the old constitution, because they did occasionally place residuums near the place whence they were drawn. I do not think that plan practicable, but if it is, I consider it worse than the old constitution. I have taken five counties different from those selected by the gentleman from Montgomery, and having a voting population of 9,208, and having six members, making a ratio of 1,524 to a representative. Five others with a voting population of 11,608 have nine members, with an average ratio of 1,289. Is this just? Will it be just? I call attention to the question, whether, when different sections, having different and antagonistical interests upon a particular issue, are affected, you will not, by the proposition of the gentleman from Logan, take residuums and give them to sections, which are not entitled to them according to their numbers.

The plan proposed by the committee sets out with the proposition that each portion shall have the representatives to which it is entitled, and I prefer the report of the select committee, to the suggestion of the gentleman from Bourbon, notwithstanding it may shear Harrison of

a member, still as I believe I represent a just people, if I cannot get a better system, I shall vote for the report of the committee as it is.

Mr. TURNER. I would not speak again on this subject, but for the remarks of the gentleman from Bourbon. Madison county is not interested, and I say this proposition will bring about more justice than any other, which has been presented. The gentleman from Logan proposed to take the old constitution. I proposed to add to it the principle of taking residuums and giving first to the smaller counties and going through with them. His proposition would give two representatives to a county, while some other counties had but one. I only say that the larger of two small counties should have the representative instead of the smaller of the two, and I say the same as to the large counties which are entitled to two representatives. Where is the injustice of this. I have seen in rolling residuums every injustice done, and the proposition I brought forward was presented to prevent the power of doing injustice to a minority.

As respects dividing the state into ten districts, you will, if that is done, have to carry residuums, and there will be the same difficulty there was under the old constitution, and the smaller counties may get a representative, when the larger does not, and the larger will get two sometimes when the smaller does not get any. This is not justice. Any principle which will give a small county a representative when a large one has not any is a violation of justice, and any principle that will give two representatives, when another county having a hundred more, only gets one, is injustice. But the principle reported by the committee brings about this result. It is admitted that it does it, and there is no opportunity to correct it, for you fix it in the constitution. According to my proposition, if there is injustice you may go over it again and correct it. If any gentleman can prove that to be unjust, he can out cypher me.

Mr. GARRARD. I dislike to trespass upon the time of the convention, but the remarks of the gentleman from Madison makes it my duty to say a few words. The gentleman says, he is fond of small counties, and in making that assertion I have not the least hesitation in saying he has spoken the truth. His amendment, so far as it is intended to operate, proves conclusively that he is. But, as a friend of small counties, and as one representing three on this floor, I trust my friend from Madison will let me say a word in defence of small counties. The operation of his proviso is decidedly worse than the old constitution, on small counties. In the congressional district in which I reside, there are twelve counties, represented on this floor by five members, they having at one time enough for six. Take the old constitution as it is, and you can hope for nothing better; but take it with the proviso of the gentleman from Madison, and I unhesitatingly say it would be much worse. Work out the first proposition of the gentleman's proviso, and you take from Livingston one member and give it to Morgan. Livingston then would go to Crittenden with perfect propriety. But what becomes of Breathitt? You may add it to Estill and Owsley, or you may add it to Clay, Letcher and Perry. That is,

the first proposition. And you take Livingston because it is the smallest county under the present apportionment, and I take it if you roll the residuums, it will be hereafter as it was before.

Mr. TURNER. My proposition does not interfere with the counties that are too small for a representative.

Mr. GARRARD. The explanation is the same as the gentleman gave in relation to Hancock. The county of Harlan, under the working of his amendment, must go to the counties of Clay, Perry, and Letcher, or Tennessee, or Virginia. The gentleman can fix it as he pleases.

Mr. MAYES. It seems to me, from the remarks of many gentlemen who have discussed this proposition, that they have mistaken, or not comprehended it correctly. We are endeavoring to settle the principle by which the apportionment shall hereafter be made. Gentlemen have spoken of their own counties, and shown the position in which they would be placed, the object of all of us being to arrive at, and do justice to, the whole state.

I thought the proposition of the gentleman from Trigg, to lay off the state into districts, would be better calculated to do justice to both the large and small counties than any other proposition that has been offered. I have listened with a great deal of attention to the debates on this question, and I have been trying to make up my mind in regard to the plan we ought to adopt. If the state be laid off into ten or twelve districts, I am not convinced that injustice will grow out of that system. On the contrary, it appears to me, we can arrive more nearly at justice, taking the whole state into view, than by any other principle of apportionment. The residuum of one county in a district ought to be taken to the next county within the district. No injury can grow out of it. I intend to vote for the district principle, and I do not think a better plan can be devised. It does seem to me that the question has been sufficiently debated, and that gentlemen have made up their minds upon it. I should be glad if it were settled.

Mr. IRWIN. I am in favor of the district system. If it is adopted in lieu of the report of the select committee, I will try to get up the proposition of the gentleman from Trigg.

Mr. DAVIS. The modification of the report of the committee, I propose, is as follows:

"The number of representatives to which each district may be entitled, shall be apportioned among the counties in such district according to the voting population, as near as may be: *Provided*, That when any county may be entitled to a representative, and shall have a residuum of two-fifths, and may adjoin a county not having three-fourths of the ratio, such large county and the small one shall, together, be entitled to elect a representative."

Every gentleman will see the effect and operation of such a provision. For instance, if Hancock adjoins a county in a district whose voting population entitles the county to one representative, and if there is a residuum of two-fifths over in the large county, Hancock and the large county shall elect a second representative. If Hancock shall not have this, concession should

be made to the small county, which shall entitle it to a representative. Here are the counties of Bourbon, Scott, and Owen, each of which will have a considerable residuum, and their aggregate residuum would entitle them to a fourth representative. There would be nothing in this bill which would prevent the legislature from directing that these three counties might constitute a district to elect a fourth representative. I think in this way justice will be better obtained, and there will be less chance for juggling and gerrymandering, for I believe the terms are synonymous.

Mr. TRIPLETT. Hancock, which lies adjoining Daviess, seems to have caused more difficulty than any other county in the state. But there is little difficulty when you come to reflect upon it. Suppose you were a citizen of Hancock, you would ask yourself, would I prefer to be added to Ohio, and let the two counties have one representative, or be added to Daviess, and let the two counties have two representatives? If you add Hancock and Daviess together, they will have two representatives, but if Hancock is added to Ohio, they will together be entitled to only one.

Mr. DAVIS. You cannot devise any system but what there must be some discretion left to the legislature. And when you ascertain the principle which operates as near as may be according to equal numbers, that principle would join Hancock to Daviess.

Mr. TRIPLETT. There is no question about that, and there is no great difficulty about it if you will establish a principle and let it alone. The difficulty is, that when you have established one principle and attempt to establish a second, you destroy the first. Now establish the principle that numbers are to be represented, and never depart from it, and where do you arrive? Whereas Daviess and Hancock together will be entitled to two representatives; if Hancock is added to Ohio, you will have a large residuum. Why? Because Ohio has a residuum without Hancock. When Hancock is added to Ohio, what has Ohio gained, and what has Hancock gained? Nothing? Because Ohio was strong enough without Hancock, and do not give another representative. But if added to Daviess it makes these two counties rich enough to claim two representatives, therefore the principle contended for by my friend from Bourbon is carried out in letter and in principle. There you do not leave it to the legislative discretion, because you fix it in the constitution that Hancock must be added to Daviess, and that those added together must be entitled to two representatives. It is a principle just in itself, and the question is, would Hancock object to it? Surely she ought to be heard. Do you believe that if you lived there you would object to it? Then it is right it should be so. Then applying the same principle of reasoning which is applied to Daviess and Hancock ought to make other parts of the state agree to it, and the principle being right in itself, ought to make us adopt it in the constitution. I think if we establish the principle offered by the gentleman from Bourbon, it will be one that nobody ought to object to, and that nobody will object to.

Mr. GAITHER. I rise to give notice that I

shall move a reconsideration of the vote by which the fifth section of the report on the legislative department was adopted.

The question was then taken on the adoption of the amendment of Mr. IRWIN, as modified by the proviso of Mr. TURNER.

The yeas and nays being demanded by Mr. IRWIN, there were, yeas 29, nays 59.

YEAS—John L. Ballinger, William K. Bowling, Francis M. Bristow, Thomas D. Brown, Wm. Chenault, Chasteen T. Dunavan, Milford Elliott, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Mark E. Huston, James W. Irwin, George W. Johnston, Thos. N. Lindsey, Thos. W. Lisle, Martin P. Marshall, Wm. C. Marshall, William N. Marshall, John D. Morris, Elijah F. Nuttall, Johnson Price, John T. Rogers, Jas. Rudd, Albert G. Talbott, Howard Todd, Squire Turner, Andrew S. White, Chas. A. Wickliffe, Geo. W. Williams—29.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, William C. Bullitt, Charles Chambers, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Benj. F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfiede, Jas. H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Wm. Hendrix, Andrew Hood, Thomas J. Hood, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Willis B. Machen, Richard L. Mayes, Nathan McClure, David Meriwether, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, Ira Root, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, John D. Taylor, Wm. R. Thompson, John J. Thurman, Philip Triplett, John L. Waller, Henry Washington, John Wheeler, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—59.

So the amendment was rejected.

Mr. DAVIS. I will offer as an amendment to the report of the select committee, of which the gentleman from Montgomery is chairman, the following, to be added after the naming of the districts in the original report:

"The number of representatives to which each district may be entitled, shall be apportioned among the counties in such district according to the voting population as near as may be: *Provided*, that when any county may be entitled to a representative and shall have a residuum of two-fifths and may adjoin a county not having three-fourths of the ratio, such large county and the small one, shall, together, be entitled to elect a representative."

Mr. W. JOHNSON. I do not think the gentleman from Bourbon understands the effect of his amendment. According to this proposition, Daviess will have the sole right to elect one representative, and a portion of the right in electing a second. Will any one contend that this is right?

Mr. DAVIS. That is exactly what I want; that a county entitled to one representative shall have her separate representative; that the small county having three-fourths of the ratio, shall

herself have a representative; but when there is a larger county having a ratio and two-fifths and joins a county not having three-fourths, that the two shall be thrown together, and the second representative shall be elected by a common vote. Suppose Hancock has a whig majority almost unanimous; and suppose the vote of Daviess is such, that by adding Hancock, she would control the election of both representatives, would it be just that Hancock, with her small vote but large majority in a party point of view, should have the right to control the entire vote of both counties? Can there be any objection that every full ratio shall elect a separate representative? And can there be any objection if she has over a ratio, to uniting that ratio with Hancock, and allowing Hancock and that residuum to be thrown together and elect a representative?

Mr. W. JOHNSON. I have waited for an explanation, and what is it? That the people of Daviess shall elect by themselves a representative without the assistance of Hancock, and that then the people of Daviess shall vote with Hancock for another representative. In that case, the people of Daviess vote twice, and the people of Hancock but once, and that in company with a county which has a much larger number of voters. Would it not be as well to put Hancock over into Indiana? Surely that principle will not be adopted here. Every part of the community should have equal rights and privileges. This would be a palpable violation of that principle.

The question was then taken on the adoption of the amendment, and it was rejected.

Mr. LACKEY. I will offer the following as a substitute for the sixth section of the report of the select committee:

"That the representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of representative inhabitants therein. At the first session of the general assembly after the adoption of this constitution, and every four years thereafter, provision shall be made by law that in the year ———, and every four years thereafter, an enumeration of all the representative inhabitants of the state shall be made. The number of representatives shall be one hundred, and apportioned among the several counties in the following manner: Counties having the ratio shall have one representative; those having three fourths of the ratio shall have one representative; those having the ratio, and a fraction less than one half the ratio over, shall have but one representative; those having the ratio, and a fraction of one half over, shall have two representatives; those having twice the ratio, shall have two representatives; those having twice the ratio, and a fraction of less than one half the ratio over, shall have but two representatives; those having twice the ratio, and a fraction of one half the ratio over, shall have three representatives; and so on. Counties having less than three fourths of the ratio, shall be joined to a similar adjacent county, for the purpose of forming a representative district: *Provided*, that if there be no such adjacent county, then the county having less than three fourths of the ratio shall be united with that adjacent



county having the smallest number of representative inhabitants, provided that their united numbers do not exceed the ratio, and a fraction of one half the ratio over; but if they do, the county having less than three fourths of the ratio shall have a separate representative. The remaining representatives, (if any,) shall be allotted to those counties having the largest unrepresented fractions; but in no case shall more than two counties be united for the purpose of forming a representative district; but if there shall ever be an excess of districts, they shall be reduced to the proper number, by taking from those counties having a separate representative, with the smallest number of representative inhabitants, their separate representation."

The question being taken on the adoption of the substitute, it was rejected.

Mr. DAVIS. I move a reconsideration of the vote by which the amendment of the gentleman from Logan was rejected.

The question on reconsidering was taken, and the convention refused to reconsider.

Mr. BOYD. I will offer the following as a substitute for that part of the sixth section of the report of the select committee, which is now pending:

"The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation as aforesaid, the state shall be districted into twelve districts.

*First District*—Fulton, Hickman, Graves, Ballard, McCracken, Calloway, Marshall, Livingston.

*Second District*—Trigg, Christian, Caldwell, Crittenden, Union, Henderson, Hopkins.

*Third District*—Davies, Ohio, Hancock, Grayson, Breckinridge, Hart, Larue, Hardin, Meade.

*Fourth District*—Todd, Muhlenburg, Logan, Simpson, Allen, Warren, Butler, Edmonson.

*Fifth District*—Monroe, Barren, Cumberland, Clinton, Adair, Green, Taylor, Casey, Russell.

*Sixth District*—Jefferson, Bullitt, Nelson, Shelby, Spencer, Washington, Marion.

*Seventh District*—Oldham, Trimble, Henry, Franklin, Owen, Carroll, Gallatin, Grant, Boone.

*Eighth District*—Scott, Harrison, Pendleton, Kenton, Campbell, Nicholas, Mason, Bracken.

*Ninth District*—Lewis, Fleming, Bath, Montgomery, Morgan, Greenup, Lawrence, Carter.

*Tenth District*—Fayette, Woodford, Bourbon, Clarke, Jessamine, Anderson, Mercer, Boyle.

*Eleventh District*—Madison, Garrard, Lincoln, Rockcastle, Laurel, Pulaski, Whitley, Wayne.

*Twelfth District*—Estill, Owsley, Clay, Perry, Letcher, Floyd, Breathitt, Johnson, Pike, Knox, Harlan.

When a new county shall be formed of territory belonging to more than one district, that county shall be added to, and form a part of the district out of which the largest amount of territory was taken to form such new county.

In the year \_\_\_\_\_, and every \_\_\_\_\_ year thereafter, an enumeration of all the qualified electors of the state shall be made, in such manner as shall be directed by law.

In the several years of making such enumeration, each district shall be entitled to representatives equal to the number of times the ratio is

contained in the whole number of qualified electors in said districts: *Provided*, That the remaining representatives, after making such apportionment, shall be given to those districts having the largest unrepresented fractions.

Representatives to which each district may be entitled shall be apportioned among the several counties, cities, and towns of the district, as near as may be, in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties, within the district, may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, and in the same district, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to the county having the largest residuum."

I have but little to say in respect to that proposition. It varies but little from the one which I had the honor to present to the convention some weeks ago. It will be seen and recollected by gentlemen, that I leave the apportionment among the several counties within the district, in accordance with the principles in the old constitution, confining to each district its own residuums, so that the legislature shall not have power to roll residuums from one district to another. It will be impossible under this plan for any great injustice to be done.

The question being taken on the adoption of the substitute, Mr. BOYD demanded the yeas and nays, which were yeas 46, nays 40.

YEAS—Mr. President, (Guthrie,) John S. Barlow, Alfred Boyd, Wm. Bradley, Francis M. Bristow, Charles Chambers, William Chenault, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Alfred M. Jackson, Thomas James, Charles C. Kelly, James M. Lackey, Willis B. Machen, Martin P. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, John D. Morris, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, John J. Thurman, Philip Triplett, Squire Turner, John L. Waller, John Wheeler, Charles A. Wickliffe, Wesley J. Wright—46.

NAYS—Richard Apperson, John L. Ballinger, William K. Bowling, Luther Brawner, Thomas D. Brown, William C. Bullitt, William Cowper, Garrett Davis, Chasteen T. Dunavan, Selucius Garfield, James H. Garrard, Thomas J. Gough, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Nathan McClure, David Meriwether, Jonathan Newcum, Johnson Price, John T. Robinson, Thos. Rockhold, James Rudd, Jas. W.

Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Howard Todd, Henry Washington, Andrew S. White, Robert N. Wickliffe, Geo. W. Williams, Silas Woodson—40.

So the substitute was adopted.

The question recurred on the adoption of the substitute as a part of the sixth section.

Mr. TURNER. I move the previous question. The main question was ordered to be now put.

Mr. WALLER demanded the yeas and nays, and there were yeas 47, nays 41.

YEAS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, William Chenault, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, James Dudley, Benjamin F. Edwards, Milford Elliott, Green Forrest, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Alfred M. Jackson, Thomas James, William Johnson, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Willis B. Machen, Martin P. Marshall, William N. Marshall, Richard L. Mayes, John D. Morris, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, Philip Triplett, Squire Turner, John Wheeler, Charles A. Wickliffe—47.

NAYS—Richard Apperson, William K. Bowling, Luther Brawner, Thomas D. Brown, Chas. Chambers, William Cowper, Garrett Davis, Chasteen T. Dunavan, Selucius Garfiede, Jas. H. Garrard, Thomas J. Gough, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, George W. Johnston, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, William C. Marshall, Nathan McClure, David Meriwether, Jonathan Newcum, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, James Rudd, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—41.

So the section was adopted.

The convention then adjourned.

#### FRIDAY, DECEMBER 14, 1849.

Prayer by the Rev. STUART ROBINSON.

#### ELECTIONS AND RETURNS OF OFFICERS &c.

Mr. TURNER submitted the following sections and on his motion they were laid on the table and ordered to be printed:

"Sec. —. The general assembly shall direct, by law, the mode and manner of conducting and making due returns to the secretary of state, of the election of attorneys for the commonwealth, judges of the county courts, and sheriffs, and all other ministerial and executive officers except those hereinafter specified; and shall, in like

manner, direct the mode and manner of conducting and making due returns to the respective county courts, of the election of justices of the peace, constables, coroners, surveyors, county attorneys, jailers, assessors, and other officers, whose duties shall be confined to counties, or parts of counties, or to towns.

SEC. —. Clerks of all other courts shall be proceeded against and removed from office for good cause, in the same manner that is provided for the removal of the clerk of the court of appeals: *Provided*, That when a vacancy shall occur, from any cause, or the clerk shall be under charges, upon information, the judge or judges of the respective courts shall have power to appoint a clerk *pro tem.*, to perform the duties of clerk, until such vacancy shall be filled, or the clerk shall be acquitted: *And provided*, That the legislature shall provide for the appointment, *pro tempore*, of a county assessor, in case of a vacancy.

#### LEGISLATIVE DEPARTMENT.

Mr. GAITHER, pursuant to notice heretofore given, moved a reconsideration of the vote, adopting the fifth section of the report on the legislative department, with the view of moving to amend that portion of it in relation to cities.

Mr. BROWN moved to lay the motion on the table. At this late period of the session he was unwilling to open every question anew, which had been fully discussed and deliberately settled.

The yeas and nays were called for thereon and were yeas 51, nays 38.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Henry R. D. Coleman, William Cowper, Lucius Desha, James Dudley, Benjamin F. Edwards, Selucius Garfiede, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Mark E. Huston, James W. Irwin, George W. Johnston, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, George W. Mansfield, Martin P. Marshall, William C. Marshall, David Meriwether, Wm. D. Mitchell, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Wm. Preston, Larkin J. Proctor, John T. Robinson, Ira Root, Jas. Rudd, Ignatius A. Spalding, John D. Taylor, William R. Thompson, Howard Todd, Squire Turner, John L. Waller, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson—51.

NAYS—John L. Ballinger, Luther Brawner, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, Edward Curd, Garrett Davis, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Alfred M. Jackson, Thomas James, William Johnson, Charles C. Kelly, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, Henry B. Pollard, Johnson Price, Thomas Rockhold, John T. Rogers, James W. Stone, Michael L. Stoner, John J. Thurman, Philip Triplett—38.

So the convention laid the motion on the table.

#### APPORTIONMENT OF REPRESENTATION.

Mr. BALLINGER gave notice of his intention to move a reconsideration of the vote by which the amendment of the gentleman from Trigg, (Mr. Boyd,) was substituted for a part of the sixth section of the report of the committee on the legislative department.

Mr. GARRARD moved to dispense with the rule which requires a motion to reconsider to lie over.

The motion was agreed to, and the vote was reconsidered.

A conversation ensued on the subject under consideration, which resulted in its postponement to to-morrow, and in the mean time, that the following propositions which gentlemen desired to submit, should be printed:

Mr. WOODSON'S substitute for the latter clause of sixth section of the legislative report.

"At the first session of the general assembly after the adoption of this constitution, provision shall be made by law, that in the year 1858, and every eighth year thereafter, an enumeration of all the representative population of the state shall be made. The House of Representatives shall consist of one hundred members, and to secure uniformity and equality of representation, the state is hereby laid off into ten districts.

The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell and Trigg.

The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson.

The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart.

The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln.

The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson.

The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd and Johnson.

The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville.

The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine.

The ninth district shall be composed of the counties of Clarke, Montgomery, Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan, and Breathitt.

The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin.

The number of representatives shall, at the several sessions of the general assembly, next after the making of these enumerations, be apportioned among the ten several districts,

proportioned according to the respective representative population of each; and the representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern to-wit: Every county, town or city having the ratio, shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns or cities having one or more representatives, and the largest representative population above the ratio, and counties, towns, and cities having the largest representative population under the ratio, regard being always had to the greatest representative population: *Provided*, That when a county may not have a sufficient number of representative population to entitle it to one representative, then such county may be joined to some adjacent county or counties to send one representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of representative population."

Mr. PRESTON'S substitute for the latter clause of the sixth section of the legislative report.

"In the year 1851, and every eighth year thereafter, an enumeration shall be made of all the qualified electors of this commonwealth. After each enumeration, representatives and senators shall be apportioned as fairly as practicable, among the several counties, cities, and towns, of this commonwealth, according to the number of qualified electors therein.

In making the apportionment, all counties having less than two thirds of the ratio, shall be joined to such adjacent counties as will make the sum of their electors approximate most nearly the ratio. After this is done, all fractions or residuums shall be apportioned upon the principle of absorbing the smallest in the largest fraction, and so on, successively, until the apportionment is completed; but no fraction shall be attached to give representation to any county outside of the appellate district in which it originates."

Mr. ROGERS' substitute for the latter clause of the sixth section of the legislative report.

"which shall be first ascertained in the year 1850. At the first session of the general assembly, after the adoption of this constitution, provision shall be made, by law, that in the year 1858, and every eighth year thereafter, an enumeration of all the qualified voters of the state shall be made. The house of representatives shall consist of one hundred members; and to secure uniformity and equality of representation, the representatives shall be apportioned among the districts of the court of appeals, in proportion to the number of qualified voters in each. In making such apportionment, the following rules shall govern, to-wit: Every county, town, or city, having the ratio, shall have one representative, and if double the ratio, two representatives; and so on, until the ratio is exhausted. Next, the counties, towns, or cities, having one or more representatives, and the largest number of voters above the ratio, and the counties, towns, and cities, having the largest number of voters under the ratio, regard be-

ing always had to the greatest number of qualified voters: *Provided*, That if there should be any county not having a sufficient number of qualified voters to entitle it to a representative, it shall be added to the adjoining county having the largest residuum, provided that said residuum, with the vote of the added county will amount to two thirds of the ratio, in which event the two counties shall have two or more representatives, as the case may be. And if the addition of such county to the county having the largest residuum, will not entitle said two counties to an additional representative, then said county not having a sufficient number of qualified voters, shall be added to the adjoining county or counties having the smallest residuum, to form a representative district."

Mr. TURNER'S substitute for the latter clause of the sixth section of the legislative report:

"Sec. — Representation shall be equal and uniform in this commonwealth, and shall be forever regulated by the number of qualified electors therein. In the year and every eighth year thereafter, an enumeration of all the free male inhabitants of the state above twenty-one years of age shall be made, in such manner as shall be directed by law. The number of representatives shall, in the several years of making these enumerations, be so fixed as not to be less than seventy-five, nor more than one hundred; and they shall be apportioned for the four years next following, as near as may be, among the several counties and towns in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall be in the power of the general assembly to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum; and the general assembly, in making said apportionment, shall commence at the county of Greenup: *Provided*, That no county having a less voting population shall have a separate representative, when another county having a greater number of voting population has no representative: *And provided*, That no county having a less population shall have two representatives, when another county having a greater number of voting population has but one representative."

Mr. C. A. WICKLIFFE'S substitute for the latter clause of the sixth section of the legislative report.

"Sec. — At each apportionment of representation, it shall be the duty of the General assembly to divide the state, by counties which are coterminous, commencing at the state line on the Ohio river, into three districts, binding on said river, (extending southward to the state line,) as nearly equal in representative population as may be, and allot to each of said districts the number of representatives to which its repre-

sentative population shall entitle it, according to the ratio fixed. The number of representatives in each district shall be apportioned among the several counties in such mode as will best preserve the principle of equal and fair representation. In doing which, the following rules shall be observed:

*First*. Each county shall be entitled to a representation equal to its representative population.

*Second*. The fraction of any county shall be transferred to an adjoining county, when such adjoining county has a representative population under the ratio, but greater than such fraction, and when such fraction or fractions, added to the representative population of the adjacent county, shall be equal to the ratio, such county shall be entitled to a separate representation.

*Third*. When the representative population of such adjacent county is less than the fraction of the adjoining county, the two shall be united, and form one representative district.

*Fourth*. Two or more coterminous counties, each having a representative population under the ratio, shall be united, and shall constitute a representative district.

*Fifth*. When there shall be a fraction or fractions not absorbed by an adjoining county or counties, the same shall be transferred to that county in the district having the largest representative population under the ratio, which shall constitute a representative district."

Mr. THOMPSON'S substitute for the latter clause of the sixth section of the legislative report:

"An enumeration of the qualified voters, and an apportionment of the representatives in the general assembly shall be made in the year 1852, and within every subsequent term of eight years. The number of representatives shall, at the first session of the general assembly after the enumeration aforesaid, be apportioned among the several counties, cities, and towns, according to the number of qualified voters in each, and shall not exceed one hundred, or be less than seventy-five: *Provided*, That any county having two thirds of the ratio shall be entitled to one member."

Mr. CHAMBERS' substitute for the latter clause of the sixth section of the legislative report:

"In apportioning representation among the several counties in this commonwealth, every county which is not entitled to a separate representative shall be attached to that adjoining county which contains the least voting population; and counties thus attached shall vote in conjunction for representative or representatives. The full ratios shall be first filled, and the remaining representative, (if any,) shall be given to the counties or attached counties, having the largest residuums: *Provided*, That not more than two counties shall in any case be attached for electing a representative; and where the residuums of any two counties thus attached shall obtain an additional representative each county shall have one, and vote separately."

Mr. APPERSON gave notice that he should move the plan of the select committee.

The eleventh section of the report of the com-

mittee on the legislative department was next read as follows:

"Sec. 11. The senate shall consist of not less than thirty, nor more than thirty eight members."

Mr. BRISTOW moved to strike out the entire section, and insert the following:

"In the apportionment of representation, the number of representatives in the house of representatives shall be seventy five; and the number of senators twenty five."

Mr. CLARKE opposed the amendment in a few remarks.

Mr. GHOLSON moved to amend the amendment by striking out "seventy-five," and inserting "one hundred;" also, by striking out "twenty-five," and inserting "thirty-eight."

A division was called for, and the first branch was agreed to.

Mr. BRISTOW called for the yeas and nays on the second branch, and they were—yeas 62, nays 28.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thos. D. Brown, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Benjamin Copelin, William Cowper, Lucius Desha, Benjamin F. Edwards, James H. Garrard, Richard D. Gholson, Thos. J. Gough, Jas. P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix, Thomas J. Hood, Mark E. Huston, Thomas James, Wm. Johnson, Geo. W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, William C. Marshall, William N. Marshall, David Meriwether, William D. Mitchell, Thos. P. Moore, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinion, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompon, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, John Wheeler, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—62.

NAYS—Francis M. Bristow, William C. Bullitt, Henry R. D. Coleman, Edward Curd, Garrett Davis, Jas. Dudley, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfiede, Ninian E. Gray, Ben. Hardin, Andrew Hood, J. W. Irwin, Alfred M. Jackson, George W. Johnston, Charles C. Kelly, Thos. W. Lisle, Martin P. Marshall, Richard L. Mayes, Nathan McClure, John D. Morris, Johnson Price, John T. Rogers, Michael L. Stoner, Andrew S. White, George W. Williams,—28.

So the amendment to the amendment was adopted.

The amendment was then adopted for the original section.

The twelfth section was read and adopted as follows:

"Sec. 12. The same number of senatorial districts shall, from time to time, be established by the general assembly, as there may be senators allotted to the state, which shall be so formed as to contain as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a senatorial district,

except such county shall be entitled, under the enumeration, to two or more senators."

Mr. GARRARD offered the following as an additional section, and it was adopted:

"Senators and representatives shall be elected under the first apportionment, after the adoption of this constitution, in the year 1851, and every two years thereafter, unless changed by law."

Mr. JAMES called the attention of the convention to a resolution which he offered at an early period of the session, and said that as he believed such a provision was necessary and important, he would test the sense of the convention upon it, by offering it again. He now moved, therefore, that it be printed, and he would call it up on a future day.

It was read as follows, and ordered to be printed:

"The general assembly shall have no power to pass any act or resolution for the appropriation of money, or creating any debt against the state, or for the payment of money in any way whatever: *Provided*, The debt created, or money appropriated, may exceed dollars, unless the act or resolution creating the debt or appropriating the money, shall be voted for by a majority of all the members then elected to each branch of the general assembly; said vote to be taken by the yeas and nays, which shall be entered upon the journals of each house."

Mr. KAVANAUGH offered the following as an additional section.

"The proceeds of the slackwater navigation of the state are to form part of the sinking fund, nor is the said sinking fund in any manner to be chargeable with the payment of the interest or principal of the school fund, nor due by the state to the board of education."

After a few words from Mr. IRWIN, Mr. BROWN, and Mr. KAVANAUGH, the motion to print was not agreed to.

The question then recurred on the adoption of the section.

Mr. HARDIN. The avails of slackwater were set apart for the sinking fund, and last year we voted that two cents should be levied upon every hundred dollars of property and applied to the school fund; but the legislature exceeded this, for they transferred the avails of the sinking fund to the school fund. Now I understand the gentleman from Anderson, in offering the proposition, to mean nothing more nor less than this—that the avails of the slackwater shall be and remain where it was originally designed—as a part of the sinking fund.

The gentleman from Franklin brought here a book yesterday in relation to the auditor's report. Upon looking into that report, I find it is a very different year; the year he read was 1848, beginning with October, 1847, and ending with 1848. The document made out by the auditors, begins with the first of October, 1848, and ends with 1849. It is a different document altogether.

Mr. LINDSEY. Mr. President: It will be seen that the language used on the 832d page of the debates, by the delegate from Nelson, (Mr. Hardin,) conveys the idea that the proceeds paid into the treasury last year, from slackwater improvements, netted only \$10,000. This will be

understood by every one to mean the business year, from January to January, as the accounts are kept by the board of internal improvement; when in fact the net sum was over three times that amount, as stated by me yesterday. The auditor's statement, (as the fiscal year of the commonwealth is from October to October,) embraces three months of last year, and leaves out three months of this year, and includes the period when business was almost entirely suspended by reason of the cholera, and afterwards by low water.

I have learned that the business year, to 31st December, will realize on the Kentucky river, from \$40,000 to \$41,000, as the gross receipts of this year.

There have been some extraordinary expenditures in securing dams one and two, on the Kentucky river, amounting to perhaps \$6,000 or \$7,000; but the ordinary expenditures will not be increased, still the net amount to be paid into the treasury for the year 1849, will go much over \$10,000. My whole object has been to place facts and figures aright.

Mr. HARDIN. The expense of the Kentucky river navigation last year was \$26,600. I have here a document, setting forth the avails and expenditures for a series of years, and other information in relation to the public debt, which may possess some interest.

The table I present shows the receipts and expenditures for the year ending in 1849. The table the gentleman, (Mr. Lindsey,) referred to the other day, is for the year 1848. The remarkable increase of expenditures for the year 1849, to my mind, demand an investigation. It is as follows:

#### AUDITOR'S OFFICE, FRANKFORT, Oct. 1849.

SIR: In compliance with your verbal request, I submit the following statements, which are supposed to embrace the information desired by your committee, to-wit:

#### 1. Statement showing the condition of the public debt of the State of Kentucky, from the 18th of October, 1848, to the 10th of October, 1849.

Whole amount of public debt outstanding, October 10, 1848,	\$4,552,313 81
Amount paid into the treasury by trustee of Craddock fund, June 15, 1849,	500 00
	<hr/> 4,552,813 81

Amount redeemed, from the 10th October to December 31, 1848,	\$19,400 00
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Amount redeemed, from 1st January to 10th October, 1849,	36,231 00
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Error in original statement of amount of internal improvement and rail-road scrip, outstanding,	30 00
	<hr/> 55,661 00

Whole debt (which is exclusive of school bonds,) outstanding, October 10, 1849,	\$4,497,152 81
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Of this sum, \$3,661,152 81 bear 6 per cent. interest; \$836,000 bear 5 per cent. interest, and \$1,690 of the 6 per cent. debt are due.

#### 2. Statement of receipts and disbursement of the Treasury on account of the Sinking Fund, from October 10, 1848, to October 10, 1849.

##### RECEIPTS.

Balance to the credit of the sinking fund, October 10, 1848,	\$124,967 05
Deduct this amount in hands of James Davidson, late Treasurer, and not accounted for,	50,511 71
	<hr/> \$74,455 34
Revenue transferred by 2d Auditor,	123,036 44
Northern Bank dividends, July, 1848,	13,074 75
Northern Bank dividends, for January and July, 1849,	26,100 00
Bank of Kentucky dividends for January and July, 1849,	61,093 50
Bank of Louisville, dividend for January, 1849,	1,624 00
Rent of Lexington and Ohio railroad,	14,635 62
Tax on Banks,	35,150 00
Kentucky river tolls, (gross,) -	41,688 38
Green and Barren river tolls, (gross,) -	7,932 06
Rent of water power on Kentucky river,	480 00
Turnpike roads,	34,095 67
Commonwealth's Bank,	1,400 00
Miscellaneous receipts,	2,353 20
Craddock fund,	500 00
Revenue to the credit of the sinking fund, in the 2d Auditor's office, and subject to transfer,	23,930 26
Taxes on Broker's and Insurance offices, to the credit of sinking fund, in the 2d Auditor's office, and subject to transfer,	9,505 19
Total resources,	<hr/> \$471,054 41

##### DISBURSEMENTS.

Interest on the public debt,	\$271,287 35
Redemption of public debt,	55,631 00
This amount, paid in as part of the rent of railroad, balance of principal and interest of a bond to the citizens of Lexington, payable out of ordinary revenue,	1,413 50
Expense of Kentucky river navigation,	26,600 00
Expense of Green and Barren river navigation,	12,532 06
Contingent expenses,	44 88
Total disbursements,	<hr/> \$367,508 79
Amount to the credit of the sinking fund, in the treasury,	\$70,110 17
Amounts carried over,	<hr/> \$70,110 17 \$367,508 79



Am'ts brought forward, \$70,110 17	\$367,508 79
Amount to the credit of the sinking fund, with 2d Auditor, 33,435 45	
	103,545 62
	<u>\$471,054 41</u>

3. *Statement of the proceeds of Kentucky river navigation, for each year, from 1843, ending on the 10th of October: Also, the amount of money drawn for repairs of said navigation, so far as appears from the books of this office.*

	Receipts.	Expenditures.	Nett.
1845	\$17,244 15	\$	\$17,244 15
1846	36,680 18	7,506 70	29,173 48
1847	44,516 85	15,446 55	29,070 30
1848	47,761 75	14,500 00	33,261 75
1849	41,688 38	26,600 00	15,088 38

The year 1845 is incomplete, and for the further information of the committee, I subjoin a similar statement to the above, made by the board of internal improvement, in their annual report for 1848, commencing with the opening of navigation, in 1843, and ending December 19, 1848:

	Collections.	Expenditures.	Nett.
1843	\$7,852 49	\$1,658 26	\$6,194 33
1844	19,044 34	10,475 12	8,569 22
1845	34,345 61	8,888 65	25,456 96
1846	35,977 63	13,446 55	22,531 08
1847	49,638 77	17,746 75	31,892 02
1848	46,279 01	13,531 22	32,747 79

These statements are from January 1st to last of December, except the last year, which is to December 19.

4. *Statement of receipts and disbursements on account of Green and Barren river navigation.*

	Receipts.	Expenditures.	Nett.
1846	\$8,737 13	\$4,500 00	Nett, \$4,237 13
1847	12,080 88	12,939 67	Loss, 858 79
1848	10,562 25	6,525 17	Nett, 4,037 08
1849	7,932 06	12,532 06	Loss, 4,600 00

It should be observed that in giving the proceeds of Kentucky river, to the 10th of October, 1849, a warrant drawn for expenses of current quarter, amounting to \$7,000, is deducted, which is the fifth quarterly requisition for that year.

Respectfully,  
J. B. TEMPLE,  
Auditor Public Accounts.

Hon. BEN. HARDIN,  
Chairman of Committee on the public debt.

Mr. LISLE. I am the friend of common schools and education. I believe that the continuance of our free institutions depends on the virtue and intelligence of the people, and I had intended submitting some remarks to the convention on these subjects, but there had been so much time consumed in discussion, that I forbore doing so, while they were under consideration. Our action here is to affect this state vitally for weal or for woe. I drew up the first section of the article on education, which has been adopted by the convention, and I am under obligations to the younger gentleman from Nelson (Mr. C. A. Wickliffe) for presenting it in lieu of the substitute which he had offered for the report of the committee on education. I could

not support the report of that committee, because it made it imperative on the legislature within five years to establish, and forever thereafter keep in existence an efficient system of common schools in the state. To accomplish this, might, and would probably, have led to oppressive taxation against the wishes of the people. If the system is sustained in the state, it must be by an enlightened public sentiment. I entreat the friends of education to do nothing which may tend to set public sentiment against it. I am unwilling to force on the people of the state a system of common schools which must be sustained by taxation levied on them against their consent. Such a course, instead of promoting the cause of education, would, as I believe, be an injury to it. The section which has been adopted, secures the present school fund of the state inviolate for the purposes of common schools, and it also provides that the interest on said fund shall be paid and appropriated in aid of common schools, and for no other purpose.

Sir, the income on the sinking fund will be amply sufficient to pay the ordinary expenses of the state, the interest on our public debt, the interest on the school fund, and leave a considerable sum to be applied annually to the extinguishment of the principal of the public debt, without any increase of taxation.

Public sentiment in the state, on the subject of education, is moving in the proper direction, as was shown at the election before the last, when the people voted an additional tax of two cents for the purpose of sustaining common schools. Sir, it is reasonable to suppose that the delegates on this floor reflected truly the wishes of their constituents, when they adopted, with great unanimity, the section securing the school fund, and requiring the interest on it to be paid.

The section which was offered by the gentleman from Anderson, (Mr. Kavanaugh,) was designed to prohibit the application of any portion of the income of the sinking fund to the payment of the interest on the school fund. I do not assert that such is the intention of the gentleman who moved this section, but most assuredly, if adopted, it would be a fatal stab to the system of common schools.

Sir, is there any gentleman on this floor, who will venture openly to advocate the repudiation of the debt due to the board of education? This school fund was not raised from the people of the state by taxation; it was a munificent gift, if I may use the expression, by the general government to the state, and has been solemnly set apart and dedicated by the state, to purposes of education. It is a fund which justly belongs to the children of the country, many of whom are poor and destitute. Sir, the repudiation of this debt would be most manifestly unjust; it would be a stain on the fair fame of the state; no gentleman will assert that he desires to see an increase of taxation in the state; yet, sir, adopt this section, and you must either repudiate the debt or pay the interest on it by an increase of taxation. Are gentlemen prepared for either? Sir, we are attempting to do too much. We are going too much into detail. A constitution should fix and settle great and leading principles, and leave to the legislature to carry out

the details. Adopt the section now under consideration, and we are not only going too much into detail, but we shall do that which will not meet the approbation of our constituents. By the adoption of the section, we virtually repeal an act passed by the last legislature. By that act the income arising from slack water improvements on the Kentucky, Green, and Barren rivers, was, after the year 1850, to be applied to the payment of the interest on the school fund.

Sir, a large portion of the school fund has been unjustly and improperly applied to the improvement of our roads and rivers, and it is right and proper that the legislature should have the power of applying the income arising from these roads and rivers to the payment of the interest on that fund. The section now under consideration, is not only uncalled for, but improper, and I hope the convention will reject it.

Mr. MAYES moved the previous question, and the main question was now ordered to be put.

Mr. TAYLOR called for the yeas and nays on the adoption of the section, and they were—yeas 11, nays 77.

YEAS—Mr. President, (Guthrie,) Alfred Boyd, William Bradley, Green Forrest, Ben. Hardin, Thomas James, George W. Kavanaugh, Wm. D. Mitchell, Ignatius A. Spalding, Squire Turner, Chas. A. Wickliffe—11.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Wm. K. Bowling, Luther Brawner, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, William Chenault, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Jas. Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thos. J. Gough, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, William Hendrix, Andrew Hood, Thos. J. Hood, Mark E. Huston, Jas. W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, Martin P. Marshall, William C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Wm. Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ira Root, Jas. Rudd, John W. Stevenson, James W. Stone, Michael L. Stoner, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Henry Washington, John Wheeler, Andrew S. White, Robert N. Wickliffe, George W. Williams, Silas Woodson—77.

So the section was rejected.

#### ORGANIZATION OF NEW COUNTIES.

The convention proceeded to the consideration of the article in relation to the organization of new counties, as follows:

"SEC. 1. No new county shall be formed with an area of less than three hundred and fifty square miles; nor shall such new county be formed, if by doing so it reduces any county

out of which it shall be formed, in whole or in part, below an area of four hundred square miles; and in running the lines or boundary of such new county, no such line shall run nearer than ten miles of the county seat of any county."

Mr. MAYES. Being a member of the select committee whose report is now under consideration, I respectfully ask the attention of gentlemen to the reasons by which I was influenced, as a member of that committee, to give my assent to the report, and by which I am now induced to advocate the adoption of it by the convention, as a part of the constitution which we are attempting to frame for the future government of Kentucky. Did I not believe that some such principle as that indicated by the report, was demanded by the people, and absolutely necessary, I certainly would not be found insisting upon its adoption. But being thoroughly satisfied from experience and observation, as well as the history of the state upon this subject, that some such principle is essentially necessary to the well-being of the state and her interests, as well as to the people whose misfortune it is to reside in counties where questions of disorganization and division of the counties exist. I am impelled not only to advocate the adoption of the restrictive principle, contained in the report; but feel most anxious that some such feature be incorporated as a part of the constitution, assured as I am, that by it much evil will be prevented, and if we can prevent evil, to that extent we do good.

The report proposes first that no new county shall hereafter be formed in Kentucky if by its creation the county or counties, or either of them, from which it may be taken in whole or in part, shall be left with an area of less than four hundred square miles of territory, and secondly that no new county shall be formed having less than three hundred and fifty square miles; and in the third place it is proposed that the county line of any county which may hereafter be created, shall not be run nearer than within ten miles of any county seat. An amendment has been proposed by the honorable chairman of the committee, (Mr. C. A. Wickliffe,) which proposes to provide that no new county shall hereafter be created, when by so doing the county or counties or either of them from which it may be taken, will thereby be reduced in voting population to a less number than the then existing ratio of representation. When this proposition was under consideration some weeks ago, I could but be surprised by the interest manifested by some gentlemen in opposition to it, and I was especially astonished that my friend from Caldwell, (Mr. Machen,) should have been excited as he evidently then was. That gentleman seemed to think that the adoption of the principle indicated by the report of the committee would be fraught with the most dangerous consequences to the constitution which we are attempting to frame. He warned us that if we should dare to restrain the legislature in its future action upon this subject, wild and impolitic as we all do know that action heretofore to have been, such restraint, whatever may be the necessity for it, would inevitably weigh down the instrument and cause its defeat, when it shall be submitted to the people for approval or

rejection. That gentleman, by way of making clear to the minds of delegates the truth of this prediction, asserted without qualification that should the principle contained in the report which we are now considering be adopted and become part of the constitution, more than one half of his constituents would for that cause alone refuse to give to it their sanction, and would in fact vote against its adoption—although it may contain all those vastly important changes, so loudly and almost universally demanded by our constituents from one end of the commonwealth to the other. That portion of the gentleman's constituents who voted against and opposed the call of this convention, will no doubt vote against any constitution we may make, be the provisions of it what they may—because they are satisfied with the existing instrument and desire no change; but sir, can it be possible that more than a moiety of the voters of Caldwell county who voted for and advocated the call of this convention, will condemn and vote against the instrument we may frame and offer to them as the future constitution of Kentucky; if in it they are secured the right to select for themselves by vote all the officers of the government, great and small—if by it also that excessive legislation which has been and which the people well know to have been one of the greatest, if indeed not the very greatest evil under which they have labored and groaned for nearly fifty years past, shall be checked, and if by its provisions the legislature shall hereafter be convened not oftener than once in two, three, or four years, and if the common school fund be secured so that it cannot be misapplied, that fund which I do trust in God will at last bless and secure to the penniless, unprotected, fatherless children of our highly favored commonwealth, at least a common education; and thereby place the offices and honors of the state within their reach; I repeat can it be possible that more than one half of the gentleman's constituents will vote against the new constitution, containing, as I am well assured it will do, those together with other provisions, deemed generally to be of paramount importance, and fall back on the present constitution with all its acknowledged defects and imperfections, and that too for the reason, and that only, that this convention may think proper to say that in time to come some restriction shall exist as matter of constitutional law upon the subject of creating new counties, surely not. It cannot be possible that such would be the case. The gentleman will pardon me when I say that in this he surely must be mistaken. A portion of the people of Caldwell may be and doubtless are and long have been most anxious to bring about the division of that county as the journals of the legislature made at different sessions, abundantly attest.

Still, Mr. Chairman, I cannot believe that any gentleman, be his residence where it may, who was sincerely in favour of the call of this convention, that the constitution might be amended in the important particulars to which I have alluded, as well as in other respects, will ever vote against the new one for a cause so very trivial. Indeed, one might well doubt the sincerity of any, who might say, that they had been in favor of a convention, but had voted against the

new constitution because of such a provision as the one proposed. I should incline strongly to believe that such had never been dissatisfied with the constitution which we are attempting to amend. The people of Caldwell, no doubt, voted for the call of this convention, for the same reasons that citizens of other portions of the state voted for it—they were sensible that the existing constitution was defective in many very important particulars, and that by its amendment in those particulars, the great end and aim of government, human happiness and prosperity would be promoted. If those great changes be made, which we all, or nearly all of us acknowledge should be made, in our form of government, then sir, I have no fear, no, not the shadow of a doubt, that our work will be received by our constituents, and will be by them most triumphantly adopted as the future constitution of our state. No sir, it will not be rejected by any portion of the people, because we have honestly thought that the common good demanded that some limit should be fixed in it upon the subject under consideration. The man must be timid indeed, if he be not labouring under a kind of mental aberration, who does, or can believe that the old constitution will be preferred to the new, for the absurd, and to my mind most ridiculous reason that the convention have said, or may say, that an old county shall not be reduced to less than four hundred square miles, nor a new one created containing less than an area of three hundred and fifty. If it be true, that persons will condemn and vote against the new constitution, if it contain the proposed restriction, why may I not argue on the other hand, that there are as many, not to say a greater number who will vote against it if it contain no such restrictive principle? Surely sir, I might with just as much reason and propriety insist that the constitution will be defeated if it contain no such provision, as gentlemen have for saying that such a provision will operate as a dead weight upon it, and will crush it. I do not however so argue, for the simple, and to myself very satisfactory reason, that whether the principle for which I now contend become part of the constitution or not, will not in the least degree affect either its reception or rejection—when it shall be submitted to the ordeal of the people. Suppose the question we are now considering was submitted to the voters of Kentucky, for their decision, what sir, would that decision be? Can any gentleman doubt, but that their votes would be at least twenty for it to one against it? No one will doubt this. Then sir, if a majority of the voters of the state would sanction the amendment proposed by the report of the committee, shall we hesitate to do that which they would do if here, and acting for themselves, and especially so, when we must know, that by the incorporation of this principle in the constitution, we shall greatly promote the general happiness, contentment and prosperity of the state and people, and check, to some extent at least, the drain upon the treasury, resulting from the mistaken and ruinous policy heretofore pursued on this subject, at the same time we give quiet and peace to the people of such counties as are afflicted by one of those vexatious and profitless questions of division.

Sir, I advocated the call of this convention, because I thought important changes should be made in our organic law. I am still for constitutional reform, and I expect and intend to do battle for the new constitution, if it contains those great principles of reform for which we have been contending so long. If we should unfortunately fail to secure the whole and only succeed in part, still I will be found for the new constitution, upon the ground that any improvement is better than none. I am not to be deterred from doing that which my honest judgment tells me is right, by the note so often sounded here, that if this principle or that, be adopted, the consequence will be, the defeat of the constitution? Whenever gentlemen are at fault, and can find no reasonable argument to bring to their aid, by way of sustaining their opposition to any proposition made here, they hold *in terrorem* over the heads of the friends of such proposition what they suppose to be a "knock down" argument, and that is, if you dare to do this, the constitution will be defeated.

Sir, if propositions are made here, and my judgment be satisfied, that by their adoption the general prosperity and happiness will be promoted, I, for one, shall be found in the support of such propositions and will trust to the good sense of my constituents to sustain me when I return home to mingle with them. If the people of Kentucky have, by an experience of fifty years, which they have had under the existing constitution, learned the deficiency of that instrument, and if they have felt a necessity for its amendment in any one particular, they unquestionably have ascertained the fact that it is exceedingly defective in not having in it some such principle of restriction as the one which the committee propose to incorporate in the new one—such a feature as will, in some degree, restrain the legislature in that wild and reckless course of policy heretofore indulged in in the creation of new counties—such a feature as will give peace to the state and to the people of the different counties upon these vexatious, disturbing, and distracting questions of division—such a principle, sir, as will save to the state treasury, and consequently to the people, large sums of money which will otherwise be uselessly and most improvidently expended and taken from the treasury, and from the expenditure of which no earthly good will arise, either in a public or private point of view, but much, very much, of evil.

Sir, the practice heretofore so extensively, and, as all must confess, so very improperly indulged in by our legislature, calls most loudly for constitutional remedy, and the question now before us is, shall we apply the remedy and place a check upon this great evil, or shall we leave it unchecked, although all of us confess that it has been, and now is, an evil, and that we have it fully in our power to apply the remedy.

The gentleman from Caldwell says that the old counties are satisfied, being conveniently situated, and having but little territory. How does it happen that the old counties are satisfied? (if such be the case.) Simply for the reason that they have no earthly power to increase their territory, and thereby to add to their respectability. How has it happened that those

old counties, such as Woodford and others, are so small in point of territory as they are, and are now pointed to by such as desire the division of a county, or counties, as examples and precedents in favor of the system of division heretofore indulged in. It is, sir, the result of the unfortunate legislation of Kentucky upon this subject. Those old counties, reduced as they have been in territory, and consequently shorn of much of the influence they otherwise would have exercised, are prepared, I doubt not, by their representatives here, to condemn that course of policy which has, in a great measure, stripped them of many important advantages, and which has resulted in evil, nothing but evil, to the state, and to individuals, for, sir, whenever one individual has been benefitted by it, at least ten have been seriously injured—some in a pecuniary point of view have been almost ruined.

The committee do not propose, Mr. President, that no new county shall hereafter be established in the state—no such thing. It is only proposed to fix in the constitution a rule by which the legislature shall, in time to come, be controlled and governed upon this subject. Will any gentleman contend that the old counties in Kentucky, or any one of them, should be reduced in territory to less than four hundred square miles? Will gentlemen contend that the good of the citizens of any county demands that the legislature should have the constitutional power to reduce them below that size? And, sir, will it be contended, I ask, that the legislature should be permitted to create a county with an area of less than three hundred and fifty square miles? Surely not. Divide the whole territory of the state into one hundred counties, of equal size, and we have exactly that number of counties now, and it will be seen that each county will contain only some four hundred square miles. Then it is proposed that new counties shall not hereafter be formed, containing less than three hundred and fifty square miles, so that the legislature will have the power to create a new county with less territory, by fifty thousand, than the counties of the state now average.

Surely sir, this ought to satisfy gentlemen; no gentleman would, I presume, wish to live in a county having less territory. Mr. President, unless some constitutional barrier be thrown in the way of the legislature upon this subject, I hazard but little when I say that no county in the state, I care not what the extent of its territory may be, is or will be safe against the spirit of disorganization, which sometimes exists in counties and in the legislature. Gentlemen may feel safe now, sir—they may flatter themselves that their counties are so very small that no man but a madman could think of division. Let the constitution remain as it now is upon this subject, and if there be gentlemen who deem their seats of justice and their counties safe from disorganization for the reason that they have but little territory, they will find themselves mistaken. No man can tell when one of those vexatious and distracting questions will be raised in his county; and it is, sir, a singular fact, that when such a question has been once made, it has rarely ever been suffered to sleep. There are those, who from motives of self-aggrandizement, are always and at all times ready to fan

the flame of dissatisfaction and to keep alive the strife, regardless of the injury which may result to the state at large or to individuals. All such persons aim at—all they care for is the promotion of their own fortunes; they care not what the sacrifice may be to others. There are but few, very few counties, Mr. President, where such persons do not live.

The gentleman from Caldwell tells us that there has been a disinclination upon the part of the legislature for years past to organize new counties. Well sir, I do not agree with the gentleman. As great as that disinclination may have been, if that gentleman will take the trouble to examine, he will find that within the last nine years the legislature has created and given life and existence to ten new counties. This is true, what does it prove? Unquestionably that, instead of a disinclination upon the part of the legislature so to act, a very strong inclination has existed, and doubtless will continue to exist in that body, by which it will be impelled, unless restrained as proposed, to the creation of new counties, and that too without any real necessity for so doing. The fact that within so short a time there has been created such a number of counties—most of them as I contend being unnecessary—satisfies me that some wholesome restraint upon this subject is absolutely necessary. View this question in any aspect in which it is susceptible of being presented, we shall see that some such provision as the one contemplated by the report under consideration is essentially necessary to the public good. If the question be one purely of state policy, then some such provision is unquestionably demanded. If it be a question of a local character, still this convention is bound to act on the subject; and if it be a question partaking both of a general and local character, we are called upon to act upon the subject, and place in the constitution such provision as will in future, in some manner, protect the state and the different counties from the positive evils which otherwise will result to both if we fail to act affirmatively upon this subject. Why, I ask, should we not so act, if there be counties in the state with territory sufficient to render their division at all reasonable? Such division may be had, notwithstanding the proposed restriction be made. If there be a county in the state with seven hundred and fifty square miles, it may be divided. I have said, sir, that if this be a question of state policy, apart from local considerations, then we are called upon by that duty which we owe to the state, to act upon this subject. I have also said that the question under consideration partakes both of a state and local character. And now I proceed to show the state aspect of the question. All admit it to be the interest of the people that the government be carried on and administered at the least possible cost. It is expected—and our fellow-citizens have a right to expect—that no expense will be incurred, unless it shall be absolutely necessary, to promote the public good; not that private interests may be advanced to the detriment of the general prosperity—and by the general prosperity I mean the welfare of the people of the whole state—not such as happen to inhabit any particular county to the exclusion of others.

Well sir, here the question arises—does the creation of a new county cost the people of the state at large anything? Does it subtract from the general wealth, and sir, are the people of the state at large taxed to any extent by its creation? I maintain that no county ever was or ever will be made unless at considerable cost to the state. The organization of each new county, when formed, costs the people of Kentucky not less than from \$700 to \$1,000. Taylor county, the last one created, and which completes the hundred, I see from the second auditor's report, cost the state for record books alone, \$278 25. There are forty five volumes of the reported decisions of the court of appeals. The state is bound to furnish the circuit and county court clerk's offices each with a set of those reports—making ninety volumes.—They cannot be had at a cost of less than \$5 per volume—making \$450. The offices must be furnished each with a copy of Morehead and Brown's digest, and with Pirtle's digest—these at \$10 a copy, amount to \$40. And sir, the offices must be supplied with furniture—such as tables and desks—which I put down, I think, low enough at \$75—making, when added together, the considerable sum of \$843 25. These are all the essential articles to the organization, and putting into operation a new county. There are, doubtless, other incidental expenses which do not, at this time, occur to me; but which will, no doubt, be thought of by gentlemen. Up to the year 1840, there were, in the state, but ninety counties—enough, one would suppose, in all conscience. Since that time, however, we find that there has been formed ten others. If the organization of each one of these ten counties cost the state \$843—as I maintain is the fact—then the organization of new counties by the legislature has, within the last nine years, cost the people of Kentucky the large sum of \$8,430. This is not all there is annually paid to the clerk and sheriff of every county out of the common treasure, \$80 for *ex-officio* services. These are positive annual burthens on the state, incurred whenever a new county is formed. There are, doubtless, others. Then sir, does not the public interest imperiously demand that some restriction, some constitutional rule be adopted upon this subject, beyond which the legislature shall not, in future, go. Examine them sir, as a question of state policy, and in that view, it certainly must strike all most forcibly. No gentleman here can, it does appear to me, fail to see that he must favor the report of the committee. But sir, I propose still further to show that the unnecessary multiplication of new counties has otherwise materially affected the revenue of the state, and has, consequently, operated most unfavorably upon the public treasury.

If gentlemen will take the trouble to examine the last report made by the second auditor, they will find that some fifty counties pay the entire expenses of the government, and that the other fifty take from the treasury as much as they pay into it. It will then be seen that, for the year 1848, the counties of Breathitt, Cumberland, Clinton, Floyd, Grayson, Johnson, Knox, Letcher, Laurel, Lawrence, Livingston, Marshall, Morgan, Owsley, Perry, Pulaski, Russell. Rockcas-

tle, Wayne, Whitley, and Harlan, being twenty one counties, took from the treasury \$9,506 34 more than they paid into it. We learn from the same report, that the counties of Monroe, Pike, Adair, Ballard, Crittenden, Graves, Hickman, Meade, McCracken, Hancock, Estill, Allen, Butler, Casey, Carter, Clay, Edmonson, and Larue, sixteen in number, for that year paid, altogether, into the treasury, only \$4,712 71 more than they took from it. Many of the counties which I have mentioned, it will be observed, are new, others of them are old; yet if you will inquire it will be found that the old ones have been so divided and curtailed as to reduce them from counties of the first respectability and importance, to their present condition. Now, Mr. President, take the sums paid by the counties which pay the smallest amounts into the treasury, and add these sums together until you have an amount equal to the sum taken from the treasury by the counties first named, and it will be seen that the whole, or very nearly the whole revenue, paid for the support of the government, is derived from about fifty counties, and that the other fifty afford little or no aid in support of the government.

This state of things is mainly and legitimately attributable to that mistaken policy heretofore indulged in by the legislature, and which we now propose in some measure to remedy. It is insisted, however, sir, notwithstanding all this, that this question properly belongs to the people of such counties as may desire their division, and that this convention would do wrong in laying down any rule upon this subject. And it is further insisted, that a majority of the people of a county should be permitted, without restriction, to divide it whenever they see proper to do so. I deny that the people of any county have the right, or should have the right to divide their county when they see proper to do so, regardless of consequences to the state. If this doctrine be true, then whenever a majority of the people of a county conclude to divide it, it must be done, be the size and situation of the county what it may, be it large or small. If this question be local to the people of the different counties, and I have said that in some respects it may be regarded as local, then I contend that we are positively instructed by our constituents to apply some such restriction upon this subject as is proposed by the report which we are considering. One of the greatest evils of which the people of the state complained, and which exercised as great and powerful an influence in bringing about, and in inducing the people to call this convention, was the fact, that under the existing state of things, there was excessive and improper legislation upon local subjects, greatly to the detriment of the public interest—subjects in which the people of the state generally had and felt no interest whatever. The people at large have no earthly beneficial interest in the division of a county. They, sir, are deeply, most deeply interested that the impolitic legislation such as has heretofore been indulged in on this subject, be checked. Yes, sir, checked at least. It tends to no general good, and the people know it. Its only tendency is to impoverish the state, as well as individuals. How many thousands of dollars has

there in the last ten years been expended in useless legislation upon this subject, in discussions as to whether a county or counties should be divided, and upon the subject of removing seats of justice?

The legislature sits at a cost to the people of more than five hundred dollars per day; and it has been known to be engaged, repeatedly, for weeks, upon a question as to whether or not a county should be divided, or a seat of justice removed. I have said, sir, that excessive and unnecessary legislation upon this subject, had operated most unjustly and oppressively upon private interests. This is true, and all know it to be so. If you will examine the different acts establishing counties, it will be seen that the legislature in the law or act, by which the county is established, generally, if not in all cases, fix the seat of justice permanently (as the act reads) at some point named in the act, thus voluntarily giving a legal promise that if persons see proper to expend their money in the purchase and improvement of property at the seat of justice, such expenditure shall not be sacrificed by a removal of that seat of justice, yet how often have we seen this legal, this voluntary promise, wantonly and grossly violated, and the poor mechanic who upon the faith of this promise had expended his all in the purchase and improvement of a lot at one of those seats of justice *permanently* located by legislative enactment, stripped of all he has by an act of a succeeding legislature, which either divides the county or removes the seat of justice; and if a county be divided, it generally follows that the seat of justice is removed, and when this is done the town is deserted, and property in it is at once rendered valueless. Such was the case in Calloway county, which was but a few years ago divided by legislative enactment. The people were informed by the act of the legislature by which that county was created, that the seat of justice was permanently located at Wadsworth, and upon the faith of this legislative promise—voluntarily made—many good citizens in humble circumstances were induced to, and did expend their all in the purchase and improvement of property at that place. What is now the fact? The legislature some few years past, as I have before said, passed an act by which that county was divided; the division line being run just so as to miss the town, in consequence of which the seat of justice was immediately removed from Wadsworth; in consequence of which that place has been almost entirely deserted, and the property of its citizens rendered worthless; all this was done in defiance of the just and united opposition of the citizens of that town and a large portion of the people of the county. This, sir, is only one instance out of many that I could name of the flagrant injustice and wrong done to private persons under such circumstances. Look, sir, at Salem, destroyed by the division of Livingston county, some two or three years ago. Fulton county was organized by the division of Hickman but a short time since. Why was this new county made? Not because Hickman had too much territory, but because so much of her territory had been taken to aid in the formation of Ballard, that it threw Clinton out of the centre, and it became



necessary, either to divide the county or remove the seat of justice, and break up the people of Clinton. I could, if I had time sir, refer to almost innumerable cases of wanton and unnecessary injustice done to private rights by the policy heretofore pursued by the legislature upon this subject, and from which no corresponding private or public benefit ever has or ever will result. Then sir, is it singular, or at all to be wondered at when it is seen that the legislature has time and again violated those legal pledges, voluntarily made to the people, that it should have forfeited their confidence and esteem. It is not. When our neighbor disregards and violates his promise made to another, he loses the confidence of that neighbor; so with the legislature, when it violates and disregards its pledges made to the people, and made too in the solemn form of law, that people so deceived and abused, must and will lose confidence in the person or body by whom they may have been deceived. I repeat that there is nothing in the proposition of the committee, so strange and new, that gentlemen need be startled by it. If gentlemen will examine, they will find that the new constitution of Tennessee provides that "new counties may be formed not to contain less than three hundred and fifty square miles of territory, such new county must at the time it is created contain four hundred and fifty qualified voters, that no line of such new county shall approach nearer to the court house of the county from which it may have been taken than twelve miles, nor shall the old county be reduced to less than six hundred and twenty five square miles," more than a third larger than the committee propose to leave the old counties of Kentucky.

Now turn to the constitution of Ohio. There we find that no new county can be made, having less than four hundred square miles of territory, nor can the old county or counties, or either of them, from which it may be taken, be reduced to a less number of square miles. We find that by the constitution of Texas, no county can be formed, when by so doing, the county or counties, or either of them, from which it may be taken, shall be reduced in area to less than nine hundred square miles, unless by consent of two-thirds of the legislature; nor shall a new county be established, unless it has as much territory. The constitution of Michigan has this provision: "No county now organized by law, shall ever be reduced by the organization of new counties, to less than four hundred square miles." The constitution of Missouri has this provision: "No county now established, shall ever be reduced by the establishment of new counties, to less than twenty miles square; nor shall any county hereafter be established, which shall contain less than four hundred square miles." Now, sir, look at the constitution of Alabama. In it we find this provision: "No new county shall be laid off hereafter, nor old county reduced to less contents than four hundred and thirty-two square miles." We find in the constitution of Indiana this provision: "The general assembly, when they lay off any new county, shall not reduce the old county, or counties, from which the same shall be taken, to a less content than four hundred square miles." In the constitution of Mississippi, this provision

is found: "No new county shall be established by the legislature, which shall reduce the county, or counties, or section of others, from which it may be taken, to less contents than five hundred and seventy-six square miles; nor shall any new county be laid off of less contents." When we look into the constitution of Arkansas, we find this provision: "No county now established by law, shall ever be reduced by the establishment of any new county, or counties, to less than nine hundred square miles, nor to a less population than its ratio of representation; nor shall any county be hereafter established which shall contain less than nine hundred square miles, or a less population than would entitle such county to a member in the house of representatives." I will now read from the constitution of Iowa, which has this provision: "No new county shall be laid off hereafter, nor old county reduced to less contents than four hundred and thirty-two square miles." So we find that ten of the states of this Union have incorporated into their constitutions provisions similar to those proposed to be inserted in the constitution of Kentucky. Most of the states mentioned are new. Some of them, however, are old, and have remodeled their constitutions, and adopted this principle. Why have they done so? For the reason, I presume, that they have all seen, and some of them have felt, a positive necessity for it. They have seen, as we must now see, that it is the only means by which peace and quiet can ever be hoped for upon this disturbing subject; for, unless some such principle be adopted, questions of division will ever be present in the legislature, and by them the time of that body will be consumed in useless discussion, and the money of the people wasted. Shall we not, then, at least, confine the legislature within reasonable limits upon this subject. The people expect us to adopt some such principle as the one indicated by the select committee; they wish to know where this thing is to end. If our present constitution had such a provision, the advantages to the state, which would have resulted from it, are incalculable.

I wish now, Mr. President, to call the attention of the convention to the territorial size of each state in this Union—their population in the year 1840, and the number of counties in each state. It will be seen that states with largely over double the population of Kentucky, and with greatly more territory, have but little over half the number of counties we have. New York has 46,000 square miles of territory, has a population of 2,428,921 souls, she has only 58 counties. Pennsylvania has the same territory as New York, with a population of 1,724,033 souls, and only 55 counties. Maryland 13,959 square miles, with a population of 469,232 and but 20 counties. Massachusetts, 7,500 square miles, with a population of 737,699 and only 14 counties. Delaware, 2,120 square miles of territory, with a population of 78,085 and 3 counties. Connecticut has 4,674 square miles, with a population of 300,015 and 8 counties. Georgia, has 58,000 square miles, with a population of 691,392 and she has 93 counties. North Carolina has 48,000 square miles, with a population of 753,419 and she has 68 counties. South Carolina has 25,000 square miles, with a population

of 594,398 and she has only 29 counties. Virginia has 64,000 square miles, with a population of 1,239,797 and has 119 counties. Our state, Kentucky, has 40,500 square miles, with a population of 779,828 and she has 100 counties. Tennessee has 45,000 square miles, with a population of 829,210 souls, and she has 72 counties. Ohio has 40,000 square miles, with a population of 1,519,466 and she has 79 counties. Indiana has 36,000 square miles, with a population of 685,866 souls, and she has 87 counties. Illinois has 50,000 square miles, with a population of 476,183 and she has 87 counties. Alabama has 46,000 square miles, with a population of 590,756 souls, and she has 49 counties. Florida has 57,000 square miles, with a population of 54,477 and she has 20 counties only. Arkansas has 54,500 square miles, with a population of 97,574 and she has 40 counties. Louisiana has 45,350 square miles, with a population of 352,411 and she has 38 counties or parishes. Mississippi has 45,760 square miles, with a population of 375,651 and she has 56 counties. Missouri has 64,000 square miles, with a population of 383,702 and she has 62 counties. Maine has 30,000 square miles, with a population of 501,793 and she has only 13 counties. New Jersey has 8,320 square miles, with a population of 373,306 and she has 18 counties. New Hampshire has 9,280 square miles, with a population of 284,574 and she has 10 counties. Rhode Island has 1,360 square miles, with a population of 108,830 and she has 5 counties. Vermont has 10,212 square miles, with a population of 291,948 and she has 14 counties. Michigan has 66,000 square miles, with a population of 212,267 and she has 32 counties. Iowa has 150,000 square miles of territory, with a population of 43,111 and she has only 18 counties; and Wisconsin has 90,000 square miles, with a population of 30,945 and she has 22 counties. I am not informed as to the extent of the territory of Texas, or her population, but this we do know sir, that she has had the prudence and forecast to lay certain restrictions on her legislature upon the subject of creating new counties. We see that Virginia is the only state in the Union, composed as it is, of thirty states, that has as many counties as Kentucky has, and that state has about one third more of territory and something like twice our population. If, sir, we are called upon as the delegates of the people in convention, to amend the existing constitution in any respect, we must unquestionably feel that this is one of the defects which calls most loudly for remedy. I have witnessed the rise and progress of these districting questions of division nearly all my life, and I do here declare that I never have known good, but evil, nothing but evil, unmitigated evil, to result from them. I might go on and show how they are generally gotten up and the common object had in view by such as originate them. It might be shown that the object in view is not at all times in truth the promotion of the convenience of the people who inhabit the county, the division of which is desired, but that the object of those generally, who originate and advocate such questions is in fact to promote their own personal interest.

But, sir, there has been so much strife and contention in the different counties upon this sub-

ject, that all understand it, and therefore, it would be a useless consumption of time to enquire into the causes which bring about and cause these questions to spring up and afflict the people; for the existence of a question of division in a county, is indeed a sore affliction to the citizens of that county. It impairs the value of lands and other property. It prevents the improvement and settlement of the county. It paralyzes, in a great measure, the energies of the people. It prevents the growth and improvement of the towns located in counties where such questions unfortunately exist. Many good citizens are, in consequence of it, driven from the county, and others who would, if no such question existed, settle in it, decline doing so in consequence of the existence of such a state of things. Divide a county and what follows as an inevitable consequence? The taxes of the people of that county are increased fourfold. Litigation receives a fresh impetus. You will find vice, immorality, and crime, greatly increased, besides other evils almost or quite innumerable growing out of it. The people of the divided territory have been disappointed; some of them in the location of the seat of justice, others because they wanted office, and hoped from the division to obtain it, but have failed. In fact, sir, dissatisfaction is one of the certain results of division; it never produces contentment and peace.

But, sir, I presume that gentlemen will, in giving their votes upon this proposition, act upon the general principle, and so far as their action shall be concerned, they will not enquire or know whether there be a question in any county in the state in relation to its division. Our votes will not, and should not be influenced either way from the fact that the people or a part of the people of any county in the state may desire its division. We should be actuated alone in this matter by the simple and plain proposition: Will it be right to fix some rule upon this subject, beyond which the legislature in future shall not go? I for one, am thoroughly satisfied that the principle contained in this report should be adopted as part of the constitution, and that its adoption will meet with the hearty approbation of the people.

Mr. NEWELL. This is a subject which has been heretofore before the convention. It is a subject in relation to which I presume every mind is made up. It is a subject which I am willing to leave to the legislature, and therefore, I move to lay it on the table.

Mr. C. A. WICKLIFFE. Before the vote upon that motion is taken, I desire the roll to be called.

The roll was called accordingly.

Mr. MAYES called for the yeas and nays on the motion to lay on the table, and they were yeas 53, nays 39.

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, John Hargis, Vincent S. Hay, William Hendrix,

Thomas J. Hood, Alfred M. Jackson, William Johnson, Geo. W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, William C. Marshall, David Meriwether, William D. Mitchell, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, John W. Stevenson, James W. Stone, Albert G. Talbott, John J. Thurman, Howard Todd, Philip Triplett, John Wheeler, Robert N. Wickliffe, Silas Woodson—53.

YAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Luther Brawner, Charles Chambers, William Chenault, Edward Curd, Garrett Davis, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfiede, Ninian E. Gray, Ben. Hardin, Andrew Hood, Mark E. Huston, James W. Irwin, Thomas James, Geo. W. Johnston, James M. Lackey, Thomas N. Lindsey, Thomas W. Lisle, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, William Preston, Larkin J. Procter, James Rudd, Ignatius A. Spalding, Michael L. Stoner, John D. Taylor, William R. Thompson, Squire Turner, Henry Washington, Andrew S. White, Chas. A. Wickliffe, George W. Williams—39.

So the whole subject was laid on the table.

#### VOTE OF AN ABSENTEE.

Mr. HARGIS asked leave to record his vote on the subject of the basis of representation, which was disposed of in his absence yesterday.

Leave was refused.

#### MODE OF AMENDING THE CONSTITUTION.

The convention next proceeded to the consideration of the following report of the committee on the revision of the constitution and slavery:

"SEC. 1. When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this commonwealth as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other officers of elections, at the next general election which shall be held for representatives to the general assembly after the passage of such law, to open a poll for, and make return to the secretary of state, for the time being, of the names of all those entitled to vote for representatives, who have voted for calling a convention; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for calling a convention, the general assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made, for the next election for representatives; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for calling a convention, the general assembly shall, at their next session, pass a law calling a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen in the same manner and proportion, at

the same time and places, and possessed of the same qualifications of a qualified elector, by citizens entitled to vote for representatives; and to meet within three months after their election, for the purpose of re-adopting, amending, or changing this constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a convention, a convention shall not then be called. And for the purpose of ascertaining whether a majority of the citizens, entitled to vote for representatives, did or did not vote for calling a convention, as above, the legislature passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the state."

"SEC. 2. All cases of contested elections, and where two or more candidates for delegate to any convention which may be called under this constitution, shall have an equal number of votes, shall be decided in the same manner as may be provided by law for similar cases arising in elections to the house of representatives."

Mr. TURNER moved to substitute the following for the report of the committee:

"In the year            it shall be the duty of the several sheriffs, and other returning officers, to take the sense of the good people of this commonwealth, as to the necessity and expediency of calling a convention, at the several places of voting in their respective counties, on the first Monday in August, by opening a poll for, and making a return to, the secretary of state, for the time being, of the names of all those entitled to vote for representatives, who shall vote for calling a convention. And if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for a convention, a similar poll shall be opened and taken for the next election; and if a majority of all the citizens of the state, entitled to vote for representatives, shall a second year vote for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the house of representatives, and no more; to be chosen at the same time, manner, and places, and in the same proportion that representatives are chosen, and to meet in three months after the said election, for the purpose of re-adopting, amending, or changing, this constitution. The qualification of delegates to the convention shall be the same as members of the house of representatives, except that ministers of the gospel shall be eligible as members of the convention. If it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for a convention, none shall be called; and a similar poll shall be opened every            year, until a majority, as aforesaid, shall, for two years in succession, vote for the call of a convention; and when such vote shall be given, the general assembly shall, at their next session, call a convention as above prescribed, and pass such laws for carrying the call into effect as may be proper."

Mr. TURNER. This proposition is not designed to provide for specific amendments, but it proposes to take the subject out of the hands

of the legislature and of politicians, and hence to avoid the frequent discussion of excitable topics.

Mr. GRAY. I beg leave to offer the following as a substitute for the proposition of the gentleman from Madison:

"The mode of revising and amending the constitution shall be as follows: Any specific amendment or amendments to the constitution, may be proposed in the senate or house of representatives, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and published for three months previous to the next succeeding election for representatives to the general assembly, in at least one newspaper of each county, if any be published therein, and shall be submitted to the people at said election, in such manner as the general assembly may prescribe; and if the people shall approve such amendment or amendments, or any of them, by a majority of all the electors of the state qualified to vote for members of the general assembly, such amendment or amendments, so approved, shall be referred to the general assembly chosen at said election; and if, in said general assembly, such proposed amendment or amendments, or any of them, shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the general assembly to again submit such proposed amendment or amendments, or such of them as may have been agreed to, as aforesaid, by the two general assemblies, to the people, at the next election for judicial officers, or members of the general assembly, and if the people, at said second election, shall approve and ratify such amendment or amendments, or any of them, by a majority of all the electors of the state qualified to vote for members of the general assembly, such amendment or amendments, so approved and ratified, shall become part of the constitution: *Provided*, That if more than one amendment be submitted, they shall be submitted in such manner and form that the people may vote for or against each amendment separately and distinctly; but no amendment or amendments shall be submitted to the people oftener than once in — years: *And, provided further*, That the article of the constitution concerning slaves, this article and the portion which provides that no man's property shall be taken or applied the public use without the consent of his representatives, and without just compensation being previously made to him, shall never be amended or changed, without the concurrence of two thirds of all the members elected to each house of the general assembly, at two successive sessions, and a majority of all the electors of the state qualified to vote for members of the general assembly, at two successive elections."

That sir, is the same proposition I presented to the convention early in the session, and it was printed and submitted to the committee on the revision of the constitution and slavery. It is not my purpose, at this time, to detain the convention with any protracted remarks on this subject; for it is a question on which, I presume, the mind of every member is made up.

The mode in which our constitution shall henceforth be revised is certainly a question of the greatest moment. It was a question sir, that excited the community as much, probably more, than all others prior to the election of the delegates to this convention. Almost every other amendment proposed to the constitution was lost sight of, or overshadowed by the high wrought feeling and excited interest thrown around this question by the action of the emancipationists of the state. There are few members of this body who do not, in some degree, owe their elevation to their peculiar views in relation to this matter. And, all so far as I know, are committed, as well as inclined, to provide in the constitution we are about to make, as strong, safe, and certain guaranties, for the enjoyment and security of slave property, and all other property, as are to be found in the existing constitution. To insure the stability, security and uninterrupted enjoyment of property, and all other rights dear to freemen, much, very much, depends on the mode provided for revising the constitution; yet I am aware that, on this subject, great diversity of opinion exists amongst the members of this convention.

The gentleman from Madison appears to think that the mode of specific amendments will be so uncertain, and will result in so much instability to our institutions, as to keep us in a state of perpetual excitement and fear. So far from this being the case, sir, I am convinced that it will have a tendency directly the reverse—that it will be more certain in its operation, more stable and satisfactory in its results. If the gentleman will attend to the reading of the amendment I propose, he will find that no provision of the constitution can be altered or amended without the approval of the legislature at two sessions, by a majority of all the members, and that the changes thus decided upon by the legislature, must have the consent and ratification of a majority of all the qualified voters of the state, at two elections, before such changes can go into operation. The same deliberation, the same precaution, the same time, will be required, to change any single article, or section of the constitution, as will be necessary, by the plan of the committee, to change, or modify the whole instrument. The same certainty, the same security, the same guarantee of stability is, by this means, thrown, like a shield, around each article of the constitution, separately, and by itself, which you now propose to throw around the whole instrument; and I hold that these advantages will be much more effectually secured by the mode of specific amendments, thus suggested, than by the plan proposed by the gentleman from Madison, or the report of the committee. From what source does the gentleman anticipate the danger he appears so much to dread? Is it from the legislature?—is it from the people? I presume not. The gentleman admits that at first he was in favor of specific amendments, and says he was almost caught in the snare. I have no doubt he has retrograded a little on this subject, and I have as little doubt that most of the gentlemen in this hall, if they would speak their sentiments, would make similar confessions. And what has produced this wondrous change? Why, sir, there was a certain emanci-

pation convention assembled here; and but for the propositions mooted in that assembly, I have not the slightest doubt that most of the members of this convention would have been warmly in favor of specific amendments.

I would ask gentlemen, if they believed, prior to the assembling of that convention, that specific amendments were wise and expedient, right and proper, what has taken place, so fearful in its aspect, to cause this almost universal change of sentiment? If this principle was right before, how can it be wrong now? If it was true before, how can it be false now? If it was safe and secure before, what has taken place to render it unsafe and dangerous in its character now? Why, sir, there was nothing in the proceedings of that convention which should have led gentlemen to adopt this singular change of sentiment. There were only two propositions that convention proposed to have engrafted upon the constitution—one, "the absolute prohibition of the importation of any more slaves to Kentucky"—the other, "the complete power in the people of Kentucky to enforce, and to perfect, in or under the new constitution, a system of gradual prospective emancipation."

These were the objects—the principles which were contended for; and because the emancipationists were in favor of specific amendments, or as some termed it, "an open clause" in the constitution by which the people might amend or alter it by a bare majority of their number, the hue and cry was posted over the whole state, as though it were on the wings of the wind, that the institution of slavery would be in danger. Thus gentlemen were induced to turn round and oppose a principle right in itself, and which commended itself to their better understandings, merely through fear of an imaginary evil.

Now, sir, I would ask, can we not provide for this specific mode of amending the constitution, and yet throw as strong a safe-guard, as certain guaranties, around the institution, by this, as by any other means? I think we can; and that we can do it much better by this plan than we can either by the mode suggested by the gentleman from Madison, or by that suggested by the committee.

I propose to guard against any emancipation, without the consent of the owner, or without full compensation, and the removal of the emancipated slaves from the state. And that that provision of the constitution, as well as the provision that secures to every man the enjoyment of all his property, and that provides it shall not be taken, even for public purposes, without compensation first paid to him, shall never be changed, without the concurrence of two thirds of the members of the legislature, at two sessions, and a majority of all the qualified electors of the state at two elections. Will not this place the institution on safe ground, and beyond danger?

The gentleman says, that if you allow the constitution to be amended by any proposition originating with the legislature, there will be so many propositions for a change that it will be necessary, by and bye, to have a digest of the constitution. Have not most of the states in the union power to amend their constitutions in this mode? Certainly they have; and even in

the constitution of the United States, there is a provision for the amending of that instrument by the action of congress, with the concurrence of three fourths of the states. That instrument has been amended; and does he now require a digest to determine what is the constitution of the United States? Sir, it is true, there have been but few amendments adopted, and this proves the gentleman's fears are without foundation, and I conceive the gentleman is perfectly able to find them without a digest. The same principle which I here suggest has prevailed in twenty three out of the thirty states of this union, and, sir—

Mr. TURNER. I beg to inform the gentleman that it is disputed even now what the constitution of the United States is. This specific amendment system has been so loosely carried into effect that the Supreme Court of the United States have doubted whether two important amendments passed by congress are parts of that constitution.

Mr. GRAY. The gentleman may doubt any thing he pleases; he may say that the supreme court of the United States may have a doubt about these amendments, but I never have heard any doubt as to what were the amendments of the constitution of the United States. Some have entertained doubts about portions of our present constitution, and in relation to the mode of amending it. The Supreme Court of the State of Kentucky may entertain similar doubts about the amendments we are about to make here in the constitution of the state. The gentleman may also doubt whether these amendments are parts of the constitution or not; but sir, there can be no more doubt about amendments made in the way I propose, than there can be about those made in any other way; and I will say more, that every slave state in this Union, except Virginia and Kentucky, has adopted this specific mode of amending their constitutions. Is there any reason then on the score of danger to the institution of slavery, to prevent us from adopting a similar provision? Did the gentleman ever hear of a single slave state that had adopted this mode, abandoning it in revising their constitutions? In some of the states it was adopted as early as 1776, and continued to be approved of to the present time. Have they not all stood by it to the present time? We find, sir, that wherever this mode has been adopted and tried, it has given universal satisfaction. Does not experience teach us that it is a practicable, a proper mode, and that it is suited to the prosperity, the liberty, the happiness, of our citizens, and that it is peculiarly adapted to the genius of our institutions? It seems to me that gentlemen allow their fears to carry them away without reason.

Now sir, according to the plan which I propose, I contend that the institution of slavery or any other institution, is safer than when you throw the whole constitution—the entire machinery of government—open to the revision and amendment of a convention like this. Here we are voting and managing to get things to suit us, and when we have done all this, I ask you if the people can take one part of this new constitution which they may approve, and re-

ject that which they disapprove? No sir. They must take it as a whole, as we have made it, or not at all. But by the mode of specific amendments, you may take it section by section, and in this way have it ratified by the people. Is not this a matter highly desirable? Here there can be no combination among the people for any ulterior political purpose, but they take each proposition by itself. They weigh and consider it deliberately and calmly, and it stands or falls, according as it receives their approbation or disapprobation. But sir, is that the case now? When the call of a convention is desired, every man who has an objection to any particular part of the constitution, combines and co-operates with every other man who has an objection to any other part. And thus the chances of calling a convention are multiplied in proportion to the various articles or sections that individuals may desire to have changed. At the same time that no one proposition for a change could secure a majority of the voters by this combination of various subjects, you involve the state in the agitation, excitement, hazard, and expense of calling a convention, and throwing the whole fundamental law in their hands, to be altered, modified, or abolished, as they in their wisdom or folly may think proper. Is this wise, is it prudent, is it good policy?

Our experience here amply proves, that the people cannot tell what changes will be made by a convention, for we have to take things just as we can get them; and there are propositions thrown in, and amendments carried, that were never spoken of before the people, or even dreamed of by them; and we have to take these amendments and propositions, just as a majority of this body may shape them. And, sir, when they are submitted to the people, it is not unlikely that there may be a vast deal in the constitution which they would reject, if each part could be taken separately. There may, sir, be many provisions in this constitution that the people will not approve of. And how are you to remedy the evil? Will you call another convention? Will you again unsettle the whole state, and come here to revise and amend, to rescind and curtail your own handiwork for the last three months? Will you again call a convention, at the cost and expense of forty or fifty thousand dollars, have the ship of state again cut loose from her moorings, and cast upon the boisterous and foaming sea of political excitement and agitation? The fear of this ought, sir, to deter gentlemen from refusing to engraft such a provision as I have proposed upon the constitution. If gentlemen will only take up the question and examine it under the dictates of reason and past experience, I feel satisfied they will no longer hesitate in coming to the conclusion that a specific mode of amendment ought to be provided in some shape or other.

I am not wedded to the particular phraseology of the amendment. If any better can be suggested that will secure the specific mode and guard the rights of property, I am willing to support it. I am as much in favor of continuing and protecting our slave institutions as any gentleman. And if there be any other plan by which it can be more surely guarded I would be willing to adopt it. By this mode any portion

of the constitution that fails to secure the rights of the people, to answer the ends and purposes for which it was instituted; any portion that "experience points out the necessity of changing," may be changed by the legislature and the proposed alteration, singly and separately, submitted to the investigation and consideration of the people, for their ratification or rejection. This can be done too without that feverish excitement, that restless anxiety, that tumult and violence, that commotion and agitation, that invariably, unavoidably and necessarily attends the putting to hazard; the subversion and overthrow of the fundamental rules and principles that secure the citizens in the enjoyment of their inappreciable and inviolable rights and privileges, for the preservation of which civil governments are founded and instituted.

Does not experience teach us that this is right and proper—that it is safe, judicious, and wise—and that no evil can result from it? Then I beg of gentlemen to suffer their reason to operate; let them pass over those ghosts of emancipation which they appear so much to dread; let them discard these imaginary evils; let reason resume the throne; let them look at this matter in its true light; and if they will do this, I am persuaded they will at once come to the conclusion with me, that the mode of specific amendments is the very best that can be adopted.

There is also great economy in this plan. Many gentlemen of this body are rigid and strict economists. I trust I shall have the aid and co-operation of all such. Economy is a matter of great moment—and in a government of the people, like ours, entitled to due weight and consideration. It should have due regard and attention, both in private and public affairs. Without it in private affairs, estates the most magnificent, and fortunes the most princely, are soon dissipated and squandered, and utter ruin, bankruptcy, and distress, are brought upon individuals and families. Without it in public affairs, the highest prosperity and greatest happiness are soon lost, and insolvency, repudiation, and disgrace are fastened upon the state and government. This proposition will enable the people, whenever they desire it, to change, alter, or modify any portion of their fundamental law, without cost or expense. It is only necessary for the legislature to propose the amendment, and submit it to be voted upon by the people, at the general elections.

And, sir, I think the question of slavery, and the security of all other property, is guarded there in as ample a manner as any gentleman can desire. The proposition I make is one that I contended for before my constituents at home, and I believe it meets their approbation. But, sir, I am willing to compromise that matter, if you will only give us some way of reaching the evils which we may have incorporated in our constitution, without the trouble, expense, and agitation of a convention. Sir, we have launched out into an unknown sea.

We have adopted some features and principles in this constitution that are new and untried with the people of Kentucky. We know not how they will operate. Experience may point out the necessity of their change or modification. Yet no power is reserved to the people; no mode



provided to make such changes—to secure such modifications, without the expense and excitement of another convention. The increase, growth, and business of the state, may require the addition of another circuit judge, and judicial district; it cannot be provided for, without a convention. Calamities or misfortune may render it necessary to borrow a few hundred thousand dollars. A convention must be called. The people may desire to change the mode of appointing the auditor, register, or any other officer of the government; a convention is the only means of securing it. They may desire to place some restriction on the taxing power of the general assembly. A convention is the only remedy. Will you, sir, deny to the people the power to make any—the slightest, the most unimportant change or modification of their fundamental law, without the expense of a convention? Certainly it would not be wise to adopt any such principle. If I could see any danger in the world that would be likely to arise from the adoption of the principle which I suggest, I would have much hesitation in coming forward with it; but when the experiment has been tried in every section of the Union, alike where slavery does not exist, and where it does exist; when it has been tried all over the Union, in the sunny south and in the frigid north; in every climate and where every kind of property and every kind of right exists; when it has thus been tried and approved by all. And not only have other states, in all times since the formation of our government approved of this plan; but the friends of a convention and constitutional reform in Kentucky, assembled in convention in this hall in 1847 and 1848 have recommended and approved this same principle. In their manifesto published to the world as containing the changes and amendments they desired to see engrafted on our old constitution, they unanimously say upon this subject, “By the ninth article of the present constitution, the whole instrument must be submitted, to make the most unimportant amendments. We think, rather than put the whole machinery and form of government to hazard for the purpose of correcting an isolated error, it would be better to submit a single proposition for amendment to the consideration, first of the legislature, and then of the people, under such restrictions as shall be deemed advisable and safe. Public opinion may then be consulted upon a single proposition without the danger of combinations on other subjects.” Several members of this body, Mr. President, signed that manifesto, and under that banner the battle of reform was fought and won; and now we see the victors ready to abandon their own standard.

I ask if we ought now, in revising this constitution, to abandon it? Is it not cowardly? I hope the good sense of this body, notwithstanding the prejudice which has been created against this plan, will induce them to consider the proposition calmly and seriously; and that before we finally separate we shall have adopted some plan by which some portions of our constitution may be amended, when experience shall prove it to be necessary, without putting to hazard the whole instrument. Are not gentlemen fully aware that

had we had such a provision in our old constitution, there would never have been the agitation in the state which we have recently witnessed? We should, sir, have had no excitement, no expense, no convention, and very probably a much better constitution than we will have when all our labors have terminated here.

If then, sound policy, common sense, and a proper regard for economy, require it—if reason supports and justifies it—if authority the most unquestionable favors it—if time and experience sanction and approve it, as the best, most economical, and safest mode of revising the constitution, why sir, will you hesitate to adopt it?

I felt it to be my duty, sir, to present this matter to the convention for its adoption; and I will only add, that if any other mode of specific amendment should be suggested, more in accordance with the views of a majority of the convention, and that will secure the rights of the people, I will, most cheerfully, accord it my support.

Mr. CLARKE. Mr. President, I have no speech to make, but I have a resolution to offer when a fitting time shall present itself, to test the sense of this convention on the question involved in the article before us, on which, I presume the mind of every gentleman is made up. I will send my resolution to the secretary's desk that it may be read for information.

The secretary read it as follows:

*Resolved*, That this convention is opposed to any and all specific modes of amendment, and will not adopt any specific mode of amending the constitution.”

The PRESIDENT said it was not now in order to offer the resolution.

Mr. BROWN moved to amend the original report, by inserting the words “except ministers of the gospel who shall be eligible,” in the twenty second line. The object of the amendment was to render ministers of the gospel eligible to seats in any future convention that may be called to amend the constitution.

Mr. MERIWETHER said the words were omitted in his report by accident, and he intended to supply them.

Mr. CLARKE moved the postponement of the further consideration of this article, that he might take the sense of the convention on the resolution which he had caused to be read. He thought much time might be saved if this course were taken, as the sense of the convention would be indicated on a very important principle.

The motion was not agreed to.

Mr. DESHA appealed to the convention to pass over the business before it, that the course suggested by the gentleman from Simpson might be tried.

Mr. C. A. WICKLIFFE, for that purpose, moved that the article under consideration be laid upon the table for the present.

The motion was agreed to.

Mr. CLARKE then, by general consent, submitted his resolution.

Mr. R. N. WICKLIFFE moved the previous question upon it, and the main question was ordered to be now put.

Mr. GRAY called for the yeas and nays, and they were, yeas 60, nays 29.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Wm. Bradley, Thos. D. Brown, William C. Bullitt, Charles Chambers Jas. S. Chrisman, Beverly L. Clarke, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, Chas. teen T. Dunavan, Green Forrest, James H. Garrard, Richard D. Gholson, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, Thomas James, George W. Johnston, Chas. C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, George W. Mansfield, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, Wm. D. Mitchell, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe—60.

NAYS—John S. Barlow, Alfred Boyd, Luther Brawner, Francis M. Bristow, William Chenault, Jesse Coffey, Benj. Copelin, Lucius Desha, Jas. Dudley, Benjamin F. Edwards, Milford Elliott, Selucius Garfiede, Thomas J. Gough, Ninian E. Gray, Vincent S. Hay, M. E. Huston, W. Johnson, George W. Kavanaugh, Thomas W. Lisle, Wilis B. Machen, Martin P. Marshall, John D. Morris, Jonathan Newcum, Thomas Rockhold, Ira Root, Albert G. Talbott, John Wheeler, George W. William, Silas Woodson—29.

So the convention declared itself opposed to all specific modes of amendment.

#### EVENING SESSION.

Mr. BROWN withdrew the amendment which he offered at the morning session, as it was now unnecessary.

Mr. GRAY also withdrew his amendment, the vote on Mr. CLARKE'S resolution having settled the principle which it contained.

The question was then taken on the substitute of the gentleman from Madison, and it was rejected.

Mr. THOMPSON. I beg to offer the following as a substitute for the report of the committee:

"When experience shall point out the necessity of amending this constitution, and when a majority of all the members elected to each house of the general assembly shall, within the first twenty days of their stated biennial session, concur in passing a law for taking the sense of the good people of this state, as to the necessity and expediency of calling a convention, it shall be the duty of the several sheriffs, and other returning officers, at the next general election which shall be held for representatives after the passage of such law, to open a poll in which the qualified electors of this state shall express, by vote, whether they are in favor of calling a convention or not; and said sheriffs and returning officers shall make return to the secretary, for the time being, of the names of all those electors voting at such election; and if, thereupon, it shall appear that a majority of the qualified electors of this state, voting at such

election, have voted for calling a convention, the general assembly shall, at their next regular session, direct that a similar poll shall be opened and taken at the next election for representatives; and if, thereupon, it shall appear that a majority of all the electors of this state, voting at such election, have voted for calling a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there shall be in the house of representatives, and no more, to be chosen in the same manner and proportion, at the same places, and at the same time that representatives are, by the electors qualified to vote for representatives, and to meet within three months after said election, for the purpose of re-adopting, amending, or changing this constitution. But if it shall appear by the vote of either year, as aforesaid, that a majority of all the qualified electors voting at such election, did not vote for a convention, a convention shall not be called."

I will briefly state the difference between this proposition and that of the committee. Under the old mode, all the qualified voters, according to the last enumeration, who did not vote—no matter whether they were in the state or out of it—would be counted as against a convention. For instance, if a man died or removed out of the state, his name still being on the roll, he would be counted as against a convention. This was the case in 1847, when many of our voters were in Mexico. My proposition is that you should only count the votes which are polled. This is the principle pursued throughout the country in other respects. In amending our constitution here, all our decisions are made by the actual vote; we do not count the votes of the absentees; and I well know that if you did, there are many sections that have passed, which would have been rejected, and many rejected which would have been carried. The law, sir, should go into effect by the vote which is cast. When we come to submit this constitution to the vote of the people, whose ratification or rejection is to be final as to all that is done here, I presume we will test that question by the vote polled, and that we will not permit these votes to be counted against the constitution, which have not been cast. This is the only difference between my proposition and that of the committee. I am opposed to specific amendments. There are, no doubt, many provisions in this constitution, which the people may wish to change. Under my proposition, they will have ample time to consider any proposed change; for from its first agitation till its final decision, will be a period of about four years. I think, therefore, that we ought to carry out the same principle which governs us in all other things.

Mr. MERIWETHER. This is a plain proposition, and the convention can easily decide it. The principle is not changed at all; and the committee adopted the old provision in the belief that it was the most just and equal in its operations. If it be the wish of this convention to let another convention be called, whenever those voting at the polls should go for it, they will adopt the gentleman's proposition; but if they deem it necessary that there should be a full expression of opinion, and that a majority of all the votes should be required, they

will sustain the proposition of the committee. The gentleman mentioned the circumstance of the votes of absentees being counted against the convention; but he did not consider the votes of those who had attained their twenty-first year, and of those who had migrated into the state. I think, taking the two things together, the matter will stand about equal.

Mr. THOMPSON called for the yeas and nays on his proposition, and they were—yeas 9, nays 77.

YEAS—Milford Elliott, Thos. J. Gough, Wm. Hendrix, James M. Lackey, Elijah F. Nuttall, Ira Root, Wm. R. Thompson, John J. Thurman, Silas Woodson—9.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, Wm. Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, John D. Taylor, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, John Wheeler, Andrew S. White, Chas. A. Wickliffe, Robert N. Wickliffe, George W. Williams—77.

So the amendment was rejected.

The question then recurred on the adoption of the section reported by the committee, as modified.

Mr. A. K. MARSHALL. I move to amend by striking out the following words: "at the next regular session, direct that a similar poll shall be opened, and return made, for the next election for representatives; and if, thereupon, it shall appear that a majority of all the citizens of this state, entitled to vote for representatives, have voted for calling a convention, the general assembly shall."

I am in favor of retaining as much of the old constitution as possible, and averse to making any change, except such as are absolutely required upon principle; and if there had been no change made in the present constitution by the one we are about to propose to the people, I should not have moved for any change at all. I like the spirit of the present constitution, and also the spirit of the report of the committee. It is that the people in amending their constitution shall do it under calm reflection; and that

it shall not be done under the influence of passion, or any sudden dissatisfaction with the instrument itself, at the time it shall be given to them for consideration. I should not have offered any amendment, if the carrying out of the plan proposed by the committee did not depend upon other parts of the constitution which have been made different. We have changed our time of holding elections. We now elect our representatives every second year instead of every year. If we adopt the report of the committee just as it is, it will require six years to call a convention. We have our elections but once in two years; the legislature will meet and direct whether there shall be a call for a convention or not. The election does not happen till two years afterwards; that will be four years before the action of the people will be known, and there will be a period of two years more before the legislature will meet to call a convention. I think this is rather too long. In my judgment, it is true, in a somewhat qualified sense, that the people have at all times the right to abolish their form of government; and I think that in a measure this right is taken away, by putting it out of their power, except after six years' delay. If it had been contemplated in the report of the committee, that those elections should have been held every year, as under the present constitution, I would not have been in favor of the people speaking but once upon the subject; but as it requires two years between each election,

I think it is attempting to fasten too decidedly upon the community the work of our hands, to say that however much they may be dissatisfied with it, however much it may militate against the prosperity of the people, and instead of being a shield to guard and protect their rights, takes away those rights which they have already enjoyed. I think under these circumstances, that we are fixing too long a period of probation in requiring six years before their will shall be carried into effect. I do hope that the mere statement of the fact will convince every gentleman here of the impropriety of keeping the people so long without an opportunity of amending our work.

Mr. GHOLSON. I should like to vote understandingly upon this question. If by the term "general election for representatives" it is meant to be confined to the time at which representatives to the legislature are to be elected, the gentleman's remarks would be true. If I understand the provision made by the convention on this subject, the election for judicial and other officers is to come off one year, and that of members of congress and the legislature another year. I should like, when a majority are to vote for any alteration of the constitution, that it should be done the next year, without the intervention of a year in which there is no election.

Mr. MERIWETHER. Instead of providing that the legislature shall act a second time, the general assembly shall direct that it shall be done at two successive elections. Strike out these words, if you please, which direct that the general assembly shall direct the alteration.

Mr. TURNER. Are we then to have the people consulted at one election when they vote for their representatives, and again at another election when they vote for their judicial offi-

cers, and thus have this matter agitated a thousand times? I for one, sir, have no wish to live under so unstable a form of government.

Mr. A. K. MARSHALL. I saw very well that the convention could have the matter so altered; but I understood that it was the desire of this convention to separate as far as possible from the judicial elections of the state all questions of an exciting political character; and as the proposition I have made appears to meet the case exactly, and cannot be objected to as forming an element of agitation in the civil elections of the state, I think it is better that it should be done. If the house is of a different opinion I must of course acquiesce. I am far from being anxious that anything that is done here should bear the impress of my hand; so that the object is attained, it is to me a matter of perfect indifference by whose instrumentality it is effected.

Mr. ROOT called for the yeas and nays on the motion to strike out, and they were yeas 5, nays 81.

YEAS—Viacent S. Hay, Alexander K. Marshall, Ira Root, Wm. R. Thompson, Silas Woodson—5.

NAYS—Mr. President (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, William Chenault, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfælde, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Andrew Hood, Mark E. Huston, Alfred M. Jackson, Thomas James, Wm. Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, John T. Rogers, James Rudd, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, John D. Taylor, John. J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, Jno. Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams—81.

So the amendment was rejected.

Mr. BARLOW moved the previous question on the section. The main question was ordered to be now put, and the first section was adopted.

The question was next taken on the second section, and it was agreed to, and the entire report was adopted.

#### DEBATES AND JOURNALS.

Mr. C. A. WICKLIFFE offered a resolution, which after receiving some modifications was adopted, as follows:

"Resolved, That one copy of the journal, and

one copy of the debates of the convention be deposited in the county clerk's office of each county, to be kept as other public books are kept by the clerk, that one copy of each be presented to the delegates and officers and reporter of this convention, and to the ministers of the gospel in attendance on the convention, and that the remainder of the five hundred be deposited in the public library."

On the motion of Mr. GHOLSON the committee of the whole was discharged from the further consideration of the series of resolutions in relation to the quieting of land titles, &c., which he introduced at an early period of the session.

The convention then adjourned.

SATURDAY, DECEMBER 15, 1849

Prayer by the Rev. STUART ROBINSON.

#### NEW MEMBER.

Mr. ROBERT D. MAUPIN, delegate from the county of Barren, took his seat this day. The oath was administered to him by chief justice Marshall.

#### COMMITTEE OF REVISION.

On the motion of Mr. W. C. MARSHALL, Mr. TURNER was added to the committee to arrange and revise the several articles of the new constitution.

#### MISCELLANEOUS PROVISIONS.

Mr. STEVENSON, from the committee on miscellaneous provisions, made the following report, and, on his motion, it was laid on the table and ordered to be printed.

#### SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

Sec. 1. That all the laws of this commonwealth, in force at the time of making the said alterations and amendments, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

Sec. 2. The oaths of office herein directed to be taken may be administered by any judge or justice of the peace, until the legislature shall otherwise direct.

Sec. 3. No office shall be superceded by the alterations and amendments made in the constitution of this commonwealth, but the laws of the state relative to the duties of the several officers, executive, judicial, and military, shall remain in full force, though the same be contrary to said alterations and amendments, and the several duties shall be performed by the respective officers of the state, according to the existing laws, until the organization of the government, as provided for under this new constitution, and the entering into office of the new

officers to be elected or appointed under said government, and no longer.

Sec. 4. Immediately after the adjournment of the convention, the governor shall issue his proclamation, directing the several sheriffs and other returning officers of the several counties of this state, authorized by law to hold elections for members of the general assembly, to open and hold a poll in every county of the state, and in the city of Louisville, at the places and precincts designated by law for the holding of the presidential election in 1848, upon the first Monday of May, 1850, for the purpose of taking the sense of the good people of this state, in regard to the adoption or rejection of this constitution: and it shall be the duty of the said officers, to receive the votes of all persons entitled to vote for members of the general assembly under the present constitution. The said officers shall open a poll with two separate columns: "*For the new Constitution*," "*Against the new Constitution*," and shall address each voter presenting himself, the question: "Are you in favor of adopting the new constitution?" and if he shall answer in the affirmative, his vote shall be recorded in the column for the new constitution; and if he shall answer in the negative, his answer shall be set down in the column against the new constitution. The said election shall be conducted for one day, and in every other respect, as the state election for representatives to the general assembly are now conducted; and on the Thursday succeeding the said election, the various sheriffs conducting said election at the different precincts, shall assemble at the county seat of their respective counties, and compare the polls of said election, and shall forthwith make due returns thereof to the secretary of state, in conformity to the provisions of the existing laws upon the subject of elections of members of the general assembly. The county courts of the various counties of the commonwealth shall, at their March or April terms of their said courts, appoint two judges, a clerk, and deputy sheriff, to superintend and conduct said elections.

Sec. 5. Upon the receipt of the said returns, to-wit: on the first Monday in June, 1850, it shall be the duty of the governor, the secretary of State, the second auditor, and attorney general, in the presence of all such persons as may choose to attend, to compare the votes given at the said poll, for the ratification or rejection of this constitution; and if it shall appear from said returns that a majority of all the votes given are for ratifying and adopting this constitution, then it shall be the duty of the governor to make proclamation of that fact, and thenceforth this constitution shall be ordained and established as the constitution of the commonwealth of Kentucky. If it shall appear from said returns that a majority of all the votes given is for the rejection of the new constitution, then it shall be the duty of the governor to make proclamation of that fact, and, in that event, the present constitution shall be re-adopted as the constitution of the commonwealth of Kentucky. Whether the new constitution be accepted or rejected, it shall be the duty of the governor to cause to be published in the newspapers called the Commonwealth, and Yeoman, published in

Frankfort, the results of the polls; showing the number of votes cast in each county, for and against the said constitution.

Sec. 6. Should the constitution be accepted by the people, it shall be the duty of the governor, as soon as the official vote is published, to issue his proclamation, declaring the legislature elected under the old constitution to be dissolved, and directing the several sheriffs of all the counties in this state to hold an election at the places designated by law, upon the of 1850, for members of the general assembly. And the said election shall continue for one day, and shall be conducted, and the returns thereof made, in all other respects, in conformity with the existing laws upon the subject of state elections.

Sec. 7. It shall be the duty of the general assembly elected under this constitution, at its first session, to order and provide for an election to be held in every county of this state, on the day of 1850, for all state and county officers under this constitution, except those whose election have been already provided for and designated in this constitution.

Sec. 8. It shall be the duty of the general assembly elected under this constitution, at its first session, to make an apportionment of the representation of this state, upon the principle set forth in this constitution; and until the first apportionment shall be made as herein directed, the apportionment of senators and representatives among the several districts and counties in this state, shall remain as at present fixed by law.

Sec. 9. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the commonwealth. All criminal prosecutions and penal actions which have arisen, or may arise, before the re-organization of the judicial department under this constitution, and which shall then be depending, may be prosecuted to judgment and execution, in the name of the state.

Sec. 10. In the trial of any criminal case, the jury shall be judges of law and fact.

Sec. 11. The general assembly shall provide, by law, for the trial of any contested election of auditor, register, treasurer, attorney general, judges of circuit courts, and all other officers, not otherwise herein specified.

Sec. 12. The general assembly shall provide, by law, for the making of the returns by the proper officers, of the election of all officers to be elected under this constitution; and the governor shall issue commissions to the auditor, register, and treasurer, as soon as he has ascertained the result of the election of those officers respectively.

Sec. 13. That the sheriffs and other officers of the election shall be liable to all such fines and penalties for a failure to discharge the several duties imposed on them in this schedule, as are now imposed upon them by law, for a failure to perform their duty in conducting other general and state elections.

Sec. 14. Should the county court of any of the counties of this commonwealth fail or refuse to appoint judges, clerks, or sheriffs to superin-

tend the election, as provided for in article four of this schedule, the high sheriff of said county shall appoint such clerks and deputy sheriffs.

SEC. 15. Should any of the sheriffs or deputies in any of the counties of this commonwealth, die, resign, or from any other cause be prevented from attending with the poll books, as directed in article four of this schedule, for the comparison of the votes on the adoption or rejection of the new constitution, it shall be the duty of the county court clerk, or his deputy in such county, to attend with said poll books, and aid in said comparison.

#### COURTS OF CONCILIATION.

Mr. IRWIN, from a select committee, made the following report:

"The general assembly may provide, by law, for the election in each civil or magistrate's jurisdiction in the several counties, cities, and towns of this state, two judges of conciliation for the amicable adjustment of all causes of dispute, under such rules and regulations as may be prescribed by law. The judges of conciliation shall have the same qualification as justices of the peace, and hold their offices for two years, and until their successors shall be elected and qualified. The first election of judges of conciliation shall be held on the second Monday in May, 1851, and every two years thereafter."

On motion, the consideration of the report was indefinitely postponed.

#### NATIVE AMERICANISM.

Mr. DAVIS offered the following resolution, and on his motion it was made the special order for three o'clock this day:

"Resolved, That the committee on the legislative department be instructed to report the following proviso to the eighth section of the report of that committee on the legislative department:

"Provided, That foreigners of the following descriptions and classes, only, shall be entitled to vote for any civil officer, or shall be eligible to any civil office, or place of trust or profit under the commonwealth of Kentucky: 1. Those who, at the time of the adoption of this amended constitution, shall be naturalized citizens of the United States. 2. Those who, at the time of the adoption of this amended constitution, shall have declared their purpose to become citizens of the United States, in conformity to the laws thereof, and who shall have become citizens. 3. Those who, twenty-one years previously thereto, shall have declared their purpose, according to the existing provisions of the laws of the United States, to become citizens thereof; and who then shall be citizens of the United States. 4. Minors, who shall have migrated with their parents, or parent, to the United States, twenty-one years after their names, ages, and a particular description of their persons, shall have been entered on the records of some court of record of the state of Kentucky, or some other of the United States: such foreigners, having also, in every case, the like qualifications of residence, and on all other points, that are required of native born citizens; and a properly authenticated copy of the record being in all cases required for the verification of the facts."

#### MODE OF REVISING THE CONSTITUTION.

Mr. BROWN moved a re-consideration of the vote adopting the first section in the article on the "mode of revising the constitution," for the purpose of offering the following amendment.

Strike out the words, "the general assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made for the next election for representatives," and insert in lieu thereof the following:

"The governor shall direct that a similar poll shall be opened the succeeding year, and return made in same manner."

Mr. BROWN. Under the provision of this section, and with biennial sessions of the general assembly, provided for in this constitution, one year must necessarily intervene between taking the vote on calling a convention. My object in moving the re-consideration is, to provide by this amendment that the second vote of the people shall be taken the succeeding year; and this could be accomplished by authorizing the governor, instead of the general assembly, to direct a similar poll to be opened the succeeding year for that purpose.

Mr. MERIWETHER suggested that they might dispense with the rule which requires a motion to re-consider to lie over one day, and dispose of this question at once.

Mr. BROWN moved to dispense with the rule.

The motion was agreed to.

Mr. GARRARD moved to lay the motion to re-consider on the table.

Mr. BROWN asked for the yeas and nays thereon, and they were—yeas 54, nays 36.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Luther Brawner, William C. Bullitt, William Chenault, Beverly L. Clarke, Henry R. D. Coleman, William Cowper, Edward Curd, Garrett Davis, Archibald Dixon, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, James W. Irwin, Alfred M. Jackson, William Johnson, George W. Johnston, Charles C. Kelly, Peter Lashbrooke, George W. Mansfield, Martin P. Marshall, William N. Marshall, Nathan McClure, David Meriwether, William D. Michell, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, James Rudd, Ignatius A. Spalding, John D. Taylor, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—54.

NAYS—John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Thomas D. Brown, Charles Chambers, Jesse Coffey, Benjamin Copelin, Lucius Desha, James Dudley, Milford Elliott, Richard D. Gholson, James P. Hamilton, William Hendrix, Mark E. Huston, Thomas James, George W. Kavanaugh, James M. Lackey, Thos. W. Lisle, Alexander K. Marshall, William C. Marshall, Richard L. Mayes, John H. McHenry, Hugh Newell, Elijah F. Nuttall, Larkin J. Proctor, John T. Rogers, Ira Root, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G.



Talbott, Wm. R. Thompson, John J. Thurman, John L. Waller, Silas Woodson—36.  
So the motion was laid on the table.

#### COMMITTEE OF CLAIMS.

Mr. HARDIN, from the select committee of claims, made the following report:

*Resolved by the Convention,* That the following sums of money, not otherwise appropriated, be paid out of the public treasury, to the several persons named and entitled to the same, viz:

1. To the members of the convention, the same mileage and travelling expenses allowed to members of the general assembly.
2. To the President of the convention, six dollars per day, during the present session.
3. To each member of the convention, who qualified and took his seat in the convention, three dollars per day during the present session.
4. To the Secretary of the convention, ten dollars per day during the present session.
5. To the Assistant Secretary of the convention, seven dollars per day during the present session.
6. To the Sergeant-at-Arms of the convention, four dollars per day during the present session.
7. To the Doorkeeper of the convention, four dollars per day during the present session.
8. To Selby Dixon Knott, an assistant to the Sergeant-at-Arms, one dollar and fifty cents per day during the present session.
9. To Culvin Sanders, jr., an assistant to the Sergeant-at-Arms, one dollar and fifty cents per day during the present session.
10. To Geo. W. Gwin, as per voucher, marked A, four dollars and three cents.
11. To William M. Todd, as per voucher, marked B, five dollars and fifteen cents.
12. To Michael Barstow, as per voucher, marked C, sixty-five cents.
13. To Joseph Taylor, as per voucher, marked D, nineteen dollars.
14. To Doxon & Graham, as per voucher, marked E, twenty-three dollars and fifty cents.
15. To Joseph Taylor & Co., as per voucher, marked F, four dollars.
16. To William Tanner & Co., one hundred and twelve dollars and fifty cents, for one hundred and fifty copies of the weekly Yeoman, furnished the convention. (No. 1.)
17. To A. G. Hodges & Co., three hundred and seventy-five dollars, for one hundred and fifty copies of the Daily Commonwealth, furnished the members of the convention. (No. 2.)
18. To the Revs. Stuart Robinson, John N. Norton, James M. Lancaster, George W. Brush, and William Warder, twenty dollars each, for their services in opening the daily sessions of this convention with prayer.
19. To Henry, a free man of color, for his attendance on the convention, one dollar per day during the present session.
20. To Dennis, a free man of color, for his attendance on the convention, fifty cents per day during the present session.
21. To Culvin Sanders, seventy cents, for expenses incurred in executing the summons of this convention on A. P. Cox.

A brief conversation ensued, in relation to the power of the convention to adopt such a resolution, in which Mr. CHAMBERS, Mr. LISLE,

and Mr. HAMILTON spoke in opposition to the appropriation of money by the convention. Mr. HARDIN defended the report.

The resolution was then agreed to.

Mr. HARDIN offered the following resolution:

*Resolved,* That the committee on claims be instructed to enquire into the expediency of providing for the payment of the expenses of the contested election from Henry county.

Mr. CHRISMAN moved to lay the resolution on the table, and on that motion he called for the yeas and nays, and being called, they were yeas 13, nays 75.

YEAS—Richard Apperson, John S. Barlow, Jas. S. Chrisman, Jesse Coffey, Henry R. D. Coleman, Lucius Desha, James P. Hamilton, Thomas James, Thomas W. Lisle, Nathan McClure, Jonathan Newcum, Michael L. Stoner, John Wheeler—13.

NAYS—Mr. President, (Guthrie) John L. Ballinger, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, Beverly L. Clarke, Benjamin Copelin, William Cowper, Edward Curd, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Thos. J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Thomas J. Hood, Mark E. Huston, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, John H. McHenry, David Meriwether, William D. Mitchell, John D. Morris, Hugh Newell, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Chas. A. Wickliffe, Robert N. Wickliffe, Silas Woodson, Wesley J. Wright—75.

The resolution was then adopted.

#### ENGROSSMENT OF THE CONSTITUTION.

On the motion of Mr. APPERSON, the following resolution was agreed to:

*Resolved,* That two copies of the new constitution be prepared by the secretary, one on parchment and the other in a book to be prepared for that purpose.

#### LEGISLATIVE DEPARTMENT.

The convention resumed the consideration of the unfinished section of the report of the committee on the legislative department, which provides for the apportionment of representation.

Mr. CLARKE, who had given notice of a motion to reconsider the vote by which the first branch of the sixth section, fixing the basis of representation had been adopted, consented, on consultation with friends, not to press the reconsideration.

The latter clause of the sixth section was the pending question, as follows:

"At the first session of the general assembly after the adoption of this constitution, and every eight years thereafter, provision shall be made by law, that in the year and every eighth year thereafter, an enumeration of all the qualified voters of the state shall be made. The number of representatives shall, in the several years of making these enumerations, be so fixed, as not to be less than seventy five, nor more than one hundred; and they shall be apportioned for the eight years next following, thus: Counties, cities, and towns, having more than two thirds and less than the full ratio, shall have one representative; those having the full ratio, and a fraction less than two thirds over, shall have but one representative; those having the full ratio, and a fraction of more than two thirds over, shall have two representatives, and increase their number in the same proportion; counties having less than two thirds of the ratio, shall be joined to similar adjacent counties for the purpose of sending a representative: *Provided*, That if there be no such adjacent county, then such county having less than two thirds of the ratio, shall be united to that contiguous county having the smallest number of qualified voters; and the remaining representatives, if any, shall be allotted to those counties, cities, or towns having the largest unrepresented fractions."

Mr. BOYD had offered the following as a substitute for the latter clause of the sixth section of the legislative report:

"The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation as aforesaid, the state shall be districted into twelve districts.

FIRST DISTRICT. Fulton, Hickman, Graves, Ballard, McCracken, Calloway, Marshall, Livingston.

SECOND DISTRICT. Trigg, Christian, Caldwell, Crittenden, Union, Henderson, Hopkins.

THIRD DISTRICT. Daviess, Ohio, Hancock, Grayson, Breckinridge, Hart, Larue, Hardin, Meade.

FOURTH DISTRICT. Todd, Mulenburg, Logan, Simpson, Allen, Warren, Butler, Edmonson.

FIFTH DISTRICT. Monroe, Barren, Cumberland, Clinton, Adair, Green, Taylor, Casey, Russell.

SIXTH DISTRICT. Jefferson, Bullitt, Nelson, Shelby, Spencer, Washington, Marion.

SEVENTH DISTRICT. Oldham, Trimble, Henry, Franklin, Owen, Carroll, Gallatin, Grant, Boone.

EIGHTH DISTRICT. Scott, Harrison, Pendleton, Kenton, Campbell, Nicholas, Mason, Bracken.

NINTH DISTRICT. Lewis, Fleming, Bath, Montgomery, Morgan, Greenup, Lawrence, Carter.

TENTH DISTRICT. Fayette, Woodford, Bourbon, Clarke, Jessamine, Anderson, Mercer, Boyle.

ELEVENTH DISTRICT. Madison, Garrard, Lincoln, Rockcastle, Laurel, Pulaski, Whitley, Wayne.

TWELFTH DISTRICT. Estill, Owsley, Clay, Perry, Letcher, Floyd, Breathitt, Johnson, Pike, Knox, Harlan.

"When a new county shall be formed of territory belonging to more than one district, that

county shall be added to, and form a part of the district out of which the largest amount of territory was taken to form such new county.

"In the year and every year thereafter, an enumeration of all the qualified electors of the state shall be made in such manner as shall be directed by law.

"In the several years of making such enumeration, each district shall be entitled to representatives equal to the number of times the ratio is contained in the whole number of qualified electors in said districts: *Provided*, That the remaining representatives, after making such apportionment, shall be given to those districts having the largest unrepresented fractions.

"Representatives to which each district may be entitled shall be apportioned among the several counties, cities, and towns of the district, as near as may be, in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties, within the district, may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, and in the same district, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to the county having the largest residuum."

Mr. WOODSON moved to substitute the following for the amendment of the gentleman from Trigg:

"At the first session of the General Assembly after the adoption of this constitution, provision shall be made by law, that in the year and every eighth year thereafter, an enumeration of all the representative population of the state shall be made. The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation, the state is hereby laid off into ten districts.

The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg.

The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson.

The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart.

The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln.

The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson.

The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson.

The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville.

The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine.

The ninth district shall be composed of the counties of Clarke, Montgomery, Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan, and Breathitt.

The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin.

"The number of representatives shall, at the several sessions of the General Assembly, next after the making of these enumerations, be apportioned among the ten several districts, proportioned according to the respective representative population of each; and the representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern, to-wit: Every county, town or city having the ratio shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns, or cities having one or more representatives, and the largest representative population above the ratio, and counties, towns and cities having the largest representative population under the ratio, regard being always had to the greatest representative population, shall have one representative: *Provided*, That when a county may not have a sufficient number of representative population to entitle it to one representative, then such county may be joined to some adjacent county or counties to send one representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of representative population."

Mr. WOODSON briefly explained the effect of his substitute, and a conversation ensued in which Mr. HAMILTON, Mr. BRISTOW, Mr. M. P. MARSHALL, Mr. PROCTOR and Mr. APPERSON took part.

Mr. GARRARD offered the following proviso as an addition to the original section of the select committee, and it was agreed to:

"*Provided*, That whenever the operation of the foregoing rules will give more than one hundred members, the smallest counties of the two thirds class shall be attached to contiguous counties to send a member, so as to reduce the number to one hundred."

The yeas and nays were called for on the substitute of Mr. WOODSON, and were yeas 52 nays 42.

YEAS—Richard Apperson, John L. Ballinger, Luther Brawner, Thomas D. Brown, William Chenault, James S. Chrisman, Jesse Coffey, Benjamin Copelin, William Cowper, Garrett Davis, James Dudley, Milford Elliott, Green Forrest, James H. Garrard, Thomas J. Gough, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, William Johnson, George W. Johnston, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle,

Nathan McClure, David Meriwether, William D. Mitchell, Jonathan Newcum, Henry B. Poiard, William Preston, Johnson Price, John T. Robinson, Thomas Rockhold, James Rudd, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, John L. Waller, Andrew S. White, Robert N. Wickliffe, Silas Woodson—52.

NAYS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, Charles Chambers, Beverly L. Clarke, Henry R. D. Coleman, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Nathan Gaither, Selucius Garfield, Richard D. Gholson, Ninian E. Gray, John Hargis Thomas James, Charles C. Kelly, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, John H. McHenry, John D. Morris, Hugh Newell, Elijah F. Nuttall, Larkin J. Proctor, John T. Rogers, Ira Root, Ignatius A. Spalding, Philip Triplett, Squire Turner, John Wheeler, Charles A. Wickliffe, George W. Williams, Wesley J. Wright—42.

So the substitute was adopted for the amendment to the original clause of the section.

Mr. LACKEY moved to amend, by adding to the section the following:

"That representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of representative inhabitants therein. At the first session of the general assembly after the adoption of this constitution, and every four years thereafter, provision shall be made by law, that in the year , and every four years thereafter, an enumeration of all the representative inhabitants of the state shall be made. The number of representatives shall be one hundred, and apportioned among the several counties in the following manner: Counties having the ratio shall have one representative; those having three fourths of the ratio shall have one representative; those having the ratio, and a fraction less than one half the ratio over, shall have but one representative; those having the ratio, and a fraction of one half over, shall have two representatives; those having twice the ratio, shall have two representatives; those having twice the ratio, and a fraction of less than one half the ratio over, shall have but two representatives; those having twice the ratio, and a fraction of one half the ratio over, shall have three representatives; and so on. Counties having less than three fourths of the ratio, shall be joined to a similar adjacent county, for the purpose of forming a representative district: *Provided*, that if there be no such adjacent county, then the county having less than three fourths of the ratio, shall be united with that adjacent county having the smallest number of representative inhabitants, provided that their united numbers do not exceed the ratio, and a fraction of one half the ratio over; but if they do, the county having less than three fourths of the ratio shall have a separate representative. The remaining representatives, (if any,) shall be allotted to those counties having the largest unrepresented

fractions; but in no case shall more than two counties be united for the purpose of forming a representative district; but if there shall ever be an excess of districts, they shall be reduced to the proper number, by taking from those counties having a separate representative, with the smallest number of representative inhabitants, their separate representation."

The yeas and nays were called for, and were—yeas 45, nays 49.

YEAS—William K. Bowling, Luther Brawner, William Chenault, James S. Chrisman, William Cowper, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, John Hargis, Thomas J. Hood, Thos. James, William Johnson, Geo. W. Kavanaugh, Charles C. Kelly, James M. Lackey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, William D. Mitchell, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, Ira Root, Ignatius A. Spalding, James W. Stone, William R. Thompson, John J. Thurman, John Wheeler, Charles A. Wickliffe, George W. Williams, Silas Woodson—45.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Wm. Hendrix, Andrew Hood, Mark E. Huston, James W. Irwin, George W. Johnston, Peter Lashbrooke, Thomas N. Lindsey, Martin P. Marshall, William C. Marshall, John H. McHenry, David Meriwether, John D. Morris, William Preston, John T. Rogers, James Rudd, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, Andrew S. White, Robert N. Wickliffe, Wesley J. Wright—49.

So the amendment was rejected.

Mr. TURNER moved to amend, by adding the following proviso:

"*Provided*, That no county having a less voting population, in any district, shall have a separate representative, when another county in that district, having a greater number of voting population, has no representative: *And provided*, That no county in any district, having a less voting population shall have two representatives, when another county in that district, having a greater number of voting population has but one representative."

The amendment was rejected.

Mr. APPERSON moved to amend, by adding the following proviso:

"*Provided further*, That any county which has not the full ratio, when all the adjacent counties have the full ratio, may be added to an adjacent county having more than a full ratio, when the two may have two members, provided that two counties have a greater population than any one county in the district."

On this amendment, a conversation ensued between Mr. APPERSON, Mr. GRAY, Mr. MORRIS, Mr. TRIPLETT, and Mr. McHENRY. The delegates from Christian county opposed it, on the ground that it would operate unjustly to that county; and the other gentlemen defended it. Ultimately,

Mr. JAMES moved the previous question, and the main question was ordered to be now put.

Mr. GRAY called for the yeas and nays, and they were—yeas 19, nays 71.

YEAS—Richard Apperson, John L. Ballinger, Luther Brawner, Francis M. Bristow, Thos. D. Brown, James H. Garrard, Thomas J. Gough, Ben. Hardin, Vincent S. Hay, Andrew Hood, Mark E. Huston, George W. Kavanaugh, Thos. N. Lindsey, John H. McHenry, John T. Rogers, William R. Thompson, Howard Todd, Philip Triplett, Henry Washington—19.

NAYS—Mr. President, (Guthrie,) John S. Barlow, Wm. K. Bowling, Alfred Boyd, Wm. Bradley, William C. Bullitt, Charles Chambers, Wm. Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, John Hargis, William Hendrix, Thomas J. Hood, James W. Irwin, Thomas James, Wm. Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, Wm. C. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, David Meriwether, John D. Morris, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Squire Turner, J. L. Waller, Jno. Wheeler, Andrew S. White, R. N. Wickliffe, George W. Williams, Silas Woodson, W. J. Wright—71.

So the amendment was rejected.

Mr. DUNAVAN called for the yeas and nays on adopting the substitute of Mr. WOODSON for the original section, and they were—yeas 33, nays 60.

YEAS—John L. Ballinger, Wm. K. Bowling, Thos. D. Brown, Wm. C. Bullitt, Wm. Cowper, Lucius Desha, Thomas J. Gough, James P. Hamilton, William Hendrix, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, David Meriwether, Hugh Newell, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, James Rudd, John W. Stevenson, James W. Stone, Albert G. Talbott, John D. Taylor, Howard Todd, Henry Washington, John Wheeler, Andrew S. White, Silas Woodson—33.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Charles Chambers, William Chenault, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward

Curd, Garrett Davis, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Selucius Garfield, James H. Garrard, Richard D. Gholson, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Chas. C. Kelly, James M. Lackey, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, Wm. N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, John T. Rogers, Ira Root, Ignatius A. Spalding, Michael L. Stoner, Wm. R. Thompson, Philip Triplett, Squire Turner, John L. Waller, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—60.

So the substitute was rejected.

The question then recurred on the adoption of the latter clause of the section, as amended.

Mr. DESHA called for the yeas and nays, and they were—yeas 43, nays 48.

YEAS—Mr. President, (Guthrie), Richard Apperson, John L. Ballinger, Luther Brawner, Thomas D. Brown, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, William Cowper, Edward Curd, Milford Elliott, Green Forrest, Jas. H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, John Hargis, William Hendrix, Thomas J. Hood, George W. Kavanaugh, Charles C. Kelly, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William N. Marshall, John H. McHenry, David Meriwether, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Thomas Rockhold, John T. Rogers, Jas. Rudd, James W. Stone, Michael L. Stoner, William R. Thompson, Philip Triplett, John L. Waller, Henry Washington, Silas Woodson, Wesley J. Wright—43.

NAYS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, Charles Chambers, William Chenault, Henry R. D. Coleman, Benjamin Copelin, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, Ninian E. Gray, Ben. Hardin, Vincent S. Hay, Andrew Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, George W. Johnston, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, Richard L. Mayes, Nathan McClure, Hugh Newell, Larkin J. Proctor, John T. Robinson, Ira Root, Ignatius A. Spalding, John W. Stevenson, Albert G. Talbott, John D. Taylor, Howard Todd, Squire Turner, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams—48.

So the clause was rejected.

Mr. DAVIS then moved, as an additional section, the following, which was originally submitted by Mr. LACKEY:

"That representation shall be equal and uniform in this commonwealth, and shall be forever regulated and ascertained by the number of representative inhabitants therein. At the first session of the general assembly after the adop-

tion of this constitution, and every four years thereafter, provision shall be made by law that in the year \_\_\_\_\_, and every four years there-

after, an enumeration of all the representative inhabitants of the state shall be made. The number of representatives shall be one hundred, and apportioned among the several counties in the following manner: Counties having the ratio shall have one representative; those having three fourths of the ratio shall have one representative; those having the ratio, and a fraction less than one half of the ratio over, shall have but one representative; those having the ratio, and a fraction of one half over, shall have two representatives; those having twice the ratio, shall have two representatives; those having twice the ratio, and a fraction of less than one half the ratio over, shall have but two representatives; those having twice the ratio, and a fraction of one half the ratio over, shall have three representatives; and so on. Counties having less than three fourths of the ratio, shall be joined to a similar adjacent county, for the purpose of forming a representative district: *Provided*, That if there be no such adjacent county, then the county having less than three fourths of the ratio, shall be united with that adjacent county having the smallest number of representative inhabitants, provided that their united numbers do not exceed the ratio, and a fraction of one half the ratio over; but if they do, the county having less than three fourths of the ratio shall have a separate representative. The remaining representatives, (if any,) shall be allotted to those counties having the largest unrepresented fractions; but in no case shall more than two counties be united for the purpose of forming a representative district; but if there shall ever be an excess of districts, they shall be reduced to the proper number, by taking from those counties having a separate representative, with the smallest number of representative inhabitants, their separate representation."

Pending this amendment, the convention took a recess.

#### EVENING SESSIONS.

CORRECTION.—The brief remarks of Mr. A. K. Marshall, delivered on Tuesday evening, December 11, as published in the volume of debates, page 920, do not correctly convey that gentleman's views. They should read as follows:

I am pretty well satisfied with the present constitution on the subject of slavery, but still I prefer the proposition I have offered. The present clause (which is proposed by the gentleman from Christian,) gives to the legislature the right to prevent the importation of slaves into this state, except by *bona fide* immigrants. I am opposed to this, and wish to except from legislative action, such as citizens of Kentucky may become possessed of by gift, inheritance, marriage, or devise. Again, sir, it will allow the subject of slavery to be agitated. It affords a legal constitutional mode of emancipation, and those who choose to press that dangerous question, are not agitators, but citizens, exercising a constitutional right. I desire to deny them any such right, under this constitution, and shall,

therefore, oppose the proposition of the gentleman from Christian.

#### APPORTIONMENT OF REPRESENTATION.

Mr. JACKSON submitted to the convention a plan for the apportionment of representation, and on his motion it was ordered to be printed, and laid on the table:

"SEC. —. In 1850, and every eighth year thereafter, an enumeration shall be made of all the qualified voters of the state. The house of representatives shall consist of one hundred members, and shall, at each enumeration, be apportioned among the several counties of the state in such manner that each county having the ratio of representation, shall have one representative, and each county having double the ratio shall have two, and so on. All qualified voters of the state, not included in such ratio, shall be regarded as residuums, and shall be apportioned among the counties in such manner, that the county having the largest residuum in the state, shall have attached to it adjoining residuums, until the ratio is obtained; then the county having the next highest residuum in the state, shall likewise receive adjoining residuums, until the ratio is obtained, and so on, until all residuums are consumed: *Provided*, That in thus adjusting the residuums among adjoining counties, the smallest residuums shall be taken first, and so on, in succession, until the ratio desired shall be completed; and the county from which, in this order the last number shall be taken, is still entitled to her residuums less by the necessary number so withdrawn."

#### NATIVE AMERICANISM.

The convention proceeded to the consideration of the resolutions offered this morning by Mr. DAVIS, which were then made the special order for this afternoon.

Mr. DAVIS. Mr. President: The resolution on this subject which I submitted to the convention at an early day of its session, has been so long suspended, as to have lost in a good degree its animation. The truth is, that I now feel somewhat awkward on this subject, and but for my avowal to debate it, so distinctly made about that time, I should not at this late day obtrude myself upon the time and patience of this body. But, omitting to discuss the subject, I should not be less a Native American, than if I were to attempt the most earnest and elaborate examination of it. However, I will proceed; and before I resume my seat, I will endeavor to revive the life and interest of my proposition.

Mr. President, in asking the attention of the convention and the country to this subject, it was no part of my purpose to win any notoriety, or any popular favor, general or party, or to endeavor to make it the means of reaching any office or distinction whatever. Were I possessed of youth and strength, it is possible I might have connected such vaulting hopes with it; but I feel an inexplicable consciousness that my years are to be so few, as to constrain me to take a view of things more personal and more sober, and to throw far from me such exciting aspirations.

Since my first examination of the matters involved in this momentous question, I have been a Native American; and during eight years of service in congress, I was pledged, and ever

stood ready to vote for any extension of the time, which is required to entitle the naturalized foreigner to the right of suffrage. The reason why I did not move upon the subject myself was, my thorough conviction, during the whole period, that in congress I would do no good to the cause, immediate or prospective, by bringing it forward.

But, I was firmly resolved, if the time should ever come, and I should be thrown upon a theatre where the effort would seem more practical, and the auspices more favorable, I would ask the attention, not only of the people of Kentucky, but all my countrymen, to what I deem to be the greatest question of the day. I believe that time and that theatre are now here. I know that the number of foreigners in Kentucky is small, when compared with other states; but they are yet numerous and rapidly increasing, particularly on the line of the Ohio and Mississippi rivers; and there is wisdom in the old proverb: "an ounce of preventive is better than a pound of cure."

If we adopt such a provision in the constitution, its influence will not only pervade our whole state government and policy; it will have a small but direct influence upon congress, in the election of our representatives in that body; and it will operate with great moral power upon other states, especially when they go into convention for the alteration of their constitutions. Has not this state felt, and is not this body now acting under the power of similar examples? Who, five years ago, in Kentucky, was there to advocate the principle of the judges of courts being elected by popular vote; and if no state had yet adopted this system, who believes we would be now incorporating it in our constitution? Would it not be reasonable to conclude that the example of Kentucky, deciding and incorporating as a fundamental provision in her constitution, that her government belonged to, and should be administered by, her native born sons, and not by foreigners, would have a most powerful and salutary influence upon our sister states?

I presume, Mr. President, there can be no doubt upon the point of our competency and right to act upon this subject; and also of our duty to act upon it, if by so doing we can effect any essential good for the country. Congress has the power and has passed naturalization laws; and it has been assumed that it would infringe the rights of the foreigners, who have been naturalized in conformity to the provisions of those laws, for the states to prescribe any other or additional restrictions to their exercise of the right of suffrage in the state governments. It appears to me that this position is wholly fallacious and untenable. The states have the right to confer upon foreigners the elective franchise, and to make them eligible to all the offices of their governments before naturalization, and they have the undoubted power to exclude them, although they have become citizens of the United States; because such citizenship confers upon them only the rights of that government, conceded by the federal constitution, and not a single one under any state government. This power of the states to withhold from naturalized citizens of the United States, the right to vote, has been often



exercised, and is now in practical operation in many of them—indirectly in declaring the payment of taxes, being a housekeeper, owning a freehold, &c., &c., as qualifications. But in many states, and in Kentucky, the higher power is exercised of excluding the naturalized citizen from the more important right of eligibility to certain offices for long terms. A man must have been a citizen of the United States, and an inhabitant of this state also, "at least six years," to be eligible to the office of governor, lieutenant governor, or senator. The states are sovereign in forming and administering their own governments. They may deny to naturalized foreigners, wholly, the right of suffrage, and the privilege of holding office; or they may confer both class of rights fully, or with such restrictions, as to time and other circumstances, as they may will.

They have often circumscribed and denied these rights to their own native born citizens, and it would be preposterous to assume they had not the same power over persons born in foreign countries, merely because they had been admitted to citizenship under the government of the United States. The point in debate is a question of expediency and policy only, and not of power; and as such, I freely admit, it should not be exercised without grave and sufficient reason, of which the people and the conventions of the states, alone, have the right to determine.

The proposition which I have submitted, deprives no man of any right which belongs to him, be it perfect or inchoate; for it concedes to all foreigners who now have the right of suffrage, or who have taken the first step towards naturalization, or who may hereafter be brought as minors to the United States, that right.—Have others any just claim to it? Europe has 280,000,000 of population. As relates to the government and people of the United States, all now have the right to come to our country, and millions upon millions of them will come. If all the male adult population of Europe have a vested and perfect right, on reaching our shores, to be admitted, after naturalization, under the laws of congress, to share all the political sovereignty, rights, and offices of all the states, each one of all the teeming millions across the Atlantic, now resident not only in Europe, but in Asia and Australasia, and all the isles of the sea, if not in Africa, have also the same right, it is true, imperfect and conditional, because any and all may come. In the universe, was ever before heard of so expansive and ramified a right, spreading over so many countless millions, not of the living only, but of their multitudinous posterity for all time, of all climes and countries, races and colors, languages, religions, and heathenisms, unless, indeed, the negro be excluded. The thing is absurdity itself. No foreigner has any right to any portion of the political sovereignty of a country in which he may choose to make his residence, except so far as it may be given to him by the people and government of that country; and then only to the extent, and upon the conditions which they may prescribe. Congress might rightfully repeal all laws for the naturalization of foreigners, and refuse to enact any others.

Having made these preliminary remarks, Mr.

President, I state the fact that Native Americanism is not a mushroom of yesterday. It dates back in the United States several generations; and has the weight of illustrious names to sanction it. To repel, in some degree, the imputations cast upon it, that it originated in small and factious motives, and among insignificant adventurers, I will read to the convention a few extracts. First, from a letter addressed to Gov. Morris, dated White Plains, July 24, 1778:

"Baron Steuben, I now find, is also wanting to quit his inspectorship, for a command in the line. This will be productive of much discontent. In a word, though I think the baron an excellent officer, I do most devoutly wish we had not a single *foreigner* amongst us except the Marquis de Lafayette, who acts upon very different principles from those which govern the rest."

From another, dated Philadelphia, Nov. 17, 1794, and addressed to John Adams, the elder:

"My opinion with respect to immigration is, except of useful mechanics, and some particular descriptions of men and professions, there is no need of encouragement."

A letter dated from his residence, Jan. 20, 1790, in reply to a letter applying for office, has this passage:

"It does not accord with the policy of this government, to bestow offices, civil, or military, upon foreigners, to the exclusion of our citizens."

These extracts are taken from letters written by the father of his country, George Washington; the first from amidst the conflicts of our war of independence; and the other whilst he was president; and in his life by Sparks, will not only they be found, but several others, with passages on the same subject, of equal distinctness and force.

I will read the sentiments of another on the subject of foreign immigration:

"Civil government, being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours are more peculiar than those of any other in the universe. It is a composition of the freest principles of the English constitution, with others derived from natural right, or natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet, from such, we are to expect the greatest number of immigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an *unbounded licentiousness, passing, as is usual, from one extreme to another*. It would be a *miracle* were they to *stop* precisely at the point of *temperate liberty*. These principles, with their *language*, they will transmit to their children. In proportion to their numbers, they will share with us in the legislation. They will infuse into it their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass. I may appeal to experience during the present contest, for a verification of these conjectures. But, if they be not certain in event, are they not possible, are they not probable? Is it not safer to wait with patience twenty-seven years, and three months longer for the attainment of any degree of pop-

ulation desired, or expected? May not our government be *more homogeneous, more peaceable, more durable?*"

Thus speaks Mr. Jefferson in his notes on Virginia. I presume that these two men of deathless names, had quite as much patriotism and wisdom as any clamorous advocate of the foreigner in this convention; and it might be safely assumed, that what they believed to be wise and wholesome, could not prove very pernicious. In the terrible throes of our revolutionary struggle, and when our young institutions were in their cradle, and the country contained a population hardly adequate to its protection against foreign and Indian aggression, these far-seeing sages deprecated and condemned a heavy foreign immigration; and Mr. Jefferson said with a thorough philosophical and practical knowledge of man, they would bring with them the maxims of despotism, or *unbounded licentiousness*, and produce "a heterogeneous, incoherent, distracted mass." If we wanted more numbers, he invoked us to await the slower, but so much more safe principle of natural increase, rather than hazard the great dangers with which foreign immigration was fraught.

But why am I opposed to the encouragement of foreign immigration into our country, and disposed to apply any proper checks to it? Why do I propose to suspend to the foreigner, for twenty one years after he shall have signified formally his intention to become a citizen of the United States, the right of suffrage, the birth-right of no man but one native born? It is because the mighty tides of immigration, each succeeding one increasing in volume, bring to us not only different languages, opinions, customs, and principles, but hostile races, religions, and interests, and the traditionary prejudices of generations, with a large amount of the turbulence, disorganizing theories, pauperism, and demoralization of Europe, in her redundant population thrown upon us. This multiform and dangerous evil exists and will continue, for "the cry is still they come." Large numbers in a short time, a few months or weeks, after getting into the country, and very many before they have remained the full time of probation, fall into the hands of demagogues and unscrupulous managers of elections, and by the commission of perjury and other crimes are made to usurp against law a portion of the political sovereignty of the country. They are ignorant of our institutions and the principles upon which they are founded; of the great interests of the country, and the questions of policy which divide our people; of the candidates for office, and their capacities, views, fitness and former course of life. Instead of being qualified to aid in the great and difficult business of upholding the most complicated structure of government that ever had existence, and of successfully administering it for the good and happiness of the people and its own perpetuation, they constitute an uninformed, unreasoning, and to a great extent immoral power, wielded almost universally by desperate and profligate men, who by this agency become enabled to carry into success their own bold, mercenary and pernicious purposes; and to defeat those which the wise and the good devise for the bene-

fit of the country and the preservation of constitutional liberty. We cannot, with any safety, continue to admit with such lavish liberality those ever coming and ever increasing masses of immigrants into full political partnership, and share with them the sovereignty of government. We are taught this truth no less by nature and reason than by fact and experience. Let me give an illustration. There is no member of this body, and probably no man in Kentucky, who, if placed any where on the earth in a civilized community, but who could aid in upholding and advancing the civilization of that country. He would have a general knowledge of the modes of thought and feeling, of the manners and customs, of the wants and desires, and of the means of ministering to them, physically, morally, and intellectually, appertaining to civilized life. All this he has been learning every day of his life from his infancy. In these respects he would be qualified to perform his duty with the members of the new society of which he had become a member. But bring among us a son of the forest, a Wyandott or a Chippewa, and how would he get along in performing the same part in our society and civilization? He would be in a state of utter and savage isolation. The most of those European immigrants, having been born and having lived in the ignorance and degradation of despotisms, without mental or moral culture, with but a vague consciousness of human rights, and no knowledge whatever of the principles of popular constitutional government, their interference in the political administration of our affairs, even when honestly intended, would be about as successful as that of the Indian in the arts and business of civilized private life; and when misdirected, as it would generally be, by bad and designing men, could be productive only of mischief, and from their numbers, of mighty mischief. The system inevitably and in the end will fatally depreciate, degrade and demoralize the power which governs and rules our destinies.

I freely acknowledge, that among such masses of immigrants, there are men of noble intellect, of high cultivation, and of great moral worth—men every way adequate to the difficult task of free, popular, and constitutional government. But the number is lamentably small. There can be no contradistinction between them and the incompetent and viscious; and their admission would give no proper compensation, no adequate security against the latter, if they, too, were allowed to share political sovereignty. The country could be governed just as wisely and as well by the native born citizens alone, by which this baleful infusion would be wholly excluded.

I propose, Mr. President, before I close, to make a more particular application of these general views to the points of my proposition; and in the meantime, as having a general, but important and interesting bearing upon it, I will present some statements and tables of immigration and population, the most recent and the most authentic that I have been enabled to command from the limited sources of information within my reach. Though by no means full and entirely satisfactory, this examination has convinced me that the great body of the people, and indeed of intelligent men, have no in-

formation or belief, approximating the truth, of the fearful and growing numbers of immigrants, of their general destitution and pauperism, of their ignorance and demoralization, and of the vices and crimes of very many of them, and of the enormous frauds which, through them, are perpetrated upon the elective franchise. At least such was my situation, and to the mass of the American people, this whole subject seems to me to be a sealed book.

In 1790, the white population in the United States was 3,172,464. The rate of increase ascertained by the latest and most reliable calculations, upon the principle of compound increase, is about 2.39 per cent. by which the population would be doubled in somewhat more than 29 years. Make an estimate by this rule upon 29 years, and in 1840 there was a white population of 11,104,659. But the census returns show a white population of 14,189,218, in 1840; so that there were then in the United States upwards of four millions of persons, immigrants and their progeny. During the decennial period indicated by each of the named years following, I present the aggregate number of immigrants: 1800, 160,305—1810, 229,755—1820, 321,064—1830, 494,491—1840, 862,040.—Since 1840, the rate and aggregate of increase has been greatly beyond any prior period. These numbers here given, I presume are made up from the custom house returns: for the latter years, I have no doubt they are. I have been able to get the custom house returns for two years only since 1840; that of 1846 showing 158,648, and 1847 an increase on the former year of about 47 per cent. and an aggregate of 239,256. No returns are made by any ships under 20 tons burthen, and from some cause, none from the ports of New Jersey. It is well known that a great many vessels neglect to make any returns; and also that most of the immigrants who land at Halifax and Quebec, come through the British provinces into the United States. The great number of timber ships which sail annually from England to Quebec, afford large and cheap facility to the immigrants by that voyage, and great numbers annually come by it. It is estimated that one fourth of the immigrants to the United States, are either through the British provinces, or through our ports and not reported; and the actual white population reported upon each general return of the census, above the combined aggregate natural increase and custom house numbers, shows this estimate to be under the truth. I have however made some prospective estimates upon the supposition that 20 per cent. of the annual immigrants through all channels were not comprehended in the custom house returns. Upon these principles, I estimate the total white population of the United States in 1850 to be the rise of 21,000,000, of which upwards of 5,000,000 will be foreigners by birth, being about one fourth. Thirty years ago only one in forty of our population was estimated to be of foreign birth. In 1843 one in five, and this disproportion is rapidly decreasing. Take 158,648, the custom house returns in 1846, add 20 per cent. to it for immigrants not reported, and upon the product put 47 per cent., the actual rate of increase upon the custom house returns of those years from one to the other, and you will

have 287,107 for the total of 1847, and for 1848, total 422,056; and by continuing the calculation for 1849, total 620,422, and 1850, total 912,020. This rate of increase may not continue, and the figures for the two last named years may be too large; otherwise they would authorise a larger estimate than 5,000,000 of foreigners in the country in the year 1850. But 620,422 immigrants for the year 1849, when the custom house returns shall be made out, and 20 per cent. added to their aggregate numbers will probably be shown not to be much above the mark. I have seen a statement that the immigrants from the port of Bremen, for the past year, exceeded 56,000; and of something like the same number from Liverpool, that four-fifths of them were Germans. The same rate of increase would bring immigrants to the country in 1851, 1,340,669—in 1852, 1,970,783—in 1853, 2,897,051—and 1854, 4,188,664. So that it becomes obvious that this rate of increase cannot continue through many years. Nevertheless the increase will be steady, great, and continuous—and I believe may be safely assumed at more than 1,000,000 yearly for the decennial period between 1850, and 1860. Upon this hypothesis I assume the total population of the United States in 1860, will be 36,606,178, of which, allowing for their decrease by death, about 14,000,000 will be foreigners by birth: and the slaves being then about 4,000,000 added to the foreigners will make nearly one half of the aggregate population of the United States. The census returns of 1870, will unquestionably exhibit the native white population to be less than the foreigners and the slaves united, a state of fact which must fill every patriotic and sober mind with grave reflection.

This view of the subject is powerfully corroborated by a glance at the state of things in Europe. The aggregate population of that continent, in 1807, was 183,000,000. Some years since it was reported to be 260,000,000, and now it is reasonably but little short of 283,000,000; showing an increase within a period of about forty years of 100,000,000. The area of Europe is but little more than that of the United States, and from its higher northern position, and greater proportion of sterile lands, has a less natural capability of sustaining population. All her western, southern, and middle states labor under one of the heaviest afflictions of nations—they have a redundant population. The German states have upwards of 70,000,000, and Ireland 8,000,000—all Germany being not larger than three of our largest states, and Ireland about the size of Kentucky. Daniel O'Connell, in 1843, reported 2,385,000 of the Irish people in a state of destitution. The annual increase of population in Germany and Ireland is, in the aggregate, near 2,000,000; and in all Europe it is near 7,000,000. Large masses of this people, in many countries, not only want the comforts of life, but its subsistence, its necessities, and are literally starving. England, many of the German powers, Switzerland and other governments, have put into operation extensive and well arranged systems of emigrating and transporting to America their excess of population, and particularly the refuse, the paupers, the demoralized and the criminal. Very many who come are stout and industrious, and go to labor steadily and thrifti-

ly. They send to their friends in the old country true and glowing accounts of ours, and with it the means which they have garnered here, to bring, too, those friends. Thus, immigration itself increases its means, and constantly adds to its swelling tides. Suppose some mighty convulsion of nature should loosen Europe, the smaller country, from her ocean deep foundations, and drift her to our coast, would we be ready to take her teeming myriads to our fraternal embrace, and give them equally our political sovereignty? If we did, in a few fleeting years, where would be the noble Anglo-American race, where their priceless heritage of liberty, where their free constitution, where the best and brightest hopes of men? All would have perished! It is true all Europe is not coming to the United States, but much, too much of it is; and a dangerous disproportion of the most ignorant and worst of it, without bringing us any territory for them—enough, if they go on increasing and to increase, and are to share with us our power, to bring about such a deplorable result. The question is, shall they come and take possession of our country and our government, and rule us, or will we, who have the right, rule them and ourselves? I go openly, manfully, and perseveringly for the latter rule, and if it cannot be successfully asserted in all the United States, I am for taking measures to maintain it in Kentucky, and while we can. Now is the time—preventive is easier than cure.

The governments of Europe know better than we do that they have a great excess of population. They feel more intensely its great and manifold evils, and for years they have been devising and applying correctives, which have all been mainly resolved into one—to drain off into America their surplus, and especially their destitute, demoralized, and vicious population. By doing so, they not only make more room and comfort for the residue, but they think—and with some truth—that they provide for their own security, and do something to avert explosions which might hurl kings from their thrones. After the allied sovereigns had conquered the mighty Corsican on the field of Waterloo, and had him safe on the rock of St. Helena, these crowned tyrants of Europe, impiously denominated the "holy alliance," had a breathing time; and they began to cast around themselves to devise means to attack, indirectly, slowly, and stealthily, our institutions and our principles of popular government, which they not unreasonably concluded had been the primary cause of the tremendous assaults which men, in their struggles to free themselves from the slavery of centuries, had made against their despotic thrones. Hear what the Duke of Richmond said on this subject:

"The following language of the Duke of Richmond, while Governor of the Canadas, and is reported by Mr. H. G. Gates, of Montreal, who was present when it was uttered.

"The Duke, a short time prior to his death, in speaking of the government of the United States, said: 'it was weak, inconsistent, and bad, and could not long exist.' 'It will be destroyed; it ought not, and will not be permitted to exist; for many and great are the evils that have originated from the existence of that gov-

ernment. The curse of the French revolution, and subsequent wars and commotions in Europe, are to be attributed to its example; and so long as it exists, no prince will be safe upon his throne; and the sovereigns of Europe are aware of it, and they have been determined upon its destruction, and have come to an understanding upon this subject, and have decided on the means to accomplish it; and they will *eventually succeed by subversion rather than conquest.*" "All the low and surplus population of the different nations of Europe will be carried into that country; it is and will be a receptacle for the bad and disaffected population of Europe, when they are not wanted for soldiers, or to supply the navies; and the European governments will favor such a course. This will create a surplus and a majority of low population, who are so very easily excited; and they will bring with them their principles, and in nine cases out of ten, adhere to their ancient and former governments, laws, manners, customs, and religion, and will transmit them to their posterity, and in many cases propagate them among the natives. These men will become citizens, and by the constitution and laws will be invested with the right of suffrage. The different grades of society will then be created by the elevation of a few, and by degrading many, and thus a heterogeneous population will be formed, speaking different languages, and of different religious and sentiments, and to make them act, think, and feel alike, in political affairs, will be like mixing oil and water; hence, discord, dissension, anarchy, and civil war will ensue, and some popular individual will assume the government, and restore order, and the sovereigns of Europe, the immigrants, and many of the natives will sustain him." "The Church of Rome has a design upon that country, and it will, in time, be the established religion, and will aid in the destruction of that republic." "I have conversed with many of the sovereigns and princes of Europe, and they have unanimously expressed these opinions relative to the government of the United States, and their determination to subvert it."

Schlegel was a learned historian, and professor of history in Vienna, and high in favor with the Emperor of Austria. At the close of one of his public lectures in that capital, against free governments, he declared: "The true nursery of all these destructive principles, the revolutionary school for France, and the rest of Europe, has been North America. Thence the evil has spread over many lands, either by natural contagion, or by arbitrary communication." About the same time, Francis, the Emperor of Austria, at the instigation of that arch minister of despotism, Metternich, and with the co-operation of the other allied sovereigns, established "the Leopold Foundation," the object of which was "to promote emigration, and the greater activity of the catholic missions to the United States." To send out the civil and religious despotism of Europe to supplant the principles which Schlegel denounced as destructive, and which made kings tremble upon their thrones. That same emperor proclaimed: "As long as I live, I will oppose a will of iron to the progress of liberal principles. The present generation is lost, but

we must labor with zeal and earnestness to improve the spirit of that which is to come. It may require an hundred years; I am not unreasonable—I give you a whole age, but you must work without relaxation." You see those men know that popular institutions in this country are not to be put down by military operations, or by direct attacks; but they expect to achieve it by other modes; by sending forth in alliance the agents of civil and religious despotism, and only by such means in the course of ages; and they look to it patiently, as a distant but certain consummation.

The government of England had powerfully co-operated with the monarchs of the Continent in putting down Bonaparte; and but for the unconquerable fortitude and courage of those 'bull-dog Islanders,' the work had probably never been done. Her government then refused to co-operate in the schemes of absolutism which the allies were devising, and drew off from them. The long slumbering energies of Spain had been deeply stirred, by Napoleon driving Ferdinand VII from her throne, and placing in his stead his brother Louis. The chivalry and heroism of Spain revived in transient splendor, and the Castilian again buckling on his ancient armor, drove Soult and the legions of France from the Peninsula, and the miscreant tyrant, Ferdinand, regained his sceptre. The spirit of liberty having been re-awakened, it would not passively and at once fall to sleep again in the benumbing embrace of despotism. The regenerated Spaniards convoked a Cortes, and began the reconstruction of liberal institutions. Ferdinand resisted, and was the second time, by his own people, driven into exile. He called upon the holy alliance for succor, and they assigned the work of his restoration to Louis XVIII, whom they had so lately restored. The Duke of Angoulême entered Spain at the head of a strong and well appointed army—all resistance was put down, after obstinate and bloody combat—Ferdinand was brought back, and even the throbs of liberty stifled, from the Pyrenees to the ocean.

But Ferdinand had lost more than half his possessions by the revolutions and independence of Mexico and the South American possessions of Spain; and he invoked the allied sovereigns of Europe to re-conquer those countries for him too, and to bring them back under his galling yoke. They were ready to go to the bloody work, but at that momentous crisis, upon which hung for centuries the destiny of the world, England and the United States united in counsels, in policy and purpose, and declared to the allied powers and to mankind, that in such a war, such a crusade by them against the Spanish American Republics and their liberties, their cause would be made the cause of them, the glorious mother and daughter. "The holy alliance" desisted from its diabolical and bloody scheme; and England and America stood gloriously before the world as the bulwarks of civil and religious freedom. Their noble interposition was not more generous and humane than it was wise and timely, because the fall of the liberties of the new republics would have been but the precursor of the exterminating war which the *propaganda* power of the civil and religious absolutism of Europe, were even then meditating up-

on the spiritual and political freedom of England and America—for though England had so much less than we, still she had a priceless amount, and the other nations of Europe comparatively none.

England is our glorious mother, and I look to her with much of affection, gratitude, and reverence. She has oppressed and wronged her daughter, but that account is long since settled, and I trust forever. We have inherited from her much of our best blood, our language, most of our science and literature, our religion, and many of the most valuable principles of human liberty. She commenced to rear her fabric of freedom, as it exists, in the reign of her John, at the beginning of the thirteenth century. She has, at distant intervals, added to the proportions and beauty of the edifice, and is still moving on according to her tenor towards its perfection. She has in this long train of time achieved much—she has still much to do, but in her own way and in God's good time, will she do it, I trust. But the other day, Hungary had been crushed by the combined arms of two iron despots, and the immortal Kossuth and his comrade exiles fled, conquered, but not subdued, from their enslaved country and an ignominious death, and found protection in the territory and from the power of the Moslem. And when these frozen hearted tyrants of the north demanded those noble men from the Ottoman Porte, that they might be offered up on the scaffold to appease a bloody Moloch, and the Turk refused this barbarian requisition of christian kings, though war was denounced against him; and England stood forth and made with him an alliance, offensive and defensive, to arrest greater barbarians than he in their aggression upon his rights and independence, and upon the rights of nations, of humanity and christian civilization, I could not read the story without my blood tingling in my veins. I thought of the lion-hearted Richard and Saladin—of their combats upon the field of death—of the union of their successors, and of the cause in which, and the powers against which, they were united; and my swelling heart could not withhold its tribute to England and Turkey. In such passages as those, what American does not proudly feel that England and America are kindred?

Mr. President, I have some documents and facts in addition, to show with what system many European states are throwing upon us their destitute and refuse population. I have not time to present them all, but I will a portion. In England, Ireland, Switzerland, Saxony, Bavaria, Swabia, Brunswick, Hanover, and other states, those operations are carried out upon a large scale.

In 1843, a society, composed of wealthy individuals of London and Dublin, was formed for the objects: "1st. To send into the western states of America the surplus population of Britain, Ireland, and the continent. 2d. To open a new market for British manufactures. 3d. To extend and to consolidate the Roman Catholic religion in the United States."

The accredited immigrant agent at Montreal, in a report bearing date 1843, says, "of 9,507 Irish paupers 8,625 came up the St. Lawrence along the borders of New York."

"The commissioners of the poor in England

recommended that parliament pass an act authorizing the different parishes in England to raise money for the purpose of sending the most vicious and worthless of their parishioners, such as are irreclaimable, out of that country to America." So says Niles' Register. A few towns in England raised the sum of \$11,820 to defray the expenses of three hundred and twenty paupers to this country.

In an official letter from our consul, F. List, from Leipsic, to the secretary of the treasury, he says: "A Mr. De Stain, formerly an officer in the service of the Duke of Saxe Gotha, has lately made propositions to the smaller German states of Saxony, for transporting their criminals to the port of Bremen, and embarking them from thence for the United States, at \$75 per head, which offer has been accepted by several of them. The first transport of criminals, who, for the greater part, have been condemned to hard labor for life, (among them two notorious robbers, Pfiffer and Allbrecht,) will leave Gotha on the 16th of this month; and it is intended by and by, to empty all the work-houses and jails in this manner. There is little doubt that several other states will imitate the nefarious practice."

The mayor of Baltimore, in a letter to the President, said, "that fourteen criminals from Bremen had been landed there. They were shipped in irons which were not taken off till they were near Fort M'Henry." I could bring forward, Mr. President, a volume of evidence to the same effect. In corroboration of the general conclusions to which it leads all unprejudiced minds, the commissioners of the alms-house of the city of New York, in a report of 1843, say: "There are not more than one fourth of the immigrants who come to this country who possess the means to obtain a comfortable support for themselves and their families on their arrival here." Most of them, of course, are disposed to labor, and who, as soon as they can obtain employment, cease to be paupers. But many of them are unable, and more still of them indisposed, and who never will work. But this source of pauperism is a constant and ever increasing stream. Of one thousand two hundred persons admitted in the year 1843, into the hospital, two hundred and six only were native born Americans; and of three thousand three hundred and thirty two persons in Bridewell, the alms-house, and the penitentiary, two thousand and forty five were foreigners. The disbursements of the city in support of the alms-house amounted, for the current year, to \$250,068. The number of paupers in the United States in 1830, was calculated to be one hundred and three thousand one hundred and seventy eight, and the number of foreign immigrants for that year was only thirty thousand two hundred and twenty four by the custom house returns; but add twenty per cent, for those not reported, and it will make thirty six thousand two hundred and sixty six. As American pauperism is the numerous spawn of foreign immigration, many of the immigrants of former years were paupers in 1830; and as the total number in the United States for that year, was one hundred and three thousand one hundred and seventy eight, how much must it have been, and be now

increased when immigration has increased ten fold. The gentleman from Jefferson, (Mr. Meriwether,) told us in a speech a few days since, which seemed to be very carefully prepared, that the paupers in Boston at the present time, exceeded twenty eight thousand. Neither Massachusetts nor Boston give the great Lazar houses of American pauperism. The people of the old Bay State all work and are generally thrifty; and Boston, or any of her harbors, are not the great highways of immigration. Its great streams are through New York, New Orleans, and Quebec, and from those ports, the foreigners seek other localities than Massachusetts. The present permanent average number of foreign paupers in the United States, must exceed two hundred and fifty thousand; and according to the rate of cost of the paupers of Massachusetts, as stated by the gentleman from Jefferson, they must produce a charge of upwards of \$5,000,000. The amount paid towards them by private charity, in all its forms, is large, and the grand total not less, but much more than \$6,000,000. What a tax this matter brings upon our people, and how our own native born are often deprived of their birth right, the charity of their own country, by the enormous demand upon it by aliens, I have seen the reports of some years ago, from the principal cities of the United States; and the proportion between the native and foreign classes or paupers were about the same exhibited by the reports from the city of New York, and showed that swarms of foreigners crowded out from the hospitals, and other eleemosynary institutions, those who had the first right to be there, Americans by birth—men who, or whose ancestors, took possession of this land when it was a howling wilderness, reared in it cities and towns and temples dedicated to the worship of the living God—opened and cultivated its teeming fields, fought for and established its liberties, upheld its institutions in our days of weakness, trial and peril—all of which is, now that we are strong and rich, coveted and almost claimed by the stranger. The whole of this fair heritage belongs first and peculiarly to the native, and it is his right to claim, and the duty of the government to protect it, to keep him in its peaceful, secure, and permanent enjoyment; and, so far as it may be necessary to those ends, to ward off the foreigner. It is his duty to share it with the poor and the down-trodden of other lands, only to the extent its safety and his proper enjoyment of it will allow.

I have in my possession, Mr. President, numerous official reports, some made to both houses of Congress, and others under the authorities of some of the Atlantic cities, all going to show extensive and flagitious invasion of the elective franchise by these foreigners; and the abuses to which it is subjected by unprincipled men through, often, their unwitting agency—for vast numbers of them are made the dupes and tools of more designing and worse men than themselves. Before every general election, thousands of them, but just arrived in the country are purchased by party managers and brought up to conniving courts, and by the false oaths of themselves and others, are spuriously naturalized in violation of law. This nefarious work is largely done before every election in



the principal cities; and great numbers are made to vote without even a formal naturalization, upon perjury alone. By these, and similar frauds, general elections have been carried in New York, Pennsylvania, and Louisiana; and the voice of the citizens of those states, the constitutional sovereign power, is iniquitously superceded, and a spurious and corrupt power introduced in its stead to give law and destiny to this great country.

But, Mr. President, I will pass on to another view of this subject—one peculiarly delicate to touch upon—of deep interest to all our people, and probably connected with greater and more fatal consequences in the remote future than any one, or even all which I have presented.

I have heard it said by a member of this body, a gentleman of great experience and extensive information, that eight ninths of the foreign immigrants are Roman Catholics. We all know that they greatly preponderate, and I suppose that to take three fourths of them to be of that persuasion, would be quite within the limits of the truth. When I speak of Roman Catholics, I mean as well those raised in that faith as those who profess it.

The latest tables of the numbers of christians in the United States, by denominations, which have come to my knowledge, state the total to be 4,334,972, and that of these 1,231,300 are Roman Catholics, being more than one fourth of the aggregate—all of all denominations being told. I do not know, and have no means to form an opinion to be relied upon, what portion of the Romanists are native, and what foreigners by birth; but I would conjecture the latter class to be much the stronger in numbers. Over the subject of the religion of the Catholics, or of any other persuasion, as a rule of moral conduct in private life, as a matter of faith and a means of man's salvation, I, as a member of the convention, have no cognizance, nor do I presume to attempt to exercise any whatever. But so far as that, or any other sect of religionists, in the principles of its religious doctrines, or in their practice, in the present or to be in the future, does actively or supinely—so far as the general opinion of the people of this country, and all other circumstances may render prudent and practicable, or to any extent whatever, claim for the particular sect temporal power, or attempt to exercise it, or to mix itself up with the politics of the country to get possession of the governmental authority and control it, directly or indirectly, with a view to the acquisition of power and rule generally, or to promote any particular church views, to that extent and within that scope, I, as a member of this convention, have a proper and legitimate jurisdiction over it. It would be within the power and duty of this convention, by proper provisions, to exclude as far as practicable, such pernicious matters from our political system—as much so as to keep out of it any other mischievous and dangerous principle or power. Suppose, in a word, that the Pope of Rome was asserting himself to be the vicergerent of God, and infallible; that all power on earth, spiritual and temporal, was given to him by divine appointment; that all countries and governments belonged to him, and were either subject to his will and command, or in a state of criminal re-

bellion; that all authority in church or state which did not profess to be under him, and to act in strict conformity to his commands was unlawful and wicked; that all religious opinions different from the dogmas of the Roman Church were heretical, and those who professed them heretics, with whom no faith was to be kept, whether plighted by contract or by oath; that it was the highest duty of Roman Catholics to God, to extirpate this heresy and these heretics by sword, fire and faggot; and by the same means to bring the political authorities to submit to the Pope in all things, and every human being to profess, and conform to the Romish faith; and to these ends they intended to devote their time, their labors, all their energies and powers, and even expend their lives, which would be glorious and happy martyrdom. Would not the convention have the right to withhold from foreigners coming to our country, whom the preceding picture would truly characterize, any power and agency in our government? There have been such Romanists, who, aided by despotic monarchs and their armed myrmidons, have, to a great extent, given effect to such monstrous doctrines and purposes, and desolated large portions of the earth with fire and sword. And what has been, however terrible, may be again!

Many years since, I heard, traditionally, as a saying of a French philosopher, "man says God made him after his own image: the truth is, man makes God after his image." This savors of impiety, but nevertheless embodies a good deal of truth. Man is very apt to assign some of his own properties to his God, or to give to his attributes a character and hue conforming to his own particular moral nature and conformation. I have known Roman Catholics resident of Maryland, of Louisiana, and of our state, excellent people—so far as I could judge the heart of man, as good as any whatever. I have had the happiness to make the acquaintance of several gentlemen, members of this body, who, I am informed, are of that faith; and none here have a larger share of my esteem and confidence. My belief is, I know no better men any where—none more fit to assume the responsibilities of self-government, or to discharge the duties of good citizens, both public and private. These men, and all Catholics born and educated in this country of light and liberty, are, and were, by me, intended to remain far from the operation of any principle which I have submitted to the convention; because our country and its institutions were as much their birth-right as mine, and they, as well qualified to take charge of both as myself, or any others. But not so the foreigner. The Romanism of Europe, and of its followers there, who come here, is a very different religion in the formation of character and in practical life, from that to which native Catholics are born, and in which they are trained, so far as I understand the matter. The Romanism of Europe, from my reading, is, in its constitution and principles, its essence, spirit, policy and administration, past and present, throughout its whole duration, a great, all-ambitious, all-grasping religious politico institution, claiming the whole earth's sceptre, spiritual and temporal, and waging perpetual war in different forms according

to difference of circumstances, to break all others. It is a hierarchy, and the Pope a hierarch, a spiritual and temporal despot. Such is my understanding of the religion which the Catholic immigrant brings with him to our land, cherishes here as his life's blood, and endeavors, perseveringly, to propagate among our people; and to this religion, so far as it is political, and its object temporal power, I avow utter hostility. I will attempt now to establish, by creditable proofs, all the points which I have stated as being parts of it. But men, who have seceded from it, inform us, that all books and documents which purport to reveal its hidden principles and its true interior nature and spirit, are sought to be discredited by its followers and defenders, pronouncing them to be false. So says Giustianiani, formerly a Roman priest, now a minister in the Lutheran church, and many others.

The title and assumptions of the Pope are thus set out by one of them, Martin V, in his despatches to his minister at Constantinople: "The most holy and most happy, who is the arbiter of Heaven, and the Lord of the earth, the successor of St. Peter, the anointed of the Lord, the master of the universe, the father of kings, the light of the world," &c. Most of the Popes have not set forth their style so pompously, but all have claimed to be the Lord of the earth, the vicegerent of God, to whom all power is given, to be holy and infallible; and to whom all authority, spiritual and temporal, is absolutely subject. That they have the right to depose kings, and give their kingdoms to whom they will; to put down all governments, and all authority, political or religious, which does not submit to them; to condemn as heretical, all religions, doctrines and faith that may be opposed to, or inconsistent with theirs, and to extirpate, as heretics, those who profess them; to release every person from all faith with heretics and all obedience to any other authority; to grant absolution for sins; and they and their priests to pray souls out of purgatory. Such are the leading features of Romanism, and none of its councils, or infallible pontiffs have denied or attempted to reform any of them, as it was for centuries propounded to the world, and it has in innumerable instances been enacted with the concurrence of the christendom of western Europe in all these terrible forms with resistless power. This is no exaggerated statement of the claims of Romanism and its head, however startling and incredible it may be to most persons in this country. During the period between the first and the seventh century, there were five bishops, whose dioceses were of so much power, wealth, or dignity, as to have prompted them to assume the title of patriarchs, and these were the bishops of Rome, Alexandria, Antioch, Jerusalem, and Constantinople; which claim and title come gradually to be acquiesced in, and at length to be universally accorded to them. These patriarchs were entirely independent of each other, and often had conflicting claims and warm disputes. An obscure council held at Sardis in 347, conferred on the Bishop of Rome a limited authority to direct a re-hearing of the case of a provincial bishop; and in 372, the emperor Valentinian enacted a decree empowering the bishop of Rome to examine and judge other bishops. But

no supremacy was conceded to him by the emperor, or by the other patriarchs, or by the provincial bishops generally, until near 150 years afterwards; and prior to that time, John, bishop of Constantinople, in a council held in 588, had assumed the title of universal bishop. Gregory, called the Great, was then bishop of Rome, and he opposed, with signal ability and vehement spirit, this usurpation of him of Constantinople, and denounced his title of "universal bishop," as "vain," "execrable," "anti-christian," "infernal," and "diabolical." Mauritius was emperor, but Phocas, an obscure officer in his army, seduced the soldiery and marched upon Constantinople to dethrone him. Mauritiu's fled, Phocas entered the capitol, and the emperor having been brought back, he and six sons were put to death by the usurper, who had already seized upon the purple. The wife of Mauritius and his three daughters had fled to a sanctuary, to which Phocas despatched ruffian soldiers to drag them hence and murder them. John interposed his spiritual authority, and successfully resisted these forcible attempts against the empress and her daughters; but the new emperor at length decoyed the women away by sacred pledges, which he basely violated, and they were inhumanly murdered. Boniface was then third bishop of Rome of that name, and he, with promptitude and alacrity, acknowledged the new emperor, and earnestly besought him for the title and dignity of universal bishop. Phocas, piqued with John for having protected the wife and daughters of Mauritius, granted the title to Boniface and his successors, ordered John to discontinue it, and declared the church of Rome to be head over all other churches. This was the origin of popery, which was established by the arbitrary decree of one temporal despot who had just murdered another, upon the solicitation of a supple and ambitious prelate; and it was done to depress another, because he had recognized the claims of humanity against the demands of a cruel tyrant. The character of this beginning of popery is strongly illustrated in all its subsequent history.

This newly acquired power of the Bishop of Rome, now Pope, was resisted by many of the provincial Bishops and some of the succeeding Emperors for several ages; but by the policy of favoring the projects of the Emperors, and bringing their church authority to sustain them, they at length were fully established in their spiritual supremacy. They then began to cast around them for opportunities to attain the same eminence in temporal affairs; and it was not very long before their steady ambition, great talents, and untiring exertions were attended with encouraging success. About the year 760, Gregory II required the bishops and legates to take a solemn oath of allegiance to him, the Pope, in which the adjurant solemnly acknowledged him as the successor of St. Peter—promised by the Holy Trinity "to maintain to the last the purity and unity the holy Catholic faith; to consent to nothing contrary to either; to consult in all things the interest of your church, and in all things to concur with you, to whom power has been given of binding and loosing;" and after acknowledging the Pope to be his Lord, concludes with an emphatic imprecation of a terri-

ble punishment to be visited upon his faithlessness. In the beginning of the eighth century began the debasing custom of kissing the Pope's foot; it was submitted to by the Emperor Justinian in 710, and has been continued to the present day. This was the darkest period of the dark ages.

But, before this time, Pope Theodore, who succeeded John in 642, had condemned as heretical the Monothalite doctrine, and ex-communicated Pyrrhus, patriarch of Constantinople for embracing and upholding it. Paul having succeeded Pyrrhus, and not abandoning the new doctrine, was formally ex-communicated by Pope Theodore, and deposed from all his ecclesiastical powers and dignity, by the authority of St. Peter. But Paul having died, Pyrrhus, who survived him, was reinstated by the Emperor to his former dignity, and his authority again acknowledged by the Bishops and people of the eastern empire. Theodore died in 649, and was succeeded by Pope Martin, who speedily assembled a council at Rome, and condemned not only the Monothalite doctrine, but also "the most wicked type, lately published against the catholic church, by the most serene Emperor, Constantine, at the instigation of Paul, the pretended Bishop of Constantinople." This was the first open attack of the Pope upon the supreme political authority of any country; and it was at once put down, for the time, by the degradation of Martin from the papacy, and his banishment to a distant country; in which exile he died. His fate rendered more moderate and prudent his two immediate successors. In 680, the Emperor, by advice of Agatho, the Roman Pontiff, convened another general council, which proceeded to excommunicate the Monothalite doctrine of one will of Christ, and its approval by Pope Honorius, so long before as 638; and by the decree of this council, it was condemned as heretical, and Honorius as a heretic; and both were anathematized.

For the period of near one hundred years previous to the coronation of Charlemagne in 800, the western empire had been administered nominally by the authority of the emperors, who for some centuries had resided at Constantinople; but sustained by an ignorant and superstitious multitude, the real power was vested in and exercised by the Popes. In 734, the emperor sent a military expedition to reduce the Pope and the refractory Romans to submission; but the most of his ships being lost in a storm at sea, the expedition was abandoned. The western possessions of the empire had been formed into an Exarchy, after the repeated capture of Rome by the Goths, the viceroy, or exarch residing at Ravenna; and from the failure of the attempt of the emperor to reduce the Pope, Rome had more formally but not yet fully, become subject to his authority. In 740, Lusitprand, king of the Lombards, invaded and laid waste the territories of Rome; and in this need Pope Gregory III. applied to the renowned Charles Martel for succor. The appeal was first made to his piety to come to the rescue of the successor of St. Peter, but being disregarded in that form, the wily priest then addressed his ambition and his thirst for dominion, proposing to renounce for himself and the Romans, all allegiance to the emperor, to take

him as their protector, under the title of consul, upon his undertaking to defend the Pope and the church. Those overtures were acceded to by the iron warrior; but before they could be carried out, he, the emperor, and the Pope, all, in the course of this year, 741, sunk into the grave. Childeric III, a man of feeble mind, was at the time, king of France, and Charles Martel, under the name of Mayor of the palace, had been his prime minister, and in truth exercised all his power. Pepin, the son of Charles, succeeded to the dignity and power of his father; and soon formed the design of seizing upon the throne of the degenerate monarch. He submitted the question, as a case of conscience, to Zachary, who was then Pope, "who best deserved to be called king, he who was possessed of the title without the power, or he who possessed the power without the title." Exposed on the one hand to the emperor's claim of supremacy, and his indignant hostility for its rejection; and on the other to the warlike incursions of the Lombards, the question had no difficulty in the mind of Zachary; and he promptly decided that he who had the power was entitled to the name of king. The clear and irresistible argument, which brought the mind of the worldly-minded and ambitious prelate to this conclusion, was his consciousness that he could not maintain his own vast pretensions against his assailants; and that this man of power could and would, because they could mutually serve each other. Pepin at once toppled Childeric from his throne, and was immediately crowned and anointed king by Boniface, the Pope's legate, and two years afterwards, Pope Stephen, the successor of Zachary, having journeyed to France to obtain aid against the Lombards, performed again in greater pomp the ceremony of the coronation of Pepin, to render still more sacred and imposing his title to the crown. The king and his court went three miles out to meet the Pope, and lavished upon him the most extravagant honors, Pepin alighting from his horse and attending him on foot a part of the way, and performing the office of his groom or equerry. In 753, Aistulphus, king of the Lombards, invaded the Exarchate, laid siege to and took its capitol, the city of Ravenna, and consummated the conquest of all the remaining possessions of the empire in the west. Flushed by his successes, the conquering Lombard despatched heralds to the Pope, demanding the submission of Rome and all her dependencies—asserting that they had belonged to the emperor, and were his by the right of conquest. In this extremity, Stephen applied first, but unavailingly, to the emperor; and then revisited France to see in person, Pepin, for his protection. The French king sent a powerful army to accompany him across the Alps into Italy, and to beat back from the eternal city its warlike invaders. The wily Pope, in the midst of the honors showered upon him by the court of Pepin, had the address to obtain from him a promise that the cities and country which might be conquered from Aistulphus, should not be restored to the emperor; but should be freely possessed by St. Peter and his successors. The invincible arms of Pepin scattered the power of the Lombards, and he sat down in siege before their metropolis, Pavia. Aistulphus was forced to sign a treaty, which bound him to deliver up

to the Pope the Exarchate, "with all the cities, castles and territories thereunto belonging; to be forever held and possessed by the most holy Pope Stephen and his successors in the apostolic see of St. Peter." After hesitation and further resistance, the Lombard was forced by the restless Pepin, to execute this treaty literally, and the Pope was put in possession of all that it ceded to him as the successor of St. Peter; and thus to his spiritual, he united a temporal crown. The first was acquired through the instrumentality of Phocas, the second of Pepin; and both by an unchristian and wicked combination with usurpers and men of blood.

This was the midnight of the world, and the little learning of Western Europe was confined almost wholly to the Monks; its people besides, with inconsiderable exceptions, were sunk in seemingly hopeless ignorance and superstition. The Popes, the monks, and all orders of its clergy, made available every opportunity to enlarge its territory and its spiritual and temporal authority; and the papacy went on steadily increasing in wealth, influence and power to the accession of Gregory VII, in 1073, when it reached its culminating point. For centuries, yet it receded not, but continued to perfect and consolidate its vast powers. It spread over Europe, and in every country exhibited itself with a grandeur which dazzled the imagination, and a strength against which no power could stand. It exercised a direct and absolute cognizance in all matters of church and religion, and one paramount and discretionary over all temporal governments, and claimed both to be of divine authority and infallible. Kings upon their thrones trembled under the frowns of its displeasure, and the world of mankind sunk in despair under its terrible excommunications. Gregory II excommunicated Leo the Isaurian Emperor; Gregory VII denounced a sentence of deposition against Henry IV, one of the most puissant of the German Cæsars; and forced the proud monarch to perform a pilgrimage across the appennines and to await bare-footed in his anti-chamber at Rome for three days before he would deign to notice the penitent. Celestine III excommunicated Henry VI, Emperor of Germany, Leopold, Duke of Austria, and Alphonso X, King of Galicia and Leon. Leo III, thundered an excommunication against Philip Augustus, King of France, because he hesitated to execute the command of that Pope, that he should take back his wife, whom he had divorced. Two successive Popes excommunicated Henry II, the ablest and one of the best of the German Emperors, because he would not submit himself and his power to them, and to enforce their decrees, they arrayed against him other monarchs in long and desolating wars. Boniface VIII pronounced a decree depriving Philip the Fair, King of France, of his kingdom; as Julius II did Louis XII. Henry II, one of the ablest men that ever sat upon England's throne, was constrained by the power of Pope Alexander to be scourged with rods upon Becket's tomb. Paul III and Pius V, respectively, thundered bulls of excommunication and deprivation of crown and kingdom against Henry VIII, and Elizabeth of England; but the reformation had dawned upon that proud island, and her disenthralled monarchs threw

back their contempt upon the arrogant pretensions of the successors of St. Peter. But these imperial pontiffs invoked the Catholic Philip II, of Spain, to their subjection, and England and the reformation successfully withstood the shock of the Grand Armada. Urban II, interdicted bishops and priests from promising allegiance to kings and princes. Martin V awed the Emperor Sigismund into a violation of his safe conduct to Huss, on the argument that faith is not to be kept with heretics; and against the violated word of that sovereign, and with his extorted consent, had the great reformer burned as a heretic by the order of the council of Constance. In the beginning of the thirteenth century, Pope Innocent III, compelled John, King of England, to surrender to him his crown, and then to receive it back, as the vassal of him and his successors. The same Pope had, by his power, given the empire to Philip, Duke of Brunswick; he constrained the emperor, set up by him, to take an oath in this form: "I promise to honor and obey Pope Innocent as my predecessors have honored and obeyed him." "Appeals to Rome shall be made freely, and freely pursued." "I promise to extirpate all heresies, and to restore to the Roman church all her possessions," &c.

In 1204, Peter II, of Arragon, traveled to Rome and received his crown from the Pope, and on being crowned, swore "to be faithful and obedient to my Lord Innocent, to his Catholic successors, and the Roman church, and faithfully to preserve my kingdom in his obedience, defending the Catholic faith, and persecuting heretical pravity." A Pope deposed a king of Poland and granted his kingdom to another.

I have given some specimens of the manifestation of papal power, and the spirit of the religion of which the Pope is the infallible head; and which all true catholics believe is to overcome and absorb all others, and again to be the universal faith. Its long and eventful career, and its present existence, with more followers than in any former age, without any purification or reformation of its vices and deformities, fill the mind with curiosity and astonishment. It has never allowed any question of its authority, truth, or divinity. Free inquiry and discussion it denounces and punishes as the blackest crime against itself, because it knows full well, that it would crumble and fall before them; and it therefore seeks to fetter the souls of its children in eternal chains of ignorance, superstition, and despotism. In every generation of its being, the mind and moral sense of man has risen against it, and grappled with it in mighty battle. It was always prompt in putting into requisition its own temporal and spiritual authority—to raise armies and thunder its anathemas—to ravage heretical countries and to extirpate heretics with fire, faggot, and sword; and when it was unequal to the work, it called upon the political despots of the earth to come to the rescue of it, the great impersonation of the universal despotism of the mind, the soul, and the body; and the combination was always victorious.

The first light of general learning and civilization that dawned upon Europe, to bring to a termination the dark ages, was among the Albi-

genses, inhabiting Languedoc and Provence, in the south of France. They rejected the supremacy of the Pope, and the benighting and benumbing dogmas and spirit of his faith. Being undisturbed for many years, truth, and peace, and the religion of the Saviour of the world flourished among them. The faculties and powers of men there, after having been enchained for ages, rapidly regained their innate strength and activity. Learning and the arts flourished—comforts, and wealth, and refinement, and happiness blessed their toil and their assiduity; and a pure, charitable, and holy faith shed upon them its hallowed influences. They became the admiration of the surrounding people, and their religious principles and freedom began rapidly to spread. The Albigenses have no sin to answer for but that of their bright example to a benighted world. They resided far from Rome, but the fears and apprehensions of the Pope were thoroughly aroused, for he saw in them a rising intellectual, moral, and religious power, dangerous to the universal dominion which he claimed. He called upon the mailed warriors of the north, whose arms in every field, from the western ocean to the holy sepulchre, had never known defeat, and sent them on the bloodiest of crusades against the Albigenses; and they were crushed in one of the most savage and desolating wars that ever blasted any portion of the earth. Prone to the earth, made red by its blood, Albigensism, sustained by the immortal truth and right of its principles, would, for generations, flame up in holy beauty and brightness, far illuminating the gloom of the surrounding darkness; but as often the inexorable Pope would march his armed myrmidons and have it again quenched in the blood of its martyrs.

About 1380, Wickliff began his vigorous reformation in England. He denied the power of the Pope, denounced his usurpations, exposed the interpolations and corruptions of the catholic religion, and interpreted the scriptures, and placed them in the hands of the people as the rule of their life and their faith. The Lollards increased greatly in England, spread into Germany, and soon almost possessed Bohemia. But the indefatigable and unrelenting Pope, brought down upon them, too, all manner of persecutions, and the armed power of his dependent kings. Another religious and exterminating war swept them from the earth.

Papacy seemed now to be all-dominating and invincible. Its corruptions, and the scandalous immoralities of the Popes and its clergy, went on increasing. One of them denied the immortality of the soul. That faith was not necessary for the remission of sins, had become an established principle of Romanism; and the sale of written indulgencies for the commission of sin, one of the sources of the Pope's revenue. Tetzel was pushing a traffic in those indulgencies for Leo X, and all the priesthood inculcating that tenet throughout Germany, when Luther began the great reformation. The truths, which he thundered in strong and burning words against Romanism, seemed to be the echo of God's spirit, and the hoary ignorance and superstitions of centuries, receded before him as from the touch of the spear of Ithuriel. At the instigation, often repeated, of the Pope, Charles V summoned him

to appear before the Diet of Worms, to answer for his heresies, for which Leo demanded that he should be burnt, as Huss had been more than a century before. The greatest spirit of the world, confronting its greatest monarch, in such an assembly of warriors, nobles and bishops, to question and expose the errors and power of the time-honored hierarchy, in the cause of truth, liberty, religion, and salvation, was one of the sublimest spectacles that has ever been exhibited upon the earth. God held Luther under his protection, and he was saved for an immortal work. By his teachings, aided by Melancthon and Swinogle, and other great and faithful men, the light and liberty of the Bible, and of religious truth, spread rapidly, and promised at once to regenerate christendom. In less than fifty years, it swept from the Baltic to the Mediterranean, and was going on, "conquering and to conquer." The danger to the Pope was mighty, unprecedented. He summoned to the rescue every power, every tributary which he could command; and soon all his host, which had continued faithful, manifested extraordinary spirit and activity. Self-preservation, continuance, or annihilation, was the issue, and the spiritual portion of his forces in every branch seemed to be electrified. The great catholic powers flew to arms in this common cause of despotism, and every energy and faculty of Romanism came up to the eventful conflict. The newly instituted order of Jesuits brought genius, learning, enthusiasm, and an industry, perseverance, devotion, and endurance, that were never surpassed. All caught their spirit, and the trembling fabric of the papacy, over the largest portion of its domain, was upheld and became steady.

The state of things was different with the protestants. They had rapidly become strong and comparatively secure; and withdrawing much of their attention from their common foe, they divided into sects, and weakened their union and strength by mutual persecution. The voices of the first great reformers were hushed in the tomb, and there were no equal men to succeed them. Ferdinand, the second Emperor of that name, Philip II, of Spain, and Maximilian of Bavaria, espoused the cause of Romanism, with no less zeal than the Pope. Again, and again, they charged with their armed legions on the protestants and the powers that defended them, and re-conquered half that Romanism had lost, and as far as they overcome, the new faith was suppressed by the most relentless persecutions. The Pope, by every incentive, was constantly urging these bloody champions of his church on in their conquering career, and the reformers had probably met the sad fate of the Albigenses, if God had not raised up Gustavus Adolphus to defend, as he did Luther to establish, the reformation. The councils of the Pope, the Emperor and the French King, too, were distracted by mutual jealousies, and their conflicting claims for the highest power. Protestantism got rest from the terrible persecutions of its natural enemies, by the thirty years' war being brought to an end by the treaty of Westphalia. But in efforts to extinguish forever its faith, its liberty, its pure christian morals, and the eternal life which it gives, seas of innocent blood had been shed. Besides the wars in Germany and

the north-east of Europe, in that of the league to suppress the Huguenots in France, a million of persons are computed to have perished. During the terrific night of St. Bartholomew, ninety thousand Huguenots are related to have been put to death, in cold blood, by their destroying persecutors, in different Catholic countries. In the Netherlands, the Duke of Alva, as the chief captain of Philip II, raged like a wild beast, never were sated with blood, although he boasted of having put twenty thousand unoffending protestants to death. But I retire, in disgust and horror, from presenting any more of these persecuting and bloody sketches of Romanism, with which history teems in frightful fecundity.

At the close of the last century, the papacy seemed to be at last overthrown, amidst the atheism and the destruction of old systems and institutions brought about by the French revolution. But after some years, it arose from the ruin, perfect in all its proportions, and in the possession of all its capabilities and faculties. Hear what Macauley, an Episcopalian, says of it:

"The papacy remains, not in decay, not a mere antique; but full of life and youthful vigor. The Catholic church is still sending forth to the furthest ends of the world, missionaries as zealous as those who landed in Kent with Augustine; and still confronting hostile kings with the same spirit with which she confronted Attila." "Nor do we see any sign which indicates that the term of her long dominion is approaching. She saw the commencement of all the governments, and of all the ecclesiastical establishments that now exist in the world; and we feel no assurance that she is not destined to see the end of them all. She was great and respected before the Saxon had set foot on Britain—before the French had crossed the Rhine—when Grecian eloquence still flourished at Antioch—when idols were still worshipped in the temple of Mecca. And she may still exist in undiminished vigor when some traveller from New Zealand shall, in the midst of a vast solitude, take his stand on a broken arch of London Bridge to sketch the ruins of St. Paul's."

It has not for generations attempted to claim, practically, any political or temporal power outside of the papal dominions, to depose kings, to control, by direct interference, politics, or to burn heretics. But still, in its constitution and principles the papacy adheres to these and all its other powers. It has renounced none—it does not intend to renounce any of them. None of her adhering children repudiate any of them; and if they did, they would be brought to recant by priestly visitation, or even now they would hear the spiritual thunder of excommunication denounced against themselves. These powers are only not active, because the condition of human affairs, the light, and liberty, and moral power of the world will not suffer them to be put in execution. It is not the advance and elevation of principle, of morals, and christian clarity in that church and among its priesthood, which has purified it of these enormities. Let the state of the world favor it, and other Gregories and Innocents would arise to enforce the powers of the papacy in their utmost amplitude, and their most inexorable spirit. She believes that she is to be coeval with man, and ultimate-

ly to have his whole and perfect obedience. She has seen the great flux and reflux of her authority through many centuries, and she is looking forward patiently through other centuries, in confidence, when its strength in full tide is to come again to her. Ever watchful, the priesthood, for whom mainly this wonderful edifice has been constructed, and been progressing to perfection in its way for fifty generations, will patiently bide their time; and when it comes, if come it ever does, they will move with a policy, a courage, and a perseverance to command success; and the grandest and most awe-inspiring scenes of the papal drama will be again re-enacted on the theatre of the world.

But whether it is the destiny of man to revolve back to papal supremacy in all his affairs or not, that is the consummation to which its whole priesthood devote themselves, their time, their energies, and their lives. That is their one great object, compensating and supplying the subjects of their affections, hopes, and ambitions; wife, children, friends, and country; wealth, social position, station, honors, fame, and distinction in the arts, sciences, politics, and war. This measurably lost ascendancy is their glorious tradition, and to regain it is the permanent, immutable, ever present policy of the papacy in all its parts. That the Pope is a heirarch, and they a portion of the heirarchy, is a part of the education, mind, soul, and personal identity of every member of the priesthood; and not less so, that the business and end of their lives and labors, is to expend themselves according to times and circumstances, for the restoration of the authority and splendor of both; and never to be disheartened or discouraged, whether or not there be any perceivable result. These are objects for which the foreign priests, especially, labor in this country. They summon every papist, upon his reaching the country, to his fealty, and hold them united and faithful to their religion, their priest, and their sovereign heirarch. They get possession of all the children they can, by means of schools, and of their parents, where even but one of them is a catholic, and they attend, and keep these children from the cradle to the grave. In every country where this priesthood has located itself, with signal flexibility and cunning, it has addressed itself to the ruling power, and paid it court and adulation, or used other means to win it; and when won, it may do what it will, on condition that it becomes subservient to the peculiar views of this priesthood and its heirarchy. They know that in our country the main spring of political power is the ballot-box, and the object of their unceasing efforts, is there to collect and consolidate strength. The members of all other sects divide in their politics and votes, but foreign catholics never, and the priest controls their votes with absolute will; and his calculation is, how can they be best turned to the account of priest-craft and Romanism. They never fail to make themselves felt in elections; and a few years since, he whom they denominate "The Lord Bishop of New York," John Hughes, was said truly to hold in his hands the issue of a presidential election.

That I have stated truly the objects and policy of the foreign catholic priesthood, in this



country, will be proved by an extract or two from one of their principal organs, "Freeman's Journal and the Catholic Herald," published in New York. I have been informed that it is the organ also of Bishop Hughes, and is edited by his brother. The number of 17th March, 1849, makes this quotation from Bronson's Review, another catholic publication: "Our readers will perceive from this number, that we are preparing to give our Review a more popular character, of entering more largely into the discussion of the great political questions of the day, and are aiming to adapt it to the interests of a wider class of readers. We cannot, as catholics, blink the great political and social questions which are now agitating the public mind, both at home and abroad; and these questions will receive more attention hereafter than we have heretofore given them. It is of great importance to our community that these should be fully and boldly discussed in the light of *catholic faith and morals*, and we are sure that a catholic journal that will so discuss them, will, if it finds here and there an enemy, never want friends. The time has come when catholics must begin to make their principles tell upon the public sentiment of the country. Heretofore we have taken our politics from one or another of the parties which divide the country, and have suffered the enemies of our religion to impose their political doctrines upon us; but it is time for us to begin to teach the country itself those moral and political doctrines which flow from the teachings of our own church. We are at home here wherever we may have been born; this is our country, and as it is to become thoroughly catholic, we have a deeper interest in public affairs than any other of our citizens. The sects are only for a day, the church forever. We care little how the elections go, for that is a small affair, but we can never as catholics, be indifferent to the moral principles which enter into the laws and shape the public policy of the country." The editor of "Freeman's Journal" adds:

"No catholic should be without a complete copy of Bronson's Review, past as well as future, &c.

The same paper, in the number 28th of March, 1849, says in an editorial: "Is it not possible for us catholics to do something to prepare our brethren for the trials that await them? Can we do nothing to direct and to shape the course of the new comers in a way that may afford more protection to their faith? Can we do nothing to keep them united to one another, and to make the cross the centre and object of their union? Can we not unite ourselves more firmly, and make abnegation of some of our personal opinions, pursuits and wishes, for the sake of securing our brethren as they reach us, to the catholic church, and of making them instruments of her more complete and speedy triumph in the land."

In the number of Bronson's Review of April 1845, which is a catholic oracle of such high authority, are the following passages: "But would you have this country come under the authority of the Pope? Why not? But the Pope would take away our free institutions! Nonsense. But how do you know that? From what do you infer it? After all do you not commit a slight blunder? Are your free institutions infallible? Are they founded on divine right? This you deny. Is not the proper question for you to dis-

cuss, then, not whether papacy be or not compatible with republican government, but whether it be or be not founded in divine right? If the papacy be founded in divine right, it is supreme over whatever be founded only in human right, and then your institutions should be made to harmonize with it, and not it with your institutions. The real question then is, not the compatibility or incompatibility of the catholic church with democratic institutions, but is the catholic church the church of God? Settle this question first. But in point of fact, democracy is a mischievous dream, wherever the catholic church does not predominate, to inspire the people with reverence, and to teach and accustom them to obedience to authority. The first lesson for all to learn, the last that should be forgotten, is, to obey. You can have no government where there is no obedience; and obedience to law, as it is called, will not be long enforced, where the fallibility of law is clearly seen and freely admitted. But it is the intention of the Pope to possess this country? Undoubtedly. In this intention he is aided by the Jesuits, and all the catholic prelates and priests. Undoubtedly, if they are faithful to their religion."

Mr. Brownson thus concludes: "That the policy of the church is dreaded and opposed by all protestants, infidels, demagogues, tyrants, and oppressors, is also unquestionably true. Save then, in the discharge of our civil duties, and in the ordinary business of life, there is, and can be no harmony among the Catholics and Protestants."

Those extracts avow, most distinctly, all the designs which I have imputed to the Roman priesthood in this country. The discussion of the great practical political questions of the day, fully and boldly in the light of *Catholic faith and morals*, that this country itself may be taught the moral and political doctrines which flow from the teachings of that church, and may become thoroughly Catholic—all other sects being for a day, and that church forever; and that our republican institutions may be made to conform to the papacy, by its principles being made to enter into the laws, and to shape the public policy of this country—are all here boldly avowed; and also that every Jesuit, Catholic Prelate, and Priest, who is faithful to his religion will aid the Pope, their hierarchy, to possess himself of this country. The means by which they expect to achieve all this, is, by the slow and cautious movements, the profound dissimulation and arts, which have ever characterized the operations of this priesthood, to get possession of the political power by controlling the ballot box. That is their sleepless effort, whether they ever succeed or not; and so subtle are they in their operations, thousands and thousands are unconsciously made their agents who would never knowingly submit themselves to any such purposes of mischief. The priesthood are encouraged by their own strong faith, that, if they do not succeed in this century, their successors may in the next. Whatever may be the results of these great projects, their prosecution is utterly opposed and hostile to the design, spirit, and practical ends of our system and institutions. Our ancestors came to this new world to enjoy, themselves and their posterity forever, perfect civil and religious

freedom, and the right of inquiry, thought and the expression of opinion upon subjects, short of invasion of the rights of others, unfettered as the winds of Heaven. The divorce of church and state, of politics and religion, of temporal and spiritual affairs, they have provided for in our constitutions, and it was intended to be absolute, complete, and forever. In the scheme of the hierarchy of Rome and his emissaries—spread and spreading over the face of this country, to revolutionize silently and stealthily this order of things, they now have more than fifty thousand voters, legal and illegal, in America. At every election, local or general, this mighty force is made to act with a view, present or remote, to the grand objects of those who control it. The certain and the promptest way to get large accessions—accessions which, in another generation, may give them the mastery at the polls, is, to permit no restriction upon immigration or upon the faculty of the immigrant to vote and exercise a full share of political sovereignty. All attempts to put upon them any restriction will meet the inflexible opposition, the anathemas of every Roman priest, and probably of every Catholic in America.

All this host of foreign Catholics, now here and coming, are brought up to the confessional. By their faith, that is sinful which the priest tells them is sin; and so of religious duty, which they are to perform, or be lost. To him, who, in this matter with daring impiety, presents himself as personating, the Almighty, the sinner tells his tale of guilt and contrition. The father confessor grants him absolution, and claims too, the power to pray his soul, when he dies, out of the fires of purgatory. When this dread man bids that confessing sinner how to vote, Charles XII, Frederick the Great, or Bonaparte, never received a prompter or so willing an obedience from their best trained veteran.

It is only as a hierarchy, as a religious politico institution, having vast political projects, and organized for political action; and because its principles, purposes and operations, are utterly inimical to popular and American constitutional liberty, to all civil and religious freedom, that I stand up in opposition to it. When Roman American Catholics call their general councils, and purge their system of its interior and only quiescent political despotism; when they announce to the Pope and the world that his supremacy is only spiritual, and out of his papal dominions in Italy, he, nor his priests have right to interfere in politics or temporal affairs; that they owe him or his hierarchy no duty or obedience, incompatible with their full and perfect allegiance to the United States, or any of the states, or that is hostile to any of the principles of their governments; that they are opposed to and will ever resist the union of church and state, and any mixing of their affairs; when they bid, and will compel their priesthood to cease their meddling with the government and politics of the country, with a view to shape its laws and policy, and to desist from their efforts to control the entire Roman Catholic vote of America; then, and not until then, should every native born American, every true friend of American liberty, wherever born or whatever be his religion, whose paramount object is the

security and preservation of that liberty, cease from his assaults upon this great religious politico institution.

Mr. President, the information which I possess, and have endeavored to give partially to the convention on this branch of the subject, I have derived from "Papal Rome, as it is, by Giustiania," "Elliott on Romanism," "Dowling's History of Romanism," and from general reading.

We have, Mr. President, a country of vast extent, with a great variety of climate, soil, production, industry and pursuit. Competing interests and sectional questions are a natural and fruitful source of jealousies, discords and factions. We have about four millions of slaves, and the slaveholding and free states are nearly equally divided in number, but the population of the latter greatly preponderating, and every portion of it deeply imbued with inflexible hostility to slavery as an institution. Even now the conflict of opinion and passion of the two great sections of the Union, upon the subject of slavery, is threatening to rend this Union and change confederated states and one people into hostile and warring powers. Cession has recently given to us considerable numbers of the Spanish race, and a greatly increasing immigration is constantly pouring in upon us the hordes of Europe, with their hereditary national animosities, their discordant races, languages, and religious faiths, their ignorance and their pauperism, mixed up with a large amount of idleness, moral degradation, and crime; and all this "heterogeneous, discordant, distracted mass," to use Mr. Jefferson's language, "sharing with us the legislation," and the entire political sovereignty. My word for it, we are nursing in rapid growth, a blind political Sampson, and sooner or later, he will grapple with the pillars of our temple of liberty and pull it down in ruins upon us.

Washington and Jefferson, and their associates, though among the wisest and most far seeing of mankind, could not but deserv in the future many formidable difficulties and dangers, and thus be premonished to provide against them, in fashioning our institutions. If they had foreseen the vast, the appalling increase of immigration upon us at the present, there can be no reasonable doubt that laws to naturalize the foreigners and to give up to them the country, its liberties, its destiny, would not have been authorized by the constitution. The danger, though great, is not wholly without remedy. We can do something if we do it quickly. The German and Slavonic races are combining in the state of New York to elect candidates of their own blood to congress. This is the beginning of the conflict of races on a large scale, and it must, in the nature of things, continue and increase. It must be universal and severe in all the fields of labor, between the native and the stranger; and from the myriads of foreign laborers coming to us, if it does not become a contest for bread and subsistence, wages will at least be brought down so low as to hold our native laborers and their families in hopeless poverty. They cannot adopt the habits of life, and live upon the stinted meager supplies, to which the foreigner will restrict himself, and which is bounteous

plenty to what he has been accustomed in the old country. Already these results are taking place in many of the mechanic arts. Duty, patriotism, and wisdom, all require us to protect the labor, and to keep up to a fair scale the wages of our native born people, as far as by laws and measures of public policy it can be done. The foreigner too is the natural foe of the slavery of our state. He is opposed to it by all his past associations, and when he comes to our state he sees two hundred thousand laborers of a totally different race to himself, excluding him measurably from employment and wages. He hears a measure agitated to send these 200,000 competitors away. Their exodus will make room for him, his kindred and race, and create such a demand for labor, as he will reason it, to give him high wages. He goes naturally for the measure, and becomes an emancipationist. While the slave is with us, the foreigner will not crowd us, which will postpone to a long day the affliction of nations, an excess of population; the slaves away, the great tides of immigration will set in upon us, and precipitate upon our happy land this chief misery of most of the countries of Europe. Look at the myriads who are perpetually pouring into the north western states from the German hives—making large and exclusive settlements for themselves, which in a few years will number their thousands and tens of thousands; living in isolation, speaking a strange language, having alien manners, habits, opinions, and religious faiths, and a total ignorance of our political institutions; all handed down with German phlegm and inflexibility to their children through generations. In less than fifty years, northern Illinois, parts of Ohio and Michigan, Wisconsin, Iowa, and Minnesota, will be literally possessed by them; they will number millions and millions, and they will be essentially a distinct people, a nation within a nation, a new Germany. We can't keep these people wholly out, and ought not if we could; but we are getting more than our share of them. I wish they would turn their direction to South America, quite as good a portion of the world as our share of the hemisphere. They could there aid in bringing up the slothful and degenerate Spanish race; here their deplorable office is to pull us down. Our proud boast is, that the Anglo Saxon race is the first among all the world of man, and that we are a shoot from this noble stock; but how long will we be as things are progressing? In a few years, as a distinctive race, the Anglo Americans will be as much lost to the world and its future history as the lost tribes of Israel. But let us avert such a fate, let us postpone it at least. Let us withdraw from the new comers the premium of political sovereignty. These strangers have neither the right nor the competency to govern the native born people, nor ought they to be allowed the power to misgovern them. It is our right and our duty to govern ourselves, and them too when they come among us; and it is best for all parties that it should be so; and this difficult and important work can be better performed without their taking part in it, even when their intentions are good; but misdirected and perverted by designing and wicked men, it is fatal infatuation to allow it. This truly foreign power, nestled

in the bosom of our country, may in its arch and crooked policy, occasionally act with one or another of the parties that spring up inherent in this republic. But it has its own paramount ends to circumvent; and when it seems to ally itself to any party, it is only a ruse; and the true motive is the belief that it helps on to the consummation of those ends. With every civil right and liberty secured to the immigrant, and a full share of political sovereignty to be the heritage of his children, if he is not satisfied to come and remain with us, let him go to other lands.

Mr. President, no well-informed and observant man, can look abroad over this wide-spread and blessed country, without feeling deep anxiety for the future. Some elements of discord and disunion are even now in fearful action. Spread out to such a vast extent, filling up almost in geometrical progression, with communities and colonies from many lands, various as Europe in personal and national characteristics, in opinions, in manners and customs, in tongues and religious faiths, in the traditions of the past, and the objects and the hopes of the future—the United States, can no more than Europe, become one homogeneous mass—one peaceful, united, harmonizing, all self-adhering people. When the country shall begin to teem with people, these jarring elements being brought into proximity, their repellant and explosive properties will begin to act with greater intensity; and then, if not before, will come the war of geographical sections, the war of races, and, the most relentless of all wars, of hostile religions. This mournful catastrophe will have been greatly hastened by our immense expansion, and our proclamation to all mankind to become a part of us. Less limits, and the slow, but safe growth of natural increase, would have given us not so magnificent and striking, but a much more perfect and enduring republican empire. Hope may offer us the delusion that American liberty, won by the swords, and secured by a constitution devised by the wisest and best men of the earth, will be immortal. But that, like man and all his creations, will pass away; it is the law of his destiny. May the time be far, far in the dim and distant future, and may the people of America, to heave it further off, confide the preservation of that liberty to those only who are competent and worthy of being trusted with the best hope of mankind!

Mr. PRESTON. I cannot, Mr. President, without proving recreant to the trust reposed in me by the constituency I have the honor to represent, permit the remarks which have fallen from the gentleman from Bourbon, to pass unanswered in this hall. They have been received with marked attention by the house, and the applause of the galleries at the utterance of sentiments so pernicious, when eloquently urged, makes me tremble for the fate of my country. But, sir, I will tell them before they applaud this proposition, to tear away the right of suffrage from the unfriended and defenceless immigrant, to pause, for if it be accomplished, the time is not far distant, when the pauper will be disfranchised, and by degrees the privilege will be alone enjoyed by the landlord and the capitalist. When that inauspicious day shall arrive

when labor lies suppliant and manacled at the feet of capital, when the immigrant and poor citizen are alike enslaved and enthralled, then your loud applauses will be turned into wailings and lamentations, and you will curse the day on which you permitted the elective franchise to be invaded.

Mr. President, this is a question which is not alone confined to the realm of politics, but transcends it and interferes with the rights of conscience. It offers two stabs at liberty, one at the rights of the foreigner, the other at freedom of religious opinion: if carried out it will lead to the establishment of religious intolerance, and destroy the equal political privileges of the poorer classes of society. Politics and religion are blended, and the gentleman raises his warning voice, to persuade us to forbid the foreigner from landing on our shores, from enjoying that equality which should belong to every freeman on our soil, and by the power of eloquence arouses the passions of the worst classes of the protestant persuasion against their catholic brethren. I will not say such is his design, but I do say it is the inevitable result of his doctrine. O, how unnecessary, how uncalled for! Where around us are the evidences of the mischievous power of the poor foreigner. There are numbers of them citizens of the state, yet, when we gaze around this hall, we behold no single delegate born in a foreign land. Has ever a foreigner filled the executive chair, from the hour when Isaac Shelby was chosen governor of Kentucky? Have they ever filled great and lucrative offices of honor and profit among us? Thousands have been naturalized among us, and have passed their lives in unobtrusive obscurity and peace. They have lived quietly and honestly among us; they have contributed to the burthens of the state in peace, and they have fought, shoulder to shoulder with their adopted brethren in the battles of our common country. They have assisted us in subduing forests, draining marshes, and building up our stately cities; they have fought for us in battle, they have increased our prosperity in peace, yet how rarely do we ever see them aspiring to offices of importance and value in the state. These are facts which no statistics are necessary to establish, which none can disprove; for when we look around us, is there a delegate on this floor a foreigner? Not one. Is there a member of congress from this state a foreigner? Not one. A member of our legislature? Not one. A minister to any foreign court? Not one. The danger then, exists only in the imagination, and these apprehensions are mere phantoms of the brain.

My friend from Simpson, (Mr. Clarke) whispers that General Shields is a foreigner by birth. It is true, and I am indebted to him for the suggestion. He was baptized in blood a citizen of the United States, on the field of Cerro Gordo. In that memorable battle he earned his title to the rights and privileges of an American citizen. He fell gallantly leading a portion of his own brigade in a charge upon a battery of the enemy, shot through the body, a handkerchief might have been drawn through the wound, yet it was his fortune to survive. He returned to the state of his adoption and the gratitude of its people has caused him to be elected to the senate of the

United states. However we may differ from him in opinion, never let our voices be lifted against him, for if he had a thousand faults he has wiped them off by the generosity of his conduct and gallantry of his bearing in behalf of our country.

But, Mr. President, the tendency of the proposition of the gentleman from Bourbon, is not merely to assail the rights of the alien, but it will terminate in tearing away from the poorer classes of our own people the inestimable privilege of the right of suffrage. Permit this principle to find favour among us, and war will next be declared against the pauper as it is in Massachusetts, and the other states of the atlantic border, where Native Americanism flourishes in full vigor. As Kentucky was the first state of the confederacy that extended the privilege of universal suffrage, to every freeman upon her soil, I trust in God she will be the last to commence the process of curtailing that right. She was the first to break loose from the shackles of feudalism. I trust she will be the last to re-adopt them. She extended to all classes this franchise, in the constitution of 1799. Let it never be said that she was the first to abandon that noble determination, in the constitution of 1849. This great principle asserted at Danville, and confirmed in the constitution of 1799, has pervaded the confederacy and mitigated the condition of the citizen in almost every one of our sister states. It has not stopped here. Borne to Europe by La Fayette, and those other foreign patriots who assisted us in our revolutionary struggle, it was the principal element in producing the first French revolution, that goal from whence sprung the germ of human liberty in Europe. The popular thirst for this very right was one of the chief causes of the revolution of 1830 which established the throne of Louis Philippe. It was also at the foundation of the movement which dethroned him, and established the French Republic. Never, sir, will I agree in this age of progress and political science, to abandon this principle, or seek to curtail the right of suffrage by invading it in the slightest degree, never will I agree that America, frightened by chimerical dangers, should be the first to retrace her steps, and destroy that very principle which has been our glory, our support, our ornament and our strength.

Nations have their fits of insanity like men. We know, in England, after the usurpation of Oliver Cromwell, and the abdication of the Stuarts, the cry of "popery" would throw the whole people into the most violent agitation. The dread of the Pope of Rome, was, at that time a national madness. All classes were terrified at the imaginary peril of the power of the pontiff, and shuddered at the prospect of a restoration of papal supremacy. No class or condition was exempted from this fear, however idle in reality. Now, sir, when I heard the gentleman, this evening, conjure up the imaginary dangers, which threatened the institutions of America, from the catholic religion and the power of the Pope in America, it seemed to me a similar insanity had seized him, and as if the cry of "no popery" was again uttered for the purpose of stimulating the angry passions of the protestant

multitude, and of crushing to earth every principle of religious toleration in the land.

If it be the wish of the gentleman from Bourbon to proscribe the catholic religion as detrimental to the institutions of our country, he does not propose a remedy, adequate to the object. Let him introduce the laws imposing disabilities on catholics, which sixty years since encumbered, and yet partially encumber, the statutes of England; those laws framed—skilfully framed—for the proscription and oppression of the unfortunate people of Ireland. Import these laws, and engraft them here, if you wish Kentucky to occupy a similar attitude—an attitude so enviable. These are the statutes against which the oppressed people of Ireland have lifted their wailing voices 'till they have reached to heaven; these are the statutes that have forced from her tears of blood; these are the statutes whose iron despotism has imposed a bondage so bitter that the sense of the civilized world has compelled England, obdurate as she is, to relax their vigor, and mitigate their severity. To our shame be it said, these are the principles which this evening have been welcomed with applause by a Kentucky audience, in the capitol of Kentucky.

Sir, establish this principle, and we have proscribed the freedom of religious opinion in this state. Establish this, and we have struck down religious toleration and freedom of conscience; establish this, and you have laid the foundation of religious wars, to convulse, to distract, and to ruin our common country.

To a stranger, there are two remarkable features in our government. We are the only civilized state in the world which allows a foreigner to acquire rights of citizenship within it, and we are the only enlightened government in which the rich and the poor, the strong and the weak, have equal political rights and privileges, and enjoy the benefits of substantial liberty. The reason is, we are the only people of the world who have erected our government on broad and just foundations—on those principles of inflexible justice on which liberty alone can safely repose. But when we commence narrowing that foundation—when we commence qualifying those principles—when we undertake to depart from those truths, the pursuit of which have ensured us prosperity and happiness, we have sapped the foundations on which the edifice rests. When this is done, the thralldom of labor to capital is again renewed, the degradation of the poorest citizen is insured, and society will return to that barbarism from whence it emerged.

Accurate as the gentleman from Bourbon usually is, there must be some mistake in his statements relative to the views entertained in regard to naturalization, by some of the prominent patriots of the revolution. He cites Washington as concurring in his views, and quotes from his correspondence in regard to Baron Steuben. Washington was the President of the convention which framed our federal constitution, and that constitution provides for the naturalization of foreigners. I am not now prepared with references on this subject, but if my memory serves me, it will be found, by reference to the debates of that convention, that his warning voice was never raised in remonstrance against the inser-

tion of that feature in the constitution of the United States, and I appeal to all who hear me, if he ever did.

Mr. DAVIS. I will refer the gentleman to Sparks' life of Washington, in which are the letters I read and many more.

Mr. PRESTON. I have no doubt of the accuracy of the transcript—none; but I say Washington was the president of the convention which provided in our constitution for the naturalization of foreigners, and lifted no warning voice against it, and that the naturalization laws were first passed in conformity to his first message to congress in which he says:

"Various considerations also render it expedient that the terms on which foreigners may be admitted to the right of citizens, should be speedily ascertained by a uniform rule of naturalization."

The gentleman has also quoted from Mr. Jefferson's notes on Virginia in relation to this matter, but I will refer him to more authentic evidence of Mr. Jefferson's political views. In speaking of the existing laws in regard to naturalization, he deemed a mitigation of them necessary, and in his first annual message to congress, he commends the subject to their attention in the following language:

"I cannot omit recommending a revival of the laws on the subject of naturalization. Considering the ordinary chances of human life, a denial of citizenship under a residence of fourteen years, is a denial to a great proportion of those who ask it, and controls a policy pursued from their first settlement by many of these states, and still believed of consequence to their prosperity. And shall we refuse the unhappy fugitives from distress, that hospitality which the savages of the wilderness extended to our fathers arriving in this land? Shall oppressed humanity find no asylum on this globe? The constitution, indeed, has wisely provided that, for admission to certain offices of important trust, a residence shall be required sufficient to develop character and design. But might not the general character and capabilities of a citizen be safely communicated to every one manifesting a *bona fide* purpose of embarking his life and fortunes permanently with us? With restrictions, perhaps, to guard against the fraudulent usurpation of our flag."

The recommendation of Mr. Jefferson led to the enactment of that system of naturalization laws under which we have lived for half a century. At the time of their adoption it required a residence of fourteen years before an alien could be admitted to the privileges of citizenship. By those enactments the period of residence was reduced to five years, and under these laws we have lived from the year 1801 to the present day without inconvenience, injury or complaint. About seven or eight years since, however, a murmur arose against them—a movement called native Americanism began. Where was the principle of this new party born? Was it born in the closet of the philanthropist, the study of a philosopher, or the library of the statesman? No sir. It was conceived in ignorance and begotten in iniquity; it was ushered into existence from amid the vilest purloins of Philadelphia; it was amid profaned altars, and

by the red blaze of catholic churches; amid the drunken orgies of an infuriated mob, amid riot, robbery, sacrilege, murder, and civil bloodshed, that this monstrous bantling was born. I leave to others the task of tracing its progress. From time to time attempts have been made to renew and revive it; but it has always in the end been scorned, repudiated, and denounced, by the good sense of the country. The arch-priest of the faith, Levin—he who fed this unholy flame after all the agitation—is the sole representative of this party in the halls of congress. Long statistical tables of European pauperism and crime have been prepared and disseminated to irritate the popular mind against the defenceless foreigner; the worst passions of the human heart have been stimulated to urge the ignorant to persecution and injustice, but the whole attempt has been rejected by the good sense of the people of America, and the whole party has proved a political abortion, and their principles have sunk back to the obscurity from whence they emanated.

The gentleman has chosen to allude to the formation of the legion of St. Patriek in Mexico, composed of deserters from the American army. As a fellow to the picture, I will mention that when the war commenced, a gentleman of Philadelphia, a leader of the Native American party, intelligent, upright, brave, and enthusiastic, but injudicious and zealous—Captain Naylor—recruited a large company, almost a regiment in itself, exclusively of Native Americans. It was one of the most tumultuous and disorderly in the service, and its lieutenant, Hare, disgraced it and the American army, by one of the most horrid murders on record. In company with some ruffians in the city of Mexico, he murdered a Spanish clerk for the sake of a few doubloons in his strong box. The circumstances of the assassination, almost equalled in atrocity the murder which recently occurred in Boston. He was arrested, tried, and condemned to death, but to the regret of the army, General Butler, after the treaty of peace, granted him a pardon. I know that there are many worthy, upright, and honest men, who entertain views favorable to the Native American party; but I have alluded to this matter to show the fallacy of using such instances in argument, or of stigmatizing a party or a people by citing such isolated cases.

The gentleman from Bourbon must be mistaken in his statistical statements. He came to the conclusion that more than half a million of foreigners immigrated to America during the last year. This estimate is vastly too great. I now hold in my hand the returns taken from a letter from the secretary of State to the speaker of the house of representatives, showing the number of passengers who arrived in the United States during the year ending the 30th of September, 1848, and it seems they amounted to 229,492. But it is an error to suppose that all of these were immigrants. Passengers of all countries are included in the estimate. American citizens returning from abroad, and foreigners visiting us who subsequently return, and those traveling through the United States on their way to other lands, are all included in the statement. The number of immigrants has apparently increased, as the facilities of travel between the United States and Eu-

rope have progressed, and to this cause, in a great measure, is to be attributed the seeming enormous increase of immigration. I will read from the American almanac some comments on this subject:

"It is an object of considerable importance to ascertain how rapidly the population of this country increases from natural causes alone, or what would be the rate of increase if no immigrants came hither. There is reason to believe that great mistakes have been committed in this respect; that writers on the law of population—the Malthusians particularly, who wish to make out the human race as prolific as possible—have not made allowance enough for the effects of immigration, and therefore have greatly overestimated the rapidity of increase here, where it is certain that the growth of the population is not checked by a deficiency of food. A census of the people is taken every ten years, and these decennial returns would show very clearly what the rate of increase is, if it were not for the disturbing and fluctuating effect of the tide of removal, which constantly sets westward, and the magnitude of which it is impossible to ascertain from official returns with any approach to correctness. A list is made up from year to year, of the number of passengers who arrive in our Atlantic and southern ports, and the total is published in the official documents, with an air of precision and minuteness, as if the information were of some value. But it is notorious, that the enumeration is carelessly made, at many points of arrival no record is kept, no account is taken of those who subsequently return to the old world, and the multitude who yearly cross the Canada frontier, are not counted at all. Overlooking these causes of error, these yearly returns are held to prove that the effect of immigration was very slight, and during certain periods of our history, that it might be left out of the calculation altogether, without materially vitiating the result."

These are the reflections on this subject contained in the most authentic statistical work in the Union for the present year, and they exhibit the falsity of many of the data from which many statistical deductions on this subject are drawn.

The true extent of the immigration or the true statistics cannot be accurately ascertained from such means, and you might as well endeavor to ascertain the population of a city by the number of arrivals at its hotels. After this immense over estimate, for the immigration cannot be placed at above two hundred and fifty thousand a year, under any circumstances, he assumes that it will proceed in sort of compound ratio, so that in 1850, nearly 1,000,000 will arrive; in 1851, 1,340,000; in 1852, 1,970,783; in 1853, 2,897,510; in 1854, 4,188,664; and so on. He however admits that there are causes which would prevent the population increasing to that extent, but he assumes that the immigrant population will advance at something like this ratio. The fact is that after population shall have reached a certain density the immigration must constantly decrease instead of increasing; I have merely alluded to these statistics for the purpose of showing that the fear of over population from immigration was groundless. We have a large and thinly settled territory, and immense unde-



veloped resources which require labor, and this tide of immigration is not an injury but a benefit.

It is unnecessary to examine statistics to see how foreign immigration has affected the welfare and prosperity of our own state, and what effect it has had on our political institutions. When we look around us, we see no such evils—we behold no such detrimental influences flowing from the privileges we award to those of foreign birth; and when we look at our legislative bodies, we do not behold them subjected to any such injurious influences. During the last canvass, this state was agitated on the subject of emancipating the slaves. The constituency I have the honor to represent has a larger number of foreign voters than any other portion of Kentucky—some eight hundred or one thousand—yet when this struggle came on, these men who we are now told are so dangerous to the institutions of the state, when others supported the emancipation cause, and were about to violate the sacred rights of property—these men, when they were told that it was not just to deprive any citizen of his property without compensation—these adopted children of our land—coming from a clime where slavery was not tolerated—with every prejudice against it—cast a majority of some two hundred votes on the side of the rights of property, and in favor of the institutions of the people who had afforded them a shelter from the oppressions of Europe, and given them a welcome to the land in which we live.

We have but few aliens upon our soil. We have a large and thinly settled territory. We are not encumbered with them. There are not four thousand foreign votes in the state. The power to regulate the matter resides in congress. It was reposed there by the constitution. I grant we may exercise it if we choose, as I am unwilling to concede the general government possess this power to the exclusion of the states, but it interferes in spirit with the federal compact, and when we have experienced so little inconvenience or annoyance, when we are so remote from the Atlantic border, where the pressure of the foreign population—if it be a pressure—exists, why is it necessary for Kentucky, first of all the thirty states of the confederacy, to take the alarm and pass naturalization laws, when no other state has done it, to the exclusion of those laws passed under the administration of Jefferson, and acquiesced in by every other state of the Union? Sir, we are the last state of the Union that ought to be terrified at such illusory dangers. Have we countless thousands of these foreigners among us? No! When we visit the interior counties, or the mountains, or the green river region, we find but few, very few. A small number dwell in our towns and cities and along the river border to which they are principally confined. Shall we then in Kentucky, be the first to manifest a timidity so unnecessary on the subject of the foreign vote?

The city of Boston has, as we are informed, one fourth of her population composed of foreigners—three fifths of the inhabitants of New York city are of foreign birth, and when convenience suits, these noble cities with their vast wealth, magnificent edifices, great commerce,

and forests of shipping, are pointed to as exemplars for imitation. If the foreign vote be so fatal to a state, whence their prosperity, whence their wealth?

No sir, these calumniated foreigners have brought new arts, new modes of industry, and new inventions to our country. The cotton and woollen manufactures have arisen among us, the culture of the vine is in progress, the looms of northern Italy will soon develop the silk manufacture of Piedmont and Lombardy, and if we pursue the policy we have heretofore followed, wealth and power will be the result. As manufactures and the arts have received a wonderful stimulus from this concentration of the experience, knowledge and ingenuity of Europe, so I believe that the admixture of the various bloods of the Caucasian varieties of the human species, has produced a nobler and more vigorous race. Look over the list of names of the delegates on this floor. We are sprung from various races.

The blood of the Italian, the German, the Castilian, the chivalrous Frenchman, the sturdy Englishman, and the generous Irishman, circulates in our veins. Are we improved or degenerated from this commingled current? Will our descendants be inferior to our ancestors? Will this admixture be injurious? A comparison was made between the negro defenders of New Orleans and our foreign population to justify the exclusion of the latter from the right of suffrage. The comparison is unjust. Is there no difference between the European and the African? If our own countrymen had sprung from such a source they would have been a very different nation. When Cortez conquered Mexico, the Castilian blood was intermingled with that of the Aztec, and we see the effects of that polluted current in the lepers, whom the pure blooded descendant of the Spaniard moves aside with his foot as he obstructs the street through which he walks. Such would be our fate if we amalgamated with the negro. But admixture with our kindred European races has improved and benefited our own.

We have been told that Napoleon first, and afterwards the Emperor of Austria, incited by professor Schlegel, determined to expel those who thirsted for freedom from the face of Europe. I know nothing of it, but if it be so, this is the true home for such refugees. It is said that it was part of the plan to plant catholicism in America. Do then catholicism and liberty go together? If so, let it come, for that religion cannot be so hurtful which inculcates the principles of freedom. I am no advocate of any particular sect, but I wish religious toleration to be extended to all.

We have had a graphic picture drawn of the wretched poverty of the emigrants from Europe who land upon our shores. I know full well that misery has driven hundreds and thousands from Europe to America, and that many are paupers when they land among us; but in a year or so those very men are no longer paupers. They engage in mechanical and manufacturing industry. They apply themselves to cultivating our fertile and unoccupied lands—they acquire competency, and finally they come in a few years to be citizens and freemen. Are we then at this day to declare we will no longer extend such an asy-

lum to the oppressed and unfortunate? Are we to adopt the policy of China, and forbid forever the entrance of these outside barbarians, so as to preserve ourselves free and uncontaminated? If we imitate such an example, we will gradually sink into the unsocial barbarism that marks that people, and instead of a liberal, civilized and just government, such as we now have, we will have a semi-civilized race such as China contains. But if it be desirable to prevent foreigners from entering our country, let us pass a law efficient to the end. We know that by merely disfranchising aliens, we will not keep them out. They will still come to this country for bread, even if we deny them liberty. Necessity drives them, and they must come. If they are to affect us so detrimentally, let us draw a sanitary cordon around our country, and proclaim that henceforth no foreigner shall ever come to America—let us, like the Duke, decree,

“——— If any Syracusan born,  
Come to the bay of Ephesus, he dies.”

If catholicism be the evil we seek to redress, this will not reach it, for the catholic will still enter the country, and still worship after the manner of his fathers. Let us, at once, declare the catholic religion shall no longer be tolerated. Let us spread upon our statute book those iniquitous laws which so long disgraced the legislation of England. Let us copy the test acts, and fetter conscience by every legal contrivance and device, and then we have indeed struck at the root of the evil. But I maintain that this proposition contains no remedy. You still permit, you invite the alien to seek refuge in our country; you subject him to the burthens of taxation, you hold him liable to the laws, you leave him free, but yet you disfranchise him, you deny him political privileges, and you create a turbulent, ostracised, and disaffected class of freemen in the state.

Let the principle that poverty is a crime be established among us, so as to disfranchise the foreigner, and not long after, it will be declared a crime in the native born citizen. It will soon be declared as criminal in him, as in the unfortunate Irishman who dared to stand by Smith O'Brien, or Mitchell, for his country's rights. Poverty is a crime of which such are already guilty. How long, my country, will it be before poverty is a crime in Kentucky? But you tell me such a supposition is extravagant; that it is impossible; that it exists only in the fancy, and that no advocate for such a principle could be found on the soil of America. If so, I point you to the condition of the poor man in Virginia, to Massachusetts, to Maryland; and I point you to wherever landed property has accumulated in past times, and to wherever an agricultural aristocracy exists. At this hour, the pauper in New York is disfranchised, native though he be, while the free negro, if he has property, may vote. The right of suffrage cannot be too strictly, too jealously guarded. Ever permit it to be infringed by the pretexes of power, and the loss is never regained. I remember an Italian story of a duke of Milan—a Sforza—who in the punishment of his victims, tortured not only the body, but the mind. The objects of his vengeance were placed within an iron chamber whose walls and ceiling gradually contracted by

the movement of secret machinery. Seven windows admitted the light. Day after day the wretched prisoner beheld a window disappear; the walls, the ceiling, and the floor contract. Filled with agony, he awaited his doom, and at length crushed by the slow, but steady pressure of the machine, he sunk, a mangled and lifeless mass within it. Let me then, tell the freemen of America, that there is a natural love of power, and lust of dominion in the great, which, if once tasted, is never willingly relinquished, and that if ever the rights of the people are brought within the grasp of aristocratic power, that they will be slowly, but certainly crushed. Such was the history of Venice, and such will be the history of all governments where a privileged class exercise unlicensed rule.

For myself I will meet this question at the threshold. Let us resist it in the beginning. Let us strangle the serpent when it is young, or when it is old it will strangle us.

Sir, is there any necessity for this measure, or is it a pretext? It is a pretext, and the real object is hidden from scrutiny. This is but the outwork. Wait till the columns of wealth and power rush over the rampart, and then too late will the freemen of America know the importance of the measure. Tolerate this assault on the right of suffrage; tolerate it as they tell you it is for its protection; tolerate its being torn from the foreigner who settles among us in good faith, with his wife, his children and his kindred, and you have commenced a career of injustice which will terminate in burying not only the rights of the alien, but of the poor native American also, in that grave in which the liberties of all free countries have been entombed.

Mr. C. A. WICKLIFFE. Mr. President, I see that my friend Mr. Rudd is anxious to obtain the floor. I will yield it to him in a few minutes. When the delegate from Bourbon first introduced this subject at the commencement of the session, I submitted a resolution declaring that it was the settled purpose of the convention not to disturb the right of suffrage as it was fixed in the old constitution. My object was to prevent misconception and alarm in the public mind. The promised discussion between the gentleman from Bourbon and the delegate from Henderson (Mr. Dixon) was postponed, and since the convention has settled the right of suffrage as it was fixed in the old constitution, I have no disposition to waste the time of the convention in further discussion on nativeism. It is true, I had promised to be present when the two champions met.

Mr. President, when the motion to restrict and limit the representation of Louisville, because of her foreign population, was under consideration, I took occasion to express my opinion upon this native American question. Those opinions are before the public—I am willing to abide by them here and elsewhere.

I will not again obtrude them upon the convention in opposition to the resolution of the gentleman from Bourbon, for which I do not believe a single member of the convention save himself will vote.

I rise, Mr. President, not to do myself an act of justice, as is often said in debate, but to discharge a duty I owe to those who sent me

here. I am one of the delegates from a county which contains a greater catholic population than any county in the state. I represent the native born and the naturalized catholic. In the office I now fill, I enjoy their confidence, though a large majority of them are opposed to me on national politics. I should be unfaithful to my duty, and ungrateful to them, if I remain silent under the denunciations against them as citizens, dangerous to the institutions of their country. If I were to fail to deny in my place, the charge that they owed civil allegiance to the Pope of Rome—to deny that the Pope of Rome controlled, or could control their civil conduct, I would be unworthy their confidence. They owe him that respect and obedience only, as I have always believed, which is due from them as members of the catholic church, to one who, in church government, is acknowledged by them to be the temporal head of the church.

Mr. President, I was born and brought up in the first catholic settlement west of the Alleghany mountains. I have associated with them, priest and laity, from that time to this, and I must do them the justice to say, that I have witnessed in no portion of our population, more devotion to the true interests of our common country, a stronger allegiance and attachment to her laws and institutions than among the catholics, native and naturalized. As a whole, they are a law-loving and a law-abiding people.

I have seen them tried in political commotion, and when our country was engaged in war, their patriotism and love of liberty, bespoke them true-hearted American citizens.

With their religion, their faith, so unnecessarily introduced into this discussion, I have nothing to do. That is a subject which belongs to a higher tribunal; it is one between them and their God, and I thank my God this convention has nothing to do with it. We have, in this free government of ours, denounced all interference with the religious opinions of the citizen, and proclaimed the right of all to worship God according to the dictates of their conscience.

Mr. President, I have no false alarms upon the subject of the admission to the rights of citizens, those who have come to our shores, and elected to become citizens of our country. Their deportment in peace and war, give evidence of their attachment to free government. After the fugitive from oppression, aye sir, if you will have it, the fugitive from starvation in the old world, shall give evidences he is required to do under our naturalization laws, that he is of good character, has lived five years in the United States, I am willing to take him in to the American family, and permit him to enjoy with me the blessings of free government and equal political rights.

Mr. President, I said the other day, and now repeat the remark, here is not the forum to commence this work of ostracizing the foreign population. If the evil, present and future, be what the mover of this resolution has represented it to be, I would advise him to make his appeals to the congress of the United States. I would advise him to appeal to the State governments to change the federal constitution, and adopt his Chinese policy of total exclusion from this land of liberty and law the oppressed foreigner. Let

him close the ports of the United States, and drive back the teeming millions of paupers which he says Europe is pouring into the United States. Kentucky has no control over this subject. As the constitution and laws now stand, a foreigner who has resided in the United States for five years has a right to become a citizen of the United States. Shall we deny to a citizen of the United States who has resided in Kentucky five years, or two years, the political rights which every other citizen enjoys, because of his birth? Let us act, Mr. President, consistently on this subject; let us rather take counsel from the past, and the wisdom of our fathers, than our fears—fears gendered by partizan feeling.

So long as foreigners are permitted to come to the United States, my policy is—and it is the true policy of the country—after they have given evidence of their good character, and manifested a desire to become citizens, to admit them to the enjoyment of political as well as civil rights. They become attached to the country and government of their adoption. They feel and breathe the spirit of freemen, and will render more willing obedience to the laws of the country when they know they participate in the political power of their government.

I cannot look upon a mass of foreign population, denied for half a life time the privileges of citizens, but with serious apprehension for the quiet of society. They will not feel that regard and reverence for the laws and the rights of society, if denied the privileges of citizens, as when they are made to feel the majesty of American citizens.

The policy of the gentleman from Bourbon, (Mr. Davis,) is to invite by the laws of the United States, the foreigner to land, but if he comes to Kentucky, to place him for twenty-one years, so far as political rights are concerned, beside the free negro. His policy would exclude every foreigner fit to be a citizen from Kentucky. He would drive from his state the enterprising and industrious, the honorable and high-minded, the wealthy and talented foreigner, and only permit the worthless vagabond, the man incapable of appreciating liberty, or the rights of a freeman. He would leave the good to settle in other states, and take the bad as Kentucky's portion. His policy would indeed give us the "off-scourings not only of Europe," but the rejected of other states. Against this policy, Mr. President, I protest. I desire the yeas and nays on the motion.

Mr. RUDD. The gentleman from Bourbon has again and again, in the course of his long speech, spoken of the political or temporal allegiance which he asserts the catholics of this and other countries owe to the Pope. Now, I deny that they acknowledge or owe this allegiance to him. It is untrue; it is entirely a mistake on the part of the gentleman; and if he had half as diligently sought from the proper sources correct information on this point, as he has studied the means to misrepresent the catholic religion, he would long since have learned his mistake. It is not the first time that this charge has been made against catholics and their religion, but whenever and wherever made, it has been denied and fully refuted.

The enemies of catholicism have been over and again challenged to bring forward one single proof or correct quotation from any of our doctrines, practices, actions, or standard writers, either controversial or dogmatic, to substantiate this charge. They never have, nor never can do it, because no such thing exists. But, on the contrary, proof without end—enough to fill volumes—such as no man in his senses can deny—has been adduced to show that the charge made by the gentleman is entirely groundless. If he seeks for correct information, I refer him to these works—the standard authors of our church—wherein the whole body of catholics acknowledge that the religious tenets which they profess are contained. But, the gentleman from Bourbon does not relish these authorities; they don't suit his purpose. His authorities are the writings of the bitterest enemies of catholicism, such as "Elliott on Romanism," "Dowling's History of Romanism," illustrated by engravings—pictures the most hideous—a book that was recently ushered into the world, as the gentleman will certainly recollect, by handbills, stuck up in every town, and at every public thoroughfare, wherein was printed in large capitals: "DOWLING'S EXPOSURE OF THE MYSTERIES OF ROMANISM." These are the works which the gentleman so pompously parades before this convention, to tell us what is catholicism. Let me ask him, would he go to a declared enemy to get a correct statement of his character or reputation? Would he abide by a history of his past life, coming from such a source, or would he not cry out injustice and persecution, if the world were to admit the truth of such evidence? Judge him accordingly, and refuse to hear any other testimony? And yet this is precisely the way the gentleman acts towards the catholic religion. He takes the evidence of her known enemies—of those who have sworn against her eternal hatred and ill-will. He reads their books, brings them into this convention, quotes them as authority, and turns with a holy horror from every work and every statement which gives a fair, candid, and truthful exposition of the doctrines and practices of the catholic church.

Mr. President, I would ask the gentleman if that is honorable and fair dealing? Is that the fulfilment of the great precept of the Bible—that Book which he has talked about so much in the course of his speech: "Do unto others as you would that they should do unto you?"

The gentleman has read from these books containing "the exposures of Romanism," extracts from councils, bulls of the Popes, and other catholic writers, to prove what he has said. I say these extracts are garbled, unfairly made, falsely colored, and do not give a correct version of the meaning and belief of the authors. On the same principle, I can take any book or document, and garble it so as to make it say the most absurd things.

I say, what we have heard from the gentleman is nothing more than a groundless tirade against catholicism, and does not originate in any well-founded danger, that the foreigners who are daily coming to our shores, will over-run our country and subvert our institutions. Nearly one-third of the foreigners who come to the United States

are protestants, not catholics. The catholics, as a political body, know what they are about, and do not suffer themselves to be led by any man, or body of men. The Pope has not half as much influence, politically speaking, over the catholics in the United States, as the gentleman has over his Native American brethren. No, not one-tenth part. I entertain a high regard for the gentleman, and I am sorry that he has wounded the feelings of some of the delegates by his remarks. It may be that he had no intention of doing so; at least I do not wish or intend to impeach his motives. But, when I heard the doctrines of my religion—that which I hold most sacred, misrepresented—that, too, under such august circumstances as are thrown around this body, assembled here to remodel the organic law of my country, I cannot help expressing my unfeigned regret that such an attack should have been made by a member of this convention—one whose name I have heretofore cherished. I say his speech will have the effect to array the protestant community against the catholic, and I should have thought that a man of his education and discernment would have seen that this must be the inevitable result. His speech is inflammatory in its tendency, and under certain circumstances would have the effect to arouse the worst feelings of perverse nature. Catholics have done much for this country, and I rather suspect that one of my blood connexions did more for it, or as much, as any other man in it, except perhaps in the heat of battle, and I cannot permit any reflections to be cast on the religion professed by such men, without speaking a word in its defence.

Mr. DAVIS. I endeavored to make a distinction between the catholic religion as it exists in this country and in Europe, and not between the catholic and the protestant religion. I did not know before I commenced my speech that there were more than two catholics in the house.

Mr. SPALDING. There are six.

Mr. DAVIS. There are six I understand. But I felt it my duty to express my views on the subject, and I deeply regret that any thing I have said has had the effect of hurting the feelings of any gentleman present.

Mr. RUDD. I am sorry the gentleman is not a catholic—a good catholic—for if I know him, and I think I do, he would be a better man than he is. I know he would be. He knows as much about catholicism as that boy, (pointing to one of the pages.) (Laughter.) His authorities are bad, and his quotations from catholic works are garbled and distorted—made to suit the prejudiced views of the enemies of catholicism. They do not contain a word of truth. The catholic church has produced such men, I mean among the Popes, for learning, piety, and intelligence, as the rest of the world has never equalled, and but few bad men—and very few. I will refer the gentleman to books and documents to prove what I say. What he has said is all false—all false.

Mr. DAVIS. I presume the gentleman does not mean to say I spoke falsely.

Mr. RUDD. No, I do not say that the gentleman has told a falsehood. But I say his quotations are false, his charges are false, and his authorities filled with falsehoods. If the gen-

tleman wishes to learn the truth with regard to the catholic faith, let him examine amongst other works: "The Decrees of the Council of Trent," Boswett's "Expositions," and others of his writings; Milner's "End of Controversy," &c., &c.

Mr. President, I will conclude by saying that I am sorry that the gentleman was not engaged in a better cause. Let the German and the Irish come, and receive them on our shores, and give them a christian reception, for they have done much for our country, and let religion stand on its own foundation. The catholic religion wants no props. It stands on the eternal word of God, and does exist, and will exist, to the consummation of the world, notwithstanding the gentleman's opposition and calumny.

Mr. CLARKE. I was necessarily absent during the speech of the gentleman from Bourbon. I have been advised by a friend that he desires to address the convention before the question is taken on the pending resolution. I know that gentlemen are anxious that the vote should be taken now. But, sir, I appeal to the convention—I appeal to their sense of right and justice, if, after indulgence at this late hour of our labors has been extended to the gentleman from Bourbon (Mr. Davis) to consume three hours in the delivery of a speech, after a preparation of months—a speech which strikes at the right of suffrage—a speech which inflames and harrows up the very worst feelings of the human heart, and arrays one portion of the citizens of our happy state against the other—I ask if it be not right and just that such a speech should be replied to? I have stated, sir, that I did not hear the speech of the gentleman from Bourbon; but if I have been correctly informed as to his positions and historical references, an honest vindication of the truth of history demands a refutation, for I know that part at least, if not all his history, and the deductions therefrom, are false.

Mr. President, in making this appeal, I cannot refrain from tendering to my much esteemed friend from Louisville, (Mr. Preston,) my sincere thanks, for his able and eloquent vindication of the rights of conscience, humanity, and the true spirit of republicanism.

Mr. C. A. WICKLIFFE. I know the gentleman to whom he (Mr. Clarke) alludes. I therefore move to postpone the further consideration of this subject 'till 3 o'clock on Monday next.

The motion was agreed to, and then the convention adjourned.

MONDAY, DECEMBER 17, 1849.

Prayer by the Rev. Mr. LANCASTER.

DISTRIBUTION OF THE NEW CONSTITUTION.

On the motion of Mr. JAMES, it was

*Resolved*, That the printers to the convention print sixty thousand copies of the new, or amended constitution, for distribution among the people of the state; to be distributed to each county according to the number of qualified voters therein.

PRESIDENT OF THE BOARD OF INTERNAL IMPROVEMENT.

Mr. TRIPLETT offered the following as an additional section to the general provisions:

"So long as the Board of Internal improvement shall be continued, the president thereof shall be elected by the qualified voters of this commonwealth; and hold the office for the term of four years, and until another be duly elected and qualified. The first election shall be held at the same time, and be conducted in the same manner, as the first election of governor of this commonwealth under this constitution, and every four years thereafter; and the general assembly shall provide by law, the method of filling vacancies and settling contested elections for this office. But nothing herein contained, shall prevent the general assembly from abolishing said board of internal improvement, and the office of president thereof."

Mr. GHOLSON moved the following as a substitute for the section:

"The board of internal improvement is hereby abolished, and its duties devolved upon the auditor's office."

Mr. TURNER moved to lay both the section and the substitute on the table.

Mr. TRIPLETT called for the yeas and nays, and they were yeas 23, nays 66.

YEAS—Mr. President, (Guthrie) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Thomas D. Brown, Charles Chambers, Garrett Davis, James Dudley, Selucius Garfiede, James H. Garrard, Andrew Hood, Mark E. Huston, William C. Marshall, Jonathan Newcum, Elijah F. Nuttall, Johnson Price, James Rudd, Howard Todd, Squire Turner, John L. Waller, Wesley J. Wright—23.

NAYS—Alfred Boyd, William Bradley, Francis M. Bristow, William C. Bullitt, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Thomas J. Hood, Thos. James, William Johnson, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, James M. Nesbitt, Hugh Newell, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Philip Triplett, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Silas Woodson—66.

So the convention refused to lay upon the table.

The question was then taken on the substitute, and it was rejected.

Some conversation arose on this section in which Messrs. TRIPLETT, TURNER, and GHOLSON took part.

Mr. BARLOW moved the previous question and the main question was ordered to be now put.

Mr. TRIPLETT called for the yeas and nays and they were, yeas 56, nays 34.

YEAS—Alfred Boyd, Wm. Bradley, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, Chas-teen T. Dunavan, Benjamin F. Edwards, Mil-ford Elliott, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Thomas J. Hood, Thomas James, James M. Lackey, Peter Lash-brooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Wil-liam N. Marshall, Richard L. Mayes, Nathan McClure, John H. McHenry, Wm. D. Mitchell, Thos. P. Moore, James M. Nesbitt, Hugh Newell, Henry B. Pollard, William Preston, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ira Root, Ignatius A. Spald-ing, John W. Stevenson, Jas. W. Stone, Mi-chael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Philip Triplett, Henry Washington, John Wheeler, Silas Wood-son—56.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bul-litt, Charles Chambers, Edward Curd, Garrett Davis, Archibald Dixon, James Dudley, James H. Garrard, Ninian E. Gray, Andrew Hood, Mark E. Huston, William Johnson, George W. Kavanaugh, Alexander K. Marshall, William C. Marshall, David Meriwether, John D. Morris, Jonathan Newcum, Elijah F. Nuttall, Johnson Price, James Rudd, Albert G. Talbott, How-ard Todd, Squire Turner, John L. Waller, An-drew S. White, Wesley J. Wright—34.

So the section was adopted.

#### ENGROSSMENT OF THE CONSTITUTION.

On the motion of Mr. APPERSON the vote on Saturday last adopting a resolution directing two copies of the new constitution to be en-grossed, one of them on parchment, was re-considered, and so much as related to the en-grossment on parchment was stricken out in con-sequence of a difficulty experienced in procur-ing parchment of a good quality. With that amendment the resolution was again adopted.

#### EXPENSES OF A CONTESTED ELECTION.

Mr. HARDIN from the committee on claims made the following report:

The committee on claims to whom was refer-red a resolution to inquire into the expediency of providing for the payment of the expenses of the contested election from Henry county, re-ports:

That your committee is of opinion that this commonwealth is bound, in justice, to indem-nify Elijah F. Nuttall in all reasonable expenses incurred by him in said contest, but the com-mittee is opposed to the expenses and cost of Joseph Lecompte, being reimbursed to him by the state. Therefore,

*Resolved by the Convention,* That the follow-ing sums of money, not otherwise appropriated

be paid out of the public treasury to the follow-ing persons entitled to the same, who attended as witnesses on behalf of said Nuttall, viz:

1st. To Samuel Eddy, Charles Allen, John Roberts, F. Roberts, Uriah Edwards, A. W. Pritchett, James Johnson, M. Luckett, Wm. Har-ris, John Shryock, James Hawkins, Gideon King, B. F. Owen, Thos. L. Martin, S. T. Drane, Ed. Ransdale, J. C. Shephard, John Radford, T. J. Bruce, R. Shockey, Richard Neale, Thos. B. Posey, James Pearce and Thos. Han-cock, three dollars each.

2d. To Ed. P. Thomas, for bringing up the poll book, under a *subpoena duces tecum*, three dollars and fifty cents.

3d. To Henry Wingate, ten dollars to be paid to the Baptist church for the use of their bell during the present session.

4th. To Perry Ellis, three dollars and twenty five cents for summoning witnesses in said con-tested election.

After a few words from Mr. CHAMBERS in opposition to the appropriation of money by the convention, the report was adopted.

#### NIGHT SESSIONS.

On the motion of Mr. DUNAVAN, it was *Resolved*, That the convention will henceforth hold night sessions, meeting for that purpose at 7 o'clock, P. M.

#### APPORTIONMENT.

Mr. GARRARD submitted the following sec-tion as an addition to the report of the commit-tee on the legislative department, and on his mo-tion it was laid on the table and ordered to be printed.

"Sec. —. An enumeration of all the qualified voters shall be made, first in the year 1850, and again in the year 1857, and every eighth year thereafter. The number of representatives shall be one hundred, and they shall be apportioned at the first session of the general assembly after each enumeration, among the several counties, cities, and towns, in proportion to the number of qualified voters therein: *Provided*, Two or more adjacent counties may be joined to form a representative district; but in no event shall a representative district have more members than another district with a greater number of qual-ified voters; nor shall any county with a less number of qualified voters than another have a member."

#### LIMITATION OF DEBATE.

On motion of Mr. WHEELER it was *Resolved*, That no person shall be allowed to speak more than ten minutes upon any subject during the sitting of this convention, except on the naturalization question and the report of the committee on miscellaneous provisions.

#### LEGISLATIVE DEPARTMENT.

The convention resumed the consideration of the unfinished report of the committee on the legislative department.

The pending question was the additional sec-tion offered on Saturday by Mr. DAVIS, as fol-lows:

"That the representation shall be equal and uniform in this commonwealth, and shall be for-ever regulated and ascertained by the number of representative inhabitants therein. At the first



session of the general assembly after the adoption of this constitution, and every four years thereafter, provision shall be made by law that in the year ———, and every four years thereafter, an enumeration of all the representative inhabitants of the state shall be made. The number of representatives shall be one hundred, and apportioned among the several counties in the following manner: Counties having the ratio shall have one representative; those having three fourths of the ratio shall have one representative; those having the ratio, and a fraction less than one half the ratio over, shall have but one representative; those having the ratio, and a fraction of one half over, shall have two representatives; those having twice the ratio, shall have two representatives; those having twice the ratio, and a fraction of less than one half the ratio over, shall have but two representatives; those having twice the ratio, and a fraction of one half the ratio over, shall have three representatives; and so on. Counties having less than three fourths of the ratio, shall be joined to a similar adjacent county, for the purpose of forming a representative district: *Provided*, that if there be no such adjacent county, then the county having less than three fourths of the ratio shall be united with that adjacent county having the smallest number of representative inhabitants, provided that their united numbers do not exceed the ratio, and a fraction of one half the ratio over; but if they do, the county having less than three fourths of the ratio shall have a separate representative. The remaining representatives, (if any,) shall be allotted to those counties having the largest unrepresented fractions; but in no case shall more than two counties be united for the purpose of forming a representative district; but if there shall ever be an excess of districts, they shall be reduced to the proper number, by taking from those counties having a separate representative, with the smallest number of representative inhabitants, their separate representation."

Mr. KAVANAUGH offered the following as a substitute for the section :

"The house of representatives shall consist of one hundred members, and to secure uniformity and equality of representation as aforesaid, the state shall be districted into twelve districts.

*First District*—Fulton, Hickman, Graves, Ballard, McCracken, Calloway, Marshall, Livingston.

*Second District*—Trigg, Christian, Caldwell, Crittenden, Union, Henderson, Hopkins.

*Third District*—Daviess, Ohio, Hancock, Grayson, Breckinridge, Larue, Hardin, Meade.

*Fourth District*—Todd, Muhlenburg, Logan, Simpson, Allen, Warren, Butler, Edmonson, Hart.

*Fifth District*—Monroe, Barren, Cumberland, Clinton, Adair, Green, Taylor, Casey, Russell.

*Sixth District*—Jefferson, Bullitt, Nelson, Shelby, Spencer, Washington, Marion.

*Seventh District*—Oldham, Trimble, Henry, Owen, Carroll, Gallatin, Grant, Boone, Kenton.

*Eighth District*—Scott, Harrison, Pendleton, Campbell, Nicholas, Mason, Bracken.

*Ninth District*—Lewis, Fleming, Bath, Montgomery, Morgan, Greenup, Lawrence, Carter.

*Tenth District*—Fayette, Woodford, Bourbon,

Clarke, Jessamine, Anderson, Mercer, Boyle, Franklin.

*Eleventh District*—Madison, Garrard, Lincoln, Rockcastle, Laurel, Pulaski, Whitley, Wayne.

*Twelfth District*—Estill, Owsley, Clay, Perry, Letcher, Floyd, Breathitt, Johnson, Pike, Knox, Harlan.

When a new county shall be formed of territory belonging to more than one district, that county shall be added to, and form a part of the district out of which the largest amount of territory was taken to form such new county.

In the year ———, and every year thereafter, an enumeration of all the qualified electors of the state shall be made, in such manner as shall be directed by law.

In the several years of making such enumeration, each district shall be entitled to representatives equal to the number of times the ratio is contained in the whole number of qualified electors in said districts: *Provided*, That the remaining representatives, after making such apportionment, shall be given to those districts having the largest unrepresented fractions.

Representatives to which each district may be entitled shall be apportioned among the several counties, cities, and towns of the district, as near as may be, in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county or counties, within the district, may not have a residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall then be in the power of the legislature to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, and in the same district, which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to the county having the largest residuum."

Mr. KAVANAUGH explained wherein this amendment differed from others which had been submitted.

Mr. A. K. MARSHALL, Mr. APPERSON, Mr. BRADLEY, Mr. IRWIN, and Mr. BROWN, participated in a brief conversation in relation to it.

Mr. BROWN moved to amend by transferring Hardin from the third to the fourth district.

The motion was not agreed to.

Mr. JAMES called for the yeas and nays on the adoption of the substitute, and there were yeas 31, nays 57.

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, Benj. F. Edwards, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, John Hargis, Wm. Hendrix, Thomas James, George W. Kavanaugh, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Richard L. Mayes, Thomas P. Moore, John D. Morris, Hugh Newell, Elijah F. Nuttall, Thos. Rockhold, Ira Root, Ignatius A. Spalding, John W. Stevenson, John L. Waller, John Wheeler, Charles A. Wickliffe—31.

NAYS—Mr. President, (Guthrie,) Richard Ap-

person, John L. Ballinger, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, Wm. Chenault, James M. Chrisman, Jesse Coffey, William Cowper, Garrett Davis, James Dudley, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, Jas. H. Garrard, Thos. J. Gough, Ben. Hardin, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, William Johnson, James M. Lackey, Peter Lashbrooke, Thos. W. Lisle, Alexander K. Marshall, Wm. C. Marshall, William N. Marshall, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, James M. Nesbitt, Jonathan Newcum, Henry B. Pollard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, John T. Rogers, Jas. Rudd, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, Wm. R. Thompson, John J. Thurman, Howard Todd, Squire Turner, Henry Washington, Andrew S. White, Wesley J. Wright—57.

So the substitute was rejected.

Mr. GARRARD offered the following as a substitute for the section proposed by Mr. DAVIS:

"Sec. —. An enumeration of all the qualified voters shall be made, first in the year 1850, and again in the year 1857, and every eighth year thereafter. The number of representatives shall be one hundred, and they shall be apportioned at the first session of the general assembly after each enumeration, among the several counties, cities, and towns, in proportion to the number of qualified voters therein: *Provided*, Two or more adjacent counties may be joined to form a representative district; but in no event shall a representative district have more members than another district with a greater number of qualified voters; nor shall any county with a less number of qualified voters than another have a member: *Provided*, That two or more counties shall not be attached, except to form a single representative district, or from the necessity of their location."

Mr. MORRIS moved to lay the pending subject on the table with the view of offering a resolution to test the sense of the convention on the question of "districts or no districts."

The motion was not agreed to.

Mr. PROCTOR called for the yeas and nays on the substitute of the gentleman from Clay, and there were yeas 42, nays 46.

YEAS—Richard Apperson, John L. Ballinger, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Edward Curd, Garrett Davis, Jas. Dudley, Chasteen T. Dunavan, Milford Elliott, Selucius Garfield, James H. Garrard, Thomas J. Gough, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, George W. Kavanaugh, Thomas W. Lisle, William C. Marshall, John H. McHenry, Jonathan Newcum, William Preston, Johnson Price, Larkin J. Proctor, Thomas Rockhold, John T. Rogers, James Rudd, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, John L. Waller, Henry Washington, Silas Woodson, Wesley J. Wright—42.

NAYS—Mr. President, (Guthrie,) John S. Bar-

low, Alfred Boyd, William Bradley, William C. Bullitt, Chas. Chambers, William Chenault, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Wm. Cowper, Lucius Desha, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Richard D. Gholson, Ninian E. Gray, James P. Hamilton, Ben. Hardin, William Hendrix, Thomas James, William Johnson, James M. Lackey, Peter Lashbrooke, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, Thos. P. Moore, John D. Morris, James M. Nesbitt, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, Ira Root, Ignatius A. Spalding, John W. Stevenson, Squire Turner, John Wheeler, Andrew S. White, Charles A. Wickliffe—46.

So the substitute was rejected.

Mr. MITCHELL offered the following substitute for Mr. DAVIS' section:

"The number of representatives shall be one hundred. In the year ———— and every year thereafter an enumeration of all the electors in the state shall be made in such manner as shall be decided by law. The representatives shall in the several years of making these enumerations, be apportioned for the ———— years next following, as near as may be, among the several counties, cities, and towns, in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjacent county, or counties, may not have a residuum, or residuums, which, when added to the small county, would entitle it to a separate representative, it shall then be in the power of the legislature to join two or more together for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining, each of which has a residuum over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case, one representative shall be added to that county having the largest residuum: *Provided further*, That a separate representative shall in no instance be given to a county having a less number of qualified voters than another county not separately represented, unless a residuum, or residuums, from a county or counties, immediately adjoining to it, sufficient to make up the ratio, be added; nor shall any county have two or more representatives when another county with a greater number of qualified voters has a less number of representatives, unless the first named county shall receive from the county, or counties, immediately adjoining it a residuum, or residuums, which, when added to the qualified voters of said county, shall entitle it under the ratio to the number of representatives given: *Provided further*, That the following rules and restrictions shall be observed by and control the legislature in apportioning representation:

1. The principle of adjacency shall be so as to prevent the rolling of a residuum from one county to another not in juxtaposition.

2. Where two or more small counties adjoin a large county having a sufficient residuum, that residuum shall be divided so as to give a separate representation to each of the small counties

unless the residuum be greater than the number of qualified voters in either of the small counties, in which event two of the small counties may be joined as a representative district, and its excess, if any, bestowed on the larger county.

3. When a residuum is to be given to one of several counties, it shall be bestowed on that having the largest number of qualified voters.

Mr. STEVENSON called for the yeas and nays, and there were yeas 34, nays 57.

YEAS—Richard Apperson, John L. Ballinger, Francis M. Bristow, Thos. D. Brown, William Chenault, Edward Curd, Milford Elliott, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Vincent S. Hay, James W. Irwin, George W. Kavanaugh, Willis B. Machen, Martin P. Marshall, William C. Marshall, Wm. N. Marshall, Nathan McClure, John H. McHenry, Wm. D. Mitchell, James M. Nesbitt, Elijah F. Nuttall, Johnson Price, Thos. Rockhold, John T. Rogers, James Rudd, Michael L. Stoner, John D. Taylor, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, Charles A. Wickliffe—34.

NAYS—Mr. President, (Guthrie,) John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, William C. Bullitt, Charles Chambers, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benj. Copelin, William Cowper, Garrett Davis, Lucius Desha, Jas. Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfiede, James P. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, Thomas James, W. Johnson, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, George W. Mansfield, Alexander K. Marshall, Robert D. Maupin, Richard L. Mayes, David Meriwether, Thomas P. Moore, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Albert G. Talbott, William R. Thompson, Philip Triplett, John Wheeler, Andrew S. White, Silas Woodson, Wesley J. Wright—57.

So the substitute was rejected.

Mr. CHAMBERS moved to amend the amendment of Mr. DAVIS by adding thereto the following:

"In apportioning representation among the several counties in this commonwealth, every county which is not entitled to a separate representative shall be attached to that adjoining county which contains the least voting population; and counties thus attached shall vote in conjunction for representative or representatives. The full ratios shall be first filled, and the remaining representatives, (if any,) shall be given to the counties or attached counties, having the largest residuums: *Provided*, That not more than three counties shall in any case be attached for electing a representative; and where the residuums of any two counties thus attached shall obtain an additional representative each county shall have one, and vote separately."

Mr. McCLURE offered the following as a substitute for Mr. DAVIS' amendment:

"In the year , and every eighth year thereafter, an enumeration of all the qualified voters of the

state shall be made in such manner as shall be directed by law. The number of representatives shall, in the several years of making these enumerations, be so fixed as not to be less than seventy five nor more than one hundred, and they shall be apportioned for the eighth year next following as near as may be among the several counties and towns in proportion to the number of qualified electors; but when a county may not have a sufficient number of qualified electors to entitle it to one representative, and when the adjoining county or counties may not have residuum or residuums, which, when added to the small county, would entitle it to a separate representation, it shall be in the power of the general assembly to join two or more together, for the purpose of sending a representative: *Provided*, That when there are two or more counties adjoining which have residuums over and above the ratio then fixed by law, if said residuums, when added together, will amount to such ratio, in that case one representative shall be added to that county having the largest residuum; and residuums shall not be carried beyond the counties adjoining the county in which the residuum shall originate."

Mr. McCLURE called for the yeas and nays, and they were—yeas 22, nays 64.

YEAS—Richard Apperson, William K. Bowling, Francis M. Bristow, Garrett Davis, James Dudley, Ninian E. Gray, Andrew Hood, Jas. W. Irwin, Thomas W. Lisle, Willis B. Machen, Alexander K. Marshall, Martin P. Marshall, William N. Marshall, Robert D. Maupin, Nathan McClure, John H. McHenry Johnson Price, Thos. Rockhold, John T. Rogers, Michael L. Stoner, Albert G. Talbott, John D. Taylor—22.

NAYS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, Wm. C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfiede, James H. Garrard, Richard D. Gholson, Thomas J. Gough, James P. Hamilton, John Hargis, Vincent S. Hay, Wm. Hendrix, Thos. J. Hood, Mark E. Huston, Thos. James, William Johnson, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, George W. Mansfield, William C. Marshall, Richard L. Mayes, David Meriwether, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Wm. R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Chas. A. Wickliffe, Silas Woodson—64.

So the substitute was rejected.

Mr. THOMPSON offered the following as a substitute:

"An enumeration of the qualified voters, and an apportionment of the representatives in the general assembly shall be made in the year , and within every subsequent term of eight years. The number of representatives shall, at the first session of the general assembly after each enu-

meration aforesaid, be apportioned among the several counties, cities, and towns, according to the number of qualified voters in each, and the number of representatives shall be one hundred: *Provided*, That any county having two thirds of the ratio shall be entitled to one member."

The substitute was rejected.

Mr. BARLOW submitted the following as a substitute, which was Mr. WOODSON'S proposition slightly modified.

"At the first session of the general assembly after the adoption of this constitution, provision shall be made by law, that in the year , and in the year , and every years thereafter, an enumeration of all the representative population of the state shall be made. The House of Representatives shall consist of one hundred members, and to secure uniformity and equality of representation, the state is hereby laid off into ten districts.

The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell and Trigg.

The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade, Grayson, Butler, and Edmonson.

The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart.

The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln.

The fifth district shall be composed of the counties of Hardin, Larue, Bullit, Spencer, Nelson, Washington, Marion, Mercer, and Anderson.

The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd and Johnson.

The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville.

The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine.

The ninth district shall be composed of the counties of Clarke, Montgomery, Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan, and Breathitt.

The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin.

The number of representatives shall, at the several sessions of the general assembly, next after the making of these enumerations, be apportioned among the ten several districts, proportioned according to the respective representative population of each; and the representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern to-wit: Every county, town or city having the ratio, shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns or cities having one or more

representatives, and the largest representative population above the ratio, and counties, towns, and cities having the largest representative population under the ratio, shall have a representative, regard being always had to the greatest representative population: *Provided*, That when a county may not have a sufficient number of representative population to entitle it to one representative, then such county may be joined to some adjacent county or counties to send one representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of representative population."

Mr. C. A. WICKLIFFE called for the yeas and nays, and there were, yeas 52, nays 37.

YEAS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, Alfred Boyd, Wm. Bradley, Thomas D. Brown, William C. Bullitt, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Benjamin F. Edwards, Green Forrest, Nathan Gaither, James H. Garrard, James P. Hamilton, William Hendrix, Thomas James, William Johnson, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, Geo. W. Mansfield, William N. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, David Meriwether, Thomas P. Moore, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, James W. Stone, John D. Taylor, Howard Todd, John Wheeler, Andrew S. White, Charles A. Wickliffe, Silas Woodson—52.

NAYS—Richard Apperson, William K. Bowling, Luther Brawner, Francis M. Bristow, Charles Chambers, Garrett Davis, James Dudley, Chasteen T. Dunavan, Milford Elliott, Selucius Garfiede, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, James M. Lackey, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, John H. McHenry, John D. Morris, James M. Nesbitt, Johnson Price, John T. Rogers, Michael L. Stoner, Albert G. Talbott, William R. Thompson, John J. Thurman, Philip Triplett, Squire Turner, Henry Washington, Wesley J. Wright—37.

So the convention substituted Mr. WOODSON'S for Mr. DAVIS' proposition.

On the motion of Mr. WOODSON, the blanks were filled with "1850," and "1857, and every eight years thereafter."

The section was then agreed to as a part of the report on the legislative department.

Mr. JAMES offered the following as an additional section:

"The general assembly shall have no power to pass any act or resolution for the appropriation of money, or creating any debt against the state, or for the payment of money in any way whatever: *Provided*, The debt created, or money appropriated, may exceed one hundred dollars, unless the act or resolution creating the debt or appropriating the money, shall be voted for upon

its formal passage by a majority of all the members then elected to each branch of the general assembly; said vote to be taken by the yeas and nays, which shall be entered upon the journals of each house."

I feel satisfied if this is adopted, the convention could not throw around the treasury a better guard. There is a similar provision in the New York constitution, and in that of Wisconsin. And the executive of Indiana, in recommending the call of a convention of that state, very strongly recommended the insertion of such a provision in their constitution. We know that the legislature have frequently, on the eve of final adjournment, when there was scarcely a quorum present, passed bills making large appropriations by a minority. And I take the ground, if the claim is just, it can get a majority of each branch of the legislature; and if not, it ought not to pass. If my proposition is adopted, it will prevent the representatives of the people from putting their hands into the treasury without proper authority and due reflection. For, when one legislature creates a debt, another has to make up the deficiency. And how is it done? It is done by taxation. I do not object to allowing just claims, but the people want to know who they are that vote for them. I have no doubt that every gentleman, when he votes for a claim, will be able to satisfy his constituents as to the reasons that induced him to do it.

Mr. THOMPSON. I hope the section will be adopted. I do not think, as the gentleman has said, that the convention could throw a stronger guard around the treasury. It is true we have restricted the legislature in their power to contract debts; but I consider that no restriction in relation to an appropriation of money. They can at one session of the legislature, as I conceive, make an appropriation exceeding the amount of the revenue \$1,000,000. If the amendment is adopted, the people will know who has voted for these appropriations. If you will turn back to the history of Kentucky, you will find that in 1837, the legislature passed a law creating the office of chief engineer of this state, with a salary of \$4000, which is \$1500 more than the salary of the governor. In 1839-40, this salary was reduced to \$2500; at the same time there were a number of assistant engineers, who received a salary of \$3000. I do trust the convention will adopt the section. Then, if in after times, such an office should be created, we shall know the names of those who voted for it.

Mr. JAMES called for the yeas and nays, and they were—yeas 62, nays 28.

YEAS—John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Charles Chambers, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Chasteen T. Dunavan, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, Thos. J. Gough, Jas. F. Hamilton, Ben. Hardin, John Hargis, William Hendrix, Thomas James, Wm. Johnson, Geo. W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William N. Marshall, Robert D. Maupin, Rich-

ard L. Mayes, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, Ignatius A. Spalding, Jas. W. Stone, Michael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Henry Washington, John Wheeler, Charles A. Wickliffe, Wesley J. Wright—62.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, Thos. D. Brown, William C. Bullitt, Garrett Davis, Lucius Desha, Jas. Dudley, Benjamin F. Edwards, Selucius Garfiede, Ninian E. Gray, Vincent S. Hay, Andrew Hood, Thomas J. Hood, Mark E. Huston, Martin P. Marshall, William C. Marshall, John H. McHenry, David Meriwether, John D. Morris, Wm. Preston, James Rudd, John W. Stevenson, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Andrew S. White—28.

So the section was adopted.

Mr. PRESTON moved the previous question on the adoption of the report of the committee on the legislative department, as amended.

The main question was ordered to be now put, and the report was adopted.

The convention then took a recess.

#### EVENING SESSION.

##### ENUMERATION OF VOTERS.

On the motion of Mr. MERIWETHER it was *Resolved*, That the second auditor be directed to cause the commissioners of revenue for the year 1850, to take in and return to his office the number of legal voters in their respective counties.

##### NATIVE AMERICANISM.

The convention resumed the consideration of Mr. DAVIS' resolution, on which the debate was postponed from Saturday night to the evening session this day.

Mr. SPALDING. When canvassing for the seat I have the honor to occupy in this convention, I told my constituents that I expected to be a silent member, and up to the present time I have been so, not having attempted to address it before. I promised them that I would cast my votes with as much propriety and justice as the most talented and learned orator in the body. So far I have redeemed my pledge. And, had it not been for the resolution of the gentleman from Bourbon, and the manner in which he spoke on the subject of it, I would not have troubled the house now. I shall not detain the convention long, for I have but little to say, and speaking is not my forte, having been more accustomed to handle the plough. I am aware of the heavy metal before me—a gentleman who is learned, and one of the best and most skilful debaters in this country, whose experience as well in the councils of this state as in those of the nation, have been great—and therefore I stand no chance of competing with him in those respects. I shall, however, express myself in a plain and simple manner, so that every gentleman will comprehend my remarks.

The resolution of the gentleman from Bourbon proposes, if I understand it, that persons

coming from Europe to this country to settle shall not be entitled to the right of suffrage until they shall have been here twenty-one years from the time of declaring their intention to become citizens. I object to the gentleman's proposition and cannot give it my support. I regard this happy land as an asylum and refuge for the oppressed of all nations. We have plenty of room for millions and millions of people. If we receive, as we ought, in my opinion, those who come to our shores, without exacting this long probation from them, many of whom bring money with them, we shall be increasing the wealth of the country, and at the same time putting money into the treasury. Whilst the gentleman from Bourbon and myself are citizens of Kentucky by the accident of birth, there are thousands who come here from choice, their object being to seek a permanent residence in the "land of the free and the home of the brave." Why is it, when we have an almost boundless country, with a territory extending from the Atlantic to the Pacific ocean, we should refuse to afford them a home amongst us unless they comply with the harsh requirements set forth in the resolution of the gentleman from Bourbon. Is the gentleman afraid that these foreigners will overrun the country? I cannot attempt to notice all the apprehensions, misgivings, and objections expressed and entertained by him, more particularly in relation to the Roman catholic immigrants from Europe. He seems to be seriously alarmed indeed. And why? Because he is afraid they will subvert the government, as they, he says, owe allegiance to the Pope of Rome. Now, this is a fact which I deny, and I will, in support of the position I assume, avail myself of this occasion to read some authorities on the subject. I will read an extract from a speech of the late Judge Gaston, delivered in the convention of North Carolina, called to amend the constitution of that state, and held in 1835:

"Oppressors in all ages and in all countries, set up pretexts for oppression, and among the excuses under which the exclusion of Irish catholics from a share of political power was sought to be justified, the calumnies that catholics own a foreign allegiance and admit a dispensing power from oaths, were most impudently insisted on. The late Mr. Pitt, as prime Minister of England, contemplating an act of justice to these abused men, solemnly proposed a set of interrogatories to these charges to several of the most celebrated catholic Theological Universities in Europe. Suffer me to call your attention to some of these, and to their answers. The following questions were proposed: *First*, has the Pope, or have the Cardinals, or any body of men, or has any individual of the church of Rome, *any civil authority*, power, jurisdiction or pre-eminence whatever, within the realm of England. *Second*, Can the Pope, or Cardinals, or any body of men, or any individual of the church of Rome, absolve or dispense his Majesty's subjects from their oath of allegiance, upon any pretence whatever? *Third*, Is there any principle in the tenets of the catholic faith, by which catholics are justified in not keeping faith with heretics, or other persons differing from them in religious opinions, in any transactions either of a public or private nature? To these

questions the Universities of Paris, Louvain, Alcala, Salamanca and Valladolid, after expressing their astonishment that it could be thought necessary at the close of the 18th century, and in a country so enlightened as England, to propose such enquiries, severally and unanimously answered: 1st. That the Pope, or Cardinals, or any body of men, or any individual of the church of Rome, has not and have not any civil authority, power, jurisdiction or pre-eminence whatever within the realm of England. 2dly. That the Pope, or Cardinals, or any body of men, or any individual of the church of Rome, cannot absolve or dispense his Majesty's subjects from their oath of allegiance upon any pretext whatsoever; and 3dly. That there is no principle in the tenets of the catholic faith, by which catholics are justified in not keeping faith with heretics, or other persons differing from them in religious opinions, in transactions either of a public or a private nature."

I think this is conclusive evidence against the gentleman's declaration that we owe civil allegiance to the Pope of Rome. Where, I would ask, did the gentleman get his authority? He obtained it, I suppose, from some protestant controversial work. I have nothing to say against the protestants, but I wish equal rights and privileges to be extended to all. And I did not feel authorized, as I represented, in part, a country which has a considerable number of catholics in it, to sit here and hear their tenets misrepresented, abused, and vilified as they were by the quotations which the gentleman has read in support of his argument. With regard to publications in the newspapers in relation to the controversies between the catholics and protestants, I have been used to them all my life. Let the two squabble and quarrel as they may, for then there is less danger of uniting church and state. And I would not care if they wrangled even more than they now do. I believe the gentleman said he would rather have the Mormons here, and he compared—

Mr. DAVIS (interrupting.) I did not compare the Mormons with the Catholics. I said if the Mormons were disposed to settle here, as many of them were foreigners, I should be in favor of excluding them.

Mr. SPALDING. Well, it is pretty near comparing us with them. I owe no allegiance to any man, or set of men, under heaven, save the commonwealth of Kentucky, and to the government of the United States, only in so far as this state has delegated, or given up some of her powers to it. I owe no allegiance to the Pope of Rome, or to the cardinals, bishops, or priests; and they have no right to send any persons here to cut our throats. The Pope has no more authority to alter or change the principles of the church of Rome than has the president to alter the constitution of the United States. If he dared to do it, he might be called to account by me or any body else belonging to the church. The gentleman quoted from Washington, and I do not recollect all his quotations, there were so many of them, probably he has been preparing for months, perhaps for years, and I don't know but all his life. I, however, shall make another extract from Judge Gaston's speech:

"Sir, although this alliance of religion and



the civil power did not take place for many centuries after christianity was first promulgated to the world, it became at length so general, that when the American colonies were settled, there was no country in Europe which had not its established church. In the train of this establishment, followed all the usual consequences of intolerance and persecution. He who did not believe according to law, was punished as a disloyal subject. Degraded, fined, imprisoned, plundered and proscribed at home, because of the exercise of man's noblest prerogative, the right to worship God according to the dictates of his conscience, different sects of European christians fled from this detested tyranny to the Western side of the Atlantic. And here it was that religion was emancipated from her thralldom to princes and rulers, and the principle of *freedom of conscience* adopted as a political axiom, and placed at the very foundation of civil institutions. Sir, the honor, the immortal honor of being the first to assert this noble truth, belongs to the illustrious founders of the catholic colony of Maryland. Every friend of freedom throughout the world owes a large debt of gratitude to these benefactors of the human race. Let me avail myself of the occasion to lay before the committee some notices of them and of their doings, well worthy to be remembered, and which I have taken chiefly from a highly respectable work, "Baneroff's history of the United States." The research, love of truth and ability, by which this work is characterized, render it an authority on all matters of our early history, and on this subject especially, there is nothing to fear from any prejudice or partiality of the author.

"At the head of the founders of Maryland was George Calvert, Lord Baltimore. He was a gentleman of high character, talents and accomplishments, who, from the purest motives, had embraced the principles of the roman catholic faith. He made an open profession of his conversion, and was consequently obliged to surrender the high office which he held as one of the two Secretaries of state to James the first. While secretary, he had obtained a patent for the southern promontory of Newfoundland, and had expended much money in a fruitless attempt to settle its rugged and sterile shores. He afterwards obtained a patent for a tract of country north of the Potomac, then uninhabited, except by scattered hordes of Indians. The patent was drawn up according to his suggestions, although it was finally issued after his death in favor of his son, Cecil Calvert. In this fundamental charter of the colony of Maryland were to be found the most admirable provisions for civil and religious freedom. "Unlike any patent which had hitherto passed the great seal of England, it secured to the emigrant an independent share in the legislation of the province, of which the statutes were to be established with the advice and approbation of the majority of the freemen or their deputies." Sir George Calvert, "far from guarding his territory against any but those of his persuasion, as he had taken from himself and his successors all arbitrary power, by establishing the legislative franchises of the people, so he took from them the means of being intolerant in religion, by securing to

all present and future liege people of the English King, without distinction of sect or party, free leave to transport themselves and their families to Maryland. Christianity was by the charter made the law of the land, but no preference was given to any sect, and equality in religious rights, not less than in civil freedom, was assured." [1 Baneroff's History, 260.] "Calvert deserves to be ranked among the most wise and benevolent law-givers of all ages. He was the first in the history of the christian world to seek for religious security and peace by the practice of justice; to plan the establishment of popular institutions with the enjoyment of liberty of conscience; to advance the career of civilization by recognizing the rightful equality of all christian sects. The asylum of *papist* was the spot, where in a remote corner of the world, on the banks of rivers which had been as yet unexplored, the mild forbearance of a proprietary adopted religious freedom as the basis of the state." [Ditto, 262.] "Memorable was the character of the Maryland institutions. *Every other country* had persecuting laws." "I will not," (such was the oath of the governor of Maryland,) "I will not by myself, or any other, directly or indirectly trouble, molest, or discountenance any person professing to believe in Jesus Christ, for or in respect of religion." "Under the mild institutions and munificence of Baltimore, the dreary wilderness soon bloomed with the swarming life and activity of prosperous settlements; the roman catholics oppressed by the laws of England, were sure to find a peaceful asylum in the quiet harbors of the Chesapeake; and there, too, *protestants* were sheltered against *protestant* intolerance." [Do. 266.] Yes, sir, while the puritans persecuted the Episcopalians in New England, and the Episcopalians persecuted the Puritans in Virginia, the oppressed of *every Province* found freedom and security in Maryland. "The disfranchised friends of prelacy from Massachusetts, and the puritans from Virginia, were welcome to an equality of political rights in the Roman catholic province of Maryland." [Ditto, 277.] The early history of Maryland is one on which the eye delights to dwell; it is the history of benevolence, gratitude and toleration. The biographer of Baltimore could with truth assert, "that his government, in conformity with his strict and repeated injunctions had never given disturbance to any person in Maryland, for matters of religion; that the colonists enjoyed freedom of conscience not less than freedom of person and estate, as amply as ever did any people in any place of the world." [Ditto, 277.] There was one attempt, a most ungrateful attempt, to mar the scene of harmony and moral beauty, and, for a short time, it unfortunately succeeded. After the dissolution in England of the long parliament, and the assumption of all power by the lord protector Cromwell, some of his followers in this country seized the government of Maryland, and administered the affairs of the province by a board of commissioners. The result is thus described by the Historian:—"Intolerance followed upon this arrangement; for parties in Maryland had become identified with religious sects. The puritans, ever the friends to popular liberty, hostile to a monarchy, and equally so to a hereditary proprietary, con-

tended earnestly for civil liberty; but had neither the gratitude to respect the rights of the government by which they had been received and fostered, nor magnanimity to continue the toleration to which alone they were indebted for their continuance in the colony. A new assembly convened at Patuxent, acknowledged the authority of Cromwell, but it also exasperated the whole Romish party by their wanton disfranchisement. An act concerning religion confirmed the freedom of conscience, provided the liberty were not extended to *popery, prelacy, or licentiousness of opinion.*" (Pretty extensive exceptions!) "Yet Cromwell, remote from the scene of strife, was not betrayed by his religious prejudices into an approbation of the ungrateful decree. He commanded the commissioners not to busy themselves about religion, but to settle the civil government." Ditto, 281.

I think Oliver Cromwell was right in saying they should attend to the civil government and let religion alone. Here we see our forefathers fled from the oppressions and intolerance of Europe in regard to religion, and came to the new world—our puritanical forefathers, who were protestants. And how long had they been here themselves, before they raised the standard of persecution against the Episcopalians and the Quakers, and banished Roger Williams, one of the best men the world ever produced, from the face of civil society into the savage world, where he planted the colony of Rhode Island, and established in it free principles?

Now, I do not bring up this thing of protestant intolerance for the purpose of giving any offence to any one here, however humble he may be. But, I merely mention it to prove that neither party can be trusted. The trouble in England began with the church and state united. But the gentleman need not tell me that the catholics were the first to practice intolerance; for I have shown here that that is not the fact. As to the tenets of the catholics, it is not my purpose to expound them. I was reared a catholic, and I am as firm as the rock of ages in that faith; but I do not practice it as I ought to do, and more the shame for me. The gentleman quoted a little from Washington, and I will also do so; his language being contained in the following extracts from Judge Gaston's speech:

"But it has been objected, that the catholic religion is unfavorable to freedom—nay, even incompatible with republican institutions. Ingenious speculation on such matters are worth little, and prove still less. Let me ask who obtained the great charter of English freedom, but the catholic prelates, and Barons, at Runnymede? The oldest—the purest democracy on earth, is the little catholic republic of St. Marino, not a day's journey from Rome. It has existed now for fourteen hundred years, and is so jealous of arbitrary power, that the executive authority is divided between two governors, who are elected every three months. Was William Tell, the founder of Swiss liberty, a royalist? Are the catholics of the swiss cantons in love with tyranny? Are the Irish catholics friends to passive obedience and non-resistance? Was Lafayette, Pulaski, or Kosciuszko, a foe to civil freedom? Was Charles Carroll, of Carrollton, unwilling to jeopard fortune in the cause of lib-

erty? Let me give you, however, the testimony of George Washington. On his accession to the Presidency, he was addressed by the American catholics, who, adverting to the restrictions on their worship, then existing in some of the states, express themselves thus: "The prospect of national prosperity is peculiarly pleasing to us on another account; because, while our country preserves her freedom and independence, we shall have a well-founded title to claim from her justice the equal rights of citizenship, as the price of our blood spilt under your eye, and of our common exertions for her defence, under your auspicious conduct." This great man, who was utterly incapable of flattery and deceit, utters in answer the following sentiments, which I give in his own words: "As mankind become more liberal, they will be more apt to allow that all those who conduct themselves as worthy members of the community, are equally entitled to the protection of civil government. I hope ever to see America among the *foremost* nations in examples of justice and liberality: and I presume that your fellow-citizens will not forget the patriotic part which you took in the accomplishment of their revolution and the establishment of their government, or the important assistance which they received from a nation in which the Roman catholic faith is professed." By the bye, sir, I would pause for a moment to call the attention of this committee to some of the names subscribed to this address. Among them are those of John Carroll, the first Roman catholic bishop in the United States, Charles Carroll, of Carrollton, and Thomas Fitzsimmons. For the character of these distinguished men, if they needed vouchers, I would confidently call on the venerable president of this convention. Bishop Carroll was one of the best of men and most humble and devout of christians. I shall never forget a tribute to his memory paid by the good and venerable protestant bishop White, when contrasting the piety with which the christian Carroll met death, with the cold trifling that characterized the last moments of the sceptical David Hume. I knew not whether the tribute was more honorable to the piety of the dead, or to the charity of the living prelate. Charles Carroll, of Carrollton, the last survivor of the signers of American Independence—at whose death both houses of the legislature of North Carolina unanimously testified their grief, as at a national bereavement! Thomas Fitzsimmons, one of the illustrious convention that framed the constitution of United States, and for several years the representative in congress of the city of Philadelphia. Were these, and such as these, foes to freedom and unfit for republicans? Would it be dangerous to permit such men to be sheriffs or constables in the land? Read the funeral eulogium of Charles Carroll, delivered at Rome by bishop England—one of the greatest ornaments of the American catholic church; a foreigner indeed by birth, but an American by adoption, and who, on becoming an American, solemnly abjured all allegiance to every foreign king, prince, and potentate whatever—that eulogium which was so much carped at by English royalists and English Tories—and I think you will find it democratic enough to suit the taste and find an echo in the heart of the sternest repub-

lican amongst us. Catholics are of all countries—of all governments—of all political creeds. In all, they are taught that the kingdom of Christ is not of this world—and that it is their duty to render unto Cæsar the things which are Cæsar's, and unto God the things which are God's."

I shall read no more. The misfortune of the church and state being united in Europe has furnished the gentleman with some truths; but he must recollect a great many of them originated out of the massacre of St. Bartholomew. Judging from the manner in which he recited them here, one would suppose that the Pope had commanded those horrible and inhuman atrocities to be committed, or that if he did not do that, he was cognizant and covertly encouraged those deeds to be done. Now, I deny the fact; he has been misinformed. He has been reading from the wrong book. I have not the authorities by me, but I know those assertions are denied by the catholics. Sir, the catholic bishops have never authorized crime. And, in this country, I think if the gentleman was as well acquainted with the catholics as many other protestant gentlemen on this floor are, he would say they are as good citizens as any in this state or in the United States. They are patriotic and faithful to this country, and discharge all their duties with alacrity and honesty, and are as ready to fight our battles as any other class of citizens in the United States. I have many catholic relatives who participated in the war of 1812, and also in that with Mexico. I ask, does it follow that because there happen to be a few rogues and paupers among the catholics who come here from Europe, that the Pope has taught them to be rogues and wicked men? Not at all; it is the misfortune of the times. I have shown that during the revolutionary struggle, the catholics bore as noble a part as any other set of men in this country. I have been told that almost the whole of the regular army of the United States that were in Mexico during the war, were foreigners. I presume, according to the statement of the elder gentleman from Louisville, (Mr. Rudd,) one-third of the immigrants that come to the United States are protestants, and two-thirds catholics.

I did not name the persecutions of the protestants against the catholics, to show that they were not fit to be received here from Europe. Not at all. It was the misfortune of the times. But now, that we live in a liberal and enlightened age, when steamboats and railroads and telegraphs have taken the places of other mediums of communication—when the march of mind has kept pace in an equal ratio—and when, too, the arts of printing and paper making have increased a thousand per cent., as well in the old world as the new—we may, I think, regard the days of religious intolerance and bigotry as passed and gone forever.

In Europe, of late years, liberty of conscience has made rapid strides in most of the countries of that hemisphere. Can there be any danger apprehended from the catholics that now come from Europe—any alarm felt that they will subvert this government? I imagine not. There cannot be. There is no danger while the gentleman from Bourbon stands ready on the watch-tower, to sound the tocsin of alarm. There is

no danger where he is; and when he is gone there will be thousands and tens of thousands of Presbyterian preachers ready to sound the tocsin. But, I repeat, there is no danger on the face of the earth. The checks and balances in our form of government are too many, to admit of a doubt as to its stability. I am astonished at the extraordinary speech of the gentleman from Bourbon. I came here to the legislature once, and I was very much prepossessed in favor of the gentleman then, and I was almost induced to vote for him as a senator of the United States. If there had not been a democrat to vote for, I would have voted for him; but it happened there was a democrat, and I was glad of it. And I would vote for a democrat again from first to last. Now, when I came here, I still entertained the same opinion; for, I believe he is a high-minded and honorable gentleman, and I think no one will doubt his talents. But he is like an old man I knew once, that went to his lawyer to ask his advice in relation to the rights his daughter would have in her deceased husband's estate. The lawyer read from a book. "Well," said the old gentleman, "that's not the book out of which I read." Now, I can say the gentleman from Bourbon has read out of the wrong book all the time.

I thank the convention for the kind attention with which they have listened to the few desultory remarks I have made. I will trouble them no longer.

Mr. KELLY. Mr. President, we listened on Saturday last to one of the most remarkable speeches, which it has ever been the misfortune of a deliberative body to hear. Had the gentleman from Bourbon, (Mr. Davis,) confined himself to the political character of native Americanism, I should have been content to have suffered it to pass unreplicated, though I am the son of an Irishman; but he has thought proper to interweave with it an unjustifiable assault upon the religion of a respectable, honest, and loyal portion of this great community—misled doubtless by authorities to which he trusted, to quotations which he had not sifted thoroughly, he has thrown himself upon a sea of declamation, calculated to arouse the worst passions of the human heart, to engender a fanatical spirit, which, if carried out, will lead ultimately to the overthrow of our liberties. As was eloquently said by my young friend from Louisville, in his reply, (for which reply, with the warm feelings of an Irish and catholic heart I thank him,) the tendency of the whole of the gentleman's speech is a stab at the right of suffrage, and though the foreign catholic may first fall a victim to this modern political religion, the poor man of all denominations, must follow him to the grave of a nation's liberties.

When, sir, was this new system first ushered into light. Born of fanaticism, watered with blood, and lighted on its path of destruction by the flames which consumed the Charlestown convent, it would long since have made the east mad with its infernal orgies, but even crime stands aghast at its own enormity, and public sentiment the *ultimatio reipublicæ* withheld its progress for awhile. It lay dormant, until some eight or nine years since, a certain faction in the purlieus of Philadelphia, lead by Louis C. Le-

vin, evoked its spirit to preside over burning churches, and libraries, and midnight murder. There sir, while the sanctuary of the living God blazed, and devils in the form of men shouted on to the work of death and arson, the poor immigrant, the citizen of a free land by choice, and not by the accident of birth, was marked as the expiatory sacrifice, to be offered upon the altar of this modern political high priest, who, if I mistake not, is a Jew by descent. Yes, sir, of the tribe of Caiaphas—he who clamored that a God might die, lest the temporal power of the Herods of Juda should pass to the meek Nazarene—he, Louis C. Levin shouted on the mob. Great God! that such an enormity should have been enacted in a land set apart and consecrated as the home of the oppressed.

It may be that my notions are peculiar, but in them I have all faith. I believe that this land was made to receive the teeming millions of the old world, and that when population treads closely hereafter on the heels of subsistence, the same wise providence, which created this continent, will, from the hollow of his Almighty hand, in the broad Pacific, upheave another, to receive the redundant population of this hemisphere. God's providence must afford to the suffering millions of his creatures a refuge from want, or he has made the laws of increase in population to contravene his other work.

But to return to native Americanism proper. Where do you suppose it had its first origin? I will tell the gentleman from Bourbon, though, if he be descended of an Irish family, his own family traditions may furnish him the same. Native Americanism is but Orangeism transferred from the north and east of Ireland to the free land of America. 'Tis the same foul spirit, which, on the 12th of May in each year since the battle of the Boyne, has congregated its thousands in Ireland, with their Orange sashes and muskets, to provoke the catholic to conflict, backed as those Orangemen have been by an Orange magistracy—an Orange nobility—and to a great extent, an Orange church of England hierarchy. It was this spirit which, in the year 1828, when O'Connell was canvassing the county of Clare, for a seat in the Imperial Parliament, and the entire mass of the Orange party was stirring heaven and earth to defeat his return, because he was a catholic, and Sir Vesey Fitzgerald, the worst landlord that ever Ireland produced—a hell-hound of party—a fanatic, and extortioner—was his opponent—that a party of Orange police, headed by an English Major, passed a cabin inhabited by a poor widow and seven children—only one of whom was old enough to assist his mother in maintaining her family—and without provocation, fired upon these children, innocently playing on the green, and killed three of them, among whom was the poor widow's stay. Sir, the spirits that fired the party above alluded to, animates the native American party here. Of course I do not include the gentleman from Bourbon. He has been seized with a certain political madness, whose effects he does not see, nor fully comprehend; but yet, even he would scorn such cruelty. I could multiply instances of this kind—I could take you back to the year 1690, and from

that time up to the present, I could present you with a series of horrors, such as no people, save the sons of the lone sea-girt isle, ever had to endure.

What occurred in last May in the county Down, in the kingdom of Ireland. In violation of the queen's proclamation, issued in virtue of the act of 1st Victoria, to suppress secret political societies, directed both against the Orangemen and Ribbonmen, the Orangemen of Down assembled at the Earl of Roden's, and after an inflammable address delivered by the Earl, and free libations to the "glorious, pious, and immortal memory of William the Third," they marched upon Dollys Brae, guarded by the bayonets of a whole regiment of queen's troops, and the magistrates of the country, and slaughtered without cause forty poor catholics. They fell unresisting before the bayonets of the infuriated Orangemen, and a fanatic soldiery, and, as yet, no one of the officers, civil or military, who assisted at that murder, has been brought to justice.

I do not attribute this to protestantism; no, sir. Far be it from me to do such a thing. I give it as a cause why the Irishman loves liberty for itself, and not involuntarily as the gentleman and myself do, both being native born. We are citizens of a republic, because our mothers lived here; they, because the holy fire of freedom burned freely in their bosoms, and because in their native homes they were slaves. The gentleman says they do not understand the genius of our government—nor does he, I fear. They comprehend the true genius of liberty—they love liberty for herself, as a true man loves the wife of his heart. He loves it because it ministers to his ambition. Such is human nature.

Will the gentleman from Bourbon examine critically the history of England, and he will find there, on every page from the time of Strongbow, the general of Henry II, to the year 1823, (when catholic emancipation became a law,) the wrongs and oppressions of poor Ireland written in her blood. Sir, under all circumstances she has suffered—and suffering, she has rebelled, she has fought, and she has fallen, but her spirit, the national mind, remains uncrushed.

Famine, it is true, in the last few years, has made her desolate, and death has enthroned himself on her green hills. A population which, three years ago, was estimated at 8,000,000, is now stated by the London Times at a little upwards of 5,000,000.

"The Niobe of nations, there she stands  
Childless and crownless in her voiceless woe."

And when she appeals for a home to those who inhabit a great country for which the Irishman fought, and many died, shall it be said to him, go back to your earthly charnel house! America, when the storm of war hovered over her, received you with embraces, but now that she is strong and vigorous, she has forgotten her charity. Such, sir, is not the spirit of this people.

The Sabines, introduced to Rome after the fight between the Horatii and the Curiatii, felt more profoundly the spirit of her government than the Romans themselves, because they were new to her liberties—the Romans felt it less because it is the nature of man to be satiated with what he enjoys. So, sir, with the foreigner; he

looks from his continental, or his island home, upon the beautiful and gorgeous government which our fathers of 1776 have provided, as the wanderer does on an oasis in the desert—an island of palms, betokening a refreshing spring. But, sir, shall those springs be dried up—shall those waters be turned to the bitter salt that pervades the sea—shall those palms be hewn down, and no landmark of liberty be left upon the desert waste of life?

Such is the tendency of the gentleman's doctrine. We would rationally suppose he was one of those pilgrim fathers, who, escaping persecution at home, persecuted the Quaker upon the virgin soil of America.

I would ask the gentleman, who was the first to proclaim, on this side of the Atlantic, civil and religious liberty. I will tell him—Maryland! a colony of catholics, founded by a catholic Irish lord, and composed, at the time the covenant of St. Mary's was made, almost exclusively of Irishmen; and yet the gentleman fears catholicism.

Strange perversion! Strange derangement of a great mind; for I yield my tribute to that of the many, that

"He was born for much more,  
And in happier hours."

I would ask this convention to look back upon the history of this country. Go back to 1774. Whose voice was first raised to cheer the colonies in their work of political redemption? It was that of Irishmen, assembled in the city of Dublin, under the patriotic O'Connor and the eloquent Flood. They cheered us to the conflict. Nor did they stop at this; they shipped to America stalwart men who, from Lexington to Monmouth, proved in the language of blood, that they loved liberty and hated oppression.

Sir, the gentleman has quoted from Washington to show that he did not favor foreign immigration. Who protected this gallant and good man—this cynosure in the political world, at the battle of Brandywine? Marylanders! who were foreign catholics in a great measure. Who is said to have written the song called the Irishman? Washington; and a prouder tribute was never paid to a gallant people. Who secured the southern army after Gates had fled at Camden? DeKalb, the gallant, the noble, the catholic Prussian, from Coblentz. Who stood by his side after the southern militia had fled? The Pennsylvanians; who, according to the gentleman from Bourbon, could not speak the English language, and the Irishmen of the Maryland line. May God grant me, that in all difficulties of this life, I may find Dutchmen and Irishmen like them.

The gentleman has forgotten the republics of the middle ages in his enthusiasm. He has forgotten that they were catholic. Milan, Venice, Padua, Genoa, Pisa, Piacenza or Placentia, Modena, Lucca, Florence, and many others. Who headed these people against oppression? I answer, their bishops and their priests. Let him read Muratori's Annals, and he will teach him, that catholics never opposed the diffusion of human liberty.

Has the delegate from Bourbon ever read the history of the little republic of San Marino, with only twelve miles square, and a population

of 23,000? Who protected it? The Pope. Did Napoleon attack it? No, sir, he did not. It had stood for fourteen hundred years, a monument of catholic tolerance, and an attack upon it, would have outraged the moral sentiment of the world. Has he heard of the republic of Andorra, in the Spanish Pyrenees? Doubtless he has. That republic is catholic—a pure democracy—presided over by officers of its own choice, and protected by the Bishop of Urgil. Yet, forsooth, catholicism is inimical to human liberty. There is a prudery in the gentleman's political fears I cannot comprehend.

From the birth of Christ—the delivery of the gentile—to the present day, that church has taught liberty. In all ages, from the time the manger cradled God—attracted the wisemen of the east—to the time whose sands are now wasting fast before us, her tenets have been the same. She has taught one God, one faith, one baptism, and universal love.

The gentleman has charged catholicism with being cruel. I admit, sir, there have been times when princes, who professed the catholic faith, have been oppressive to their protestant subjects. This I deplore. No man feels more sensibly than I do, the cruelties inflicted by the French under Louis XIV, after the revocation of the edict of Nantz. They were unjust and uncalled for; but they sprung not from the religion, but the heart of the minister.

The gentleman has spoken of Frederic II, of Germany, (one of the latter Kaisers,) being compelled to yield allegiance to the Pope. I would call his attention to Sismondi's Italian Republics, to prove, most satisfactorily, that the Pope warred with Frederic to secure Italian independence—to save Lombardy from what she now suffers from the house of Austria, and against which, in the last two years, she has freely shed her blood, headed and led on by the catholic Archbishop of Milan. He spoke also of the Bavarian, Henry IV, who secured the empire by fraud, and sought to do what his greater predecessor failed in doing, the subjugation of the Lombard states: and failed, because a Pope, who loved liberty, headed the armies of independence, and at the battle of Alessandria, beat him and took him, and restored him to his empire on condition he would not further molest the Lombards. By this, the Pope, in his temporal domain, profitted nothing; the people gained much, and the world learned a sense of right; and yet the gentleman urges this act of the Pope as a violation of his pastoral duty.

Sir, since christianity began, from Peter, first Pope, to the present, they have been friends of rational liberty. They have not been agrarian—they have not been eutopian; but they have looked to the substantial blessings which each scheme of liberty promised. Catholics do not deny but that there have been a few bad Popes; men who, though vested with the tiara, have looked alone to the influence of temporal power. Of this number is Alexander VI, one of the Borgias. But I defy the gentleman, or any one else, to point to one change in doctrine during their reigns—one variation from the ancient faith, which was promulgated from the time christianity had birth in the east. The gentleman says it is a gigantic structure. True, sir;

baptised in the tears and blood of a God, in Gethsemane, and on Calvary, it opens its maternal arms to receive into its sanctuary all people, all kindred, and all races. It says to the protestant, if you act up to the lights before you, and discharge all the duties, faithfully, of your civil and religious station, you will reap the reward accordingly. It says the same to the heathen. It spreads wide the portals of heaven to all who diligently seek the truth, and secure it, or fail—for its fundamental principle is, that God is just.

The gentleman says we owe civil and religious obedience to the Pope. Sir, I doubt not he believes so; but I know the reverse. I am a catholic in faith. I would die before I would yield it—like most Irishmen I am better prepared to die for it, than to live for it—but I know what the faith is, for I have been reared a catholic by an educated Irishman—my father—a man who understood his faith, who taught it to his children without constraint, and who left them free to choose among the six hundred and sixty-six faiths that now exist in the world. He did not say to me, be a catholic; but told me to read, not alone histories, of which he had many, catholic and protestant, but the dogmas of the churches, to acquaint myself thoroughly with their arena, and not to stick in the bark. I think I have done so. He has gone to receive the reward of a life spent in the service of his adopted country, and the maintenance of the faith, while I, of his sons, stand *alone*; but the principles of right and wrong, I learned under him, shall never leave me, and his memory shall be as a pole star to me through the wanderings and cares of this life.

It will be recollected by this body that in 1828, Daniel O'Connell was elected to the British parliament from the county of Clare. Sir Vesey Fitzgerald contested his election, and when O'Connell was required to swear that catholicity, taught rebellion, and disorder, and sedition, he refused the vile oath. What was the result? Though one of the greatest lawyers of the world, he was ejected from parliament, and a new writ of election was issued. He offered again; was again elected, and the house of commons, fearing the people, caused a committee to be raised, and directed them to enquire of the catholic college of Maynooth, in Ireland; the college of Louvain, in Belgium; of Bologna, in Italy, and the college of Cologne, in Prussia, and I think the Propaganda of Rome, if the catholics owed civil or temporal allegiance to the Pope; and they all answered no. Dr. Doyle, one of the most distinguished catholic theologians who ever lived, asserted the same; and further, that such a doctrine had never existed in the church. And yet, the gentleman, on the authority of Elliott, an American, asserts the reverse. As did the senior gentleman, of Louisville, I would advise him to read more, and to feel that the same God made us all. I claim nothing, as a catholic, from him, which I do not fully and freely accord to him as a protestant. In the language of the song of the pilgrim fathers—

"I leave untouched what here I found,  
Freedom to worship God."

What matters it to me if the gentleman be a Socialist, a Fourierite, or a Moslem, if, in the ex-

ercise of his civil duties, he be a good citizen? Nothing. What if, as the Pariah on bended knee at sunrise and sunset, he worships the eternal fire which he dreams to be a God? Nothing. What sir, if at the call of the Muezzium, on the rising of the sun and the going down thereof, he shout aloud, with his face towards Mecca, "there is no God but God, and Mahomet is his prophet?" Nothing. Sir, we here are all equals. The ægis of civil and religious liberty is over us all. While ever onestar of the proud galaxy, which has lighted American valor to victory, remains undimmed—while ever a stripe remains untarnished on our national colors, the great truth of civil and religious liberty will remain enthroned in the hearts of the people, though demagogues may endeavor to destroy its efficacy.

Who was General Jackson—to name whom is enough to excite the liveliest emotions of the American heart? The son of an Irishman. Who was Richard Montgomery, who watered one of the earliest fields of the revolutionary struggle with his blood, and offered up his life as a sacrifice to his adopted countrymen? He, too, was an Irishman. Who was the Baron Steuben? An exiled Prussian, who sought a home in the wilderness, and fought for its liberties. Who was De Kalb? A Prussian also, who upon the plains of Camden gave out his life for us all, as freely as if it were for the liberties of his own loved home. And who, sir, was La Fayette? A French marquis, with wealth, with hereditary renown, with every earthly enjoyment. He gave them all up to make our country free. Go to every battle field, from Lexington to Monmouth, during the war of the revolution, and if the mute earth could speak, she would tell you how enriched her broad bosom had been with the life-blood of the poor foreigner, shed for the sacred cause of human liberty. Go, sir, to the fields of battle of the last war—beginning at Tippecanoe, where the most eloquent man the west ever saw, (I mean Jo. Daviess,) fell at the head of his gallant blues, and pursue the history of that struggle through the bloody Raisin, where the great and gallant Allen perished—Bridge-water, Queenstown, Chippewa, to Orleans—and you will find that wherever a native born American fell, an adopted citizen died beside him. There is no period in the history of this great nation, which is not pregnant with examples of patriotism displayed by the foreigner.

Who was Charles Carroll, of Carrollton—he who signed the declaration of independence, and pledged, with John Adams, Thomas Jefferson, and the other immortal men who affixed their names to that instrument, their "lives, their fortunes, and their sacred honor," for the redemption of an oppressed land? He was a catholic. And I would ask, also, who was John Carroll, who under the recommendation of Gen. Washington, was appointed by the continental congress to a mission among the Canadians, to persuade them to join with our country in the struggle for freedom; and who fulfilled that mission in such a manner as to command the unanimous thanks of congress? He too was a catholic, and the first Archbishop of Baltimore.

Sir, I will go further, I will ask the gentleman what was the faith of Christopher Columbus—



the Genoese—who, under the auspices of Ferdinand and Isabella, the sovereigns of Spain, cast himself upon a trackless ocean, and discovered a western land, as a refuge to the oppressed, both protestant and catholic? He was a catholic. And who, sir, was Sebastian Cabot? He, it is true, sailed under the flag of then catholic England, but he was a catholic. And from whom is the name of the western hemisphere—North and South America—derived? From Americus Vespucius, an Italian, and a catholic. Do these things argue nothing? If catholic science, catholic zeal, catholic mind, have done so much for mankind, are catholics to be proscribed—are they to be assailed as felons to the spirit of civil and religious liberty? Sir, it is unjust—a violation of the truth of history—and, to “vindicate that truth,” I have made this effort.

The gentleman has said that there was an affiliation among the catholics; that the priests control the multitude, and that a nod was only necessary from the priest to make the laymen obey his will. Sir, I will use a mild term, the gentleman is mistaken. I am a catholic, and run this year against a distinguished and chivalrous gentleman, who was a protestant, and the catholics were my most decided opponents. Some of them, it is true, voted for me; but the mass, who were whigs, voted for my adversary. The mass of the catholics of Kentucky are whigs, which proves that the gentleman calculated without his host, when he said “he would like them better if they differed more in national politics.”

It has been my interest, as well as my desire, to look into the discordancies of faith. I have read on both sides. I have read with charity, and while I have always respected the opinions of my protestant friends, I have never sought to enforce mine upon them. To the full, I have ever recognized the true spirit of the constitution of the United States, which guarantees freedom of religious worship; and in my county I number no truer friends than the Presbyterian, the Methodist, the Baptist, the Reformer, and the various protestant religionists. But, sir, it seems to me, that a theological discussion between the gentleman from Bourbon and myself is like a discussion on points of faith between Belial and Azrael. Neither of us, I presume, is a member of a church. I am not. He may be however. I have defended the faith of my ancestors. I have no ambition in this. I feel that the catholic has as many liberties under the constitution and laws of this Union, and of Kentucky, as the protestant, and no more. What will be the effect of Native American principles? John Mitchell, and Smith O'Brien, protestants; Thos. F. Meagher, Patrick O'Donoho, and Bel-lew McManus, catholics, who fought for the liberty of Ireland, will be ostracised by it. Does the gentleman wish such a consummation as this? I believe he does; and I grieve to think so. I would welcome with as much warmth to these shores Dembinski, the protestant, as Kosuth, Klappa, or Guion, the catholic. As a catholic, I know no shade of opinion, so that all, politically, love liberty, and hate oppression.

The gentleman has spoken of the St. Leopold society, and he has talked largely of what the emperor Francis II said in regard to the conver-

sion of America to catholicism. That, to me, sir, is an old tale. I saw it when I was a boy, in the paper published at Albany, New York, by seventy-two parsons, among whom was one of my own cousins—Stephen N. Rowan. Upon it they rung the charges for years, until the truth leaked out, and it was discovered that this society was formed to relieve the poor catholic of America from the charge of maintaining his bishop and his curate. This is an awful bugbear. Yet, we find every day, men who are begging for the heathen—and we give to them freely—and I, as a catholic, say it—I have given more to support protestant churches, than I have given to catholic ones. My means are small, but I have never yet turned a deaf ear to the voice which sought alms; for my church has ever taught me to beware, lest in refusing charity, I turned an angel from my door.

This, sir, is the spirit in which I have replied to the gentleman from Bourbon. He knows not my faith—he feels not my spirit—and, though he might malign me, were I a political catholic, I would yet ask him to be redeemed. Does he know our faith? He does not. He says we keep no faith with heretics. I will, in refutation of that, keep faith with him. He seemed to assume for himself the place of heretic. I did not place him there. I measure not God's mercy. He is omnipotent, omnipresent, and omniscient; and when we meet, as surely we shall, at the bar of the Great Judge, to that time will I defer the final settlement of our difficulties.

Sir, the gentleman has spoken of the legion of St. Patrick, in Mexico. It was composed of something near two hundred men—thirty-six of whom were Irishmen, ten Germans, two Frenchmen, and one Englishman—(I refer, sir, to the letters of Lieut. Denman, of the U. S. army, and Lieut. Cantwell, who fell at the Guata, a gallant son of the palmetto state.) Who were the remainder? Native born Americans, I blush to own it.

The gentleman from Bourbon says that native catholics entertain different opinions from the foreigner. In this he is mistaken. We all hold the same ideas. It matters not whether the catholic vegetates in the cold north; lives a life of ease in the temperate zones, or suffers under the tropics, his religion is the same. Its substance—its outward form—everything pertaining to it, is the same—one and indivisible. It looks to God for its author, and to man for the fruition of its blessings.

The gentleman has spoken much of the increase of the foreign population. He has counted every soul who arrived upon these shores, and allowed nothing for the ravages of death, nor for re-migration. If he will examine, carefully, the returns of the alms-houses, and other public charities, he will find that death destroys at least ten per cent. of the immigrants, while re-migration takes off at least ten per cent. more. I know it is said that the vast majority of the immigrants are paupers; but I have looked into this thing from 1823 up to the present, and I affirm that the returns to the British parliament, show that each Irishman brings with him an average of £10, or \$50. Two years ago this matter was caused to be investigated by Harvie, a merchant of New York, a man of wealth and

reputation, and a protestant; and what I have stated above is the result of ten years' experience. What has tended, sir, more than anything else, to keep up a wholesome condition in the monetary affairs of this government—I mean the specie? I answer immigration. It has brought the gold and silver of the old world to the new.

The gentleman has also alluded to Orestes A. Brownson, who, after being a member of almost all other churches, became a catholic. He has talked largely of what Brownson has said. I answer, as a catholic, I believe as much of Brownson as I please. Bishop Hughes recommended him, as a catholic, and a man of very great genius; and these he certainly is; and no more. Brownson is a layman. No catholic is bound to yield obedience to him.

He also alluded to the Freeman's Journal, published in New York, and charged Bishop Hughes with being its editor. I say he is not. Eugene Casserly and McMaster, the former an Irishman, and the latter a native born American, are the true editors, and Bishop Hughes has no control over the paper whatever; and is not any more responsible for its editorials than I am. These editors are both young men—wild and fiery—with the blood of the Celt, they feel its flow—and if at times they yield to it, and speak wildly, is the church to be made liable for it.

Sir, in the broadest terms, I, a catholic, assert, that the church, whose faith I profess, but of which I am not a member, loves liberty, and hates oppression; that she teaches perfect faith with all people, and despises and condemns the doctrine of temporal allegiance to the Pope, save in the Papal territories.

The gentleman has read Hallam's Middle Ages. He certainly is good authority with him. If he has read and studied him, as that great author deserves, he will yet feel that his speech of Saturday was a libel on the catholic faith.

Does the gentleman know who invented printing? He does, doubtless. A German monk, in the reign of Richard III. Who invented gunpowder? A German monk, in the reign of Henry IV. And though it is asserted that catholicism forbids the bible to her people, the catholic press has published two thirds more of that holy book than the protestant. But, sir, I would not be understood as maligning the protestants. They have published many editions of the scriptures, and have displayed a very great zeal in spreading its tidings among men. Though opposed to them in faith, I see, and admire the spirit of love, which animates them in the struggle for dominion over the human heart.

The gentleman has thought proper, perhaps to be fashionable, to attack the Jesuits. Who are they? Priests set apart, by the ordinances of their order, for the conversion of the heathen; for encountering the pestilence in the hovels of the poor, and for the education of the masses. I know there exists a wide spread prejudice against them, even in catholic Europe. I know that the order was suppressed by the Pope Ganganelli Clement XIV; but I will tell you why the clamors of the kings and princes, who governed Europe, were such that this good old man had to give way to them. The real cause why they became obnoxious to kings and princes, arose from the fact that they taught the doctrine

of the Carmelite Friar of Spain, "that all power was inherent in the people, and that they had a right to bring their rulers to punishment, even to that of death." Out of this doctrine has grown their unpopularity. As a man, I say there is nothing in their canons or their statutes inimical to civil and religious liberty.

I have asserted that catholics owe no temporal allegiance to the Pope, and in proof of this, I refer to Charles Butler's book of the catholic church, 287 to 289; and, as the gentleman is a lawyer, to the oath of allegiance required by the English statutes of English catholics. This oath, sir, was not refused by Mr. O'Connell, when, though elected by a most triumphant majority, he was stopped at the bar of the house of commons. I would, also, refer to the published opinions of all the catholic universities of Europe.

The gentleman has referred to the writings of Cardinal Bellarmine. He was a great man, and whenever he treats of matters of faith, I accord him as much credence as to any learned and pious writer of the church; but his political opinions never were endorsed by catholics. If the gentleman will read the controversy of Hughes and Breckinridge—and Pope and McGuire, or Campbell and Purcell, he will be set right on this subject.

Why, the gentleman's ideas, as expressed in this body in regard to reform, might, with as much propriety, be quoted hereafter against his party, (which, as a party, has labored faithfully to correct and purify the government of our state,) as the political opinions of catholic writers against the church, with whose faith those opinions have no connection. Would I do so, I could recriminate; but that I will never do. Abiding in the purity, the integrity, the heaven born character of my faith, I will rely upon its merits, and will never assail adversary churches, because some of their members hold opinions which politically do not square with mine. He has also quoted from the writings of Antoninus, Archbishop of Florence, to prove that the catholic owes civil allegiance to the Pope. Sir, I again affirm, that as a catholic, I, nor any other man who understands the faith, is bound by the said archbishop's opinion. On this point, and in reply to all the stale and oft refuted calumnies which the gentleman has extracted from "Elliot's Romanism," and "Dowling's Romanism," I would refer him to Butler's book of the catholic church; the controversies above cited, and the works of the late distinguished bishop of Charleston, the Rt. Rev. John England.

He will also find in the above authorities, ample, full, and irresistible proofs, to an unprejudiced mind, that the faith of the catholic is pure, strictly consistent with civil and religious liberty—the duties of the citizen or subject, and that it teaches perfect faith with all men, as we hope to be saved. He has said the catholic church withholds the bible from the laity. If he will go back to those ages, mis-called dark, when the monk toiled for years in transcribing the word of God, that the people might have its light—if he will only examine D'Israeli's Curiosities of Literature—if he will read attentively D'Aubigne reviewed by the present coadjutor bishop of Louisville, he will find that before

the days of Luther, there was scarcely a country in which the bible had not been published in the vernacular. The light of the sacred scriptures never was denied by the church to her people. She, on the contrary, commanded it to be read—to be read with prayer.

Sir, who determined the canonicity of the bible? The catholic church. Who preserved it through long ages of most cruel oppression, inflicted by the pagan? The catholic church. Who beat back the fierce Saracen, when he swept like a flood from Western Asia, and threatened to visit Europe with worse desolation than that which followed in the footsteps of the Hun and the Vandal? Catholic Poland, headed by her glorious Sobieske, and Catholic Hungary. To preserve in tact the faith bequeathed from the cross, her capacious bosom has bled for ages.

"Time, war, flood and fire,  
Have dealt ruin upon the seven hilled city."

The dominions of the pagan has passed away. The splendour of the empire lives only in history. The tread of the legion is no longer heard. The eagle has stooped from his proud eyrie, and yet the church lives—bright, vigorous, young—eighteen hundred years old; but her step is as elastic as if her patent was still wet with the blood of Calvary.

Who christianized the world? The gentleman can't deny the fact—the catholic church. Who traversed the wild steeps of Tartary—crossed the trackless and burning deserts—encountered the Bedouin, the Turcoman, the Bashkier, and the Tartar, to spread the blessings of the gospel? The catholic priest—the calumniated, and reviled. Who first taught the Chinese the truth of Christ's mission? The slandered Jesuits. Why, sir, without the efforts of the priesthood—a knowledge of the earth—her institutions and her people, would be a sealed book even to my learned adversary. He is deeply read, and yet he strikes at the hand that brought food and raiment to his own mind.

He has charged us with having a different faith in different nations. Let him read the fathers of the church—let him read Tertullian, St. Chrysostom, St. Cyril, St. Cyprian, St. Augustine, and the eloquent and beautiful Lactantius. Yea, sir, the works of the founder of the society of Jesus, a Spaniard; Drs. Lingard and Wiseman, who are Englishmen; Bourdaloue, Fenelon, and Bassuet, Frenchmen; Mœhler, a German; England, Doyle, and McGuire, Irishmen; Hughes, Purcell, and Spalding, of America; and his own candor will compel him to admit that he has wronged us.

The gentleman has enlarged upon indulgences. Sir, he does not understand this doctrine. He has vilified the church by asserting that it was a license to commit sin. There is not now and never was such a doctrine. And I am sorry that a distinguished Kentucky lawyer has detracted from the prestige of the profession, by discovering a culpable ignorance of the doctrines of the oldest church of the world. Indulgences never were granted to authorise sin. They are a remission of temporal penalties, or penances. And if the gentleman were a catholic, and had assailed the faith of the great pro-

testant community with the malignancy, with which he, a protestant, has attacked the faith of the catholic, his confessor would give him such a practical illustration of the doctrine of penance that he! even he might feel that an indulgence would be valuable.

He asserted, also, that the priest professed, of his own authority, to forgive sin, past, present, and future. Such never was the doctrine of the church; and he will pardon me, when I say, that the charge is the result of a distempered imagination—the mere fiction of a brain, which has trifled with itself, until 'tis mad. The church has ever taught that confession was necessary, because Christ commanded it; that the priest interposed as the agent of God; and that to the remission of sin, *contrition, a resolve to reform, and restitution*, (a doctrine in which the gentleman don't believe,) were absolute prerequisites. And yet, sir, with a spirit which would far better have become Exeter Hall, with its fanatic rabble, led by the right reverend John Philpots, the gentleman from Bourbon has converted this hall (consecrated to the defence of civil and religious liberty,) into an arena for polemical controversy. If he will pardon me, I would suggest to him, in all candor, and charity, the reading of Milner's End of Religious Controversy, and Challoner's Meditations. In the one he would meet a doctrinal disputant, an overmatch for himself, while in the other he would encounter the balm of Gilead—charity—brotherly love—gentleness—every attribute of christianity.

He has praised some of the Popes—Leo the 10th, for his literature; Adrian the 2d, for his spirit; Gregory the Great, for that pervading genius, which was felt so deeply in his own times, and which, like the voiceless but deep current of a great river, sweeps on through all ages, resistless and calm. His, sir, was the sublimation of genius. In the language of Grattan, applied to the great Chatham, "he struck a blow in the world which resounded through the universe." There is something mysterious in the inspiration of those great men, who, in violation of a world's learning, committed themselves with the Palinurus to the tempest-tossed deep, and discovered new worlds. The catholic Portuguese, headed by the great Albuquerque, braved the storms of the Cape of Good Hope, and flung his little argosy on the billow-washed shore of southern Africa. To him—yes, sir—to him the world owes the spices of the Moluccas, and the "odors of Araby the blessed." And who was it first trusted the frail barque to the iron-bound shore of Patagonia, on whose relentless bosom the wailing tempests never cease to play—Magellan—another catholic, who died for science on the shores of Terra del Fuego.

Sir, who discovered the mariner's compass—the voiceless, but unerring spirit which in every clime points to the pole, and shows to the wanderer on the heaving ocean the pathway to his home—though upon her broad bosom earth's teeming millions never yet have left a trace? A catholic and an Italian.

I assert, sir, science owes more—genius owes more to catholicism, than to all the world beside. She walked with the Saviour in Judea and Gallilee; she agonized with him in Geth-

semine, and she sprang full fledged into vigor, when, with his expiring breath on Calvary, he commissioned her to save.

The gentleman has boasted of his Anglo Saxonism. I do not know how it is. Whether he was a descendant of the heavy Dutchman of the Zuyder Zee, or of the inflammable and mercurial Irishman, depends on the spelling of his name—whether his ancestors were a part of the hoards who followed Schomberg, or were of the old stock who bared the bosom to the foeman of Benburb, the Boyne, Aughrim, Limerick, and Londonderry, I will not attempt to determine. My name bespeaks my lineage. I am an ancient Irishman—Milisian—Celt. No Saxon blood disturbs the current which flows through my heart. 'Tis true, there are many of Saxon lineage in English history whom I reverence; the great catholic Alfred who secured to you and me, sir, trial by jury; and Mary, yeled the bloody, Celt and Saxon, who first of England's sovereigns, guarantied to the criminal the right to be heard by his counsel. Yet, this is nothing.

In conclusion, I will call the gentleman's attention to the speech delivered by the "forest born Demosthenes"—Henry Clay—in the market house in Lexington, during the Mexican war. What did he say of Pius the IX, the present Pope? "That he was now the most interesting person on the earth."

Sir, I do not recollect his words, but the spirit of his speech was, that catholicism was not, and never had been, inimical to liberty. I would also remind him of the rich and fervid eloquence of our present governor, when the proposition to succor Ireland was before the senate of the United States. When reading it, I felt as though the spirit of Grattan, of Flood, and of Curran, had taken up their abode in his great mind, for he poured upon the subject of Ireland's wrongs an eloquence such as has rarely, if ever, been heard on this side the Atlantic.

Sir, thus imperfectly I have endeavored to answer the gentleman from Bourbon. According to my poor ability I have discharged my duty to my country, my religion, and my God, without sectarian feeling, without bigotry and without any feeling except charity. If there be upon the earth's face a religion, against which I entertain bad feelings, I know it not. If towards the gentleman from Bourbon, who has assailed my faith with such virulence, I have any bad feeling, I am not conscious of it; and though unworthy to offer a prayer, I ask that he may be forgiven for the contumely he has heaped upon a religion he does not understand, and a faith, I fear, he has been taught to hate.

Mr. DAVIS. I entertain no prejudice against the catholic church as a system of religious faith, notwithstanding my total dissent from many of its dogmas and doctrines. I feel myself free from this offence. I avow that I am no bigot, and if I had no sins to answer for but those which I have, as yet at least, committed against the Roman catholic church, I should feel no apprehension to be now summoned to the bar of my maker and omniscient judge. I make no war against the religion of any sect as a matter of faith and salvation—not even against the Mormons. It is only in its political phases, and its spiritual connections inseparably blended with

them, that I attempt any exposure, or indulge in any denunciation of Romanism. To that extent I have the right, and mean with freedom in the spirit of truth, to animadvert upon it. Its efforts to connect itself with the politics of the country, and to control the measures and policy of government, to imbue them with the spirit and doctrines of its peculiar faith, I will never cease to oppose while I have life; because though not so immediately threatening, I deem these machinations to be the most insidious, the most potent, and the most comprehensive, in their hostility to our system of civil and religious freedom of all the dangers which beset it. If that sect and faith in which my parents lived and died, and that other sect and faith which has been embraced by my wife and children, and to which I am most inclined, should assume the religious politico character, and commence systematic operations to control the politics of the country, I would oppose them with as firm a resolution, and denounce them as unsparingly as I do Romanism in the same connection. The union of politics and religion, of church and state, has ever proved itself to be one of the most direful curses of man; and in every pulsation of my heart, every ray of my reason, every emotion of my soul, I will make war against any religious association that seeks such an alliance in any form.

The eloquent gentleman from Louisville, however, (Mr. Preston,) has fallen into one error in relation to "Native Americanism." He exhibited it to us as the combination of the spirits of fanaticism and lawlessness, committing their excesses in outrageous aggressions upon the foreigner and the burning of Roman catholic churches by low and infuriated mobs. This point is somewhat illustrated by an occurrence which first met my eyes about two hours since. A Roman catholic monk, of the order of La Trappe, has been traveling and lecturing in the state of Ohio, on Romanism in general, and exposing the mysteries, the immoralities, and vices of that and other orders of monks. I read from the Louisville Courier, of the 13th instant:

"We copy the following telegraphic dispatch from the Cincinnati Commercial of yesterday, received from Sandusky, Ohio:

"SANDUSKY, Dec. 12, 1849.

"RIOT IN SANDUSKY.—Our peaceful city, this evening, about 7 o'clock, was the scene of a disgraceful riot. The celebrated Monk of La Trappe had announced a lecture on Priestcraft, &c., for to-night. Just as he was entering the hall, he was surrounded and seized by a band of Irish and others, dragged into the street, and severely beaten with bludgeons. He was eventually rescued by the Mayor and others. One or two others were injured, being taken for the Monk. It is reported that some pistols were fired. No arrests."

As I have read the facts, the native Americans who perpetrated the excesses alluded to by the gentleman from Louisville, had previously received from foreigners similar, but greater and more atrocious wrong and outrage than even the monk of La Trappe. They have seen daily the coming and increasing multitudes of immigrants to our country. Many of them laborers and me-

chanics, have been crowded out of their business, and their means of subsistence rendered precarious by the competition of these strangers. The wages of all were likely to be seriously affected and reduced from this cause. The pauperism, the vices, the moral degradation of many of the immigrants, and their criminal invasion of the right of suffrage, had struck deep into the native mind. Their general, arrogant and domineering bearing, but particularly at the polls; and the political management and schemings of the Roman catholic priesthood, and their designs upon the government and religion of the country, were daily made manifest to these native Americans. They united and organized to endeavor by peaceable and legal means to put limits upon immigration, and to restrict the political power of those who might come, as they had the natural and constitutional right to do. They met in a quiet and orderly manner in public assemblies to devise measures to carry out their purposes; and in many instances, while thus engaged, large mobs of armed ruffian foreigners would rush in upon them, overpower them with numbers, knock them down with bludgeons, stab them with knives, make a general melee and break up their meetings. Such I understand to be the deep provocation which caused the excesses of the native Americans against the foreigners, and particularly against foreign catholics and their churches. Such outrages even upon the native Americans do not justify the acts to which they were impelled. Those acts were violent, lawless and deeply reprehensible; but there was much, very much to excuse them, and while the honorable gentleman from Louisville was, in vehement and indignant strains, denouncing the conduct of his own native born countrymen, I was surprised, that he uttered not a word in extenuation, even in explanation of what he was holding up to the unmitigated condemnation of the world. I thought he ought to have presented both sides of the picture, and in his glowing language have told the wrongs received as well as those which had been inflicted by his countrymen.

I stated distinctly, in my former speech upon this subject, that I had known personally, Roman Catholics, natives of Maryland, of Louisiana, and of my own state; that they were good citizens and excellent people—as truly devoted to civil and religious liberty, in my own belief, as I was, and as capable of taking charge of and preserving both. To the gentlemen of that faith in this body, and particularly to my friends from Louisville, (Mr. Rudd,) and Union, (Mr. Spalding,) with whom I am best acquainted, and I hope they will allow me so to call them, I take no manner of exception. No men here have a larger share of my esteem and confidence, both as men and citizens; and if they were asking office, and my position would allow me to be of their constituents, and their political sentiments accorded with mine, as those of one of them do in the main, I would give them a hearty and a trusting support. Their religious profession would never enter my mind as an objection to them for office. If we were neighbors, we would not harmonize on the doctrinal points which distinguish particular religious persuasions, and occasionally, on a political question or

measure; on all beside, I feel assured there would be no discord between us.

My friend from Louisville, (Mr. Rudd,) says I know nothing about the religious faith of his church. One thing is certain, from his speech on Saturday night, he and myself know it very differently on many, and very essential points. By its own constitution and principles, it is the only true and infallible church, and all the distinctive faiths of the sects are damnable heresies, and those who adhere to them doomed inevitably to hell as heretics. The Pope is the infallible head of the church, the successor of St. Peter, holding the keys of Heaven by divine appointment, the vicegerent of God, Lord of all the earth, with all power, temporal as well as spiritual, to declare what is and what is not scripture—to grant indulgences for sins, to pray souls out of the fires of purgatory, and his priests under him have the two latter powers. The authority of the Pope, in spiritual matters, being direct and supreme, he regulates all of them by his infallible will; and may proscribe all heresies, and punish and extirpate all heretics, by sword, by stake, and faggot, by the inquisition, its judgments and racks, or in such other manner as he may select. To sustain his spiritual power and infallibility, and the purity of the church, the pope, to those ends, has a supreme indirect power in all temporal affairs, and over all temporal governments. Within this scope, he may put down, depose, excommunicate, and re-grant. Is this the Romanism, the Catholicism of my friend? If it is not, he is not the Romanist of the papacy in its days of glory; nor is he the Romanist of Europe at the present, nor the immigrant Romanist, nor the Romanist which Bishop Hughes and all the priesthood of America would have him to be.

I will proceed, Mr. President, to establish by proofs, each constituent of what I have here presented as the picture of Romanism. In the catechism of the council of Trent, there is this passage: "But as this one church, because governed by the *Holy Ghost*, cannot err in faith and morals, it necessarily follows that all other societies arrogating to themselves the name of church, because guided by the *spirit of darkness*, are sunk in the most pernicious errors, both doctrinal and moral."

The Jesuits, Canonists, Italians, and others, maintain the infallibility of the Pope personally. In the Romanish confession of faith imposed on proselytes to popery in Hungary, drawn up by the Jesuits in 1828, the second article reads: "We confess and believe that the Pope of Rome is the head of the church and that he cannot err." Lewis Capsenses affirms: "We can believe nothing if we do not believe with a *divine faith* that the Pope is the successor of Peter, and infallible." Cardinal Ballarmino, one of the highest Catholic authorities says: "But if the Pope should should err, by *enjoining vices or prohibiting virtues*, the church, unless she should sin against conscience, would be bound to believe vices to be good, and virtues evil."

The Romanists claim that St. Peter was the first bishop of Rome, although there is no evidence, sacred or profane, that he ever was in that city; and that the Pope is his successor by divine appointment. Every Pope, in all his official

acts, so styles himself; and the church, its councils, all its functionaries, so denominate him. The creed and oath of Pius the IV, made in conformity to the decrees of the council of Trent, is received by all Romanists as undoubted authority. The thirteenth article reads: "I acknowledge the holy catholic and Roman apostolic church, the *mother and mistress* of all churches; and *I promise and swear true obedience to the holy bishop*, the successor of St. Peter, the prince of apostles and vicar of Jesus Christ." Article fifteen reads: "This true catholic faith, *out of which none can be saved*, I now freely profess and truly hold" &c.

The bishop's oath of allegiance is long but of the most expressive obligation. It was originated by Gregory VII in the eleventh century; and in form and authority is far more ancient than Pius IV. Some of its parts run, "I, N. elect of the church of N. from henceforward will be faithful and obedient to St. Peter the apostle, and to the holy Roman church, and to our Lord Gregory, Pope Gregory IX, and to his successors," &c. "I will help them to keep and defend the Roman papacy, and *regalities of St. Peter*, saving my order, against all men." "The rights, honors, privileges and authority of the holy Roman church, *of our Lord the Pope*, and his aforesaid successors, I will endeavor to preserve, defend, increase, and advance." "*Heretics, schismatics, and rebels to our said Lord, or his aforesaid successors, I will to my utmost persecute and oppose.*" The existence of the Pope's supreme and universal power, in all matters and over all persons, is a claim so arrogant, so daring, so iniquitous and impious, as in our age and country to appear incredible. But there is no truth in history better attested, or that is blended with a greater amount of human misery and crime. It was first claimed to that extent by Gregory II in 730, and was fully established by Gregory VII in 1080, has been asserted by all Popes and Roman catholic authorities to the present day: and in its diabolical and terrific execution for centuries, by means of remorseless and exterminating wars and every manner of cruel persecutions, it desolated and cursed the fairest portions of the globe. The Lateran council under Innocent III; that of Lyons under Innocent IV, and the Lateran council under Leo X, have asserted this doctrine of the universal supremacy of the Pope; and the decrees containing it stand in the canon law and in their collections of synods. The infallible Popes, and their great controversial authorities, have often declared and defined it in express terms. "Leo X, by a decree, asserted all power in earth and heaven is given to the Pope, and consequently the civil power is subject to the papal jurisdiction. Another Pope decrees: "The authority given to St. Peter and his successors excels all the powers of earthly kings and princes; it passes uncontrollable sentence upon all." Boniface VIII decreed: "We declare, say and pronounce it to be of *necessity to salvation* for every human creature to be subject to the Roman Pontiff." I shall not multiply examples of the assertion of this power—they exist to an indefinite extent; but I will give an instance or two of its execution. The Province of Thoulouse, in France, was one of the strong seats of the Albigenses. In 1207,

the reigning count, Raimond VI, was required by Innocent III to take part in the war of extermination against his own subjects, which the Pope had ordered Philip Augustus, king of France to undertake against them. The Pope after having directed the king to undertake this war in person, further addressed him: "We exhort you, that you would endeavor to destroy that wicked heresy of the Albigenses, and to do this *with more vigor* than you would use towards the Saracens themselves: persecute them with a strong hand: deprive them of their lands and possessions; banish them and put Roman catholics in their room."

Raimond would not undertake the butchery of his own unoffending people, and in a letter which the Pope wrote to him, is this passage:

"If you could open your heart we should find, and would point out to you, the detestable abominations that you have committed; but as it is harder than the rock, it is vain to strike it with the sword of salvation; we cannot penetrate it. Pestilential man! what pride has seized your heart, and what is your folly to refuse peace with your neighbors, and to brave the divine laws *by protecting the enemies of your faith!*"

Peter Castleman, the Pope's legate, sought out Raimond, reproved him for his negligence, which he termed baseness, denounced him as perjured, as a favorer of tyrants and heretics, and excommunicated him. The legate met with a friend and supporter of the count, to whom he used the most insulting epithets, who thereupon drew his poignard and slew him. The Pope caused Raimond to be publicly anathematized in all churches, and published his proclamation which closed in these words:

"As following the canonical sanctions of the holy fathers, *we must not observe faith towards those who keep not faith towards God*, or who are separated from the *communion of the faithful*: we discharge, by apostolical authority, *all those who believe themselves bound towards this Count by any oath, either of allegiance or fidelity*; we permit every catholic man, saving the right of his principal lord, to *pursue his person, to occupy and retain his territories, especially for the purpose of exterminating heresy.*"

A crusade against Raimond and his province was published by the legates and monks throughout Europe, under orders from the Pope, offering to those who would engage in the plunder and extermination of the Albigenses, "the utmost extent of indulgence which his predecessors had ever granted to those who labored for the deliverance of the Holy Land." Raimond was overwhelmed with terror and submitted, and was made "to strip himself naked from head to foot, with only a linen cloth around his waist for decency's sake, the legate throwing a priest's stole around his neck, and leading him by it into the church nine times around the pretended martyrs' grave, he inflicted the discipline of the church upon the naked shoulders of the humbled prince with the bundle of rods he held in his hand." But this degrading submission saved not Raimond or the Albigenses. He made and continued every observance of penance imposed upon him, and strictly conformed to the rites of the Romish faith, but was suspected, contemned and debased by the Pope and his adherents, as long



he lived, and in his life time, after making a pilgrimage to Rome, he was stripped of his hereditary possessions, and they were conferred upon his relentless persecutor, De Montfort. The Albigenses were oppressed with the most savage war and merciless persecutions for many years, conducted also by the bloody Simon de Montfort, and other barbarians sent against them by Philip Augustus, and at last were nearly wholly extirpated from the face of the earth.

My friend from Union (Mr. Spalding) tells us that the *magna charta*, the beginning of English liberty, was extorted from King John by his barons, who were Roman Catholics; and he adduces that fact as evidence that this religion is not unfriendly to freedom. At that time all christendom, except the Greek church and the Albigenses, were catholics, and there were no doubt many good people among them. But let us look a little more at the history of John. The Pope claimed the right to elect and consecrate all bishops in England, which was violently resisted by John. The controversy became so violent, that "Pandulph, the Pope's legate, plainly told the king, even in the face of his parliament, that he was bound to obey the Pope in temporals as well as spirituals! And when John refused to submit to the will of his holiness without reserve, the legate with shameless effrontery, published the sentence of excommunication against him, with a loud voice, *absolving all his subjects from their oath of allegiance, degraded him from his royal dignity*, and declared that neither he nor any of his posterity should ever reign in England." In the following year, Innocent solemnly ratified the acts of his legate, and afterwards proceeded, with great solemnity, to pronounce a sentence of deposition against King John; and of excommunication against all who should obey him or have any connection with him; and he appointed Philip, King of France, to put his sentence in execution, and promised him the pardon of all his sins, and the kingdom of England for his reward. The awe-stricken John submitted. He not only acknowledged that the Pope had the power to appoint all bishops, and indemnified them for all damage which they had sustained in the contest, but even surrendered his crown to the Holy See, received it back as a vassal, swore fealty to the Pope, and agreed to pay him an annual tribute of seven hundred marks of silver for England and three hundred marks for Ireland. And what was the judgment of Innocent, a predecessor of the present Pope, who is the successor of St. Peter and the Lord of my friend from Union, (Mr. Spalding,) of this conduct of the Roman Catholic barons who extorted the charter from John, which my friend so much and so properly extols. He took part with John, and thundered his excommunication against these sturdy barons from the council of Lateran; and in writing to some ecclesiastics about this matter shortly afterwards, he thus magisterially delivers himself: "We will have you to know, that in general council we have excommunicated and anathematized, in the name of the father, and of the Son, and of the holy Ghost, in the name of the holy apostles Peter and Paul, and in our own name, the barons of England, with their partisans and abettors, for persecuting John, the illus-

trious king of England, who has taken the cross, and is a vassal of the Roman church, for striving to deprive him of a kingdom which is known to belong to the Roman church." If this haughty and imperial Pope could, with his stormy spirit, burst from his tomb, and appear in this hall, he would thunder an excommunication against my friend as an abettor of those bold barons who impiously defied his divine authority.

Is any more evidence needed to establish the claims of the Roman catholic church, and its head, the Pope, to be infallible; that it has the power, by its general councils, and by the Pope, to condemn what it wills, to be heretical, and to call upon all temporal powers to extirpate the heresy and the heretics? Look to the decrees of the councils of Lateran, and the third chapter begins: "*We excommunicate and anathematize every heresy extolling itself against this holy orthodox catholic faith, which we before expounded, condemning all heretics, by whatever names called. And being condemned, let them be left to the Secular Power, or to their bailiffs, to be punished by due animadversion. And let the Secular Power be warned and induced, and if need be, condemned by ecclesiastical censure, what offices soever they are in, that as they desire to be reputed and taken for believers, so they publicly take an oath for the defence of the faith, that they will study in good earnest to exterminate, to their utmost power, from the lands subject to their jurisdiction, all heretics denoted by the church.*" "So that every one that is henceforth taken in any power, either spiritual or temporal, shall be bound to confirm this chapter by his oath." "But if the temporal Lord, required and warned by the church, shall neglect to purge his territory of this heretical filth, let him, by the metropolitan and comprovincial bishops, be tied by the bond of excommunication; and if he scorn to satisfy within a year, let that be signified to the Pope, that he may denounce his vassals thenceforth absolved from his fidelity, and may expose his country to be seized on by catholics, who, the heretics being excommunicated, may possess it without any contradiction." "*And the catholics that, taking the badge of the cross, shall gird themselves for the exterminating of heretics, shall enjoy that indulgence, and be fortified with that holy privilege which is granted them that go to the Holy Land.*" "And we decree to subject to excommunication, the believers and receivers, defenders and favorers of heretics, firmly ordaining, that when any such person is noted by excommunication, if he disdain to satisfy within a year, let him be, *ipso jure, made infamous.*" Pope Gregory VII in his maxims, declares: "It is lawful for the Pope to depose emperors. The Pope can absolve subjects from their oath of allegiance which they have taken to a bad prince. His judgment no man can reverse, but he can reverse all other judgments. He is to be judged by no man." Pope Pius V, in his proclamation of deposition and excommunication of Elizabeth, Queen of England, begins: "Pius, &c., for a future memorial of the matter. He that reigneth on high, to whom is given all power in heaven and on earth, committed one Holy, Catholic, and Apostolic Church, out of which there is no salvation to one alone upon earth, to Peter, the Prince of the apostles, and to Peter's successor the Bishop of Rome, to be governed in fullness of

power. Him alone he made *prince over all people, and all kingdoms, to pluck up, destroy, scatter, consume, plant, and build,*" &c. "We do, therefore, out of the fulness of the apostolic power, declare the aforesaid Elizabeth, being a *heretic* and a *favorer of heretics*, and for her adherence in the matter aforesaid, to have incurred the sentence of *Anathema*, and to be cut off from unity of the body of Christ. And moreover, we do declare her to be deprived of her *pretended title to the kingdom aforesaid*, and of *all dominion, dignity, and privilege whatsoever*; and also the nobility, subjects, and people of the said kingdom, and all others of any sort which *have sworn unto her, to be forever absolved from any such oath, and all manner of duty, of dominion, allegiance, and of obedience*; as we also do, *by the authority of these presents, absolve them, and do deprive the said Elizabeth of her pretended title to the kingdom and all other things aforesaid.* And we do command and interdict all and every one of the noblemen, subjects, people, and others aforesaid, that *they presume not to obey her, or her admonitions, mandates, and laws*; and those who shall *do the contrary*, we do inodiate with the like sentence of *Anathema.*"

The true, but partial deliverance of the world from its long thralldom to the darkness, wickedness, and despotism of Romanism, began in the fifteenth century. An Englishman led it on; Wickliff is justly called the "morning star" of the Reformation. The orient dawn of that bright luminary from its insular horizon, was unmarked even by the Argus eyes of the Pope, though every priest was to him an orb that never closed. The rising luminary had shed its light broadly over Britain before the aroused papacy attempted its extinction, but it was then too late, that light was established forever. Wickliff was shielded against all the attacks of his enemies by the powerful protection of John of Gaunt, and he died in his bed. In a previous sickness, some mendicant friars obtruded themselves upon him, and after reminding him that he must die, exhorted him to retract what he had said against them. He directed his attendants to raise him up in his bed, and the intrepid reformer summoning all his strength, exclaimed in a loud voice, "I shall not die, but live, and shall again declare the evil deeds of the friars." His appalled visitors hastily withdrew. The immortal truths which he garnered pure from the book of life, he threw out in his writings to mankind, and also gave to his countrymen that book in their own tongue. His doctrines not only struck wide and deep in England, but they spread rapidly in the north of Germany, and in Bohemia became prevalent. Huss and Jerome of Prague, confirmed them at the stake, to which they were condemned by the council of Constance; and from the flames that consumed them, they handed the torch of truth to Germany, and heralded on the great reformation of Luther. The enraged council of Hierarchs at Constance, tracing the movement back to its author, Wickliff, decreed that his bones should be disinterred and hung upon a gibbet; but his immortal spirit and immortal doctrines were equally beyond the reach of their insane malice. Let me pause here, and say to my respected friend from Union, (Mr. Spalding,) that English freedom, civil or

religious, owes nothing to the Popes or to Romanism. On the contrary, if the power of the papacy had been re-established in England, that ancient tree of liberty, which was planted in the noble Isle in the reign of John, and which struck such deep and vigorous root in her soil as to live and flourish through all the storms that have since rocked her, had probably, centuries ago, withered and perished; and in the seventeenth century, there had been no parent stock from which to transplant noble shoots to a new world.

Another power claimed, and daily pretended to be exercised by the church of Rome, and her priestcraft, is to grant absolution for sins. The council of Trent declared this doctrine very explicitly. Canon 3 says:

"Whoever shall affirm that the words of the Lord our Savior, 'Receive ye the Holy Ghost,' &c., are not to be understood of the power of forgiving and retaining sins, in the sacrament of penance, &c., let him be accursed."

Canon 9 says: "Whoever shall affirm that the priests' sacramental absolution is not a *judicial act*, but *only a ministry*, to pronounce and declare that the sins of the party confessing are forgiven, so that he believes himself to be absolved, even though the priest should not absolve seriously, but be in jest, let him be accursed."

This power of the priest, of himself to forgive sins, "to the believing sinner," is one of the most mysterious and important; and is another strong link in the chain which fetters his mind and his soul. To the eye of truth, the daring of the impiety, and the weakness of the credulity, are equally the subjects of indignant amazement.

Kindred to the power of granting absolution for sins, Romanism claims for the Pope that of granting indulgences. Peter Dens thus defines an indulgence:

"What is an indulgence? It is the remission of the temporal punishment due to sins, remitted as to their guilt, by the power of the keys, without the sacrament, by the application of the satisfactions which are contained in the treasury of the church."

The same author classifies indulgences into local, real and personal; into plenary, more plenary, and most plenary; and into perpetual and temporal. The creed of Pius IV contains this article on indulgences:

"I also affirm, that the power of indulgences was left by Christ to the church, and the use of them is most wholesome to christian people."

The council of Trent passed a decree relating to indulgences, from which the following tract is taken:

"Since the power of granting indulgences has been bestowed by Christ upon his church, and this power divinely given has been used from the earliest antiquity, the holy council teaches and enjoins, that the uses of indulgences, so salutary to christian people, and approved by the authority of venerable councils, shall be retained in the church; and it anathematizes those who assert that they are useless, or deny that the church has the power of granting them."

Indulgences were granted by different Popes, to the crusaders of Palestine, to the destroyers of the Albigenses, to the members of the Council of Constance, who condemned as heretical the doc-

trine of the Lollards, and Huss and Jerome to be burned, and the bones of Wickliff to be dis-hummed and exposed upon a gallows. It has been granted and promised, and publicly sold for money in innumerable instances; and this most abused, sinful and demoralizing practice is still kept up by the church in Rome. Robertson, in his life of Charles V, gives this translation of the form of the indulgences, which Leo X was vending by his agents over Italy and Germany in the time of Luther.

The form of the indulgences sold by Tetzal in Germany for Leo X:

"May our Lord Jesus Christ have mercy upon thee, and absolve thee by the merits of his most holy passion. And I, by his authority, that of his blessed apostles, Peter and Paul, and of the most holy Pope, granted and committed to me in these parts, do absolve thee, first from all ecclesiastical censures, in whatever manner they have been incurred, and then from all thy sins, transgressions and excesses, how enormous soever they may be, even from such as are reserved for the cognizance of the holy see, and as far as the keys of the holy church extend, I remit to you all punishment which you deserve in purgatory on their account, and I restore you to the holy sacraments of the church, to the unity of the faithful, and to that innocence and purity which you possessed at baptism, so that when you die the gates of punishment shall be shut, and the gates of the paradise of delight shall be opened; and if you shall not die at present, this grace shall remain in full force when you are at the point of death. In the name of the Father, and of the Son, and of the Holy Ghost."—Robertson's Charles V, page 126, note.

These indulgences, aside from all the other usurpations and crimes of the papacy, were sufficient to have moved not only Luther, but the world to the reformation; and the only wonder is that it had not proved universal, complete and enduring.

Another source of the absolute and despotic dominion, which this faith enables its priesthood to exert over the will, imagination, and souls, of especially its ignorant followers, is its doctrine of purgatory. Here is the concise teaching of the creed of Pius IV on this point:

"I constantly hold there is a purgatory, and that the souls therein detained are helped by the suffrages of the faithful."

The council of Trent asserted it in an article which concludes thus:

"This holy council commands all bishops diligently to endeavor that the wholesome doctrine concerning purgatory, delivered to us by venerable fathers and sacred councils, be believed, held, taught, and everywhere preached by Christ's faithful."

The teaching is that all venial sins are punished, not in eternal hell, but in purgatory; and the pains and punishments of purgatory are represented in the highest degree gloomy, dreadful, and tormenting; all of which may be brought to a termination by mass, and other means, and the freed soul translated immediately to eternal happiness. The ignorant and superstitious are ever prone to think all the sins of themselves and their friends venial. The doctrine of purgatory seizes upon them at once and grapples them with

hooks of steel; and the ascendancy which this terrible phantom, and the modes by which it may be divinely charmed away, gives to the priesthood over the ignorant masses of catholics almost incredible power.

Allied to it, is auricular confession, which is the private confession of sins to a priest, by whispering them into his ear. This is to be done at least once a year, and whoever omits it is to be excommunicated out of the church, and if he die, is not to be allowed a christian burial. This is the function of the priesthood, which brings up before it all the liegemen of the catholic empire, and bows all in utter subjection and submission to it. When the novice for the first time, with convulsive excitement, breathes into the ear of the listening priest the deep and criminal secrets of the heart, the soul is enslaved forever; a chain of adamant is thrown around it, and that chain is held by this priest. Even then he may grant or withhold absolution and forgiveness. Such are the mighty spells which Romanism brings over all her sons and daughters; and those who work them, control not only their acts and conduct, but their thoughts and emotions. And how often is this puissance of the priesthood, exhibited strikingly in our country. Bands of rude and stormy foreign catholics, who have traditionary feuds, are loitering in the same neighborhood. They meet in bloody affray. The civil officer of the law interposes and is unheeded. He calls to his aid a large constabulary force, which is laughed to scorn by the infuriated mob. The military is summoned to uphold the civil authority, and blank cartridges are fired among the combatants, but no more regarded than the whistling of the winds. At length death-dealing bullets begin their fatal office, and men fall, but the fight still rages. Lo! the priest makes his appearance, the contending mass of men pause at once, and give attention. He speaks a few words, the tempest of excited passion ceases, and savage men are subdued as children under the rebuke of a firm father. These men all vote, but not their will, it is the will of the priest.

I have, Mr. President, I think, brought forward enough of testimony to sustain fully my statement of the general constituents of Roman catholicism. If more were needed, I could produce volumes to the same effect, of equal distinctness and force; and my presentation of it is true, or all history is false. I have brought forward only a few of the innumerable instances of the enactment of its principles and powers on a public and large scale, in which the papacy controlled kings and all the forces of civil government, made war, ravaged the earth, put down conflicting religions, and extirpated communities, proscribed by it as heretical. But in its more private and secret operations and persecutions, its burnings at the stake, its imprisonments in deep dungeons for long years, its racks and tortures in the gloomy recesses of its murderous inquisitions, of men, women, and children, for no other offence than thinking and expressing a different religious faith, is to be found the horrid acme of its cruelty and its crimes. This narrative, verified by every thing that is authentic in history, is enough to produce against it a universal revolt, except with such as

are possessed of the very demon of Romanism. If this most mysterious religious politico institution, in all its principles and their true significance, in its interior and mystical administration, in all its history, public and private, in the collected immoralities, crimes and guilt of twelve centuries, could be presented visibly to all the living at one view, mankind would rise up together and drive it from the face of God's earth.

Here, Mr. President, I will call the attention of the convention to the Jesuits, whom all catholics acknowledge to compose a part of the Romish church. My friend from Washington, (Mr. Kelly,) concedes that Romanism is the same in this day that it ever was, and insists that it was the same identical existence in the days of the Saviour. But Jesuitism was a creation of Ignatius Loyola, and his associates, in the sixteenth century; and the all-powerful and infallible Pope Paul III, in 1546, ingrafted this order upon the infallible church. I will read the Jesuits oath.

"I, A. B., now in the presence of Almighty God, the blessed Virgin Mary, the blessed Michael the Archangel, the blessed St. John Baptist, the holy apostles, St. Peter and St. Paul, and the saints and sacred host of Heaven, and to you my Ghostly Father, do declare from my heart, without mental reservation, that Pope Gregory is Christ's Vicar General, and is the true and only Head of the universal church throughout the earth; and that by virtue of the keys of binding and loosing, given to Holiness by Jesus Christ, *he hath power to depose heretical kings, princes, states, commonwealths, and governments, all being illegal, without his sacred confirmation, and that they may safely be destroyed*; therefore, to the utmost of my power, I will defend this doctrine and his Holiness's rights and customs against all usurpers of the heretical or protestant authority whatsoever, especially against the now pretended authority and church in England, and all adherents, in regard that they be usurped and heretical, opposing the sacred mother church of Rome.

"*I do renounce and disown any allegiance as due to any heretical king, prince, or state, named protestant, or obedience to any of their inferior magistrates or officers.* I do further declare the doctrine of the church of England, of the Calvinists, Huguenots, and other protestants, to be damnable, and those to be damned who will not forsake the same. I do further declare, that I will help, assist, and advise, all or any of his Holiness's agents in *any place wherever I shall be*; and do my utmost to extirpate the heretical protestant's doctrine, and to destroy all their pretended power, legal or otherwise. I do further promise and declare, that notwithstanding I am *dispensed with to assume any religion heretical*, for the propagation of the mother church's interest, to keep sacred and private all her agents, counsels, as they entrust me, and not to divulge directly or indirectly, by word, writing or circumstance whatsoever, but to execute all which shall be proposed, given in charge, or discovered unto me, by you my Ghostly Father, or by any one of this convent. All which I, A. B., do swear by the blessed Trinity, and blessed sacrament, which I am now to receive, to perform and keep

on my part inviolably, and do call all the heavenly and glorious host of Heaven, to witness my real intentions to keep this my oath. In testimony hereof, I take this most holy and blessed sacrament of the eucharist, and witness the same, further with my hand and seal, in the face of this holy convent."

Was there ever such a piece of iniquity, under the garb, and ostensibly to aid the cause of pure and holy religion, devised by man? What other persuasion of christians, than the Roman catholics, have revolting oaths, with horrid and impious imprecations? The achievements of the Jesuits more than paralleled the enormity of their juramentary obligation. I will present a true and most masterly sketch of their spirit, their character, and their operations, from Macaulay.

"In the order of Jesus was concentrated the quintessence of the catholic spirit, and the history of the order of Jesus is the history of the great catholic reaction. That order possessed itself at once of all the strongholds which command the public mind—of the pulpit, of the press, of the confessional, of the academies. Wherever the Jesuit preached, the church was too small for the audience. The name of Jesuit on a title-page, secured the circulation of a book. It was in the ears of a Jesuit that the powerful, the noble, and the beautiful breathed the secret history of their lives. It was at the feet of the Jesuit that the youth of the higher and middle classes were brought up from their first rudiments to the courses of rhetoric and philosophy, literature and science, lately associated with infidelity or with heresy, now became the allies of orthodoxy.

"Dominant, in the south of Europe, the great orders went forth conquering and to conquer. In spite of oceans and deserts, of hunger and pestilence, of spies and penal laws, of dungeons and racks, of gibbets and quartering blocks, Jesuits were to be found under every disguise, and in every country—scholars, physicians, merchants, serving-men; in the hostile court of Sweden, in the old manor houses of Cheshire, among the hovels of Connaught, arguing, instructing, consoling, stealing away the hearts of the young, animating the courage of the timid, holding up the crucifix before the eyes of the dying.

"Nor was it less their office to plot against the thrones and lives of apostate kings, to spread evil rumors, to raise tumults, to inflame civil wars, to arm the hand of the assassin. Inflexible in nothing but in their fidelity to the church, they were equally ready to appeal to the spirit of loyalty, and to the spirit of freedom. Extreme doctrines of obedience and extreme doctrines of liberty—the right of rulers to misgovern their people, the right of every one of the people to plunge his knife in the heart of a bad ruler—were inculcated by the same man, according as he addressed himself to the subject of Philip or the subject of Elizabeth. Some described these men as the most rigid, others as the most indulgent of spiritual directors. And both descriptions were correct. The truly devout listened with awe, to the high and saintly morality of the Jesuit. The gay cavalier, who had run his rival through the body, the frail beauty, who had forgotten her marriage vow, found in the

Jesuit, an easy well bred man of the world, tolerant of the little irregularities of the people of fashion. The confessor was strict or lax according to the temper of the penitent. His first object was to drive no person out of the pale of the church. Since there were bad people, it was better that they should be bad catholics than protestants. If a person was so unfortunate as to be a bravo, a libertine, or a gambler, that was no reason for making him a heretic too."

The machinations and crimes of the Jesuits reached such a pitch, that they were at length by the civil power, driven out of most of the states of Europe, including those strongly catholic; and on the 21st July 1773, Pope Clement, XIV issued his bull, entirely abolishing the order. This measure was not hastily adopted, for before he resolved upon it the Pope was engaged four years in the patient examination of their history. When he signed the order, he is reported to have said: "The suppression is accomplished. I do not repent of it, having only resolved on it after examining and weighing every thing, and because I thought it necessary for the church. If it were not done I would do it now, but this suppression will be my death." Shortly afterwards the Pope died, with every symptom of having been poisoned. But in 1814, Pope Pius VII issued his bull, by which he restored and established the order of the Jesuits. Since then they have revived, and have been busy in Europe. They have come to America, and established sundry colleges in different states, and are scattering themselves over the land. They are deemed to be effective and necessary allies in reducing our government and people under the dominion of Romanism. The Romish Priesthood in New York, a few years ago, in the public newspapers, declared their "ardent admiration of the illustrious order of the Jesuits, which death alone would be able to extinguish in their bosoms." Fit auxiliaries, these Jesuits, of bishop Hughes and bishop Purcell, and the foreign priests, in the execution of their designs in this country.

The Romanism of the dark and middle ages is the Romanism of this day. A part of it only is active and controlling; but all will be if its hierarchy can bring back the world to enough of ignorance, superstition, and slavery, to submit to it. That is the great consummation for which the Pope, Bishop Hughes, and Purcell, and Brownson, and all labor. There has never been any expurgation of the usurpations and corruptions of the Roman catholic church by any of its councils, or Popes; and the necessary conclusion is that they do not admit that there is any. Every principle, power and feature which I have attributed to it, and many more of kindred nature, are found in the body of the canon law. That law is defined by Benedict XIV, who was elected Pope in 1740, thus: "Those constitutions are properly called canons which bind the whole church; such are those which emanate from the chief pontiff or a general council; because if the statute of a bishop be confirmed by the Pope, and extended to the whole church, then it is properly called a canon, as it is now authorized by the Pope." And in no form, either by decree of council or Pope, is their any renunciation or abandonment, in

modern times, of any right or power ever claimed by the hierarchy.

Ferdinand VII, on his restoration, re-established the inquisition in 1814; but when the despot was again expelled by the republican Cortes in 1820, it was the second time suppressed, and has never been again re-established in Spain. In the Papal States it still exists, though its operations are shrouded in a great deal of secrecy. The Pope and his priests in every country exercise all the power, and persecute to every extent which the present opinions and condition of the world will allow. The following curse is annually pronounced, with all the solemnity of "bell, book and candle" by the Pope and other church dignitaries:

"In the name of God Almighty, Father, Son, and Holy Ghost, and by the authority of the blessed Apostles, Peter and Paul, and by our own, we excommunicate and anathematize all Hussites, Wickliffites, Lutherans, Zuinglians, Calvinists, Huguenots, Anabaptists, Trinitarians, and all other apostates from the faith; and all other heretics by whatsoever name they are called, or of whatever sect they may be. And also their adherents, receivers, favorers, and generally any defenders of them; with all who, without our authority, or that of the apostolic See, knowingly read or retain, or in any way, or from any cause, publicly or privately, or from any pretext, defend their books containing heresy, or treating of religion; as also schismatics, and those who withdraw themselves, or recede obstinately from their obedience to us, or the existing Roman Pontiff."

Even in our country, a catholic procession was moving along the public streets of Cincinnati, and a quiet spectator standing on the highway, and not pulling his hat off as the procession passed, had it knocked from his head by one of the attendants.

The advocates of Romanism have, in this debate, claimed that she is the patron of learning and of freedom. Free thought, free opinion, and their free expression, and interchange, are essential to learning, and the essence of liberty; and against those Rome draws the sword and throws away the scabbard. In relation to doctrines propounded by the council of Trent, it decreed: "If any one shall presume to teach, or to think differently from those decrees, let him be *accursed*." But let us hear what the Popes of Rome have said of the freedom of opinion, and of the press, and the free circulation of the Bible within a few years past. In 1832, Gregory XVII, published his famous Encyclical letter, in which will be found the following passages: "From that polluted fountain of indifference, flows the absurd and erroneous doctrine, or rather raving, in favor and in defence of '*liberty of conscience*,' for which most pestilential error, the course opened by that entire and wild liberty of opinion, which is every where attempting the overthrow of civil and religious institutions; and which the unblushing impudence of some has held forth as an advantage of religion." "From hence arise those revolutions in the minds of men, hence this aggravated corruption of youths, hence the contempt among the people of sacred things, and of the most holy institutions and laws; hence in one word, *that pest of all others most*

to be dreaded in a state, unbridled liberty of opinion." This Pope saw full well, that the hoary superstitions of Romanism could not stand the test of free inquiry and liberty of opinion. Hence his trembling apprehension of them, and his zeal to stifle them forever.

Some years ago what is termed the Christian Alliance was formed in the city of New York, the object of which was to circulate the Bible without note or comment, in catholic countries in their own language. The same Gregory in 1844, fulminated a bull against this association, from which this passage is taken:

"Moreover, venerable brothers, we recommend the utmost watchfulness over the insidious measures and attempts of the Christian Alliance, to those who, raised to the dignity of your order, are called to govern the Italian churches, or the countries which Italians frequent most commonly, especially the frontiers, and parts whence travellers enter Italy. As these are the points on which the sectarians have fixed to commence the realization of their projects, it is highly necessary that the bishops of those places should mutually assist each other zealously and faithfully, in order, with the aid of God, to discover and prevent their machinations.

"Let us not doubt but your exertions added to our own, will be seconded by the civil authorities, and especially by the most influential sovereigns of Italy, no less by reason of their favorable regard for the catholic religion, than that they plainly perceive how much it concerns them to prostrate these sectarian combinations. Indeed, it is most evident from past experience, that there are no means more certain of rendering the people disobedient to their princes than rendering them indifferent to religion, under the mask of religious liberty. The members of the Christian Alliance do not conceal this fact from themselves, although they declare that they are far from wishing to excite disorder; but they notwithstanding avow that, once liberty of interpretation attained, and with it what they term liberty of conscience among Italians, these last will naturally soon acquire political liberty."

Here is palpably revealed the natural connection and alliance between the despotism of the Papal See and the monarchs of Europe. The only object of the Christian Alliance was to give unadulterated the Holy Scriptures to the people of Italy. And how it excited the fears of the Pope. He knew that the light and power of the gospel would, wherever it was admitted, establish religious liberty, and that would be the precursor of civil liberty; and he knew full well that civil and religious deposits were its natural enemies, and therefore he invoked his natural allies to aid him in his attempts to exclude it from all their dominions.

The last bull of Gregory XVI, dated 8th May, 1844, is a long document, and shows throughout the greatest hostility and dread of the circulation of the Bible in Italy, and in Catholic countries. I will read one or two more passages from it:

"Subsequently, when heretics still persisted in their frauds, it became necessary for Benedict XIV to superadd the injunction that no versions whatever (of the Bible) should be suffered to be read but those which should be approved of by

the Holy See, accompanied by notes derived from the writings of the Holy Fathers, or other learned Catholic authors."

"As for yourselves, my venerable brethren, called as you are to divide our solicitude, we recommend you earnestly in the Lord, to announce and proclaim, in convenient time and place, to the people confided to your care, these apostolical orders, and to labor carefully to separate the faithful sheep from contagion of the christian alliance, from those who have become its auxiliaries, no less than those who belong to other Bible societies, and from all who have any communication with them. You are consequently enjoined to remove from the hands of the faithful alike the Bibles in the vulgar tongue which may have been printed contrary to the decrees above mentioned of the sovereign Pontiffs, and every book proscribed and condemned, and see that they learn, through your admonition and authority, what pasturages are salutary, and what pernicious and mortal. Watch attentively over those who are appointed to expound the Holy Scriptures, to see that they acquit themselves faithfully according to the capacity of their hearers, and that they dare not, under any pretext whatever, interpret or explain the holy pages contrary to the tradition of the Holy Fathers, and to the service of the Catholic church."

"Let me know then, the enormity of the sin against God and his church which they are guilty of who dare associate themselves with any of these societies, or abet them in any way. Moreover, we confirm and renew the decrees recited above, delivered in former times by apostolic authority, against the publication, distribution, reading and possession of books of the Holy Scriptures translated into the vulgar tongue."

What a spectacle is here exhibited. The infallible head of the only true church, attempting most zealously and industriously, to exclude from the mass of mankind, the Holy Scriptures, the book of light and life. The ablest minds in the Protestant world could offer no refutation of the errors of Romanism, equal in point, force, and the power of conviction, to this conduct of the Pope. The sense of mankind will be, that it could have been suggested only by the spirit of darkness. But this has been paralleled in our country of gospel light and liberty. In the town of Champlain, State of New York, in 1842, a Mr. Telmont, a missionary of the Jesuits, held a protracted meeting, which was attended by a great number of Catholics from some distance; and they, who had any, were required to bring in their Bibles and testaments. Many were brought, and by this Jesuit, and other Catholics, publicly burned. How long before we may expect similar scenes in Kentucky where the gentleman from Washington, (Mr. Kelly,) says there are sixty thousand Catholics?

The example of France, in the subversion of her monarchy and the establishment of republican institutions, has been held up to us as a testimony that Popery and Romanism favors liberty. France always resisted the assumptions and aggressions of the Pope more perseveringly than other Catholic countries, her kings making with him the question, that they had the right, to his exclusion, of the appointment of all Bishops for



France. Louis XIV. and her monarchs most imbued with Romanism, were her greatest tyrants. That had always been her national religion, and all other faiths were generally persecuted and proscribed by her. Of late years, as the light of true liberty and religion began to make further encroachments upon the dark domain of popery and despotism, other sects became to be partially tolerated; and one of the first fruits of the late popular revolution was, the proscription of Romanism as the established religion, and the free toleration of all religious persuasions. But still the example of France, as asserting and upholding freedom, cannot be quoted with triumph, or indeed without shame to her.

A few months ago, and Rome herself awoke from her long night of slavery, and declaring herself free, her spiritual and temporal despot, the Pope, fled from her walls and took refuge in Gaeta. The tyrant of enslaved Spain, and he of Naples, having but just re-subjugated her after a convulsive effort for freedom, and republican France, undertook the overthrow of the Roman Republic, and the restoration of the Pope to his spiritual and temporal throne. The regenerate Romans offered to receive the Pope as their spiritual head, but resolutely insisted on the abolition of his temporal power and that of his college of cardinals. The overture was scorned, the work of subjugation to despotism was assigned to France, she marched her armies upon Rome, bombarded and carried the city by assault, and crushed the new Republic and that liberty, for which France herself had taught by her example, the Romans to strike. Shade of Brutus, why didst thou not rise up to confound these bastard republicans of France! At the same time Hungary was heroically combatting against the destruction of her nationality and of her ancient rights. In the days of the trouble of the Hapsburgs, that great race of people had upheld their tottering throne, and the requital they were to receive from those they had saved, was slavery. But the love of liberty with these sturdy northerners was manly, vigorous, deep, and enthusiastic. They rose upon their oppressors, overthrew the armies of Austria, menaced Vienna, and the trembling emperor called upon the Russian Czar to save him; and to quell this tempestuous spirit of northern freedom which seemed to threaten the destruction of every throne. Too promptly, and too well, the imperial despot of the north answered to the call; and he and Austria poured in upon Hungary armies numerous as all her men. The triumph of despotism was completed, and Hungarian liberty is the noblest ruin of the age. Her heroic struggle, with which every heart, all over the world, devoted to the rights and liberty of man, was held in convulsive sympathy, these miserable French republicans turned coldly from, and marched in a crusade against a kindred cause in Rome.

But, Mr. President, of all the strange and extravagant claims which ever fell upon my ear, this, that the papacy and Romanism favored the liberty of mankind, is to me, the most remarkable. Her dark mantle still hangs like a pall over the most of Europe. Schlegel says truly, that Romanism favors monarchy—Protestantism,

republican liberty; and such is the history of both faiths. The one is genial to the advancing rights and civilization of man, the tendency of the other is to fetter him in ignorance, superstition, and sloth. Compare England with Spain, Prussia with Italy, the United States with Mexico and the South American countries. In each case, the Catholics have the greater natural advantages of country, but how striking the present inferiority of people in everything which constitutes the power, dignity, and happiness of man. Nor does this result from any inferiority of race. In the sixteenth century the Spaniards were the first people of Europe.—That race had been formed in a conflict of eight centuries with the Moors, and the world never knew superior men naturally than to the conquerors of the Aztecs and the Incas, and those missionaries that established themselves as early as the fifteenth century in the Celestial Empire, and on the bay of California. It is the spirit and tendency of their religion which has degraded them to their present position.

I freely admit the good and the wise are now to be, and have in every age, been found without number among the Catholics even of Europe. It could not, nor cannot be otherwise. The children of this church for many centuries constituted almost the whole of Christendom; and number something like 180,000,000 more than all Christians besides, in the aggregate; and excluding the Greek church, probably three times as numerous as all the other sects. As long as this faith endures, if it be throughout time, it will have among its followers myriads of excellent Christians doubtless. But this only proves that, even great and gross corruptions, interpolated in any religious faith founded upon the Bible, cannot prevent many, very many, from being good and pious. But Romanism in America, practically—at least, is greatly modified by the general intelligence, spirit of inquiry, and religious liberty and privileges of the whole people. In the purity of morals, exemption from superstition and bigotry, and independence of the priesthood, the native born Catholics are immeasurably elevated above the Catholics of Europe. All our countrymen who travel abroad into Catholic countries, so inform us, and we see it verified every day in the person of the immigrant Catholic. Against those who have been born amongst us, I make no move. And against those who come from abroad, if they and their priests will cease to connect their religion with the politics and government of the country; to indoctrinate the people with the moral and political doctrines which flow from the teachings of the Catholic church; and through political combinations and the power of the ballot-box to make the country wholly Catholic, and bring it under the dominion of the Pope and Romanism; if they will drive their Bishop Hughes and their other political missionaries from political machinations to advance the triumphs of their church by spiritual means and dropping as churchmen, their temporal projects and aspirations in the country to which they are by birth aliens, will attend only to spiritualities, and in any way they may please, for one humble individual, I will promise never to molest them. But whilst they continue

their political labors in the cause, of what they claim is to become a universal hierarchy, and of a supreme and infallible hierarchy resident in another hemisphere, I stand up in opposition to them, and will to life's end.

Mr. WOODSON moved the previous question, and the main question was ordered to be now put.

Mr. CLARKE called for the yeas and nays on the adoption of the resolution, and they were yeas 6, nays 69.

YEAS—Garrett Davis, James Dudley, Andrew Hood, Johnson Price, Michael L. Stoner, George W. Williams—6.

NAYS—Mr. President (Guthrie,) John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, Wm. C. Bullitt, Chas. Chambers, Wm. Chenault, Jas. S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Jas. H. Garrard, Thomas J. Gough, Ninian E. Gray, J. P. Hamilton, Ben. Hardin, Vincent S. Hay, W. Hendrix, Thos. J. Hood, Mark E. Huston, Thos. James, Wm. Johnson, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Martin P. Marshall, Wm. C. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, John D. Morris, Jonathan Newcum, Hugh Newell, Henry B. Pollard, Wm. Preston, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, John D. Taylor, Wm. R. Thompson, Howard Todd, Philip Triplett, Henry Washington, Jno. Wheeler, Andrew S. White, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—69.

So the resolution was rejected.

The convention then adjourned.

## TUESDAY, DECEMBER 18, 1849.

Prayer by the Rev. Mr. LANCASTER.

### POSTPONEMENT OF PENAL LAWS.

Mr. JAMES offered the following:

*Resolved*, That no penal law shall be in force or take effect until six months after its passage.

On the motion of Mr. DAVIS the resolution was laid on the table—yeas 47, nays 30.

YEAS—Mr. President, (Guthrie,) John L. Ballinger, John S. Barlow, William Bradley, Luther Brawner, Francis M. Bristow, Thomas D. Brown, Charles Chambers, James S. Chrisman, Jesse Coffey, Henry R. D. Coleman, William Cowper, Garrett Davis, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Selucius Garfield, Thomas J. Gough, Ninian E. Gray, Vincent S. Hay, Thomas J. Hood, Mark E. Huston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Wm. C. Marshall, David Meriwether, William

D. Mitchell, Jonathan Newcum, Hugh Newell, John T. Robinson, John T. Rogers, Ira Root, Michael L. Stoner, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Henry Washington, Charles A. Wickliffe, Silas Woodson, Wesley J. Wright—47.

NAYS—Alfred Boyd, William Chenault, Beverly L. Clarke, Benjamin Copelin, Edward Curd, Milford Elliott, Green Forrest, Nathan Gaither, James H. Garrard, Richard D. Gholson, James P. Hamilton, Ben. Hardin, William Hendrix, Alfred M. Jackson, Thomas James, William Johnson, Charles C. Kelly, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, Thomas P. Moore, James M. Nesbitt, Henry B. Pollard, Johnson Price, Ignatius A. Spalding, John W. Stevenson, Albert G. Talbott, Squire Turner, John Wheeler—30.

### NATIVE AMERICANISM.

The following gentlemen, who were absent last night when the vote was taken on Mr. DAVIS'S resolution, this morning obtained permission to record their votes, viz: Messrs. Dixon, Gaither, Gholson, Jackson, Machen, M. P. Marshall, Moore, Nesbitt, Talbott, Thurman, Turner, and R. N. Wickliffe, who all voted in the negative.

### THE WILMOT PROVISIO.

Mr. KELLY moved to take up the preamble and resolutions on the subject of the Wilmot Proviso, which he presented on the 5th instant, when they were laid on the table.

The yeas and nays being taken on the motion were, yeas 29, nays 58.

YEAS—Beverly L. Clarke, Jesse Coffey, William Cowper, Edward Curd, Lucius Desha, Green Forrest, Nathan Gaither, Richard D. Gholson, Thomas James, William Johnson, Charles C. Kelly, James M. Lackey, Alexander K. Marshall, William N. Marshall, Richard L. Mayes, Nathan McClure, David Meriwether, James M. Nesbitt, Hugh Newell, Henry B. Pollard, Johnson Price, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, John D. Taylor, John J. Thurman, Chas. A. Wickliffe, Robert N. Wickliffe—29.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, Wm. Bradley, Luther Brawner, Francis M. Bristow, Thos. D. Brown, William C. Bullitt, Charles Chambers, Wm. Chenault, James S. Chrisman, Henry R. D. Coleman, Benjamin Copelin, Garrett Davis, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, James H. Garrard, Thos. J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, Wm. Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, George W. Kavanaugh, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, William C. Marshall, John H. McHenry, Thomas P. Moore, Jonathan Newcum, Larkin J. Proctor, Thomas Rockhold, Ira Root, James Rudd, Michael L. Stoner, Wm. R. Thompson, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, G.

W. Williams, Silas Woodson, Wesley J. Wright  
—58.

So the convention refused to take them up.

#### MISCELLANEOUS PROVISIONS.

The convention proceeded to the consideration of the last report of the committee on miscellaneous provisions.

The first, second and third sections were read and adopted as follows, without amendment:

#### "SCHEDULE.

"That no inconvenience may arise from the alterations and amendments made in the constitution of this commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

"Sec. 1. That all the laws of this commonwealth, in force at the time of making the said alterations and amendments, and all rights actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

"Sec. 2. The oaths of office herein directed to be taken may be administered by any judge or justice of the peace, until the legislature shall otherwise direct.

"Sec. 3. No office shall be superceded by the alterations and amendments made in the constitution of this commonwealth, but the laws of the state relative to the duties of the several officers, executive, judicial, and military, shall remain in full force, though the same be contrary to said alterations and amendments, and the several duties shall be performed by the respective officers of the state, according to the existing laws, until the organization of the government, as provided for under this new constitution, and the entering into office of the new officers to be elected or appointed under said government and no longer."

The fourth section was read as follows:

"Sec. 4. Immediately after the adjournment of the convention, the governor shall issue his proclamation, directing the several sheriffs and other returning officers of the several counties of this state, authorized by law to hold elections for members of the general assembly, to open and hold a poll in every county in the state, and in the city of Louisville, at the places and precincts designed by law for the holding the presidential election in 1848, upon the first Monday of May, 1850, for the purpose of taking the sense of the good people of this state, in regard to the adoption or rejection of this constitution; and it shall be the duty of the said officers, to receive the votes of all persons entitled to vote for members of the general assembly under the present constitution. The said officers shall open a poll with two separate columns: "*For the new constitution,*" "*Against the new constitution,*" and shall address each voter presenting himself, the question: "Are you in favor of adopting the new constitution?" and if he shall answer in the affirmative, his vote shall be recorded in the column for the new constitution, and if he shall answer in the negative, his answer shall be set down in the column against the new constitution. The said election shall be conducted for one day, and in every other respect, as the state election for representatives to the general assembly

bly are now conducted; and on the Thursday succeeding the said election, the various sheriffs conducting said election at the different precincts, shall assemble at the county seat of their respective counties, and compare the polls of said election, and shall forthwith make due return thereof to the Secretary of state, in conformity to the provisions of the existing laws upon the subject of elections of members of the general assembly. The county courts of the various counties of the commonwealth shall, at their March or April terms of their said courts, appoint two judges, a clerk, and deputy sheriff, to superintend and conduct said elections."

Mr. WOODSON. Mr. President, I will propose an amendment for the purpose of testing the sense of the convention on the mode by which this constitution is to be ratified. I believe it was the universal opinion that when this convention finished their business here, they would adjourn *sine die*. I would wish that the sense of the people should be taken on the question of adopting the new constitution or re-adopting the old one. And for that purpose I would move to amend this section of the report of the committee on miscellaneous provisions, by striking out the words "the new constitution" in the thirteenth line, and substituting the words, "for the old constitution."

Mr. HARDIN. The people have already decided against the old constitution by calling this convention. The old constitution was promulgated in 1799, and the people of our day have declared, by an overwhelming majority, that it should be amended.

Mr. STEVENSON. It is but right to state, that when this report was drawn up, a large majority of the committee thought it would be necessary for this convention to re-assemble to put this constitution in operation. If it be the determination of the convention to re-assemble, then the question will not be between the 'new' and the 'old' constitution, but 'for' or 'against' the new constitution. The committee having directed me to make a report, are not yet determined how they will vote upon the subject.

Mr. WOODSON then withdrew his amendment.

Some verbal amendments were made on the motion of Mr. TAYLOR.

Mr. C. A. WICKLIFFE. With the view of ascertaining the sense of the convention on the question whether we shall dissolve this convention and submit the constitution in the mode indicated by that report, and thus make the constitution of Kentucky depend upon a contingency, over which this convention has no control, or whether we shall finish this work and proclaim the constitution from our hands as a convention; and, if we cannot do that, perform the other duty imposed upon us by the article of the constitution in the re-adoption of the old one, and then go home—with a view of testing the feelings of the convention on this question, I desire to offer a resolution, which will bring the subject immediately before the consideration of this house. It would accord with my wishes, personally, not to return to this hall again as a member of the convention, if my absence could take place consistently with the duty I owe to my constituency; and if I could satisfy myself

that we ought to permit this constitution to depend upon a contingency; but I believe it is the duty of the convention to proclaim this constitution; and I am unwilling to transfer the business and power of proclaiming what is the constitution of Kentucky to any agency—whether select committee, governor of the commonwealth, legislature, or any officer of state. We have, in my opinion, the right of consulting the wishes of our constituents, either before we came here, while we are here, or hereafter; and I am in favor of submitting our work to their judgment. If the majority of them should approve of it, then it is the duty of this convention to proclaim it from this hall as the organic law of the land, and then to put the government of the state under this constitution. These are the views I hold on this matter, and I wish to test the sense of the house on this question. For that purpose, I move to lay down the report of the committee, now under consideration, with the view of taking up the resolution which I am prepared to offer.

The question being taken, it was decided in the affirmative.

The resolution of the gentleman from Nelson was then reported as follows:

*Resolved*, That the convention will take a recess and submit the constitution as agreed upon, and proposed to be adopted, to the people for their approval or rejection; and that the convention will re-assemble to ascertain the result of the vote, and to close the labors and duties devolved upon the convention, by proclaiming the new constitution, and providing for putting the government into operation, or to re-adopt the old constitution.

Mr. HARDIN. I am very happy to say that I entirely concur with my colleague in this matter. I have a few words to say on the subject, but shall wait until some other gentleman has spoken.

Mr. STEVENSON. I hope this report will be acted upon now. The committee has drawn up a report with the view of settling this question, and I think we ought immediately to set about its settlement. I feel as sensibly as any gentleman on this floor, that the sands of this convention are ebbing fast, and I am as anxious as any gentleman to get through with business so as to let us get home. But, sir, this is one of the nicest questions that has yet come before this body. When it is remembered that the people have called this convention, that it has assembled in obedience to their will, and passed through the greater part of the task that has devolved upon it, and, further, that the success of the constitution depends upon our action here, we cannot but feel how deeply important it is that this question should have a careful consideration.

I should like to understand, sir, what the mover of this resolution proposes to do when we re-assemble. The object for which we are to re-assemble must have some weight in determining the policy of the step. Is it proposed that this convention shall re-assemble simply for the purpose of declaring that this constitution is the work of our hands, and that we approve of our own work? Or is it proposed that the convention shall re-assemble for the purpose of district-

ing the state, and of putting this constitution into practical operation? If the latter is the object of the gentleman, I can see some sense in it; but I cannot see any propriety in re-assembling here merely to assert that this paper, which everybody knows to be our work, is our work. We have already imposed a great deal of work upon the legislature, and why not the duty of proclaiming this constitution? I think, sir, we ought to know definitely and distinctly, what we are to do when we re-assemble.

Mr. GHOLSON. In proposing to submit this constitution to the vote of the people, the question comes up "when is this constitution to take effect?" If it is not to take effect until after the day it is to be voted upon, I ask in what way any obligation is placed upon the state to hold an election; or, if the proper officers should refuse to hold such election, how will they be punished? How can you enforce such an election unless you declare now that this constitution is the paramount law of the land? When I first came here I was as much in favor of a *sine die* adjournment as any man. I believe that the convention have the power to put a contingent clause into the constitution to submit it to the people; but then how comes the question that it shall not be the permanent law of the land until the first of May. It seems to me to be a mere matter of courtesy to the people, and that it might as well be ratified by the convention now.

Mr. HARDIN. I have a few remarks to make upon this question, and I may just as well make them now as at any other time. I understand sir, that we are assembled for the following purpose: "And to meet within three months after the said election for the purpose of re-adopting, amending, or changing this constitution."

We are to meet, and when we meet, we have the power to re-adopt the whole of the old constitution if it so please us—we are to meet, and when we meet, we are to amend that constitution if we please, or to make a new one out and out; but whatever is done, we are to do it. The act of assembly which was passed last year endeavored to conform to the constitution, but it did not do it exactly in so many words.

That constitution was made fifty years ago, when our state was in its infancy. We had not then a population of over twenty five thousand voters. After a lapse of nearly fifty years, the people became greatly dissatisfied with the constitution made for us, and the question being put to the people whether they would have a convention to amend that constitution, it was decided by a majority of forty eight thousand votes. In pursuance of that vote, the legislature again put the question to the people, and by a majority of ninety thousand votes, they declared in favor of calling a convention to amend this constitution, and we, Mr. President, have been elected in pursuance of that call. We are sent here to make a new constitution or to change or alter the old one. The people, in the strongest manner have proclaimed to us and to the world at large, that they are opposed to the old constitution.

Well, sir, we are sent here by them, for what purpose? To alter or change the old constitution, or to promulgate a new one. Well now have we the power to adjourn until the first of

June, as some gentlemen think it to be necessary? I say that we have the power; that we can adjourn from day to day, if we choose; that we can adjourn for a month if we choose, or for six months if we choose; but if ever we dissolve then there is an end of it. If ever we adjourn without a day fixed in our adjournment, then there is an end of the vitality of this convention. I suppose there is no question of our power to adjourn till the first of June. I came here, sir, with a full determination to submit the new or altered constitution to my constituents. But when it is submitted to them, are they to make it? No, sir, we are to take their advice and opinion upon it; and when that is done, we are to pronounce the final action of the convention, because it is the convention alone that is to make the constitution. Sir, to use a legal illustration, we are like a court of chancery, when the chancellor sends his interlocutory decree to a commissioner; the commissioner is to make out his report, and the chancellor acts upon it and gives his final judgment. It is not the commissioner who furnishes the decision; he furnishes but the facts on which the chancellor pronounces. We present the new constitution to the people, but do they make it? No, sir. We have framed a set of laws and submitted them to the people for their examination and approval; and when they have given or withheld that, we act understandingly in relation to their opinion on the subject. They don't make the constitution, we are to make it; we are to publish it; we are to promulgate it to the people of Kentucky, and to the world, that they may know what we do. But, sir, how is it by the present regulation? We are to submit it to the people; a vote is to be taken, and the several county courts are to appoint judges. If they don't appoint them, the sheriff is to appoint them. The regulation is most excellent. The polls are to be opened in every county and in all the precincts of the counties. Returns of the sheriffs are to be made on the Thursday afterwards; and when the vote is ascertained each sheriff of each county is to certify to the secretary of state. That is all very well, but what then? After that is done, it puts in the aggregate vote of the people, and the governor, secretary of state, attorney general, and auditor, are to count and compare the polls, and they are to proclaim what is the constitution, and not us. They are the men to whom we thus delegate the power to make the constitution; they are to give it life and vitality. Now I say it is our duty to do it; and I will here remark, in reply to the gentleman from Knox, that I don't think it was universally agreed not to come back here. I never heard of any such universal agreement. I verily believe that, in some states, conventions have published their constitutions without submitting them to the people at all. We did so in 1799; in other states constitutions have been so submitted. Well, be it so; but I do think it is our duty to meet here and compare the polls for and against the constitution, and say whether the majority of all the votes cast are for the constitution or against it; to say whether the election has been rightly conducted, and whether every county has cast its vote. Suppose one or two counties have not voted, what then? We are to do whatever we may

think advisable to be done. I believe, Mr. President, that it is our bounden duty to appear here at some convenient time after the election to ascertain what the people say on the subject, and then to act accordingly. That this is within our power no man denies. Now as to the propriety of doing that, I think it is our bounden duty.

As there appears to be a difference of opinion in the house, whether this is a matter of duty or expediency, I will call the attention of the house for a few moments to the question of expediency. The people have called us together to make a constitution, and we have assembled pursuant to that call. The state has expended, up to yesterday, inclusive, forty thousand dollars, in this convention, and before we adjourn the expenses will, in all probability, amount to forty five thousand dollars. The people expect a constitution at our hands; they look for it, they demand it, and we are not to break up here and leave our work unfinished. Sir, if we adjourn without a day for re-assemblage, then we have no power; and then will come on the death struggle; then the great object of this convention is to be defeated, and again all the discordant elements of the state will close in and put down this constitution. The abolitionists, or call them by the tenderest name you will, and say "emancipationists," of whom there are not less than 30 or 40,000 in Kentucky, will use every exertion in their power to put down this constitution, and they will do it, because we have then no power left. And what is to be the result? The same battle which we fought last year will have to be fought over again, with new and increased violence. Efforts will be made in Ohio, Indiana, Illinois, and other states to throw a vast amount of this kind of influence into this state. Men are to take the stump again, and then when the vote comes, they will say they did not vote because they saw they could not carry the election. They will poll every vote, and exhibit a force of 40,000 votes. But in addition to that, what more will they show? They will produce the same spirit of insubordination, outrage, and violence among the black population which there was before the election for this convention, if we now finally adjourn. Your celebrated preaching men, in their black coats, dedicated to the service of God, but alas! too many of them in the service of the devil, will endeavor to serve the negro population, and the same distracting battle will have to be fought over again. What else is to be done? Your office holders, your judges, your sheriffs, your magistrates, who are to succeed the next, and the next, and your constables who are losing their places, your office holders from the highest to the lowest will start into the field, and show their hands, and will make every exertion; what for? For the purpose of defeating this constitution. The constitution defeated, the convention adjourned, and what then? Why you are thrown back upon the old constitution.

Who was it that called this convention and for what purpose was it called? It was called by the people of Kentucky for the purpose of bringing down the appointing power of the government and bestowing it upon those to whom it legitimately belongs—the people. And for

what other purpose? Why for the purpose of bringing down the life-tenures of office, and the scandalous sale of offices. To all this the emancipationists and office-holders are keenly alive. And what more? At least sixty thousand of this class were against calling the convention, and they were well united. You will find the houses of Austria and Russia uniting oncemore to crush the Hungarians and to put us back where we were before. And who is to take the field for this new constitution? Nobody that I know of. Who is to raise the sinews of war? Nobody. Thousands and hundreds of thousands will be raised to put down this constitution. Do you ask who are to raise it? Your emancipationists in the adjoining states and your office-holders will raise it; and the great object of the people will be defeated. But, sir, if we adjourn to meet on the first Monday of June, then there will be a fair voting; no emancipationists will be interested in sowing the seeds of discord, because we have to meet again, and we have the power to carry it into effect. There will be no chance then to fall back upon the old constitution; and if such an event should happen by any possibility, the people will be so dissatisfied with the old constitution, that in less than ten years they would call another convention.

But one gentleman says, what are we to do when we come back here? I am not mealy-mouthed about what I intend to do if I get here; other gentlemen can do as they please, I am but one. I will endeavor for myself, and I trust it will be so with the other ninety-nine delegates, to confirm and promulgate the constitution, if the people are willing; to come here and shake hands, and say "well done thou good and faithful servant." If the people should not approve it in all its provisions, we can see what is the matter, and rectify it, and endeavor to conform to public opinion. There is no paper in the world, that ingenious men cannot find fault with; there is no language used that they cannot pick holes in; even the Almighty himself, when he delivered his divine laws to the Jews, was not always understood. They misunderstood him occasionally, and not unfrequently departed from his commands. The best language that ever was used—not Webster himself—and he was a perfect master of ours—can use language that cannot be misinterpreted. But the opponents of this constitution can have no motive of this kind, if we adjourn over their heads. No ingenious sophist can then undo our work, because we have power to meet again, and correct anything we may have done wrong; and the people will not cavil at anything which is not wrong.

I have given in a few words what my views are. First, that we have power to adjourn; secondly, that we are either to abolish the old constitution and make a new one, or we are to alter and amend it. We cannot delegate that power. But, thirdly, and most of all, we owe it to ourselves to see that this constitution is properly ratified. Sir, we have met here to make a constitution, and it is not unknown to gentlemen that there are some persons in this state who have done all in their power to traduce us by stating that we were spending our time needlessly

and wasting public money. Some of these persons are probably now preparing the public mind to crush our labors; and I will say this—that I have never seen a set of men labor more assiduously, more honestly, more earnestly than have the members of this convention. They have gone into no dissipation, no frolics; they have labored almost day and night to make the best constitution they could, and that would suit the wishes of their constituents. The great body of the intelligence of Kentucky is here; and we owe it to ourselves, to posterity, to our constituents, that we should never adjourn until we have made them a constitution. If we should do so, what will be the result? Why, we will be a laughing stock, a scoff, and the scorn not only of Kentucky, but of all the surrounding states. Self-respect, the high consideration of this convention, the duty which we owe to our constituents, tell us not to quit till we have made a constitution which will be satisfactory to the people. Some objection, I believe, has been made to our constitution, on account of its running a little too much into detail. Be that as it may, we have fulfilled the expectations of the people; we have taken away the appointing power from the governor; we have changed the tenures of office; we have given them an elective judiciary. And, sir, what instrument is there in the world that is without defects? We have done all we could do, and I do hope we shall never consent finally to leave here, until we have proclaimed this as the new constitution of the state of Kentucky.

Mr. MAUPIN. The duty which I owe to my constituents is paramount to everything. I came here at a late season, but I promised my constituents that I would endeavor to make them a constitution, and that we would submit it to them when finished, for their approbation.

My friend's proposition is one of great moment, and one that we are bound to look to. I heard a great deal said when I was at home about the wisdom of the hundred men who were making this constitution, and not a little too about their delaying their business so long and spending the people's money; but to this I replied that it was difficult to get a hundred men to think alike, and that every man had his opinion and would express it too, as he was bound to do. The proposition of the gentleman from Nelson is nothing more than what we promised the people we would do. Adjourn without a day, and the constitution incomplete, or not brought into effect, and the people will say, "you have tantalized us." They did not want a great deal done; the chief thing which they were anxious to see abolished was this life tenure of office, and the power of filling offices vested in the proper hands. This has been effected in a manner highly satisfactory. The convention has broken, as it were, into a hornet's nest, and though there may be a little stinging, the mischief has been effectually eradicated. Our fathers gave us a constitution and left us their example; and from both we may learn that they were anxious our government should be established in as independent a basis as possible. The right of acquiring property, of having open courts, of the liberty of speech, of justice without sale, denial, or delay, were



sacred privileges secured to us by our fathers in making their constitution; they thus gave us these four pillars of polished marble, and all they required of us was to turn a good arch over them. Here, then, are a hundred men, influenced by the most patriotic motives, neglecting their business, away from their families, working like a band of brothers, harmonizing on all great subjects of interest, compromising their feelings, come together for the purpose of laying down—and they have laid down—the foundation of our government, giving to every man equal rights and privileges. Do not talk to me of the government becoming unwieldy. All we want is unanimity of feeling, and concert of action, to destroy what is called dengoguism. Let us throw self out of doors, and come here with hearts declaring that we love our country better than every thing else. This constitution is to last, not like a rope of sand, but I trust it will continue forever. Then let us take action at once, and give our enemies no occasion to attempt to destroy the work that we have done. Let us act with caution and judgment. We have erected a pillar which we hope will stand, and not be thrown down in a night. Close your business now and adjourn *sine die*, and the people will say you have neglected your work, you have refused to do what they sent you here to accomplish.

Let me say to this proud body of men, that I cannot say enough in their praise when I return to my constituents. It is true that I have had comparatively no hand in their deliberations, but my heart has been with them. They have discharged their duty with great ability—I have never seen anything like it in my life; and to the honor of Kentucky, I say that two-thirds of the people will receive this constitution with open arms.

Gentlemen, you have done great honor to your country. Now carry out, fulfill, accomplish to its perfection, what you have already done. Do not leave that unfinished, which was a *sine qua non* with the people. Adjourn without a day, and leave this matter to the people, and how can they settle it? They care not for the expense so that the work is completed; and they have left it to you to begin and to end it. Finally, I trust that no gentleman will go home and speak against the constitution, to his constituents. There may be points to which some would object, and others to which others would object; but we have acted with comparative unanimity here, and have compromised many of our feelings, and perhaps some of our local interests, for the general good; let us keep up that spirit, let us cultivate it among our constituents, and if we do this, there is not the shadow of a doubt that the constitution will be accepted by an overwhelming majority, and that all you will have to do when you return to this hall, will be to affix your names to the instrument and proclaim it to the people as the organic law of the state of Kentucky.

I leave the subject, hoping that the proposition of the gentleman from Nelson will be carried by acclamation.

Mr. M. P. MARSHALL. The question which this resolution presents, involves two propositions, of which the first is, "shall we submit

this constitution to the people of Kentucky for their adoption?" The old constitution authorizes us to submit the constitution we may now make, to the votes of the people of Kentucky; but I conceive that whether such authority is, or is not given by the old constitution, matters nothing in the determination of the first question involved in the resolution. The people who have sent us here, and who have imposed upon us the sole agency of making an organic law, have given us the power of disposing of that proposition according to our wise discretion. Wisdom and experience teach us that public sentiment should be adopted by this body. I therefore, cannot discover a dissenting voice in this house to that part of the proposition which relates to the reference of the constitution to the people. The elder gentleman from Nelson in his remarks, introduced a legal illustration which I do not think he applied with very happy effect; certainly I cannot coincide with his application of it, and must take the liberty of placing it in direct contrariety with his position. The people of Kentucky, sir, in this case, constitute the high chancellor who have instituted an interlocutory decree to this house as commissioners, to carry out at discretion. The principle of that decree, devolves upon us the duty of making a constitution, as the result of the labors, in which we have been engaged during the last three months. We have made a report upon which is to be based the decree of this great high chancellor, the people of the state of Kentucky. This report is embodied in the constitution which is to be submitted to the sovereigns of this state. They are to consider it in all its bearings, and to say whether it accords with the principles laid down in that decree; and if, upon examination of the labors of this house, they can say that this principle is fairly carried out, it becomes then the decree of this great high chancellor, and goes forth the law and constitution of Kentucky. Is not that the correct position, and the state of the fact, in reference to this question? If it is, we have been engaged for three months past in doing that duty which we ought to be proud to say was confided to us by this high chancellor, and we refer to it the inquisition into the truth of the statement we make, when we ask him to put his name to this as his final decree; and when his name is affixed to this decree there is an execution; and the question arising on this second proposition is this: "in executing this final decree, are we bound to come back here to sign our names to it, and give it efficiency, or whether, by the powers conferred upon us as a convention, we have a right to assign this duty to some other agency less expensive to the state and equally solemn in its office." I insist that this power can be as legitimately exercised through the agency created in this fifth section of the report, as it can be through the agency of this house.

We delegate solemnly the power of proclaiming the result of the popular vote, as to the acceptance or non-acceptance of the constitution, to the governor of Kentucky. Cannot this be effected as well through that medium as through the re-assembly of this house? And does not the assemblage of this house, to perform an act which can be as well done through the execu-

tive of the commonwealth, involve a little absurdity and ridicule in itself? Shall the congregated respectability and intelligence of the state—for I will not subscribe to the idea which some gentlemen entertain of the magnificent abilities of this assembly, (I believe it is a fair sample of the honesty and intelligence of Kentucky, but I believe it falls far short of the intellect of which this state so proudly boasts; I believe that some of the highest order of intellect in this state has been excluded from this convention, but I believe also that this house is a fair representation of the virtue, intelligence and honesty of the good people of this country, and I am proud of the character of the state)—but, sir, shall the congregated intelligence and wisdom of Kentucky re-assemble here for the purpose of doing an act which, in my opinion, can be as well performed by any delegated agency? The re-assembly of this body for such a purpose appears to me to be wholly without necessity. Suppose that resolution requiring us to assemble here again is to be adopted, what is to be the effect? What are we to do? Are we to do more than ratify the will of the people who have passed their votes upon the subject, or are we to constitute ourselves into a permanent body which shall go again and again into operation? Were we elected with any view of re-assembling after we once adjourned? Did it enter at all into the minds of the people that we were to constitute ourselves a perpetual body; or was it not merely to do what we were sent to do, and then adjourn? If we were assembled for any other purpose except to register the will of our masters, what is that purpose? To make another constitution? If when we have been found wanting in ability to make one, are we to come back to do it—to try again to do that in which we have already failed? Will the people have unlimited confidence? If when once we have failed, will they trust us again? If we are to come here again and go to making a new constitution, I ask you whether that is consistent with the original design of the electors who sent us here? Well, we assemble again and make another constitution, what is to be done with it? Have you considered what is to be done in a second convention? You have already expended from forty to fifty thousand dollars, you are to assemble again in June and make another constitution and expend forty-five thousand dollars more? And what is to be done then when you have made another constitution? Will you say that shall be the constitution of the state? No sir; you will have to submit it again to the people, and thus you will go on, like a drowning man grasping at a straw, holding on to the office to which you were elected in 1849, and you assemble and re-assemble, and assemble again, until the people become indignant and they come here in a body and push you out of the doors of this hall.

Is this drawing too strong a picture? I think not. I do not think the elder gentleman from Nelson will agree to come here without the direction of the people; and if he would so agree, would the house agree to it? But he says if you do not agree to meet, you will weaken the estimation in which the people will hold this constitution. I ask you gentlemen who sent

you here? The people of Kentucky. Are you to control them or they you? But the gentleman says there are forty thousand emancipationists in the state. And what if there are? Are they not to be here for all time. If he submits the constitution to them now he has to meet them; and if he submits it a second time he has still to meet them. They have as much right as he to the freedom of their opinions, and there is not a bold spirit in this hall that will challenge them to show why our constitution should not be accepted.

But, sir, this constitution is going to be accepted. It has pushed some things to extremes, and in my opinion, beyond propriety; but I think it will meet with the sanction of the great majority of the people. They are going to accept it, and when they have accepted it, I will observe that it can be as well proclaimed through the agency of the governor, as through this house. It is not denied that this house has the power of conferring such agency upon the governor, and in my opinion it ought to be done. If we come back for no other purpose, that purpose is ridiculous; if for any other purpose then we are transgressing the warrant of attorney under which we have assembled here.

Mr. CLARKE. Under the ninth section of the constitution of the state of Kentucky, after repeated efforts within my recollection, the people have called this convention by a majority of over forty thousand of the legal voters of the state, taken against the commissioners report the year before last, and by ninety thousand polled last year. By this overwhelming majority of the vote of this state, the people have sent us here to make those changes in the old constitution which they desired, or to adopt an entirely new one, should we deem it expedient. Now I ask this convention, what does this section propose? We are assembled here, a hundred delegates from different parts of the state, to do what? To cure those defects that exist in the old constitution, or to make a new instrument altogether. I appeal to the gentlemen composing this convention, whether it is not a matter of impossibility that we could have known every change which the people might desire should be made in that instrument; and whether it was not next to impossible that we should come here entertaining similar views and opinions as to all these charges. Now, sir, if after the labor of three months we should present a constitution to the people which should fail to satisfy a majority of them—say by ten, twenty or thirty thousand votes, is it right and proper, after the struggle that has taken place within the last four or five years, that we should part with the power they have wrested from the present office holders, by their action at previous elections? Adjourn without a day and all the labors both of the people in that struggle and the labors of this convention will be endangered. I maintain that we have no authority to lay down that power, when we adjourn here, for the moment we adjourn *sine die*, without having received the approbation of the people and proclaimed the constitution, that moment we have done what the convention party never intended we should do, and what they will not sanction even if we should do it.

I will ask my friend from Fleming, if he was originally a convention man?

Mr. M. P. MARSHALL. The people of my county gave a majority of 1,700 votes for a convention in 1847. I did not give my vote at all.

Mr. CLARKE. I will ask him, does he intend when he goes before his constituents, to support the constitution?

Mr. M. P. MARSHALL. I intend to do so, for several reasons—but for none more strong than this—that I do believe if the convention decides to meet again, and goes to tinkering up the constitution we have now been making, they will make a worse one than we have now. This constitution does not meet my views in every respect, but still with one or two exceptions it accomplishes most, if not all that the people desired—and perhaps a little more than they desired.

Mr. CLARKE. I think the gentleman has answered the question sufficiently, he need not proceed further.

Mr. M. P. MARSHALL. Yes, but the gentleman having asked a question I beg to tell him he must please to wait till I give him the whole answer. (Laughter.) Sir, I have said that with one or two slight exceptions the constitution has my approbation. I wish to say further, that I take no impracticable, theoretic, high sounding views in relation to my position here; I am not disposed to put myself in opposition to the cataraet of Niagara, and fill this house with the roar of declamation, (laughter,) but I come here as a plain sensible man, entertaining sensible opinions, and wishing to submit this constitution to the decision of the sensible people of the sensible state of Kentucky. I do not wish this convention to return here with high and impracticable notions of power; but I wish to serve my country as a plain honest country gentleman, and then go home to my constituents and sustain the constitution. Now sir, the gentleman has my answer in full. (Laughter.)

Mr. CLARKE. I will not say that the explanation is more difficult to understand than the thing explained; but this I will say, that the gentleman would have been as well understood with half the response he has made.

I am aware of the anxiety of the convention to close their labors so as to return to their families; but I am sensible no question has yet been presented to our consideration, of equal importance to this. While I am in favor of taking the sense of the people upon the adoption or rejection of this constitution, I am unwilling to part with all the power which the people have won during a struggle of three years past, by that submission. A majority of 90,000 against the poll books have declared against the old constitution of this state. Now suppose you submit the new constitution to the people and a majority of 10,000 should decide against it, what do we do? Why, if we do not ratify this constitution, we permit that 10,000 to overrule a majority of 90,000. This constitution has been framed in a spirit of compromise and concession. It may possibly contain within it, sections, provisions, or principles that may be obnoxious to the people of this or that region; it would be a miracle if it did not; but I say again that if you submit this constitution to the people and then

part with all the power they have given you, you will see an opposition raised to it that you little expect. Every emancipationist in the state, every man in favor of the old constitution, every office holder, past and present, will unite in brotherly love and friendship; and thus you will have a combination of the most discordant elements coming up in favor of the old constitution, and against the new one. I want to submit this constitution to the people; I want them to come up in the exercise of their sovereign will and say whether they are satisfied or not, with the work we have performed. And if they should not be satisfied, where can be the harm, where the danger of the delegates returning to their constituents and consulting with them? When we go back to our people from here, we can ask them what particular opinions they entertain on this or that section; we can thus learn what they want, and if their be any thing radically wrong when we return here in May or June, it can be remedied; for we should return clothed with full power to effect such changes as the people may have determined upon.

Now, sir, mark my prediction here to-day—that the very moment we part with this power to so change the work of our hands as to meet with the people's wishes, just so surely will all the discordant elements in this state unite to destroy the work in which we have been engaged during the last three months. Every man opposed to change will throw in his mite; and millions of dollars will be raised to defeat this constitution. Part with the power you now have, and the people will be thrown back to where they were four years ago, and cannot make any change in the constitution unless they can overrule a dead majority against them of twenty or thirty thousand.

Now let me ask, suppose the present office-holders should refuse to hold any election at all, where is your power to compel them? Have you affixed any penalty for such refusal? None whatever. And if they should refuse, then the whole work of three months goes by the board, and the old constitution is re-adopted. There can be no danger, Mr. President, in submitting this constitution to the people with the reservation of power on the part of their servants on this floor to meet here again, if what we have done does not accord with their will and pleasure. The very act itself will display mutual confidence between the people and the convention. There can be no question, that so far as we are concerned, there has been a full intention to their will, and that our labors will meet with their full approbation throughout the state, I have but little doubt. Adopt the resolution of either of these gentlemen, (and I must say I prefer that of the elder gentleman from Nelson,) and we can go back home and meet our constituents and say to them, we want to talk with you in reference to the various changes in the constitution; we have not parted with the power which you entrusted to us, but we want to exercise it in accordance with your will. And then, sir, when we meet here again in June, all we have to do is, to submit to each other those improvements suggested by our constituents, and instead of entrusting the matter to the governor, or any other officer of the state, we establish

this constitution at once as the paramount law of the land. I will not consent, sir, that a mere majority of ten, twenty, or fifty, or a thousand, or ten thousand, shall declare and decide against what a majority of ninety thousand have already determined upon. If, so far as I am concerned, I have not carried out the will of the people who sent me here, I have mistaken their will. I have no authority to part with the power which the people gave me until the work they delegated me to perform is completed; it is their power, not mine; they have said those changes should be made; and if the manner in which we have made them does not suit their approbation, they ought to have the right to instruct us to come back and make such alterations as will meet with their approbation. I am opposed to the old constitution; and I have been so since I was old enough to read a constitution. Sir, save only in the name, there is not a constitution in the United States that contains the elements of the old British laws, conferring titles of nobility in so high a degree, as the present constitution of the State of Kentucky. True, 'tis said that there shall be no titles of nobility; but, sir, with the mere exception of the name all the advantages connected with lordly titles were kept up and have been sustained. This, sir, in our new constitution, we have, I apprehend, effectually prevented. I shall go for the resolution of the elder gentleman from Nelson; and if that resolution does not meet with the views of the convention, and this fifth section should be adopted, I predict that you will again see such an array in opposition to this new constitution as has never been known to exist in any land as will exist in April or June next, if one or other of these propositions be not adopted for the determination of the question.

Mr. NUTTALL. To my mind, sir, it is important that we should re-assemble here, and finally adopt the constitution when it shall have been submitted to the people. We are assembled here for the purpose of re-adopting, amending, or changing, the old constitution. I would ask if there is in that provision any power to submit this constitution as a complete instrument to the people, with the qualification, that if they adopt it, it shall be the constitution of Kentucky? If, when it is presented to the members, they sign this instrument, the matter is ended; and neither we nor the people, have any further control over it. We submit it to the people merely as an advisory measure; and if, after it has been submitted to them and approved, we come back here and sign and proclaim it, then it becomes the constitution of the country. All the power that was delegated to us will have been officially exercised when we sign this instrument. We have no qualified power; it is absolute unconditional. Much has been said here about assembling and uniting all the discordant elements of the state against the new constitution; but, sir, I would have those discordant elements to understand that the power of the people has not been parted with, and that when we do go home, if in their judgment and sober deliberation, after examining the result of our labors, they, in their primary assemblies should give us advice upon the subject, we are not going to put ourselves in such a position as to be unable to carry

out their wishes. We ought to act with all possible discretion on this subject, and clear the constitution of every difficulty which may stand in the way or be attempted to be thrown around it. I have no doubt it will be received by the people with acclamation; but let us not put our names to it until we have received the acknowledgment of the people; and when we have received that acknowledgment we can meet again and ratify the whole. I hope and trust this resolution will be adopted.

Mr. TAYLOR. I very much question whether we have the power to adjourn as is suggested, and if we have, there is a question about its policy. I will not, however, discuss this question, for I am not prompted to do so either from inclination or a sense of duty. But grant that we have the power. I would like to ask some two or three homely questions. It is provided in one section that, immediately after the adjournment of the convention, the governor shall issue his proclamation, &c. Now, I do not pretend to say that the present governor would refuse to comply with the requirements of the convention, yet, have you any guaranty that he would comply; or that his mandate would be obeyed by the subordinate officers of the state? Suppose the governor of Kentucky should repudiate your power, and say you have no authority to impose such duty upon him, and refuse to obey you, what would become of all your labor? You go home, and you stand a monument of the scorn and contempt of every honest man of this country. And why? Because in framing this constitution you will have left a loop-hole through which your adversaries may effect an entrance. What else? You have called upon the county officers to appoint judges of election, and the sheriffs are commanded to make the returns. But suppose some of the great anti-reforming counties should refuse to hold any election; in that case, too, the great object of this convention would be defeated. The magistrates and justices of the peace are next called upon to support the new constitution, and what is their answer? They will say, "oh, no; I cannot do anything of the kind. I have sworn to support the constitution of the state of Kentucky as it now exists, and I cannot violate my oath." (Laughter.) This was said by some of the magistrates in the state of Indiana; and I should not be surprised if some in this state were found making the same objection. Now, I ask if this would be right? I ask if we are to place ourselves and the trust confided to us by the people, in the power of any men that God ever made, except it be the people themselves, acting in their aggregate capacity? You will place it in the hands of our justices of the peace will you? No, sir; no, sir. And, sir, whether we have the power or not, the question is, whether we are going to place the adoption of this constitution upon a mere contingency, as it would be, if the provision contained in the report of the committee should be finally adopted. These officers to whom you would entrust this business, may or may not obey you; and thus, in consequence of a species of fraud, we may be driven back to the old constitution; and be compelled to sit under the old "vine and fig tree," with none but the office holders to make us afraid. (Laughter.)

But now to the policy of this matter. While I have sat here day after day looking upon the proceedings of this assembly my heart has felt deeply thankful to the great governor of the universe that my lot has been cast in this goodly land. Look sir, now, when we are about to close our labors, at the cheering exhibition of popular power as here manifested; we have come here from all parts of this commonwealth, and where can be found a more spirit-stirring display of the influence of our institutions than in this assembly, when now we are about to submit the work of our hands to the people who sent us here? We came here to do the people's will; and I would ask is there any thing wrong in coming back to perfect that which we have already done, and proclaim the will of the people as it will then have been declared? Ah, Mr. President, have you ever thought of the elements of opposition that are to combine against this constitution? Proud as we are of it, sir, the mortifying spectacle may be exhibited of its rejection, notwithstanding the 102,000 votes in the year 1847 cast in favor of constitutional reform; sir, the sad spectacle may be exhibited of our being remitted to the old constitution. Who do we expect to be arrayed against us? The entire office-holders of the country. They are men of intelligence and power; they have too their aiders and abettors; every man among them, no matter how small his office, has his influence, just as though you would throw the smallest pebble into the largest pool, and you will see the circles on the water to the very verge. So is it with these men. They have their friends and relations, their sons and their sons-in-law, and sons-in-law in expectation, and their daughters too all arrayed against this constitution, not because it does not accord with popular sentiment, but because it strikes at the root of their monopoly. Well, sir, besides these, you will have the emancipationists against you, and it has been represented that there are a great many of them in this commonwealth. They are many; they are intelligent; they are powerful and wealthy, and—though I do not say it with any unkind feeling towards them—they are, on this question at least, fanatical; and this very fanaticism would induce them to work hard, and spend money in this cause. You will have them against you in conjunction with the office-holders. Now who else have you? I speak it in no mood of disrespect, but it is a fact that a gentleman came here one morning with a whole constitution ready made. (Laughter.) There are a great many constitution makers outside of this hall, and if the new constitution does not answer their expectations, you will find them following you closely up.

Besides these you will find some men, who have peculiar notions, which they want engrafted into the constitution—and, as my friend from Nelson said, inspriguated into it—and when all these elements are combined, you may depend upon it they will make a formidable array. I know that many gentlemen suppose they will have nothing to do but go home and tell the old woman and the children what fine things they had seen, and what fine eating and drinking they had had, especially since the convention had determined that the seat of

government should remain at Frankfort. (Laughter.) But I can tell gentlemen if they want this constitution to stand, they will have to gird on their armor and fight as a father fights for his offspring; they will have to "fight on, fight ever," until this constitution is firmly settled as the law of the land; for until that is done, all these opposing elements will be combined to the extent of their power to effect the downfall of this constitution. Thank God the sceptre has not yet departed from Judah; we have it yet in our hands; and I trust we will not permit it to go out of our hands until we have perfected the great work which the people sent us here to perform; and that cannot be completed until the constitution has been referred to the people and we have come back, in conformity with public sentiment, and proclaimed it. As my friend from Simpson remarked a little while ago about having been in favor of constitutional reform ever since he was able to read a constitution, so has it been with me. I have been in favor of constitutional reform ever since I could read a constitution and understand for myself. I can conceive nothing so horrible as to be remitted back to the old constitution, because if once remitted we are there forever. That may be a strong assertion, but, sir, I believe it is true. I ask the friends of constitutional reform, if I dare make an appeal of that sort to them—and perhaps it may be going too far, but it results from the common interest I feel in the common success of our labors—I ask gentlemen to take counsel from their fears, and never to suffer the sceptre to depart from Judah until the constitution is made the law of the land, and the old one is forever abolished. Take counsel from your hopes also, and the time may come, and I hope it will come, when we shall convene here, and—though not like the prodigal son in having wasted our substance—that the fatted calf shall be killed, and we shall have joy and dancing over the strongest opposition to the most useful and necessary measure ever proposed in our state.

#### COMMITTEE OF REVISION.

During the preceding proceedings the committee of revision and arrangement of the constitution reported the preamble and several articles which they had revised, and the verbal changes, alteration of construction, and the amendments, which they had deemed it necessary to make, were acted upon by the convention.

#### RECONSIDERATION.

Mr. MITCHELL gave notice that he would move a reconsideration of the vote of yesterday, adopting the amendment of Mr. JAMES, to the report of the committee on the legislative department.

The rule requiring notice of a reconsideration to lie over one day having been dispensed with, the question was taken on reconsidering, and it was decided in the negative.

#### EVENING SESSION.

Mr. TRIPLETT. I hold in my hand a resolution which I wish to submit to the consideration of the convention. I will present it as a substitute for the resolution now before the convention:

"Resolved, That the convention will take the

sense of the people of this commonwealth as to the propriety of adopting the new constitution which they have formed, or re-adopting the present constitution, and will provide for the adoption of the new constitution, or the re-adoption of the present constitution, in accordance with a majority of the qualified votes which shall be cast in favor of the one or the other."

This resolution is offered for the purpose of testing the wishes of this convention upon the isolated proposition as to whether or not we intend to submit the new constitution to the people. The first proposition which arises, is, whether or no this convention is compelled by absolute necessity—and by absolute necessity, I mean lawful compulsion—for I take it for granted if there be one member of the house who believes it to be his duty to come back here he will come back here—to return here and ratify the constitution after it has been approved by the people. There is no man more opposed to coming back than I am, and perhaps there are few who will suffer so much as I would do.

But I wish to say one word on the question now before the house. The argument shall be short, and I would like to have it answered. We are assembled here for the purpose of adopting, or changing, or amending the constitution. If this was an original convention under God, we would have omnipotent power. Under God the constitution of Kentucky was first framed; and the convention framing that constitution would have all power. Under the constitution of the United States, and that of the state of Kentucky, this convention is omnipotent unless restrained by the old constitution. We are restrained, what for? We are restrained to three things: you are to assemble within three months after your election, to re-adopt the old constitution, or change it; and beyond that, you have no power of attorney. You have assembled under that power of attorney, knowing that it was; you have assembled at the call of the people, knowing that it was. You have no right, after you have assembled, and before you have discharged your work to adjourn *sine die*, and leave to somebody else to decide whether you have discharged your work or not. I can best illustrate this by a legal argument, that cannot fail to be comprehended by the most ordinary understanding.

Are we to leave this constitution as it stands now upon a contingency? If we have a right to do so, have we a right to go one step further, and bind somebody else besides ourselves, to determine whether that contingency has happened or not? I say we have not, because that power was not delegated to us. We did not assemble here under a power of attorney, in which that power was contained; and why? Because we were to "adopt the old constitution, or to amend or change it." We were to do this, and not another person.

One other idea, and it appears to me to be a strong one. How much of the new constitution is imperative, and how much of it is not imperative, if you should adjourn to-morrow? A part of it, every man will say, must be imperative, or you leave the taking of the vote of the people to a contingency. How much of this new constitution is active or passive, between this day and

the day the people shall vote, and have the majority of them voting one way or another? Understand me. Here's to-day; there's the day the people have voted. What is the state of the new constitution in the meantime? Is it partly passive, and partly active, or is it all active, or all passive? It is either one or the other; it is either all active, or none of it is active. Then, sir, what becomes of this clause in which you require—it is not a request, it is mandatory—but what becomes of this clause that "requires" if you will, that your county courts and your sheriffs shall perform particular duties in order that the vote shall be taken? Suppose the county courts and sheriffs fail to perform the duties you have required them to discharge, what is the result? It may be replied that there is no danger of their doing so. So far as many of them are concerned, there may not be any danger, but you know, and I know, that there are counties in the state which were opposed to calling any convention at all; and for the purpose of defeating the constitution adopted by the convention, some fifteen or twenty counties, following out their original designs, will fail to discharge the duties required of them. What will be the result? We may re-assemble or not; if not, the governor must settle the question as to whether the vote of part of the state shall settle the question or not. If we re-assemble, we will have to settle that question. But there is this difference between the convention upon one side, and the governor, and attorney general, and secretary of state, upon the other. We have authority to settle that question; they have none, or ought to have none. What will be the argument used before the people? It will be that we have neglected to discharge our duties, and have thrown the responsibility from our shoulders to the shoulders of others. This is, however, merely an argument as to propriety. The legal argument is the one which I wish to press upon the attention of the house, and I hope it will be intelligible and produce the effect desired.

Mr. TURNER. I suppose I might as well commence by stating my position under which this constitution is being made. I am in favor of the constitution being ratified by the people. I am in favor of an elective government; and taking the constitution as a whole, I am decidedly in favor of it when compared with the old one. Having defined my position, I will now address a few remarks to the convention. We are about to separate, and I do trust that we will separate in that same good friendship which has marked our deliberations, and that we will seal this constitution in peace.

Mr. President, I am not convinced that it is necessary for us to re-assemble, and I do not want to do so unless it is absolutely necessary. If we have the power to make a constitution, have we not the power to settle the particular manner in which it shall be ratified? The attorney general, a man of great legal ability, is of opinion that we can do so, and I think so too. Before I came here, this subject was mooted with the distinguished gentleman at the head of the government of Kentucky. He had no doubt whatever of the power to do it; it was what he denominated an incidental power, growing out of the main power delegated to us, and that it



could in that way be carried into operation. Possibly I may be trespassing upon private conversation and opinion to make those statements here, for neither of these gentlemen expected I should say a word about it here. Now, there is no vast difference between a convention like this and a convention of revolution. We came into existence by virtue of the old constitution, and coming thus into existence, our powers are limited.

If I have power to make a government have I not all the incidental powers to say what part shall be carried into operation now, and what part then? Have we not power over all the legal officers of the country? We have unlimited power—power to do anything. The federal constitution does not interfere with any of our acts here, in relation to this matter of making a constitution, and upon what contingency it shall go into operation. Now, to illustrate this, let me tell you what happened some years ago. A man of the name of John Anderson, undertook to bribe a member of congress. The attempt was discovered and the speaker ordered the sergeant at arms to arrest the delinquent and bring him before the house. He was arrested and thrown into jail. Now, congress is a limited body, having limited powers; we on the contrary are in possession of unlimited powers. Anderson afterwards sued the sergeant at arms; but the supreme court decided that the action of congress was right, and that that action was taken in accordance with the incidental powers possessed by that body. Well, if the attorney general is right, we are in possession of all powers, and can, if we please, ordain that we should pay ourselves ten dollars a day for our services. We can, if we please, put part of the constitution into operation to-day. Have we not been putting it into operation ever since we came here? Have we not been directing the auditors of the state as to what they should do? Now I take it, that as we have the power of turning out every officer to-morrow, so we have the power to appoint to any office, which does not interfere with the government of the United States. We have within the scope of these powers, the power of addressing any officer of our government; and if he refuses to perform what is required of him, he may be brought up and punished, and the courts would recognize our power, and command him to perform what he was desired to do. I think, sir, upon this subject there can be no reasonable doubt.

Now, I will go on to another proposition. The gentleman from Nelson made a very ingenious argument this morning, and he always conjures up some tremendous despot to come in and whip people into his notions. It was a very artful address; but the sum and substance of it was this: and I ask gentlemen here whether they are prepared to go the length of the argument which the honorable and distinguished gentleman has made. He says that the people are a good deal like a commissioner in chancery under the chancellor; that they are the commissioner and we the high court of chancery. What! is that the position of things! The people a little commissioner, and we the high court of chancery to do as we please! But that is the sum and substance of his argument. It smelt to me a little like Na-

poleon when the whole people were under arms.

Mr. HARDIN. I beg you will not put words into my mouth which I never used.

Mr. TURNER. Well, that is the effect of your words; if not get up and answer it. When the whole French people were under arms, and Napoleon was anxious to be made emperor, what did he do? Why he threatened to shoot every man who would not vote for him. We send the people a constitution, and if they are not pleased with it, we are to come back here and force it upon them.

Well, then, the gentleman raises a bug-bear about the emancipationists. I don't believe there are 15,000 emancipationists in the state; and as to the office holders, we have fought them, and can fight them again if need be. I believe, sir, that this constitution will be adopted by a more overwhelming majority than we had in 1848 for a convention. We shall see the people who have been kept out of office coming forward and shouting for the constitution, and the old aristocracy will be thrown off who have been hanging like a mill stone about the neck of the treasury. They will come and shout "hosannah" for the new constitution. And the office holders too will say that this change is good for themselves.

Well, the gentleman said that our position was something like that of Hungary, in relation to Austria and Russia, and that our enemies would come and attempt to crush our constitution. Do not you suppose that the people who called for it will defend it? They will rise like a giant in their majesty, and there is no power that will be able to resist them; and I put it to the honorable gentleman from Nelson, and the other gentleman from Nelson too, as they are together, whether we have not got Austria and Russia here, and whether we who oppose this measure are not the Hungarians? (Laughter.) Now, I asked the younger gentleman from Nelson what his view was of his own proposition. He said, we are to come back and see whether the people have adopted or rejected the constitution, or adopted the old one, or to do any thing else we please. Now, what does that mean but that we are to put it in force against the will of the people; and to that, sir, I never will consent? When the people elected us, did they believe our sessions were to be permanent? When are we to settle it? When are we to resign the power with which the people have entrusted us? There is, there must be, a limit somewhere. There was a mutual understanding on the part of the people, that when we finished our labors we should quit, and not come here from time to time. And when are we to give up? We make a constitution; the people object to it; we come back and amend it; the people say "we don't like this," and we come back again; and thus we go on from time to time, and never get done.

But there is another view of the question. Does any gentleman here suppose that the governor, and attorney general and the auditor will refuse to carry this constitution into effect? We all know these officers well, and who suspects that they will refuse? Neither of the gentlemen who say we are to come back and require a majority of all the votes in the state; but it is this: we are to come here, and the governor is to

issue his proclamation, if a majority of the members should not come, and in that way the constitution is to be ratified. But take it the other way; you submit this to the people and they do not accept it, what will be the result? Why you would have your delegates from this county and from that county voting against the constitution in its various sections. But on the other hand, if you put it before the people entire, it is for them to say whether they will have it or not. I would ask the people this question: "Do you believe it is better than the old constitution, and will you sustain it, taking the good and the evil together? Why, sir, by this mode, you will have all the people voting for it together.

Now, gentlemen, is not this true? If you go home and are decided, and don't go to fighting, you will carry the constitution; but you cannot expect to carry it unless you go to voting in a body. If we go home and vote in a body, our success is as certain as that the sun is shining on yonder hill.

Finally, the gentleman said he hoped they would all come back and shake hands once more in the completion of their work. It will be unpleasant for me to part with the members of this convention. I will admit that there is a great deal of talent and gentlemanly deportment here; I respect every man in this house, and desire to take every man by the hand; but it is scarcely within the scope of human probability, that we shall all live till next June. If there are not exceeding half a dozen called to their long home before that time we shall be lucky. And would you desire to come here and decide this great question by a mere majority of one or two votes, as some questions have been decided here? And in case of death, are you to issue your own writ, and wait till the people elect another representative? Taking the question in the way you propose, a hundred difficulties will arise; but if you leave the matter entirely to the people, it will gladden their hearts, and there can be no question that it would be most gratefully accepted. Every provision of the constitution may be altered before we come back, and the convention will not be in any better position to decide than it is now.

For these reasons, I shall vote against the resolution, and in favor of the report of the committee.

Mr. DIXON. I shall, of all men here, feel in the most awkward position, if the constitution goes to the people and is rejected. I am in favor of the constitution, and intend to devote what little abilities I possess, to have this constitution adopted. But although I am decidedly in favor of the adoption of the constitution, I will take occasion to announce that I am not in favor of coming back here to proclaim to the people that we have adopted it, because I do not believe it is necessary, and because we can just as well do what we were sent to do without coming back here. If I entertained any doubt as to the contingency, I would come back; but I do not believe that there is any contingency, except the approval of the people; and if they do not approve it, why then let it go. Should they reject it, I am not in favor of coming back to make another constitution; and I think I would say I could not be induced, under any circumstances,

to come back. I should think myself sufficiently disgraced by the rejection of this constitution, without coming back to have the disgrace repeated.

Now, sir, if I understand the whole force of the argument of the gentleman from Simpson, it is, that if the constitution is not approved of by the people, we are to reserve to ourselves the power of making a good constitution, or changing this one in such form or manner, as will meet the approval of the people. If that is not so, I will readily stand corrected.

Mr. CLARKE. The gentleman quotes me correctly. I hold it would be wrong to reject the new constitution, because five hundred people rejected it, when ninety thousand were opposed to the old one.

Mr. DIXON. Well I don't see that the matter is changed. If the people reject this constitution, then we are to come back here either to amend this constitution, or to do something else. Now, if we come back to amend this constitution, are the amendments which we adopt to be absolute, or are they again to be submitted to the people? The gentleman, I apprehend, will not insist that they are to be absolute; and if not, what will be the consequence? We come back not with the sanction of the people, and then when we re-assemble, we are to make a new start for another constitution such as will meet with the approbation of the people. Well, sir, it comes back; it is amended in its form, and we proclaim it; not being approved by the people, we amend it again, and so it goes on *ad infinitum*. Does the gentleman mean to tell me that we are to sit here for the next twenty years to make this constitution? Are we to assemble and re-assemble; are we to make a constitution any how, and drive it down the people's throat? Are we to stultify ourselves by making a constitution which the people will not ratify; and when they refuse, and refuse, and refuse, are we to go on mending up, mending up, mending up? I will not go for any such measure or proposition, unless I believe that we have not the power to submit it to the people without coming back. And if any gentleman will convince me that we have not the power, and that this is the organic law of the land, I will vote to come back again.

Now, have the convention or the people the power to declare this as the constitution, provided that the people of the state should ratify it. We make this constitution, each man signs his name to it and he attaches to his signature this proviso, that it shall not be the organic law of the state, until the people of Kentucky shall have ratified it.

Now, am I to understand the gentleman from Nelson, that this power does not exist? If I understand him, it does not; that we have no power under the old constitution to declare that this shall be the law of the land, upon condition that the people accept it. Now, I understand my friend to maintain another position, which is, that the power of this convention is absolute, except so far as it is controlled by the constitution of the United States.

Mr. HARDIN. And acts of congress passed in pursuance of that constitution, and of treaties.

Mr. DIXON. Now is there any thing in the

constitution of the United States, which limits us in the exercise of this particular power? I put the question to him, to show me any clause in the constitution of the United States, under which there is any inhibition to the exercise of this power. Where is this power? Let any man point it out if he can. The constitution of the United States, limiting us here in declaring the mode of revising the constitution of Kentucky!! Surely the gentleman cannot be in earnest. Sir, what law, made under the constitution of the United States, imposes any limit upon us, as to the manner in which we shall make this constitution? Sir, the gentleman will not pretend that such restraints are imposed upon us, either by the constitution or the law, or by any treaties; and if not, then the power is an absolute one.

Now, there being no restraint upon us, the next consideration is, what are the powers which we derive under the constitution of Kentucky? Sir, the great proposition which I maintain to be true is this—that wherever the power is ample, all acts done under that power, and in pursuance of that power, are valid. It is only when you transcend the power conferred upon you that it ceases to be obligatory. Turn then to the constitution of Kentucky, and see what the power is. It is so perfectly clear, that there cannot be a cavil about it. If I understand anything of the power here conferred, it is full and ample. You have power to re-adopt the old constitution, to amend it, or to make a new constitution. You have ample, full, uncontrolled power, excepting only those powers which lie at the foundation of the laws of independent colonies. Now, the power being given to us to make a constitution, are we prescribed in the manner of doing it? There is the question. What is the limit? As a convention, we have the power to do it, and may we not prescribe to ourselves the manner and form of doing it? The convention shall assemble—for what? To amend the constitution. Is not that precisely what is left to our decision? It seems to me so; I cannot see how we can doubt it. What is the proposition now before us? It is that we shall sign this document, provided that a majority of people of the state of Kentucky shall ratify it. That is the proposition. It is to be ratified by the people, in a particular way at the polls. But the gentlemen say we have no such power to submit it; we have no right to make such a provision. And why? Not because the constitution restricts it. Can we not act to the extreme limit of our power. If you can go to the extreme limits of your power, there can be no controversy about it, and the gentleman does not dispute it; but if you keep within the extreme limits, then the gentleman says the power does not exist. You can do all, but you cannot do a part. You may make a deed in fee simple; but you cannot make a deed with a condition. You give him the power, and can a man exercise the major power, and yet not exercise the minor power? Suppose, Mr. President, you give me a power of attorney to convey your land, in the county of Henderson, and I made a deed with this proviso—"that you approve of it." Does any body believe that if I have made such a deed as that to the gentleman from Kenton, if that condition be complied with by you—does

any body believe that such a deed is not binding upon you, and upon all the parties concerned? It is true, you gave me absolute power to make a deed without condition, and then I make it with a condition that you shall ratify it; and you do ratify it; where is the difference. Now, we are the agents of the people of Kentucky. The power is ample and complete. We can proclaim the constitution here, if we please, and where is the man that will say "it shall not be so." The power is complete; but we do not choose to exercise that power, without referring the constitution back to the people for their approbation. We exercise the power amply and fully, and will any gentleman question that this constitution, if not approved by the people is still binding upon them. This is the great question in the case, but I do not believe any gentleman will maintain that the constitution should be established without the sanction of the people.

Now some gentlemen argue that the sheriffs or judges may refuse to call the election. That is a thing within the range of possibility; but I would not sink to such a level of dishonesty and corruption, any portion of the people of this state, as to suppose for a moment, that when this convention assembled in obedience to the authority of the people, they will shrink from carrying into effect the express wishes of the people of Kentucky. But if it be necessary to attach any penalties to the neglect of these duties, why not impose such penalties as would at once insure prompt obedience? I will not reply to that portion of the argument further than to say, that if the executive should refuse to issue their proclamation whenever the voice of the people of this state had proclaimed that this is the organic law of the land, you had better call upon the rocks and mountains to fall upon you, and hide you from the anger of the people. Sir I would sign it, and write it in my blood, that no officer of distinction will be so recreant to the high duties imposed upon him by the new constitution. I see no manner of objection, none whatever, to our leaving the constitution now in the hands of the people; and I should like to hear some argument on this matter if there is any to be adduced.

Mr. A. K. MARSHALL. This question having already been fully debated by gentlemen learned in the law, I should not have felt myself justified in addressing the convention, had I not been on the committee which had charge of this subject. As the house has been informed, this question was debated in committee, and the voice of its members heard upon it. I do not now remember the number who were present. I think there were eight—certainly a large majority; and I think there were but two who were in favor of a final adjournment. I had supposed that there would have been two reports made to the convention. That was the understanding when the committee adjourned; but the chairman has informed the house that he was induced to pursue a different course, upon the members of the committee expressing to him, in private, a change of opinion, which in his judgment authorised him to hand in the report before us, as emanating from a majority of the committee.

I am not of the number who changed position

on this question, I entertain now the opinion which I expressed in committee, that it was not only right and proper, but absolutely necessary that this convention should reassemble to learn the decision of the people upon the constitution submitted to them by us, that we might then do that for which we were called together—that which we are commanded to do in the present constitution, under which we are assembled, and from which we derive our authority.

This is to me no new question. In the country which I have the honor to represent, the enemies of constitutional reform, urged that it would be impossible for the convention to submit its work to the people, that the new constitution must be "adopted" by the convention, and to submit it to the people for adoption was not permitted in the present constitution, in which the duties of the convention were clearly defined—duties which could not be delegated or intrusted to any other body.

The answer to this was simple and plain. Admitting, as I was compelled to do, that to "adopt" was no less the peculiar duty of the convention than to "amend," or "change" the constitution, yet the power to frame and submit the instrument to the people—to adjourn until the public will had been expressed—to then re-assemble and conform its action to that expressed will, could not be questioned. Such power has not been denied either here or elsewhere. Now, sir, I know that I have not the legal acumen to catch the very nice distinctions which have been drawn by gentlemen in the discussion of the question now before the house. I am not sufficiently "learned in the law" to see no difference between doing a thing myself, and allowing another to do that for me. I have but a plain common sense way of looking to these matters, and when clothed with delegated powers, and directed to do certain things, I am not more bound to do them than I am to do them in the way directed. The constitution of Kentucky is submitted to us for amendment or change. I grant that we can alter every line, every word, every letter, in that constitution, and "adopt" that which we make. But we alone can "amend"—we alone can "adopt."—Sir, we are a constitutionally assembled body—we are here under the constitution of Kentucky—it is still the supreme law of this land, binding upon every individual in the state, and especially binding upon the members of this convention; and the provisions of that constitution which bear upon us, we are sworn to observe. How can we expect the work of our hands to be held sacred and inviolable if we disregard the injunctions of that constitution from which we receive our political existence? Not only should we observe the spirit of the present law, but the very letter of that law. And if we err, it should be in the abundant care we take to do nothing doubtful or uncertain. Now, sir, what are the provisions of the present constitution which bear upon our conduct; and which should control our action? What power is conferred upon us by it, and in what language does it address itself to this convention? "To re-adopt, to amend, or to change," the constitution. This we are to do. It is as much the peculiar province of this body to "adopt"

as it is to "amend" or "change" the instrument. And as no other body of men can alter or "amend" the constitution, so no other—no, sir—not all the people of the state can legally "adopt" what we may propose. The gentleman from Henderson, (Mr. Dixon,) has said that we have a kind of power of attorney—plenary powers—and that as we have full power to do all, we can do a part—power to do our duty, and power to leave that duty but half performed! I can scarcely think so. I would ask the gentleman, have we any authority to transfer or delegate these powers, or any part of them, to another? If I am employed as your agent or attorney to do certain things, and in a certain way, does that give me the right to do a part and leave a part undone; and can I transfer the authority with which you have clothed me to another? I think not. Granting, then, all that the gentleman has said to be true, that we have the power to do a part and leave a part undone, we cannot empower others to finish up that which we have neglected to do. So far as we go, the work is ours—that which is left cannot be legally done by any other. It is competent for us to sign this constitution conditionally, but that condition compels us to return and do that which will not be done at all unless we do it. And if that condition be not complied with, we must return and "re-adopt" the present constitution. Suppose, sir, the people reject the instrument we submit to them. What constitution have we then for Kentucky? Sir, we have none. The life, if I may so speak of the present constitution, is suspended upon the action of this body. Upon the dissolution of this convention it dies, unless it be "re-adopted." It dies by its own provisions. Now let the people reject—

Mr. DIXON. I fully agree with my friend from Jessamine, that we cannot transfer our power to any agency; but that is not what I propose to do. I do not propose to transfer any power from this convention to any body else. But what do I propose to do? You have made me your agent; all the power is vested in you, and all the power I have is derived from you. Now you give me ample power to convey; and although I cannot give my friend from Jessamine the power to convey, I take it that you, in whom all the power resides, may give me authority to exercise that power with your approbation. That is my position.

Mr. MARSHALL. For one so unused to public discussion as myself, to attempt to meet, in debate, the very able gentlemen who are opposed to me, may appear almost impertinent; but I will try to answer the arguments of my friend. I do not understand that the cases are at all parallel. We are empowered by the people not only to frame a constitution, but to "adopt" it. We have met here to confer together—to agree upon the great principles which will best secure the citizen in all his rights—to fix these principles and express them in appropriate language. But this is not all; the last, the most important act is, to "adopt," and we alone can do this. Could the legislature of Kentucky authorize any body of men, or, if you please, the whole people of the state to pass laws? And would laws, thus enacted, be binding? Is it competent for this convention, called

together by the people, to delegate to any man, or body of men, the power to frame a constitution? Could we authorize the governor, attorney general, and secretary of state, to make a constitution—to say what should constitute this, that, or the other article? There is not a man in this house who would so far stultify himself as to say that we could have met, elected our president, secretary, &c., and resolved “that the governor, auditors, attorney general, and a secretary of state, should “amend” or “change” the constitution—submit it to the people—receive their opinions, and either publish their work as the constitution or “re-adopt” the present one.” If we could not delegate all our powers, how can we delegate a part of them? To “adopt,” is as important and necessary as to frame; and both must be the act of the convention, or our work is unfinished, and of no force or effect whatever. I am aware, sir, that some gentlemen claim for this convention unlimited power; while others have intimated limits which rob it of its sovereignty and absolve the citizen from all allegiance to the constitution we may make. I am of opinion that within our proper sphere we have all power not denied to us by the constitution of the United States. But this power can only be exerted to frame and adopt a constitution, and in its exercise we must observe the requisitions of the present constitution, so far as its provisions bear upon us. Whatever we may choose to “adopt” as the constitution of Kentucky, is the law of the land, and, unless it militates against the general government, every officer and citizen is bound to obey it. But our “resolves,” outside of that instrument, are as impotent as though they came from a body of fish-women in the common market place.

But, gentlemen say, “we will affix penalties.” Well, sir, who is there to enforce them? Have we an executive officer? Is any one responsible to this body after we dissolve? Can we punish any one for disobeying our mandate, when that mandate forms no portion of the law of the land? That constitution is as powerless as a blank sheet until it is formally “adopted.” Like that dust of Eden when fashioned into man, e’er he became a living soul, to hold dominion “over the fish of the sea, and over the fowls of the air, and over every living thing that moveth upon the earth,” it awaits in weakness this life-imparting act at our hands. And gentlemen would entrust this last important act to the doubtful authority of the office-holders! Would Satan, think you, even if he had possessed the power, have given life to that glorious mould destined so soon “to bruise the serpent’s head?” Would these gentry of the gown and staff be more apt, could they be endowed with authority to do so, to give effect to that which dooms them to political banishment? Like my friend from Mason, I would rather not trust them. They might think they were “sworn to support the old constitution.” And suppose they say—and they have a right to say it—to disregard any resolution we may pass. It is in vain for us to command, all the homage and obedience they choose to render us is through courtesy, they may disobey every command, until those commands reach them as imperative,

speaking the authoritative language of the “adopted” constitution of the state—suppose they disregard our request, and say, we will not appoint judges of elections—we are very well satisfied with the constitution we have sworn to observe, and we don’t find that it confers upon you legislative powers—you were a convention to make and “adopt” a constitution, and if you have failed to do so, that is your business, not ours—we have no power to correct your errors, and would not do it if we had—we are magistrates under the good old constitution, and no convention to “adopt” a new one.” Suppose they were to act thus, and we “shorn of our strength,” what sort of position would we be in? Why, sir, it is madness to risk it. All here know that this may happen. The gentleman from Henderson admits that it is possible. And the moment of that admission he should have given up the argument.

Sir, it is enough for me to know that it is possible; for after all the labor, time and money this convention has cost the people of Kentucky, in framing a constitution, so far as I can prevent it, there shall be no possibility of its loss except by the rejection of the people themselves. I will submit the work of our hands to them—hear their verdict, and act in obedience to their commands.

The gentleman from Madison (Mr. Turner) is in extacies, and joins in anticipation those hal-lalujahs which are to resound from one end of Kentucky to the other upon the reception of this constitution. I hope the gentleman may be disappointed, though I fear some fault will be found with our work. I am not quite so sanguine as he seems to be. And yet, Mr. President, if this convention fail to make a constitution, it is our own fault. If we do not place before the people an instrument which they are willing to accept and approve, I cannot but believe, that never before in the history of legislation, has the confidence of a people been so cruelly abused. And why? Because, sir, there came not up to this assembly one single man who did not understand distinctly and fully what would satisfy his constituents. All knew what gave rise to the call of this convention. All knew what were the objections to the present constitution. I do not pretend to say that we all knew how much the people would bear. How far we could go in unexpected and uncalled for changes of principle and elaborate detail without danger to the constitution we have made; but there was not a man returned to this convention, unless he were wilfully ignorant, who did not well understand what he was commanded to do. In most things I think we have come up fully to the commands of our constituents. In some things I fear we have gone beyond their permission. And woe to that man who has, from personal, sectional, or professional considerations, (if indeed any such motives have operated here,) been induced to press into this constitution any rule or detail uncalled for and unexpected which may militate strongly against its acceptance. The people required that we should change the tenure of office; that we should strike from the constitution every aristocratic feature, and place the servants of the people within the pale of a practicable respon-

sibility. This we have done; but we have gone a little further. They required us to take from the executive the appointing power and give to the real sovereigns the authority to select their own officers. This has been almost done; but we have done a little more. They required us to change the sessions of the legislature, and to place that department of the government under wholesome restraints. We have done this also; but this is not all we have done. They required that we should give to every man ample security for the peaceable possession of his property—and especially for that species of property which is the object of attack at home as well as abroad. That we should throw around it all the guaranties of legal protection and constitutional sanction. Sir, I cannot but fear that we have fallen far short of our duty on this subject. Vaporous and abstract declarations of rights, claims based on neither law nor constitution, but placed above both, may nerve and stimulate, but will never serve to check or restrain fanaticism. God grant that we may not soon feel the need of a more practical and living law.

But, sir, I have said already much more than I intended, and ask pardon of the house for having detained it so long. I shall be compelled, from a sense of duty, so far as my vote will go, to place this constitution, when it leaves the hands of this convention, beyond the reach of any power but that of the people themselves. I cannot, and I will not, place it in other hands than theirs. And when this body is dissolved, I desire that it shall dissolve either under the old constitution "re-adopted," or under one which having met the full approbation of the people, shall have been "adopted" in its stead. In reference to what I shall deem my duty when we return here, though I know that is a matter of little moment to any but myself, I will say, that if the people refuse our work, like the gentleman from Henderson, I shall not want to come back, and shall return in sorrow and in shame, for although I have very often voted with the minority in this house, there is much in the new constitution which meets my most hearty approbation. But if it be rejected unconditionally, I shall vote to "re-adopt" the present constitution. But if—and such I hope and believe will be the case—our work is accepted, I shall return to "adopt" and sign it; and do whatever else may be right and proper to put the government to work under it. If, however, in talking with my people, they say to me, "we prefer this new constitution to the old one, but would rather have this or that provision out of it"—for there is no fear that they will want any thing added—there is enough already and to spare—but if my people tell me, "we will take the instrument as it is, but would rather this provision or detail was out;" when we meet again, I will endeavor to have the parts objected to taken out. And if you, gentlemen, have learned the same thing from your people, why then we will be able to make the constitution more perfect, more acceptable, than it now is. But if a majority of the state say we take it as it is, I shall gladly admit that I have been mistaken, and rejoice to learn that our work is more perfect than I now believe it to be.

Mr. MORRIS. I stand forward, sir, as the

friend of this constitution, to entreat its friends, that they will not, by their closing act, smother the offspring which has cost us so much labor, even before it has been fairly ushered into the world; that they will not lay the axe at the root of the tree before it has commenced to blossom, and bear fruit. Sir, I look upon the resolution introduced by the gentleman from Nelson, sustained as it has been by its friends upon this floor, as calculated to inflict the most deadly wound upon the instrument which we are about to promulgate to the world. They have told us that their object in taking this recess is not, alone, that they may return and certify the will of the people by placing this instrument in operation, but that when they return home, they may be enabled to collect and ascertain the sentiments and wishes of their constituents, and upon their return, make such alterations as will conform to their wishes. They say that they are unwilling to surrender the power which they now have again into the hands of the people—unwilling to trust this work, which they have made, fully and fairly to their decision. That they have determined to hold on to the power which has been confided to them, until such an instrument as they will accept shall be made. I should have no particular objection to returning here for the simple and sole purpose of putting this work into operation—of ratifying what we have already done—was there the least necessity for such a proceeding—could this power not be properly and safely delegated to others. But I do most solemnly protest against the idea of returning here in order to make such alterations as our constituents may desire. Such an avowal must prove absolutely destructive to the end which we as friends of this constitution should ardently desire, its adoption.

I presume, sir, that there is, perhaps, not one solitary man in this house who has succeeded in obtaining all those reforms and amendments in our constitutional law, which he could have wished, had his individual inclinations been consulted—too much has been done to meet the tastes of some gentlemen—too little for others. I can well imagine, that such is likewise the case with all the thinking convention men of the state. The wishes and opinions of men upon these points are as various and as widely different as it is possible to conceive. My own plans for constitutional reform have by no means been carried out. There were certain prominent features of reform upon which nearly all of us united, which were demanded by the people. These we have adopted, and by mutual compromises and concessions we have harmonised the many conflicting opinions of our fellow members, and have produced an instrument with which, in the main, I am satisfied, and which I doubt not, will meet the decided approbation of the great mass of the convention party, provided it be placed fairly before them on its own merits. But when we go home and say that the door is still open for amendments; there is still an opportunity for further changes; all the peculiar sentiments of all the people will be brought to bear against it, and a party will be arrayed in opposition to its adoption which no instrument, however perfect, could withstand. You will have its natural enemies, the friends of



the old constitution, forming a very imposing phalanx. You will have all the office holders of the country, with all their interests. Emancipation will again play its mighty and all-absorbing game. Those opposed to an elective judiciary will then stand boldly forward. Our county court system will not meet the views of a great many; and a thousand matters of minor consequence, which have their peculiar advocates upon this floor, and before the people, will again be brought forward, and the friends or enemies of each particular measure will all unite in opposition to our constitution. It was this union of various and conflicting sentiments which broke down the old constitution by such an overwhelming vote. It is this same union, which, if it be brought to bear, will blast the work of our hands.

We pledged ourselves that this constitution should be submitted to the people; that they should have the opportunity of selecting between this and the old one; and whether the changes be made now, or hereafter, it will be equally imperative upon us to submit them. How will it be possible for us to advocate this constitution before our constituents. I can say to them—this is what we have done—these are the amendments we have made—but I cannot say that these changes are permanent, that further alterations will not be made. No sir, if this resolution be adopted, we shall have the same mighty fight before the people which characterized the last summer's canvass, and the same terrible conflict which has just been concluded upon this floor.

And should any alterations in our work be made, shall we not again submit them to the people? They certainly will demand it at our hands; and should we again submit, we will perhaps again change, and so on until there would be no end to our labors. The people sent us here to abolish lifetime offices. But they had not the least expectation, that in electing us, they had established a hundred officers for life—whose business it would be, to be forever tinkering at their constitution. They had no idea they were establishing a perpetual parliament—"Rump Parliament," I believe it was called—upon which no power could be brought to act. Sir, they never dreamed of such thing. They intended that the old and the new constitution should be submitted to them, and between these they expected to select the least objectionable.

Should the people decide that our labors for the last three months are not satisfactory, I think it would be but right that we throw up our commissions, and place it in their power to select others more competent to carry out their wishes. Sir, with this meeting of our convention my work, as a constitution maker, closes. Should the majority so declare, and the people accept what we now tender to them, I will return and put the new wheel in motion, but I will do no more. Not one solitary change will I consent to hereafter.

Mr. W. C. MARSHALL. I have been labouring to bring this session to a close, and when it is brought to a close, I trust we shall submit the work of our hands to the people of the country, and I have no doubt that it will be approved; for after all I have heard, I have no doubt that the

people will approve what we have done. But while I am convinced of this, there is a question, and I find there have been a great variety of opinions expressed on this floor, in relation to it—there is a question which ought to induce every gentleman to reflect seriously upon what we are about to do. I ask the last gentleman who has taken his seat, if he believes that any member of this convention entertains a doubt as to what is the safer course to take on this matter.

Mr. MORRIS. I stated that I should have no objection to come back if it was found to be necessary.

Mr. MARSHALL. And if the gentleman comes back, does he not come back clothed with all the power which he now possesses. I ask him if the people reject this constitution, have we not the power to go over all we have done, and to meet, as far as possible, the views of the people of this commonwealth? If he comes back at all, I ask him is he willing to place restrictions upon the action of this body? I tell him that whatever we do in this respect is utterly powerless. The people have delegated to us the power to make a constitution. If we fail to make it when the people have passed their votes upon it, and leave the ratification of it to some other power, what have we done? We have conferred upon others the power to do that which we have been required to. We have the power to perfect this instrument, but how is it to be carried out? We are to open the polls and ascertain the will of the people.—Now, what power has this convention to pass an act or resolution which would require action on the part of the officers of the commonwealth? Suppose the magistrates should refuse to open the polls, and there is no election, I ask have we then a constitution? No; it will be made in such case to depend entirely upon a condition. Suppose on the other hand that the election should be conducted, and a large majority should say this shall be the constitution of Kentucky, you require it to be proclaimed; and suppose when the returns are made, the governor finds a majority in favor of the constitution, I ask you if the governor refuse to make the proclamation, is it, or is it not the constitution of the state? You have said the people are to ratify it, yet there is another condition which is to be coupled with that—a condition resting in the mere will of an individual; and thus after all, when the people have voted you leave it to another power, and that power is unwilling to carry it out. Where do you stand in such case—under the old or under the new constitution? It is not under the new constitution which the people have ratified that the magistrate holds his office, but it is under the old constitution; and under that he stands responsible to the people. These are suggestions that have caused me to doubt; and if they could be removed; I am anxious that they should be removed, and till they are removed, I shall be constrained to take a different course from that which I anticipated. But I would go further—the gentleman from Christian says he is willing to come back and endorse what the people will do. He says the office-holders and emancipationists will be armed against it; but I say submit this constitution

to the people, and you will neutralize both the office holders and emancipationists.

I expect to go home and sustain this constitution. Although it does not meet with my entire approbation, yet as a whole, as a matter of compromise, I am willing to take the stump and stand by my constituents and maintain this constitution.

Reserve the privilege to come back, and if the people should refuse, of which, thank God there is no danger, the power is still vested in us to come back and ratify this constitution ourselves; but once let us adjourn indefinitely and all power is lost forever. Here we can exercise the power, here we can enforce it ere our opponents have the power to stifle the action of this convention. That is the condition in which it would be placed. If any gentleman can satisfy my mind that it is unnecessary to return, I shall be most happy, for I do not wish to return. To me it will be a great inconvenience; but I will most willingly make any sacrifice to secure the stability of this constitution, believing as I do, that in securing it, we are securing the welfare of our citizens at large.

Mr. C. A. WICKLIFFE. Mr. President, as I remarked in the early part of the day, when this debate first commenced, I read my authority for the step suggested, in the constitution of Kentucky—that this convention is to make and proclaim that constitution. I believe, sir, that we have no power to authorise any other human agency to perform that act; that we cannot, and ought not to place this instrument, and its taking effect, upon any contingency whatever, which we, as a convention, cannot control and correct. With a view of testing the sense of the house on this matter, I will ask the previous question.

The main question was ordered to be now put.

Mr. PRESTON called for the yeas and nays on the adoption of the substitute of Mr. TRIPLETT, and they were yeas 27, nays 67.

YEAS—Mr. President, (Guthrie,) William K. Bowling, Francis M. Bristow, William Chenault, James S. Chrisman, Archibald Dixon, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Vincent S. Hay, James W. Irwin, William Johnson, Peter Lashbrooke, William N. Marshall, John H. McHenry, David Meriwether, Thomas P. Moore, Jonathan Newcum, Larkin J. Proctor, John T. Rogers, Jas. Rudd, Albert G. Talbott, William R. Thompson, John J. Thurman, Philip Triplett, Henry Washington, Silas Woodson—27.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, Alfred Boyd, William Bradley, Luther Brawner, Thomas D. Brown, William C. Bullitt, Charles Chambers, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfiede, James H. Garrard, Richard D. Gholson, Ben. Hardin, William Hendrix, Andrew Hood, Mark E. Huston, Thomas James, George W. Johnston, George W. Kavanaugh, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, Robert D. Mau-

pin, Richard L. Mayes, Nathan McClure, Wm. D. Mitchell, John D. Morris, James M. Nesbitt, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, Wm. Preston, John T. Robinson, Thomas Rockhold, Ira Root, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, John D. Taylor, Howard Todd, Squire Turner, John L. Waller, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Wesley J. Wright—67.

So the substitute was rejected.

The question was then taken on the adoption of the resolution proposed by Mr. C. A. WICKLIFFE, by yeas and nays, on the call of Mr. PROCTOR, and there were yeas 55, nays 38. Several gentlemen were afterwards permitted to record their votes, and then the result was, yeas 56, nays 41.

YEAS—John S. Barlow, Alfred Boyd, William Bradley, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfiede, Thomas J. Gough, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Mark E. Huston, Thomas James, William Johnson, Geo. W. Johnston, Geo. W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, William C. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, William D. Mitchell, James M. Mesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, John T. Rogers, Ira Root, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, Philip Triplett, John Wheeler, Andrew S. White, Chas. A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—56.

NAYS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, William K. Bowling, Luther Brawner, Francis M. Bristow, Thomas D. Brown, William C. Bullitt, Charles Chambers, William Chenault, James S. Chrisman, Jesse Coffey, Garrett Davis, Archibald Dixon, James H. Garrard, Richard D. Gholson, Ninian E. Gray, Andrew Hood, Thomas J. Hood, James W. Irwin, Charles C. Kelly, Martin P. Marshall, Nathan McClure, John H. McHenry, David Meriwether, Thomas P. Moore, John D. Morris, William Preston, Johnson Price, Larkin J. Procter, Thomas Rockhold, James Rudd, John W. Stevenson, James W. Stone, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, George W. Williams, Silas Woodson—41.

So the resolution was adopted.

On the motion of Mr. C. A. WICKLIFFE, it was

*Ordered*, That the portion of the report of the committee on miscellaneous provisions, made on the 15th inst., not adopted, be re-committed to the committee on miscellaneous provisions.

And then the convention adjourned.

WEDNESDAY, DECEMBER 19, 1849.

Prayer by the Rev. Mr. LANCASTER.

#### RECESS OF THE CONVENTION.

Messrs. T. J. HOOD, PRICE and KELLY, asked and obtained leave to vote on the resolution of Mr. C. A. WICKLIFFE, which was adopted last night, by which the convention agreed to take a recess until the first Monday in June. They severally voted "nay," and the final result therefore stands, yeas 56, nays 41.

#### COMMITTEE OF REVISION.

Mr. McHENRY, from the committee of revision, made a further report, and the amendments and modifications in the articles of the constitution which they suggested, were agreed to.

#### CONTESTED ELECTION FOR CASEY COUNTY.

Mr. HARDIN, from the committee to which was referred the petition of sundry citizens of Casey county, in relation to the election of the delegate from that county, asked that the committee be discharged from the further consideration of the subject, which was agreed to.

#### DEPOSIT OF THE CONSTITUTION.

On the motion of Mr. MERIWETHER, it was *Resolved*, That one copy of the constitution, which the secretary is directed to prepare, shall be deposited with the president of this convention, and the other with the secretary, during the recess.

#### POWER TO FILL VACANCIES.

On the motion of Mr. GARRARD, it was *Resolved*, That the president be, and he is hereby, authorized to issue a writ of election to fill any vacancy that may occur in this convention before the final adjournment.

#### RECONSIDERATION.

Mr. APPERSON. The vote given by me for the nineteenth section of the report on general provisions, I am not satisfied with, and therefore do now move a re-consideration of the vote by which that section was adopted. In making this motion, I have no expectation that a re-consideration will be obtained, but being satisfied that my vote was wrong, I desire to place myself right on the record. The proposition is an abstract one, having, in my judgment, no right to a place in the constitution. Nothing practical can grow out of it, even though the proposition be assumed as true, which I do, by no means, admit. For the first time during the session of this convention, I call for the ayes and noes on the motion to re-consider.

On motion, the rule which requires a notice to re-consider to lie over, was dispensed with, and, on the motion to re-consider, the vote was—yeas 25, nays 64.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John S. Barlow, Francis M. Bristow, Chasteen T. Dunavan, Milford Elliott, Ben. Hardin, Vincent S. Hay, William Hendrix, Andrew Hood, Alfred M. Jackson, Thomas N. Lindsey, Alexander K. Marshall, John H. McHenry, David Meriwether, Wm. D. Mitchell, Thos. P. Moore, Hugh Newell, Ira Root, William R. Thompson, Squire Turner, John L.

Waller, Charles A. Wickliffe, George W. Williams, Silas Woodson—25.

NAYS—John L. Ballinger, Alfred Boyd, Wm. Bradley, Luther Brawner, Thomas D. Brown, William C. Bullitt, William Chenault, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Córd, Lucius Desha, Archibald Dixon, James Dudley, Benjamin F. Edwards, Green Forrest, Nathan Gaither, Selucius Garfield, James H. Garrard, Richard D. Gholson, Thomas J. Gough, Ninian E. Gray, Thos. J. Hood, Mark E. Huston, James W. Irwin, Thomas James, William Johnson, George W. Johnston, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, William C. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, James M. Nesbitt, Elijah F. Nuttall, Henry B. Pollard, Johnson Price, Larkin J. Proctor, John T. Robinson, Thos. Rockhold, John T. Rogers, Ignatius A. Spalding, John W. Stevenson, James W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Henry Washington, John Wheeler, Andrew S. White, Robert N. Wickliffe, Wesley J. Wright—64.

So the convention refused to re-consider.

#### COMMITTEE OF ENROLLMENT.

On the motion of Mr. BRADLEY, it was *Resolved*, That a committee of enrollment, to consist of five delegates, be appointed by the president, for the purpose of comparing the enrolled constitution with the engrossed copy; and that said committee report their action to the convention.

The President appointed Messrs. Bradley, Boyd, Apperson, G. W. Johnston, and Preston, as that committee.

#### MISCELLANEOUS PROVISIONS.

Mr. STEVENSON, from the committee on miscellaneous provisions, to which was re-committed the report of that committee, made on the 15th instant, reported the same back to the convention, with an amendment, in accordance with the decision of the convention on the adoption of the resolution of Mr. C. A. WICKLIFFE. The sections reported were as follows:

"That the general assembly of the commonwealth of Kentucky about to assemble, be, and they are hereby, requested to make all necessary provisions, by law, for the proper carrying out of the submission of the new constitution to the people of this commonwealth, as provided for in section four, of this schedule.

"That when this convention adjourns it will adjourn to re-assemble in the town of Frankfort on the first Monday of June, 1850, with the view, and for the purpose, of ascertaining the result of the vote upon the new constitution. If the same shall have been ratified by a majority of all those voting for and against it, this convention will then publish or proclaim the new constitution as the "Constitution of Kentucky;" and proceed further to provide for putting the new government into operation. If it shall be found that a majority of all those voting for or against it, has been cast against it, then said constitu-

tion shall be declared rejected, and this convention will forthwith re-adopt and re-publish the present constitution as the constitution of the state."

Mr. JAMES moved to amend the fourth section of the report by adding "Tuesday" after the word "Monday" so as to provide that the poll shall be opened two days instead of one, in the month of May, to take the sense of the people on the new constitution.

A brief conversation ensued on the amendment, in which Mr. STEVENSON, Mr. C. A. WICKLIFFE, Mr. JAMES, Mr. BRADLEY, and others took part.

The amendment was agreed to.

Mr. POLLARD moved to strike out the words "first Monday and Tuesday of May" and insert the words "second Monday and Tuesday of April."

The amendment was rejected.

Mr. GRAY moved to amend the fourth section by inserting after the words "general assembly" in the 26th line, the following:

"At the same time and places, and in the same manner, the sense of the people of the state shall be taken, in regard to the mode of revising the constitution, and regulating taxation. It shall be the duty of the several sheriffs and officers conducting the election, to propound to each voter the following questions: *"Are you for or against the specific mode of revising the constitution?"* *"Are you for or against the provision, that taxation shall be equal and uniform, and imposed upon property in proportion to its value?"* And said officers shall, in the same manner, make due return to the secretary of state, of all the votes cast, for and against each of said propositions."

The amendment was not agreed to.

Mr. BROWN moved to amend the section, by adding the following:

"And any sheriff, or other acting officer, who shall fail to perform the duties herein prescribed, such sheriff or other returning officer so failing, shall be liable to all the fines and penalties, now prescribed by law for failing to perform their respective duties."

Mr. C. A. WICKLIFFE. I may as well ask the indulgence of the house, to make a few remarks which it is proper I should make, circumstanced as I am in relation to the vote of last night. I do not think we can set ourselves up to prescribe penalties and enforce, by judgments of law, fines and imprisonments and make them obligatory; neither do we possess the power to refer the question to any one to say what shall be the constitution of Kentucky, to any man, save the people themselves, speaking through this convention. It was therefore, under this opinion, that I ventured to offer the resolution I did, that the convention should take a recess as it proposes, and meet again and perform the last and final official act required at our hands—the proclaiming, as the immediate delegated organs of the people, the constitution that shall govern them and their posterity, when we shall be satisfied that that constitution shall have met the approbation of the people for whom it was made. I entertain the opinion that the constitution of Kentucky must emanate from the people, and that the only human agency or organ to proclaim that fact, assembled as we

were, was the delegates chosen by the people to perform this work. That we could not, in the language of the gentleman from Jessamine, any more delegate this high and final act to any human tribunal over whose official action we had no control after our adjournment, any more than we could delegate the whole power with which we were clothed by the people. Could I, had I brought my mind to the conclusion that we could do this and comply with the solemn duty imposed on me, I should have most cheerfully closed my labors not only in this convention, but in all other public assemblies that may hereafter assemble in this commonwealth. The house decided this question upon its best judgment. They sustained that resolution. I know some gentlemen were influenced by the apprehension, that if this convention were dissolved by final adjournment, certain combinations would be gotten up, and the labors of this convention would be ultimately defeated by a vote of the people. These considerations, however, did not influence my action, or control my judgment in the vote I gave on that resolution. I had no want of confidence in the public functionaries. I did not distrust their fidelity, or their disposition to carry out what might seem to be the wishes of the convention, and the final action of the people, but I was unwilling to transfer, beyond the control of this convention, the power to do that which I believed was required to be done at my hands, the final act of proclaiming the constitution.

\* But we have had read to us a lecture on our conduct last evening, which I confess I do not very well relish. Coming from the high source and respectable quarter it does, I have thought it proper to state the reasons and grounds upon which I acted. The editor, after speaking of the resolution, and proclaiming as a fact known in this commonwealth, that there were organized arrangements to defeat the new constitution, brings to our minds the promises made by the convention party, that the constitution should be submitted to the people for their ratification or rejection, and to choose between the old and new constitution, and reminds us of the promises made during the canvass for seats on this floor. We are told that all these promises and pledges are about to be violated, that by the resolution which was adopted, the people we represent are about to be defrauded and cheated by the delegates of this house; that submission is a "mere form, an idle mockery." The mode and manner in which this convention is to submit this constitution to the people; the mode and manner in which we have advocated the carrying out of that judgment, whatever it may be, is announced by the printer to this house, as a "mere form, as an idle mockery," as a violation of the high pledges—the sacred pledges—we owe the people. What do you propose to do by the resolution? That the people shall meet in the most solemn form known to a free people, fully informed, so far as we can inform them by throwing out our work before them, in order that they shall decide by their votes, whether they will accept the work proposed, as the constitution of this commonwealth. Is this an idle ceremony? Is this mere mockery? Is this to be proclaimed from the capital of the

commonwealth, before we disperse, as a violation of the pledges we have made? What else could we propose? Had we adjourned, and suppose the result of that vote should have been left to the chances of human agency, as I remarked, over which we have no control—had we have left the result to chances, since I admit there is a remote possibility of equal votes in determining this question, then we have no power to settle the controversy between the old and new constitution; had we adjourned, leaving this contest to be affected by spurious and illegal votes, with no power to purge the polls, with no persons, save the office-holders, to look out the spurious votes, on one side or the other, with no power to make such provision as is necessary to ascertain the final result—I suppose, then, we would have been considered as having faithfully carried out our pledges, and the people would have had a fair chance to vote for the adoption of the new constitution, or for the retention of the old one. But what is this conjecture? What are the apprehensions of gentlemen? That if the people of Kentucky, after they have looked at our work, shall become satisfied that the change of the tenure of office, and the mode of appointment, that the whole principles of the constitution are wrong—that the old system of appointment and the tenure of office—the frame work and principles of the construction of government, as prescribed by the old constitution, were now preferred by them—that we should come back as a set of usurpers, as corrupt delegates, as men unworthy the places we occupy, and again and again attempt to re-establish the same principles of the same constitution, forcing it upon the people against their will, and proclaiming it as the constitution, or again to re-submit it to the people for approval or condemnation. I act in public life as I do in private life, upon the presumption that my fellow-men are honest till the contrary appears; and that man, that delegate on this floor, who, after the people shall have proclaimed their judgment against this constitution, and their preference for the old, who shall dare to get up and propose to re-enact the same constitution, in principle if not in detail, would not only manifest a degree of political boldness and desperation which could not find approval in a majority of a hundred delegates, constituted as this house is. He would be condemned as unworthy a seat on this floor. No, I for one approved that resolution, and as one who voted for it, as one who intends, as far as his feeble abilities will enable him, to explain the constitution to the people who have honored him with their confidence, I will maintain it in its whole as the best that could be expected to emanate from the hands of a hundred men who necessarily had to compromise much of individual opinion and thought.

If, after this is done, and a majority of the people of Kentucky shall reject that constitution, because of a preference for the principles of the old one, I should return here not feeling, in the language of some gentlemen who spoke of themselves yesterday, a disgraced man, but as one who feels disappointed with reference to the fruits of his humble labors, but one who will bow with submission and yield a willing obedi-

ence to that expression of public opinion, to that public sentiment, to that inalienable right which belongs to the great sovereigns of the commonwealth, to determine for themselves the principles of government, and rules of propriety, and rules of right, personal and political, that shall govern them and their posterity. Why, then, this alarm? Why this denunciation, immediately upon the eve of our departure for home, by the accredited organ of this assembly? Does the proposition I submitted yesterday make that constitution we have adopted better or worse? Does it change its features in principle or detail? Can any man—will any sane man who approves of the constitution, vote against it, because the majority of this body thought it was their duty to meet here, at great private and personal inconvenience, to fulfil the high duty they had voluntarily sought to be imposed upon them by their constituents?

You may blame me, as an individual member, for incurring what some may deem an unnecessary expense; but certainly, whether we meet and proclaim the constitution, or whether we leave it to the governor, or the secretary of state, to do it, does not change the constitution, or alter the judgment of any man upon this floor, or in this country. Again, I have heard it said the effect of that resolution is, that when this convention re-assembles in June next, they will go to work, in violation of the constitution which the people themselves had approved, which point out certain duties to be performed by the legislature—those districting the state for circuit jurisdiction, and appellate jurisdiction, and apportionment of representation, because of a democratic majority on the political side of this house in regard to national politics, for party and political purposes, lay their sacrilegious hands upon the constitution which the people had approved, in order to gerrymander this state in its districts and apportionment, to prejudice the whig party in this commonwealth. It is hardly necessary for me to disavow, for myself or associates, such an intention. I only regret that such an idea ever entered the imagination of the most violent and heated partizan out of this house. I am here, as is well known, elected by a constituency with whom I differ politically, and in reference to questions of party politics I have endeavored to discharge the duty which was confided to me without feeling or knowing on which side of the political questions of the union I stand. And I should feel myself a dishonored man, and I think I may say there is not one here who would not feel himself a dishonored man, to attempt to violate the provisions of that constitution by thus usurping power to promote party purposes.

As I have remarked before, I labored to bring my mind to a right conclusion on this subject, and would have been glad to be relieved from the necessity of re-assembling, if I could have believed it right—if I could have brought myself to the conclusion to risk that constitution against all attacks and all machinations to defeat it. I undertake to say that the article which I have referred to, which declares the act of yesterday an idle mockery, is undeserved, and is a false judgment upon the action of this house.

Mr. STEVENSON. I desired last evening to

have stated the reasons which operated upon the committee in bringing forward the report upon which the house was then acting. I had hitherto deferred mingling in this debate, because I desired all gentlemen who wished to attack the report to have an opportunity of doing so, and then I designed to reply in a brief and humble manner to such assaults as should have been made upon it. I had supposed that parliamentary usage would have entitled, and extended to me the privilege of such a position! It was, I thought, due to the committee, due to myself, I thought it was due to you Mr. President, who had placed me, an humble, young and obscure individual, at the head of so important a committee, to have given its chairman at the close of the debate at least an opportunity to state the reasons upon which that report was founded. I therefore confess I was surprised when the distinguished gentleman from Nelson rose last night to deny me that privilege.

Mr. C. A. WICKLIFFE. I certainly did not deny that privilege. I offered the gentleman the floor, and said if he chose to occupy it I would not call the previous question.

Mr. STEVENSON. I am still constrained to think I am right. These are the facts: I remarked that I wished to address the convention. The gentleman told me I must address it then if I did so at all. I told him, as chairman of the committee, I wished to address the convention after he should have made his assault. He went back to his seat and called the previous question. Was not my position the same as that of the distinguished gentleman himself, when the elder gentleman from Nelson, (Mr. Hardin,) moved to amend his report on the appellate court? Did he not then claim the privilege of closing that debate? I thought the same courtesy would be extended to me, but it seemed the rule in the gentleman's opinion, at least, was altered, and when he was chairman, and when I happened to be, I was plainly told I must either speak before him or not at all.

I have felt no peculiar or personal interest in the adoption of this report, and the only reason why I desired to speak at all, was, to justify the committee and myself before the convention and the country, that I had not proved recreant to your confidence or that of the commonwealth, by making a report without full examination of every principle contained in it. I was clearly satisfied that it was not necessary to come back. I was thoroughly convinced that we possessed the power of saying when, how, and upon what contingency, the new constitution should go into effect. I honestly thought that this convention ought not to re-assemble for the mere idle ceremony of proclaiming the constitution to be "the constitution." When the report was made containing these views, with the power of the convention to enforce a compliance with its terms was denied, but the impolicy of a final adjournment was eloquently portrayed—for myself, if I know myself, all that I desired was to meet fairly this question of the power of the convention. I desired briefly to offer a few remarks, putting this question on its true ground, and leaving the expediency of our coming back to the good sense of the convention. I did not desire to change the opinion of any member of

this house. It was a question of expediency, on which honest minds might well differ. I questioned no delegate's honesty who differed from me. I measured no man's devotion to constitutional reform, by his opposition to this report. I was willing, after justifying the report, to have left the whole question to the good sense of this house; and I shall now proceed to do what I should have done last night, if I could have gotten the floor—state the grounds upon which it is founded.

I differ with the gentleman from Nelson, (Mr. C. A. Wickliffe,) *toto calo*, as to his proposition broadly laid down, that this convention has no power to enforce any thing that it does. I understand him to rest his proposition to re-assemble on that ground. I understand him boldly to assert that we possess no power to enforce any ordinance we adopt. If there is anything in precedent and authority, I would point him to almost every convention that has ever assembled to form a constitution, as contradicting his position, I would point to the Virginia convention, where this very question arose and was decided. In that body the proposition to fine the sheriff for a failure to open the polls, five thousand dollars, was offered and was adopted. Of the character of that convention it is not necessary for me to speak here. It is known to us all. In it I believe were the most distinguished lawyers, and the most exalted statesmen the world has ever seen collected together. There was a Marshall, a Madison, a Barbour, a Tazewell, a Leigh, a Johnson, with a host of other imperishable names—men who have passed in glory to the grave, but the light of whose genius has formed a sort of milky way in the galaxy of legal talent, that has not and never will disappear. The proposition proposed here was introduced and adopted there, and not a word was heard there, from any man in that distinguished assembly in opposition to it.

In Tennessee, which was a later convention—if new lights have recently dawned on the world, and if our ancestors were such dark, benighted creatures as not to understand the powers of conventions—Tennessee, our neighbor, has this provision. In the schedule of her constitution I find the following provision:

"Be it further ordered, That if any sheriff or other acting officer shall fail, within the time prescribed by this ordinance, to discharge any of the duties hereby required, such sheriff or other returning officer so failing as aforesaid, shall forfeit and pay the sum of \$5000, to be recovered by action of debt in any of the courts of record in this state; to be sued for in the name of the governor for the use and benefit of common schools."

Look, I beseech gentlemen who are questioning this power, to all the modern constitutions, and they will at once perceive, that the various conventions adopting them have submitted their work to the approval of the people, and upon its ratification, have required the governor and legislature to put it into operation. To declare the constitution the work of our hands, and that it is the constitution of the commonwealth of Kentucky, upon the happening of a particular contingency is one thing—to put the government



into operation under it is another. Now, we have already, in our report, declared that the constitution submitted is the constitution, as soon as ratified by the people. We, having the power, declare it to be the constitution, to take effect at a future time. We do not delegate, as some gentlemen have supposed, our power to the governor, nor do we delegate it to any one else? We exercise, ourselves, legitimate power in declaring either the old or new constitution to be the constitution of the commonwealth of Kentucky, upon the happening of a peculiar contingency; and we select the governor as the organ to make known the happening of that contingency, and the promulgating of our declarations. Why cannot this be done? Why have we not the power? Why have so many conventions pursued the same course, and why has not this objection been hitherto raised?

I considered that there was not a doubt on this subject. Sir, who are we, and for what have we assembled? Do we represent here the sovereignty of Kentucky? We do. Is this convention a collection of people unrestrained by law; or are we a legally existing convention. We must be one or the other, for sovereignty can express itself but by two ways? It must be expressed, either by a constitutional convention, assembled as we are, by color and sanction of law, or by revolution, when the people themselves, tired and oppressed, determine to take the power into their own hands, and by physical force overturn the existing government. We constitute the former, I apprehend, and we represent the sovereignty of Kentucky. How were we assembled? We were called into existence by the law of the last legislature—which was enacted in response to the voice of the same sovereignty, expressed at the polls! The legislature, four years ago, passed an act that the people should be consulted to know whether they desired a convention. That question was submitted under, and in accordance with, the provisions of the present constitution. That organic law required it to be twice submitted, and it was twice submitted. The people responded that they desired a convention; that same sovereignty, through the legislature, provided for the assembling of this convention; and it is to that law that we owe our existence as a convention; and it is that law which distinguishes us from the wild and mad revolutions which have blotted and disgraced the world.

It was thus, through legitimate legislative action, sanctioned by the provisions of the existing constitution; further sanctioned for the two succeeding years by the voice of the people of this old commonwealth, (with a unanimity too, never before equalled,) that we found ourselves assembled, some eighty days ago, in this hall, representing the entire sovereignty of the state: The legislative act which called us into existence did not attempt to limit the power of this convention. It did not attempt to clog popular suffrage by attaching qualifications, as requisites, for membership to this body. It fixed the pay of members of this body. It designated the time of meeting. It provided, by appropriate provisions, for our election; but was in all other respects silent. The election came on—delegates were elected, and we found ourselves a reg-

ularly organized convention on the first Monday in October—met together for the purpose of framing a new constitution. This convention, as I have before stated, owed its existence to legislative enactment; but when it was organized, that law had no longer any binding influence upon it. If the act which called us into existence had attempted to restrain us in the exercise of our power as delegates, by setting out particular defects in the present constitution, restricting our power to those amendments, is it contended that we would have been bound by such an act. Unquestionably not. Our acts as members of this convention already contradict such a supposition. We have seen this body auditing their accounts, and fixing their pay at three dollars per day for the whole session, instead of three dollars for the first sixty days and two dollars for the remainder. We did this in express violation of the legislative act, as construed by the attorney general—fixing our pay. By what authority was this done, except by the power of this body? Indeed, I am told the attorney general did not doubt our power to fix our pay. His construction of the act of the legislature fixed our pay at three dollars for the first sixty days and two dollars for the remainder of the session; but I am credibly informed he did not doubt our power to change, and so informed the second auditor! Sir, did we not exercise that power. Have we not, as our journal shows, acted upon it? And shall we now be told, that we have no power to do anything, until this constitution is ratified? If this be true, of what utility will be the action of this assembly? If we can do nothing without re-assembling—possess no power to get our work before the people—have no authority for asking either the governor or the legislature to aid us in putting this constitution into *esse*—it strikes me that our labours are fruitless—a mere rope of sand, which crumbles away and is inoperative as soon as made. Mr. President, I ask you how can such a doctrine be maintained? Are we to go home and tell our constituents that after all their labor and toil for four long years in the cause of constitutional reform—after all their money expended for this convention and in the calling of it—we have no power either to coerce a sheriff to receive the expression of the popular voice upon the result of our labors, and no power to ask the legislature or executive to aid us in bring this result about? Why may not the present legislature, about to assemble, enforce, by ample penalties, the provision that we have made for submission? Have we any reason to doubt they would not; and if they do, why need we come back? I have always understood that when there was a clear grant of power given to any body, that such a grant carried with it all implied and necessary authority requisite for its full and complete execution? I had always supposed—

Mr. C. A. WICKLIFFE. I should be glad to hear the gentleman discuss this question. Does the gentleman understand that this convention has the power, by resolution, to declare a crime or misdemeanor and prescribe punishment for it; not by organic law, but by resolution?

Mr. STEVENSON. I will before I get through most cheerfully answer my distinguished friend

and give him my opinion. I am particularly desirous of defining my position, especially as I do not go as far as the gentleman from Madison, who has so ably and clearly argued this question and defended my report, nor half as far as my venerable friend from Nelson, (Mr. Hardin,) who stated that the powers of this convention were absolute and unlimited except so far as restrained by the federal constitution; but before I get through, I will endeavor to make myself understood. I stand supported in my opinion as to the powers of this convention and the principles of this report by the action of nearly all the conventions which have assembled in this country. When you, Mr. President, placed me at the head of this committee, understanding that some doubt had been expressed by distinguished gentlemen as to the power of this convention finally to adjourn, I made it my duty to investigate it. I have consulted and conferred with some of the ablest lawyers in the state, and with but one exception, I have found none who doubt. I have carefully examined the proceedings of other state conventions, and although most of them have submitted their constitutions to the people for ratification, I know of but one that deemed it necessary to re-assemble. They have invariably left it to the governor and legislature, coupled with their own ordinances, to put the new government into operation, when it should have received the sanction of the people. The position of the gentleman from Nelson is contradicted by the practice of almost every state in the union.

Nor will it do for gentlemen to do away with the force of precedent and the practice of other states, in this particular, by attempting to show that the statutes calling the convention in those states have caused their action as to the mode of the submission of the constitution and their subsequent proceedings. To do so, would be to make a legislative act, calling a convention, the charter of its rights! This I deny! It is wholly at war with what I believe to be the nature and power of sovereignty as represented in a legally called convention. I have already admitted that we owe our existence to the law of the last legislature, but I have shown by our action here in regard to our pay, that we were not limited in our power by it. Could that act have limited us to action on the judiciary alone, by enacting that our action should be confined to that subject? Is there a gentleman who will contend for it? I apprehend not; and yet if the act is to have an effect upon us, and we possess no power ourselves, we should be forced to this conclusion! Sir, I cannot subscribe to this doctrine. As representatives of the sovereignty of the people, we are bound by no restrictions of a mere legislative enactment. No provision, it occurs to me, of any act of the legislature requiring a constitution to be carried into effect in a given way, would be binding on a legally organized convention called under it. The convention might recommend a different mode to the people, and they might choose to adopt it. I believe the exercise of sovereignty by this convention is on a more extended sphere than that by the legislature; and yet I do not agree with the gentleman from Nelson, (Mr. Hardin,) and the gentleman from Madison, (Mr. Turner,) that the powers of this convention

are unlimited, save so far as they are restrained by the federal government. I believe the powers of this convention are great and plenary; but I deny that they have not a just and natural limit. It possesses delegated power, and like all other delegated power, is limited by the legitimate object for which it was delegated. I promised I would refer to this restriction of power, and I will now do so. What is it? I believe that it confines the power of this convention within the objects of republican government! We were elected and sent here to frame such a government, and are confined to that object! This restriction is as natural as it is just! Our delegated power, great as it may be, does not authorize us to overstep then the protection of life, liberty and property. If we do so, we are usurping power not delegated. If this convention were to ordain that any one should be hung by the neck who should hereafter make an abolition speech, or that property might be taken without compensation, is it contended that even if the constitution was ratified, that such provisions could be enforced? Would not such an ordinance be declared by any able and upright judge the vilest usurpation? The glorious writ of *habeas corpus* must have lost its efficacy, if any citizen could be thus ruthlessly dealt with, under the specious but hollow pretence of constitutional enactment. Away with such a heresy, and strike it away from any arch on which we propose to build!

While we act within the objects of a republican government, then we are sovereign, then we are supreme, and have power to carry this thing out. It was for this reason that I voted for the proposition of the gentleman from Bourbon, in which he declared that the right of property is before and higher than all constitutions. I voted for it with all my heart, for I believe the naked savage, where no human constitution exists, when he shall kill his dear, or his bear, is entitled, as the husbandman is to his axe, to the skins; and when they are attempted to be taken away from him, it is a violation of his natural rights. If he goes into a compact with others, I believe that he will go for safety to himself and protection to his property. I believe government is intended for the protection of life, liberty and property, and when any attempt to violate any of them, they overstep that compact and become usurpers. Such are my crude views of the limitations of the powers of this convention! Look into this book of thirty constitutions of thirty states and see how many of them re-assembled according to the proposition of my friend from Nelson, (Mr. C. A. Wiekcliffe,) to re-adopt that constitution or to proclaim it.

Examine them still further, and see how many of them, after a submission, have entrusted to the legislature, (after the ratification by the people of the constitution,) the duty of putting the new government into operation. Does it not occur to the gentleman from Nelson, that it is strange that none of these states foresaw the danger and difficulty that has occurred to him? I know that my distinguished friend is actuated by the purest motives in offering his resolution. I should be the last man upon this floor to question his zealous devotion to the cause of constitutional reform, or the ardent interest which he

feels in the triumphant success of the new constitution; but he will pardon me for saying that I think it springs rather from his fears than his judgment.

Look to Virginia. There they submitted it, having first provided, by appropriate penalties, for the selection of a new legislature under, and requesting the old legislature to provide, by adequate penalties, for the proper submission to the people. Did they transcend their power? The great men then thought they possessed it. They provided for the election of members of legislature under the new constitution before it was adopted and inflicted penalties! Yet we are told we have not the power to put this constitution into operation. My friend from Daviess said, if we adopted this report a part of the constitution would be active, and a part passive; that we would be acting under the old constitution till the new one is adopted. We attach a schedule to it to say how it shall be put into operation, and I would ask my friend from Daviess this question. Suppose we should say this constitution shall not take effect till the year 1870?

Mr. TRIPLETT. I will ask the gentleman in turn, suppose we say it shall not go into effect till the year 1870, but in the meantime appoint officers to discharge particular duties, how shall we punish them for a failure?

Mr. STEVENSON. I will endeavor to answer. If we say it shall not go into effect till 1870, we of course shall have the old constitution in existence; and if we request the present legislature to provide, by adequate penalties, for submission, and if they disobey, can we not under these laws thus passed punish them under the old constitution?

Mr. TRIPLETT. I would like to have the gentleman answer me this question. The old constitution is in force till the new one is adopted, but the old constitution does not contain any clause requiring duties of clerks and sheriffs, which we require them to perform. Where do you derive power to punish at all? It is not in the old constitution, and the new does not go into operation.

Mr. STEVENSON. I will answer my friend with great pleasure, and I will show that both the gentlemen from Nelson have acted on what I regard mistaken principle. What have we said in the judiciary report? We have delegated power to the legislature to keep four or three of the judges of the appellate court in office if they please. We have, I say, also fixed the time of the election of these judges, which will be twelve months after the new constitution is adopted, and some months after the new legislature, under the new constitution, is elected. Will we not have a portion of the old and new constitution working at the same time? Unquestionably. But my friend would say that this has been provided for in the new constitution. Equally true; but this very provision answers my friend's objection, of the positive and negative action of the old and new constitution at the same time. It takes place by one provision in the new constitution. Have we not the right to put it there? But my friend from Daviess wishes again to know, how is it we can fine an officer for failing to perform a duty before the

new constitution goes into effect, which is not provided for by the old? Cannot the legislature, about to assemble, at our request, provide by adequate penalties for the plan of submission as directed by us? Have they not this power under the old constitution? Would they not do it? Did they not do it on a former occasion; and if they did, would not our object be achieved and a return here unnecessary? So, in regard to opening the polls for members of the general assembly under the new constitution in 1850. We direct it to be done in this constitution, and we declare penalties against the officers who fail to comply. This duty will not be required of these officers until August, 1850, which will be three months after the ratification of the new constitution. If they fail, would they not be subject to penalties of the new constitution? At the time of their failure, the said constitution has been ratified by the people—our acts sanctioned—and I am at a loss to know why said officers would not be rendered amenable? In both cases then, suggested by my friend, ample provision can be provided for the contingencies suggested, and in no event could our re-assemblage be absolutely necessary. So at least thought the committee, or a majority of them. At our first meeting my friend from Wayne and myself stood alone on this report; but before it was made, a majority of the committee came over and concurred in its suggestions. The committee, like all humanity, are finite and short-sighted. They may have overstepped the mark; but they cannot see, that in the power claimed for this convention in the recommendations of that report, that they have introduced any new and novel principle into the science of government, or that their claim is not sanctioned both by truth, authority, and precedent.

There is another ground on which the opposition to the report is strenuously insisted on. On that ground, I shall not have a great deal to say. That is a ground which comes home to every man's own heart, and must be decided by his own judgement.

Mr. C. A. WICKLIFE. Did I understand the gentleman to say part of the judiciary report is to go into effect now?

Mr. STEVENSON. No sir. You misunderstood me. I replied in answer to my friend from Daviess, that we should have old judges acting and holding offices now held by them for a year after the adoption of the new constitution, in consequence of the time fixed in the constitution for their election.

With regard to the expediency of this question, I was about to remark, when I was interrupted, that I have not so much to say. I supposed that every delegate on this floor would have examined the subject with the lights which come nearest home to his own conscience and his own constituents; but there are one or two reasons which, as a matter of expediency, strike me with some force. While I believe that every man on this floor desires this constitution shall be approved, it may be an important question whether we shall, by coming back here, give strength to the new constitution. I came to the conclusion that we should weaken it by coming back. I may be wrong; but I will state the rea-

sons of my opinion. If we re-assemble, we re-assemble the same body, with the same allegiance to our constituents which now binds us. Suppose that some six, or eight, or ten, should find out we had honestly mistaken what our people desired. Would not they be compelled to rise up and move a reconsideration of that portion of the constitution? If I recollect right, the report on the judiciary passed by a vote of two or four only. On other subjects, there were still closer votes. Gentlemen will return here with express injunctions that they shall change their votes, and it is done. We then really change the constitution. Does any gentleman suppose we would not be obliged to re-submit it when we had changed it in any important point? It is no longer the constitution which we first submitted. It is a new constitution, changed in some important feature. Two or three votes would do this. Does not honesty and good faith require that if we change it, we should re-submit it. To fail to do so, would be but, by our present submission, "to keep the word of promise to the ear, but break it to the hope." Well, suppose it re-submitted, and a second re-assembling. Further changes in public sentiment would require re-submission, and the only possible limit to our re-assembling would be the improbable contingency of adopting a constitution so perfect in itself, and so acceptable to our constituents, as not to demand any change. Suppose, again, some of the present convention were to die, or be absent, and the convention should think proper to introduce a proposition of amendment on some important subject which passed by a close vote, would not this require a re-submission; and if, in every submission, the ground is taken that we must come back, where is it to end? May not this very argument be used by skilled and talented opponents with great force in their crusade against the new constitution.

Again: how many votes will not this new constitution lose, should we come back, by men who, although they prefer it to the old one, yet in consequence of some objectionable feature, will vote against it, hoping that upon our return, that objectionable feature will be amended? These are some of the views which led me to my conclusion of the impolicy of our return.

The gentleman from Nelson, (Mr. C. A. Wickliffe,) seems worried and excited at an article in the Commonwealth, on which he has severely commented, and which he thinks was aimed at him.

Mr. C. A. WICKLIFFE. Not at me, but at the whole body.

Mr. STEVENSON. I do not understand the article as offensive to the whole house. I did not regard it as personally offensive to any individual in this house. I differ in politics with that paper, and it is not my business to defend it. There are able men prepared to do that who agree in politics with the paper. But while I differ with the editor of that paper politically, he is my warm, personal, and devoted friend. I have known him long and well. I had the good fortune to serve with him on this floor, and he stood by me, battling with me for this convention. And from that time to this his voice has never ceased, nor has his pen stopped send-

ing forth articles in favor of this convention. I say that, because it might be inferred that he had some sinister motive in wishing to defeat the constitution. This is not so. I know him to be as warm a convention man as any that treads the sod of old Kentucky. I know him to be as chivalrous, enlightened, and liberal as any among the gallant sons of this proud old commonwealth. I know him to be above undertaking, indelicately, unjustly, or improperly, to wound the sensibilities of any living man upon this floor. I know this from long intimacy with him. He felt as a convention man, and I presume, under some excitement, he wrote the article. I say this, without seeing him, and without the slightest knowledge that the piece was to come out. I have not seen him since it came out; but I make the statement from my knowledge of the man. I am ready to vouch he did not mean any disrespect to this convention. As an editor he thought he had the right, and as a convention man he thought he was doing his duty to censure or advise what he thought might injure the constitution. I admire his boldness, and I love the man, though I may and do differ with him wholly in his political views.

Mr. NUTTALL. Have you ever seen an article in the Commonwealth in favor of the constitution, before the meeting of this convention?

Mr. STEVENSON. I know nothing about the course of the Commonwealth before that time, and what I have said, I have said to vindicate my personal friend, believing he did not intend to insult this convention. But I did hear the editor of that paper say he intended to patronize the constitution, and I know he did that in the legislature. He is not a man who can falsify his word. Mr. President, I am done.

Mr. MAUPIN. We told the people that we would refer the new constitution to them to accept or reject. There was no occasion for making any such promise, as all power is inherent in them. If they reject the new constitution, then they fall back upon, and re-adopt the old one. Every sensible man must know that when we adjourn and go home, we neither lose all our powers, nor have we any more conferred upon us. There is no interregnum in this government—the old constitution stands, or the new one goes into operation.

Mr. MACHEN. The question now before the house is one of great moment. Is it one upon which there is no doubt? Is it not such a question as requires our careful consideration and cautious action? I came here with no disposition to return. My opinion was and is, that we have the power to submit our work to the people for their approval or rejection, and if accepted by them, to declare that it shall then be the organic law of the land. But is it a question upon which there is no doubt rationally entertained? We have the evidences in this house of not only doubt, but settled conviction, that we have no such power. When I see gentlemen of great legal learning and experience occupying this position, it is enough to satisfy me, as one of this body, as to the prudent course to be taken. If, upon a question of so much importance, there is doubt as to the legality of a proposed action, and another course can be taken, upon which there is no doubt, it seems to me

that we should not hesitate as to our duty. Take that course which is plain and certain, and ensure the work. If, with the doubts in and out of this house, as regards our power to delegate authority to any other, of promulgating our work as the organic law of the land—if we separate and go hence to return no more, what difficulties may be drawn upon the commonwealth. Suppose that the office-holders of this state, opposed to a convention, should refuse to yield up their offices under the pretence that our work, from the manner of its submission, was void; in what condition, I ask you, would our state be placed? Commotion, confusion, and strife would necessarily be the result. I differ with some gentlemen here as to our powers. They are restricted in some respects, and the gentleman from Kenton in quoting from the action of the convention of Virginia, has not produced a case in point. Let me read from the preamble to the constitution of Virginia, the authority under which they acted. It proceeds as follows, to recite their powers:

"And whereas, the general assembly of Virginia, by an act passed on the tenth day of February, in the year of our Lord one thousand eight hundred and twenty-nine, entitled, 'An act to organise a convention,' did authorize and provide for the election by the people, of delegates and representatives to meet and assemble in general convention, at the capitol in the city of Richmond, on the first Monday of October, in the year last aforesaid, to consider, discuss, and propose a new constitution, or alterations and amendments to the existing constitution of this commonwealth, to be submitted to the people, and to be by them ratified or rejected."

Such is the authority under which the Virginia convention assembled. I ask you, if such power was delegated to this body by the legislative action under which we assembled? None will contend that it was. One of the requisitions of the legislature of Virginia was, that the work of the convention should be submitted to the people of Virginia for their adoption or rejection. That requisition carried with it all necessary powers, to be exercised in order to accomplish that which was required of the convention; and hence they might, with propriety, impose fines and punishment upon officers failing to do their duty. But our directions are, by the legislation of last winter, to alter, amend, or re-adopt the old constitution; and the submission to the people, is only in obedience to the demands of those from whom we received authority to assemble here. We may claim obedience to our mandate, but have no power to enforce it. Under these circumstances, our only safe policy is to return here and adopt the work we have put together, or re-adopt the old constitution, as directed by our constituents. I am for taking that course as the course of safety, and trust that this house will so determine.

Mr. HARDIN. If we cannot delegate to the governor and the second auditor the power to make a constitution, surely I cannot delegate to my friend from Ballard to make my speech. I rose and read from this book to show that we cannot delegate our power which is given on account of our skill. When an apprentice is bound to a master on account of his skill, and

the master dies, he is free; because he was bound for a particular purpose. A judge cannot act by deputy, because he is appointed on account of his skill. A clerk can, because his is a mere ministerial act; but a judge cannot appoint a deputy. A legislator cannot act by his deputy. Why? Because he is sent here on account of his skill. How absurd would it be for one of the representatives of Nelson county to send his deputy here. I have a son-in-law, by the name of Thomas W. Riley, who is a representative. If he was to give me a power of attorney to take his seat could I do it? Or if my other son-in-law was to direct me to take his seat in the senate, it could not be done. Mr. Helm cannot act by deputy. We are sent here to amend, alter, or re-adopt the old constitution. What do we propose to do? Why, we propose to appoint another set of gentlemen to make this very thing which we are sent here to make. We are to submit our work to the people, and they vote on it. Can they make a constitution? No sir. Can the people, in their primary assemblies, make laws? No sir. Have they power under the organic laws, rules, and regulations, for future government? No sir. But under the great principle, that the voice of the people must be heard, and when heard respected and attended to, we ask them for their opinion on this subject; and, as faithful representatives, we are bound to conform to that opinion. But we are the power which is to make the constitution. Yet, under the great republican principle of instruction, we call on them for advice, for instruction; and what they advise and instruct, I have no doubt the whole hundred members here will conform to.

Well, we propose getting the opinion of the people. What next? The sheriffs are to compare the polls in each county where they have a precinct, and the returns sent to the secretary of state. What next? The governor is to call a council, composed of the secretary, the attorney general, and second auditor. And whoever may choose to attend as spectators, can attend and look on. Very well; they look on, and the governor, the attorney general, and the auditor count the polls. Suppose it comes to a hard contest whether votes are good or bad, cast for or against the constitution, who is to decide? Why, the governor, I suppose, and his secretary to help. Is the attorney general to throw in his weight, and the second auditor, too? Suppose it comes to within ten votes, and there are spurious votes, or supposed alterations in the record—the governor and his officers are to judge of this, and when the result is ascertained they are to make proclamation to the world. I say that in this we should delegate to these officers the very thing we were sent here to do. We are to come here, we are to count the votes given, and we are, by a faithful comparison and addition of the votes, to ascertain whether the constitution is adopted. If it is, then we are to announce it, and proclaim it to the world as our constitution.

The honorable chairman (Mr. Stevenson)—who is a man of great ability, and is a very fair new edition of a most illustrious father, and if I should say a little improved, I hope I would not be offensive, because all new books should be

an improvement—says the committee had great trouble on this subject. He says they were all against him, save the gentleman from Wayne, who stood up to him most manfully. Very well, and how did you change them? They directed him to make a report to present to the committee when they met again, and he talked to them and talked to them, till they were willing he should make this report.

He says the Virginia convention did not re-assemble, and the Tennessee convention did not. Very well, the proposition may not have occurred to them. But the gentleman paid but a just tribute to the illustrious gentlemen he named, who framed the Virginia constitution, and every compliment he paid them I subscribe to, and I bow with profound reverence to the very names as they are mentioned. The names of Madison, Munroe, Marshall, Johnson, and Tazewell, I bow to, but I hold we are bound to come back and count the votes for and against the constitution, and then if there is a controversy, we are bound to decide that question ourselves.

I have had this question very much at heart for a longtime—a long time. I repeatedly mentioned it in public speeches made last summer, and wherever I named it, it met with universal approbation. I knew the opposition which the constitution would have to encounter. When I first started this question of a convention, it was doubtful whether we would have a majority or not, but it was a growing question, and as it grew it gained proselytes and became stronger and stronger, and the prospect brighter and brighter, just like the sun in rising, the fox-fire of the opposition seemed to disappear, and at last the office-holders—the first year, great God, how they followed me round and spoke. When I first went to Washington, there was William Booker, and the judge, his brother, who mounted the rostrum and spoke against me. In Green Judges Buckner was present, and I expected they would mount me. But at last they all agreed with me, except the clerk and his family. Then I spoke the whole week in Nelson county, and on Saturday night at Bardstown I was haunted by the clerks and their families. On Monday morning a clerk asked the judges at a precinct to open the polls at 8 o'clock, and when the judge asked "what is the reason," he answered to prevent Hardin from speaking, for he will get the people to vote for a convention. After I spoke, every man but three voted for a convention.

Now we have done all the people claimed. We have taken the appointing power from the governor and restored it to the people, where of right it belongs. We have taken away the life tenure of office, which is an anti-republican feature in the present constitution. We have done more. By our whole regulations put together, we shall save from \$30,000 to \$35,000 a year. Every great object of the people is answered. But yet we know there is a party greatly dissatisfied. There are not less than thirty or forty thousand men against any constitution we may make, and in favor of the present. To be sure there were not so many the second year as the first. Why? Because the office-holders saw we would carry the convention, and then they pitched in, and swore they were in the hunt

from the start, (laughter,) although we know they came in after the first year's voting. O, they were the greatest men for a convention; like Falstaff, when he found Hotspur dead, who was killed by the prince, he picked him up and he waddled off with him, the old fat drunkard, and threw him down before the king, and said I expect to be made a duke or an earl, if not the king may kill the next Percy himself. So with these men. The second year they swore they had killed Hotspur themselves, when they had not stuck a lance in him. (Laughter.) Nay sir, more. I saw men who at first stood off and never put their names to it till they saw the state of the weather out of doors. But when they saw the convention was a beautiful trade wind, how they spread their sails—great God how they pitched in! (Renewed laughter.)

We have all the opposers of the constitution to fight. We have all the emancipationists and all the office-holders for life, or a great body of them to fight. These will all combine, and thousands and thousands will be raised to defeat it.

Mr. M. P. MARSHALL. May I ask the question; suppose the people should reject this constitution, and this convention assemble in June, do you think it competent for this convention to make a new constitution or make amendments to the work? And if you think it competent, would you be in favor of it?

Mr. HARDIN. We should meet with the same powers as at first.

Mr. M. P. MARSHALL. Will we make any change?

Mr. HARDIN. Nothing material. I was saying these three classes of opposers we shall have. First the emancipationists, then those who prefer the old constitution, and next the old hunkers. Thank God, I am a barnburner, for I understand the old hunkers to be those who hold on to office until God takes them away, and as Jefferson said, "they scarcely ever die." I understand barnburners to be those who are opposed to those in office, and are as anxious to get rid of them as the old trapper when he said if he could not get rid of the rats, he would burn the barn, rats and all.

How long may a man hold on to office? Fifty or sixty years I suppose. I know men in office who have, by themselves or their vendees, been in office sixty years, and are now precisely like old brother Dobson. Dobson is represented as a handsome young man who was married at the age of twenty one. On the night of the wedding there was a knocking at the door, and a servant went and came back and told his master that a stranger who wished to see him was at the door. Dobson went and enquired who he was, and what he wanted. The stranger replied, "I am death, and I have come for you." "My God," said Dobson, "you have called out of time." [Laughter.] Said death, "I know I have called in rather a bad time; I will wait a little." In sixty years he came again, and again he was asked what he wanted, and he said, "I have come for you Mr. Dobson." "Good God" said Dobson, "have you come so soon? I did not expect you so soon as this." [Renewed laughter.] So it is with the office-holders; when they have been in sixty years, they say they have only



been in a short time. Jacob said his days had been a hundred and twenty and five years, and they had been few and evil; so it is with the office-holders—they think after sixty years they have been in office only a few days.

I want to see rotation in office, and the corrupt sale of sheriff's offices at the court house door, or in the court yard, taken from this government; when you leave it to the people, you can do that. My dear friend, you cannot sell a clerkship then for \$3,000, nor for \$14,000, as was done in Lexington; nor in the streets, cry out the offices from one end of the street to the other.

Sir, I was unhappy from the day this convention was called till last night. I was afraid all these discordant interests, the emancipationists, the old hunkers, and the old constitution men, would combine and raise money—which is the sinews of war politically as well as civilly—and no man would subscribe one dollar for the constitution, and that they would mash it up. A dark cloud hung over our prospects till last night. The lightning seemed to flash, and the thunder to roll; but thank God, it is past, and I see the bright sun of Austerlitz now bursting on the people. Yes, sir, the bright sun is shining on us, and as sure as the Lord liveth we will have a constitution, and the people will take it. Where will be the emancipationists? Will they undertake to kill you, friend Meriwether? (Laughter.) Never. They will not be a thorn in your side. Where will be the old hunkers? They will swear they were with us from the first. Where will be the old constitution men? Like the rest of the horses when they ran against Flying Childers, they will be no where in the race. We will have an easy time of it if we determine to come back here. Did not the world say that Sampson was a fool for permitting his hair to be cut off by that woman Delilah? Why? He was shorn of his strength. If we adjourn *sine die*, we shall be like Sampson with his hair cut off. For what power have we then? None, not even to kick a dog from our feet; and like a dog we shall go sneaking home. And when asked what you have done—"nauthin, nauthin, nauthin." (Laughter.) Have you made a constitution? No. We have left it to the sheriffs and our county courts, whose very offices under the old constitution will depend on not doing the very thing we order them to do. We have left it to the governor and his council, and they are either to make it or not, as they please. Why, we shall feel as if we have no power at all—none.

We can pass resolutions, and they are to be enforced for the purpose of carrying into effect the great principles we establish here, but we cannot make laws. To be sure, I see there is an amendment for fixing a penalty, and whether right or wrong I will go for it; any thing in the world to get a good constitution adopted.

Sir, I regret very much a proposition offered last evening which was misunderstood, and that time was not given by my colleague to the chairman of the committee. He has been a very able man, and I may say more—he is a modest one. I am sorry I cannot get some one to pay me the same compliment. (Laughter.) I know I have spoken a great deal, but I think the gentleman from Madison speaks as long as I do;

and what is more, he speaks better than I, except that he said his proposition was as clear as the sunshine on the hill yonder, when I took two or three witnesses to the window, and the sun did not shine at all, but was covered with clouds. (Laughter.)

I was sorry to see an article which appeared in the *Commonwealth* to-day. I have known Mr. Hodges a great many years, and I have had a great deal of experience in public printing, and I will take this occasion to say, that as an executive officer he is the best I have ever known, except one man I knew in the *National Intelligencer* office. The execution of his work is of such a character, and it is so promptly done, that he would always get my vote, no matter what might be his political principles. He does his work well, and that is the reason why I would vote for him. I have, however, thought that that paper should long ago have stepped forward and vindicated the members of this convention from the foul aspersions heaped upon them by the press of Kentucky. It has not done so. I would to God these expressions were not in that paper. But this has nothing to do with the public work. He does his work better, and prints better than any man I ever saw, and if he was a democrat this day, the most rabid one that ever lived, knowing his skill, I would vote for him.

My friend from Shelby was at the court in that county the other day, and the opposers of the constitution there were overjoyed, in hopes that we should adjourn without putting the constitution into operation. And so earnest was he that when he was telegraphed as to what was doing here, he hired a horse and buggy and came to the rescue in good time. There is an earnest wish by those opposed to the constitution, that we shall adjourn without an opportunity to return. I know it, and I beg of you who are in favor of the new constitution, to work for its adoption. You are staked upon it. We are bound, in vindication of our reputation, and in honor to the people, to see that they have their will carried out before we quit. But if we do not, we shall be the scorn and ridicule of every man, from Maine to the mouth of the Rio Del Norte. We shall be their laughing stock and scorn. I hope we shall come back, and that we shall not have to do much more than dot an i or cross a t. When will it suit you to come back? No day will suit me; but let us hold a recess, to keep the old constitution men in order, and to keep the emancipationists in order, and, above all things, to keep the old hunkers down.

Mr. PROCTOR. I am not in favor of the course suggested, because I am not willing to coerce the freemen of Kentucky by holding this thing over them *in terrorem*. If the people decide not to accept this constitution, I cannot consent to return here and make another constitution in opposition to the wishes of the people. I shall go home and do all I can to have the new constitution carried into effect. But I cannot return to my constituency, and say to them, "I have assisted in making a constitution, and voted to submit it to you for your adoption, or rejection, but if you do not coincide with my peculiar views, and do not endorse our work, I

will return to Frankfort and lend my aid in framing another constitution." I cannot consent to lend my approval to the adoption of any such doctrine, or such course of proceeding. I would consider myself recreant to the high trust and confidence reposed in me by those whom I have the honor to represent on this floor. If the people reject the constitution, I shall bow with deference and respect to their will.

Mr. WILLIAMS. I rise to make a motion to re-commit this report, but before I do so I desire to submit two resolutions, which will elucidate my object. I desire to submit them as instructions to the committee, if the report be re-committed.

The Secretary read them, as follows :

"Resolved, That the constitution adopted by this convention shall go into effect on the — day of June, 1850, unless by a vote to be cast by the qualified voters of the state on the first Monday of May, and the Tuesday thereafter, of said year, it shall be determined by said vote to reject said constitution.

"Resolved, That the legislature next to assemble do pass such laws as may be necessary to take the vote proposed in the foregoing resolution, and for due returns and a correct account and publication thereof; said laws to contain a provision providing that a majority of the votes cast shall decide upon the rejection or adoption of this constitution."

Mr. WILLIAMS. The difficulty in the minds of a great many delegates in relation to the pending proposition arises, it seems to me, from the fact that if the convention adjourns now, and does not return to adopt the new constitution, it will have done nothing. This is the principal argument enforced by the gentleman from Nelson, in the remarks he has just made. If we adopt the principle contained in these resolutions, the convention will not have to meet again in June and adopt this constitution, but if it should be rejected by the people, then the old constitution remains in force, and is the organic law of the commonwealth. According to the principle I have laid down, we shall be acting effectively, and it then cannot be said that we have done nothing. If the legislature fail to provide for the taking of the vote on the new constitution, it will not be our fault, and it will go into effect notwithstanding, and the argument respecting the failure of officers to do their duty, will amount to nothing.

#### COMMITTEE OF REVISION.

Mr. McHENRY moved the postponement of the pending question, to enable the committee of revision to make another report.

The motion was agreed to.

Mr. McHENRY then made his report, and the amendments suggested were agreed to.

#### EVENING SESSION.

The convention resumed the consideration of the report of the committee on miscellaneous provisions.

Mr. WILLIAMS called for the yeas and nays on his motion to re-commit the report.

Mr. HARDIN asked that the roll be called, and it was called accordingly.

Mr. HARDIN. I will inquire of the honorable mover of that proposition, as he does not

propose that the convention shall come back again, if he proposes to have the legislature designate how the constitution shall be proclaimed? We shall be through with it soon. The house last night decided to come back. The gentleman says it will go into effect if something does not happen. But the legislature may make something happen, and then we shall be what may be called *functus officio*.

Mr. WILLIAMS. The proposition offered by me adopts the constitution as our work at this time, but to take effect at a certain day hereafter, unless, in the mean time, the people shall cast a vote that it shall not be the constitution. I propose that the legislature shall pass such laws as may be necessary, in the mean time, to provide for taking such a vote as will be necessary to decide whether the people will receive or reject the constitution. Suppose the legislature pass no such law, the constitution will be the law of the land, because we have adopted it, and had the power to do so. Suppose there should be no vote taken, even if the legislature should provide for it by law, we have adopted the constitution, and it will be the constitution of the country. I am not unwilling to trust the legislature. I have no such apprehensions as the gentleman from Nelson. If upon my plan, as he says, we shall be *functus officio*, upon his plan, if the people reject the constitution, the convention, I think, will be *non est inventus* in June.

Gentlemen seem to have some doubt as to the power of this convention. Upon what is that doubt founded? I think it must be on this, if any thing: that the constitution, if not adopted by the people, can have no binding force before it is adopted by this convention. I humbly conceive that my proposition does away with that doubt; because we adopt the constitution, and it is the constitution, unless the people reject it. Where is there room for doubt? Is not our power complete? If there can be a doubt, I cannot see whence it can come. If gentlemen are determined to come back here, I think it will be to do nothing, because every thing we can then do, we can do now. Every thing we ought to do, if the people reject it, we can do now.

Permit me to say, there is no one more sincerely desires that this constitution should be adopted than myself. I will work as hard as any other man to secure that end, and my great objection to returning here, is, that it will put into the hands of the opposers of the constitution a most powerful weapon.

Mr. TURNER. The gentleman from Nelson has argued this question ingeniously. The constitution of the United States was adopted just in this way. The ratification of the federal constitution by nine states was required, and when given it became the constitution of the United States. The states ratified it and reported to congress. The convention dissolved and gave up all authority to congress, and left congress to proclaim the constitution if adopted by nine states, which was done. Cannot we give the legislature the power of declaring whether the people will consent to have this constitution put into operation? I think there is no doubt that we have the power.

Mr. HARDIN. I once met with William T. Willis, an eminent lawyer, at Marion court, and there never was a case occurred but he had had one in Green, or Adair, or Cumberland, which would just fit it. So my friend from Madison. He always has some case to fit, exactly. We cannot delegate our power, because we are sent here on account of our capacity. The states which adopted the federal constitution were a set of sovereignties, and their whole power, as states, had to be surrendered. But here are no sovereignties to be surrendered.

My worthy friend from Bourbon (Mr. Williams,) says he has labored hard for the convention. I know he has, and I hope he will not give out just now. We have made the constitution in a spirit of compromise, and I hope we shall hold on to it till it becomes the glorious constitution of Kentucky, and not let it go out of our hands till then.

Mr. KELLY. I have been opposed, from the first, to our meeting here a second time. I think there is a time when there should be an end to our voting and our talking; and, for the first time since I have been here, I will usurp the peculiar privilege of the gentleman from Madison, and call for the previous question.

The main question was ordered to be now put. The question was then taken on re-committing the report, with instructions, and the yeas and nays being demanded by Mr. IRWIN, there were yeas 31, nays 59:

YEAS—Mr. President, (Guthrie,) John L. Balinger, Wm. K. Bowling, Luther Brawner, Francis M. Bristow, Wm. C. Bullitt, Charles Chambers, William Chenault, Jas. S. Chrisman, Edward Curd, James H. Garrard, Ninian E. Gray, Andrew Hood, Thomas J. Hood, James W. Irwin, Chas. C. Kelly, John H. McHenry, Thos. P. Moore, William Preston, Johnson Price, Thomas Rockhold, James Rudd, John W. Stevenson, James W. Stone, John J. Thurman, Howard Todd, Squire Turner, John L. Waller, Henry Washington, George W. Williams, Silas Woodson—31.

NAYS—Richard Apperson, John S. Barlow, Alfred Boyd, William Bradley, Thos. D. Brown, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Lucius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Selucius Garfield, Richard D. Gholson, Thomas J. Gough, Ben. Hardin, Vincent S. Hay, William Hendrix, Mark E. Huston, Thomas James, William Johnson, George W. Johnston, George W. Kavanaugh, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thos. W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Wm. N. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, David Meriwether, William D. Mitchell, James M. Nesbitt, Hugh Newell, Elijah F. Nuttall, Henry B. Pollard, John T. Robinson, John T. Rogers, Ira Root, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, J. D. Taylor, Wm. R. Thompson, Philip Triplett, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, Wesley J. Wright—59.

So the house refused to re-commit.

The amendment offered by Mr. BROWN was then agreed to.

The question was next taken on the section, and it was adopted.

Mr. STEVENSON, on behalf of the committee, withdrew the fifth, sixth, and seventh sections of the report, which were rendered unnecessary by the adoption of the amendment to the fourth section.

The eighth and ninth sections were next read, as follows, and adopted:

"Sec. 8. It shall be the duty of the general assembly elected under this constitution, at its first session, to make an apportionment of the representation of this state, upon the principle set forth in this constitution; and until the first apportionment shall be made as herein directed, the apportionment of senators and representatives among the several districts and counties in this state, shall remain as at present fixed by law.

"Sec. 9. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the commonwealth. All criminal prosecutions and penal actions which have arisen, or may arise before the re-organization of the judicial department under this constitution, and which shall then be depending, may be prosecuted to judgment and execution, in the name of the commonwealth."

The tenth section was read, as follows:

"Sec. 10. In the trial of any criminal case, the jury shall be judges of law and fact."

Mr. LINDSEY. I move to strike out the entire section, and insert in lieu thereof the following:

"In all criminal trials, the courts having jurisdiction thereof shall be judges of the law, and the juries of the facts."

Mr. APPERSON. According to my recollection, the same proposition has been once rejected, and I would ask if it can be brought in again?

The PRESIDENT. If it has been once offered, it cannot again be offered.

Mr. LINDSEY. I supposed it was proper to offer it in this place. I offered it some weeks ago as an original proposition, when another branch of the constitution was under consideration. There is now a principle reported by the committee which involves a portion of the same proposition, and I desire now to offer it as an amendment.

The PRESIDENT. The proposition is, to strike out the section offered by the committee, and insert this. If this amendment has been once rejected, the chair is still of opinion it is not in order.

Mr. LINDSEY. Then I will move to strike out the section, as reported by the committee. It contains a strange principle, to my mind, to be incorporated in the constitution of the state. It is true, judges now differ as to the power of expounding the law in criminal cases under the existing constitution. Some have held that it was their right and duty, when asked, to state the law to the jury, and some have maintained that the power of the jury was just what is de-

clared in the section proposed to be stricken out. The convention certainly have not reflected on the effect of this section, and the high principles it involves, or I am sure they will pause before they will declare that juries shall be exclusively judges of the law in cases involving liberty or life. So particular have we been that we have provided that no person shall be eligible to the office of judge of the circuit court, or court of appeals, until he has been a regular practicing attorney for eight years; and yet after this provision, which is intended to secure persons sufficiently acquainted with the law of the land to enable them to say what it is, and apply it to all questions in civil cases involving property, we are to conclude our great work by declaring that those learned and experienced as we require, and provide they shall be, are not to be trusted in criminal cases, but we are to have juries composed of men selected as they can be picked up from the court house yard, having the least acquaintance with the law, to make another tribunal before whom the judge is to bow, and on whose decisions life and liberty are to be determined. Sir, I cannot value the constitution, with such a provision in it, as worth having.

Too high do I value the personal rights of the subject to be ready or willing to place them under the entire control of men not sufficiently acquainted with legal forms to know when they are right, or why they are required.

Will the gentlemen of the committee inform the convention, if the section is adopted, where they contemplate the duty of the judge ends, and the power and authority of the jury begins? Will it be when the jury is empanelled and sworn, or after the evidence is heard? The competency of witnesses—the admissibility of proof offered, are questions in every cause of great moment. If the jury is to be judges of law and fact, necessarily they should determine upon these questions suggested, and then the whole power of the learned judge will be to preside over the assembly and keep order, or cause his officers to keep it.

What power will the judge have to grant a new trial, if an accused is improperly found guilty, either through the prejudice and passion that operate unjustly against him, or the erroneous determination of the law? I have never, as I remarked upon a previous occasion, been able to find out on what grounds judges who hold that juries are judges of law and fact in criminal cases, justify the power they exercise in granting new trials, after a jury has returned a verdict of guilty.

The judge, sir, must sit and quietly hear propositions urged upon the jury, which he knows not to be the law of the land—see counsel use books as authority that are not recognized, and if the section is retained, he is to be powerless in correcting such flagrant wrong—such terrible injustice.

I know, sir, there are greater chances of escape to the criminal, if the jury is to decide the law in Kentucky, as the impulses of our people are averse to the higher and more ignominious punishments allowed by our laws. But now and then spring up unaccountable cases, where condemnation is in advance of trial in the public

mind, and the prejudiced and undisciplined citizen is left to determine the fate of an unfortunate person, and there is to be no power to stay the tempest, or arrest the sacrifice.

To those who know how long it takes to learn even the grades of offences, and how to distinguish, on facts, the particular class to which they belong, no argument need be offered of the utter fallacy, of expecting, at any time, to procure twelve jurors, in any court, who could of themselves, unaided, say what crime an offender they were trying had committed. And when the counsel prosecuting shall argue one way, and the counsel defending another, such a tribunal is an unsafe one to decide between them.

I have no disposition to extend my remarks, though I could give examples where juries, under the excitements improperly awakened amongst the people, have been led unjustly to condemn, and but for the action of the judges in arresting their verdicts and granting new trials, the victims of their prejudices would have been sacrificed of character or of life.

As much, Mr. President, as I prize the right of trial by jury, and as unwilling as I would be to see it abolished, I am still for confining the jury to the trial of fact, and of letting those whose time is devoted to study, and whom we select for their learning, be judges of the law. I hope, sir, the motion will prevail, and the section be stricken out.

Mr. STEVENSON. I desire to see this settled, one way or the other. With my experience, I have been in the habit of seeing the law read to a jury, and sometimes I have known lawyers forbidden by the judge to read law. I do not consider the man who may be a judge, in all instances the best lawyer. There may be those equally good at the bar as the one on the bench. But in addition to that, the commonwealth is supposed to have an able man to act for her. We have also in this state no appellate jurisdiction, so far as criminal cases go. I think this should be settled, and I am in favor of it as our ancestors adopted it, and as it is practiced throughout the United States.

Mr. C. A. WICKLIFFE. We had better leave this question, Mr. President, where we find it. The right of trial by jury is well understood, I think, in the country, and if we undertake to remedy the defects of the human intellect, or of the legal attainments of our judges—if we, for the purpose of producing harmony or uniformity in the opinions of the judicial incumbents, by constitutional provision on this delicate question of the rights of the jury in a criminal trial, I fear we may jeopard, in some degree, the value of the trial by jury, both to the commonwealth and the citizen.

The right to decide the law in a criminal case is one of joint possession, by court and jury. If the jury mistake the law and convict the accused, the judge has the right to award a new trial. The amendment proposed as a section to the constitution would deprive the judge of that all-important power—a power necessary to protect the unfortunate against the improper excitement of the public feeling, which always, more or less, infuses itself into the jury box.

I hope the new mode of appointing our judges will improve the judicial manners of the in-

cumbents complained of; if not, that others will be selected, whose minds will look upon this question with an eye single to the pure administration of public justice, and the constitutional rights of the citizen.

I had supposed that since the trial of Fries, by Judge Chase, and the trial of the Judge himself, for his opinions and conduct on that trial, the question of the rights of the jury in a criminal trial, as well as the duty and power of the judge, had been understood. In that case, Judge Chase and his associate instructed the jury upon the law of treason, and left the jury to decide the law and fact. The counsel for the prisoner complained and protested against the right of the court to decide the law; the court told the counsel that they had instructed the jury what, in their opinion, was the law of the case—they had a right to do so, and the counsel had the right to argue to the jury, and satisfy them that the law was not as the court had decided. So I have understood the law to be. If by constitutional provision, such as that now proposed, you make the jury judges of law and fact, you open the door by which a popular criminal will certainly escape, and the unfortunate victim of unjust prejudice will be denied the protection of the impartial judge, in the exposition of the law. Better, in the language of our bill of rights, hold the ancient mode of trial by jury sacred.

Mr. STEVENSON. The honorable gentleman from Nelson (Mr. C. A. Wickliffe,) has referred us to the instance of Judge Chase, a judge who, although he instructed the jury in a criminal case, yet permitted the counsel of the prisoner to combat the law as expounded by the court. If the judiciary of Kentucky would invariably follow the example of Judge Chase in this particular instance, then I frankly admit there would be no necessity for this provision. But, is such the fact? Far from it. There are scarcely two judicial circuits in the state where there is any uniformity in the practice and management of criminal cases. In one circuit we see the counsel of the prisoner permitted to read and combat the law; in another, the judge, upon the motion of the attorney for the commonwealth, rules what the law is, and the prisoner's counsel is not allowed to combat or contradict it! Now, if we had an appellate jurisdiction in criminal cases, where errors committed by a *nisi prius* judge could be corrected, I should not be disposed to doubt the correctness of the rule by which the judge should always expound the law in criminal cases. But we have no such appellate tribunal for criminal cases. If the judge rules the law improperly, it is as immutable as the laws of the Medes and Persians, in those circuits where the prisoner's counsel is not allowed to combat the law as laid down. Now, I have as high an opinion of the judiciary of my own state as any gentleman upon this floor. In my own circuit we have in our judge an exemplar of judicial integrity, learning, and worth, which would adorn the highest supreme tribunal in this, or any other state. But while I admit all this, I am unwilling that where a man's life and liberty are at stake, the mere private and fallible opinion of one man as to what the law is, should not be controverted by the prisoner's counsel,

who may be a much more learned jurist than the judge himself.

I see no injury to the commonwealth in this. The judge may rule the law as he honestly thinks it to exist. The prisoner's counsel may rebut it, and the attorney for the commonwealth has the opportunity, in conclusion, of showing the fallacy and error—if it exist—in the argument of the prisoner's counsel. I have no peculiar solicitude in this matter; my great object was to secure uniformity in the practice throughout the state. If it is not settled, as proposed by the committee, adopt the proposition of my friend from Franklin. In either event, we shall have a uniform practice. I submit the whole matter to the better judgment of the convention.

Mr. TURNER. I think this an exceedingly mischievous provision. If the whole law of the case is to be decided by a jury, every question of evidence will have to be submitted to them. On questions of law, running back to English law, should they not rely on the opinion of the judge? When he gives his reasons, and reads the law to them, that respect should be paid to his opinion which his station entitles him to. Suppose a jury convict contrary to law, shall there be no power to grant a new trial—no power to overrule the mistake?

This is one of the most important provisions in the whole constitution. There is nothing that reaches the citizens so deeply and powerfully as this, because it makes the jury the whole judge of the case, and allows them to take the life of a man under the influence of prejudice.

Mr. STEVENSON. I move to amend, by adding the following:

"Except as to the admissibility of evidence; but the right of the court to grant a new trial on the application of the accused, shall not be questioned."

The amendment was adopted.

Mr. APPERSON. I agree with the gentleman from Franklin in urging the convention to come to some conclusion upon this very important matter. He knows that the criminal law is administered differently in different circuits in the state. When we declare that the ancient mode of trial by jury shall remain as heretofore, the question arises, what has been that ancient mode? The answer is, one judge, at the instance of the commonwealth or the accused, instructs the jury as to the law of that case, and will not permit his instructions and expositions of the law to be called in question, nor a book to be read to the jury, whether to sustain or to overturn his instructions. Another judge will expound the law to the jury, but will tell them that they have the right to find the law to be different from his instructions, and hence the prosecution and the defence have the right to argue against the instructions of the court, and of course to read the law to the jury from the law books. Another set of judges (who compose the greatest number, from all that I have heard,) will not instruct the jury, unless the prisoner, as well as the commonwealth, agrees for the court to give instructions to the jury.

I ask gentlemen if we ought not to have this question settled? The gentleman from Nelson (Mr. Wickliffe,) states the law and the practice to be one way—the gentleman from Madison

(Mr. Turner,) another way. They differ most widely, and notwithstanding that difference, they both oppose any action by this convention on this subject. The senior gentleman from Nelson, (Mr. Hardin,) in a conversation which I had with him, some days ago, on this subject, said to me that it was unnecessary to put any provision in the constitution as to this matter, because he was satisfied that no judge would so far leave the old beaten track of the criminal law as to forbid the discussion of the law to the jury, and to read authority from the books.

The chairman of the committee (Mr. Stevenson,) has just told us of the mode of a jury trial, which he recently witnessed, in which the court instructed the jury, at the instance of the commonwealth, without the assent of the accused, and that no law was permitted to be read to the jury. When gentlemen find the contrariety of opinion is so great, it does seem to me that they must feel the necessity of having the matter settled; and I cannot see how gentlemen, entertaining views so different, should still insist that it is wholly unnecessary for us to declare what was "the ancient mode of trial by jury."

For myself, I believe that the jury should judge of the law as well as of the facts. As a lawyer I have been brought up under this mode of administration of the law, and I believe convictions are quite as common in those circuits where the law is tried by the jury, as well as facts, as in those in which the court assumes the prerogative of the jury, and expounds the law to them.

If the proposition submitted by the committee, as amended, declaring that the jury have the right to try the law and facts, except on the admissibility of evidence, and leaving to the court the right to grant a new trial to the prisoner, if improperly found guilty, be not in accordance with "the ancient mode of trial by jury," let us say what that mode was, so that in all time to come, there may be uniformity in the administration of the criminal laws. Although it is late in the session, I do hope that gentlemen will come up to the question, and not dodge it. It is very important to the rights of the citizen, that he should know what the law is. Let it be settled as the convention may deem right, but I do insist that it shall be settled in some way.

The PRESIDENT. I ask leave to make a few remarks on this question. (Leave, leave.)

There are periods of time when there are excitements which are strong and prejudices exist against a criminal. If the jury are to be the exclusive judges of the law, through their prejudices the most innocent man in the community may fall, while the judge who is acquainted with the law and in the habit of deciding upon it will not be influenced by it. There may be certain descriptions of crime which if committed the jury will lean toward the criminal, and under the pretence of deciding law and fact will find out a way to excuse, when if the judge declared the law, under the evidence they could not fail to convict. We have had a constitution without any such provision, and in making it imperative on a jury to decide law you will open a way for the greatest criminals to escape, or for prejudice to strike down any man in the com-

munity. My opinion is, decidedly, that we should not put this in the constitution.

Mr. NUTTALL. It seems to me we are taking dangerous ground. We all know that even with a judge to instruct a jury there is little chance to convict a man, and the greater the offense, the less chance is there. Such a principle as is in that section will do away with the effect of all criminal laws in the country. Crime is stalking abroad now. I want to know if we are to trammel a court in this way? Of what use will it be to have judges if this section is adopted? It is a monstrous principle, that I hope will be rejected.

Mr. MITCHELL. I move the previous question.

The main question was ordered to be now put.

The question was then taken on striking out, and it was agreed to.

Sections eleven, twelve, thirteen, fourteen and fifteen were adopted without amendment, as follows:

"Sec. 11. The general assembly shall provide, by law, for the trial of any contested election of auditor, register, treasurer, attorney general, judges of circuit courts, and all other officers, not otherwise herein specified.

"Sec. 12. The general assembly shall provide, by law, for the making of the returns by the proper officers, of the election of all officers to be elected under this constitution; and the governor shall issue commissions to the auditor, register, and treasurer, as soon as he has ascertained the result of the election of those officers respectively.

"Sec. 13. That the sheriffs and other officers of the election shall be liable to all such fines and penalties for a failure to discharge the several duties imposed on them in this schedule, as are now imposed upon them by law, for a failure to perform their duty in conducting other general and state elections.

"Sec. 14. Should the county court of any of the counties of this commonwealth fail or refuse to appoint judges, clerks, or sheriffs to superintend the election, as provided for in article four of this schedule, the high sheriff of said county shall appoint such judges, clerks, and deputy sheriffs.

"Sec. 15. Should any of the sheriffs or deputies in any of the counties of this commonwealth, die, resign, or from any other cause be prevented from attending with the poll books, as directed in article four of this schedule, for the comparison of the votes on the adoption or rejection of the new constitution, it shall be the duty of the county court clerk, or his deputy in such county, to attend with said poll books, and aid in such comparison."

The convention then adjourned.

NOTE.—In the course of the preceding remarks of Mr. Hardin, he alluded to the circumstance of Mr. Meriwether's having been shot at during the canvass of last summer, in a manner to create the impression that the attack was made or instigated by the emancipation party. Mr. Meriwether was unable at the time to obtain the floor for explanation, and he desires us to say that he is of opinion that Mr. Hardin has done injustice



to the party alluded to, in supposing them capable of such an act. It may have been the act of a mono maniac, or some deluded enthusiast, but he believes the emancipationists, as a party, are as incapable as any other set of men on earth, of committing or instigating so foul a crime.

THURSDAY, DECEMBER 20, 1849.

Prayer by the Rev. Mr. NORRON.

WITHDRAWAL OF PAPERS.

On the motion of Mr. BALLINGER, it was *Ordered*, That Mr. COFFEY have leave to withdraw the papers, &c., presented by him in relation to the election of the delegate from the county of Casey.

PER DIEM IN THE RECESS.

On the motion of Mr. HARDIN, it was *Resolved*, That the members of this convention shall not be entitled to any *per diem* during the recess which the convention may take after the end of the present session, until the first Monday in June, 1850.

DUELING.

Mr. TAYLOR. I move to add to the twelfth article on the general provisions of the constitution, the following:

"The governor shall have power, after five years, to pardon all persons who shall in any wise participate in a duel, either as principal or seconds, and restore him, or them, to all the rights, privileges, and immunities to which he, or they, were entitled before such participation."

I am in the condition of one who is about to leave an important matter with the feeling that he has not done all he ought to have done. That idea keeps boiling up in my heart and my head. We know that if a man's "sins be as scarlet they shall be as wool," and I ask if this convention will incorporate in the constitution that there is one sin which shall not be pardonable? When General Root was on the northern frontier in the last war, General Scott sent him with a flag of truce to the British camp. When there, one of the British officers drank as a toast, "here is to James Madison, dead or alive." Root immediately responded, "here is to the Prince Regent, drunk or sober." Who could find it in his heart to disfranchise such a man, if the result of that act had been a duel? When the officer asked if he meant to insult him, he replied, he meant to answer that which was intended for an insult. Shall we say there is one crime for which there is no pardon? If I understand, there is no mode of trying the accused, nor any court of conciliation. I hope there will be no offence which the arm of mercy cannot reach.

Mr. WOODSON moved the previous question.

The main question was now ordered to be put.

The yeas and nays being demanded by Mr. NUTTALL, were yeas 50, nays 39:

YEAS—Mr. President, (Guthrie,) Alfred Boyd, William Bradley, Thomas D. Brown, William C. Bullitt, William Chenault, Beverly L. Clarke, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Garrett Davis, Lu-

cius Desha, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Thos. J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, William Johnson, G. W. Johnston, Geo. W. Kavanaugh, Peter Lashbrooke, Thos. N. Lindsey, Alexander K. Marshall, William N. Marshall, David Meriwether, John D. Morris, James M. Nesbitt, Hugh Newell, Johnson Price, Larkin J. Proctor, John T. Rogers, James W. Stone, John D. Taylor, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, Henry Washington, John Wheeler, A. S. White, Charles A. Wickliffe, Robert N. Wickliffe, Silas Woodson—50.

NAYS—Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Luther Brawner, Francis M. Bristow, Chas. Chambers, James S. Chrisman, Jesse Coffey, Selucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, James P. Hamilton, Ben. Hardin, Vincent S. Hay, William Hendrix, Andrew Hood, James M. Lackey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Martin P. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, John H. McHenry, Thomas P. Moore, Elijah F. Nuttall, John T. Robinson, Thomas Rockhold, Ira Root, James Rudd, Ignatius A. Spalding, Michael L. Stoner, Albert G. Talbott, William R. Thompson, John L. Waller, George W. Williams—39.

So the amendment was adopted.

Mr. NUTTALL. I move a re-consideration of the vote adopting the clause of the constitution on the subject of dueling, for I think the vote just given has destroyed its efficacy.

Mr. WOODSON moved to dispense with the rule requiring a motion to re-consider to lie over one day.

The motion was not agreed to.

ADDRESS TO THE PEOPLE.

Mr. CLARKE. I am instructed by the committee, to whom the duty of preparing an address to the people of Kentucky was assigned, to make the following report:

TO THE PEOPLE OF KENTUCKY.

FELLOW CITIZENS:—We, your delegates in convention assembled, in submitting to your consideration the constitution we have framed, deem it necessary to announce the chief alterations in that organic law under which you and your posterity will live. The progress of political science, and the advancement of popular privileges, have demonstrated, in the half century which has elapsed since the adoption of our present Constitution, that the people could more safely and wisely exercise many of those powers which were formerly delegated to others.

The restoration of this power to the source whence it emanated, has been a controlling principle of the convention.

We have boldly, but we trust not incautiously, removed those barriers which our ancestors deemed necessary to impose on the direct exercise of popular sovereignty; and this we have done without apprehension, as we felt an abiding confidence in the wisdom and moderation with which these great powers would be exercised by the freemen of Kentucky.

The people, anxious as they are for reform,

have been, nevertheless, extremely jealous of the exercise of this power in reference to the judicial department; republican experience has, however, taught that the selection of the judiciary, directly by the people, though the most important of all other departments—one which directly controls the lives, the property, and the liberty of the citizen, can as well be exercised by the people themselves; and hence to your hands, after mature deliberation, we confide it.

The great object of all governments should be to improve and elevate the condition of the governed—this can, in no wise, be better or more profitably done than by opening to all the door to social, civil, and political preferment; the result will be honorable, and crowded competition for office and thorough preparation to discharge the duties incumbent on its possession—hence the elective power by the people has been greatly extended, whilst the just and proper independence, and yet frequent and salutary accountability of the officer secured.

Among the changes made in the Constitution, are the following: Biennial sessions of the legislature, limited in their duration to sixty days. The protection of the public credit, by expressly prohibiting the legislature from contracting any debt, save for the expenses of the government, without the assent of the people, given at the polls. Private and special legislation is forbidden, and this hitherto fruitful source of expense, including the grant of manifold divorces, so long borne and so strongly condemned, is entirely removed.

The power of selecting the agents necessary to the just and proper administration of the government in its several departments having been vested directly in the people, has necessarily shorn the Governor of much of the power and patronage hitherto entrusted to him; it is still, however, his duty to enforce the faithful execution of the laws, and to secure and maintain, by executive authority, the safety and dignity of the commonwealth.

The mode of appointing the judges has been altogether changed, and for the first time in the history of this commonwealth, been given directly to the people. The court of appeals is to consist of four judges. The state is to be divided into four districts, in each of which an appellate judge is to be elected for the period of eight years; with the power, on behalf of the legislature, to reduce the number to three, should it be deemed expedient. The number of circuit judges is reduced from nineteen to twelve, and they are to be elected every six years in their respective circuits.

The old county court system is entirely abolished. The judges, one president and two associates, are to be elected by the people of the several counties, having the same jurisdiction, in all respects, which has heretofore been exercised by county courts, as organized by the Constitution of 1799, except when the county levy is to be imposed, or county debts created, when the General Assembly may require the justices of the peace, also elected by the people, to form a part of the court in the exercise of the great power of county taxation.

The clerks of the several courts, sheriffs, justices of the peace, and constables, and all other

county officers, and officers of the militia, are to be elected by the people at stated periods.

The public credit, that great element of social and political power, has been still further sustained, by rendering inviolable the resources of the sinking fund, and by requiring the faithful application thereof to the payment of the interest on, as well as the principal of, the public debt.

The promotion and diffusion of knowledge among our citizens, has been secured by the dedication of the school fund to a system of public instruction in primary schools, which, if properly fostered and managed by the legislature, will, we hope, in time, as each county is secured by the Constitution in its due proportion of that fund, bring the means of a common education within the reach of all the children in the commonwealth.

It will be seen that the relation between master and slave remains as it was under the old Constitution. Public sentiment, so far from demanding any change, expressly rebuked any constitutional action thereon. Hence it has been untouched; and this great element of wealth, and of social and political power, will remain undisturbed and secure, so long as this Constitution shall continue the paramount law of the land.

The free negro population among us is conceded by all to be worthless, and highly detrimental to the value of our slaves, as well as the security of the owner. The new Constitution provides that no slave shall be emancipated but upon condition that such emancipated slave be sent out of the state.

The mode of amending the new Constitution is the same as in the old. Various plans were presented to the consideration of the convention, upon this deeply interesting and important subject. It was one which received, as it deserved, the attention of the people, and was ably discussed throughout this Commonwealth—a mode sanctioned by time, and irrespective of approval by the people, commending itself to our consideration by the stability that it imparts to the organic law—a stability so necessary to the safety and security of private rights, and to a fair and proper trial, and consequently to a just appreciation of the new Constitution.

The great personal, civil, and political rights which were declared and secured by the old, have been still further secured in the new Constitution.

It may be, that we have been engaged longer in this great work, than, in the estimation of many, was deemed proper. But amid the conflict of opinions and interests, so diverse and antagonistic in their character, time, patience, and discussion were necessary, and produced a spirit of conciliation and compromise—one so fruitful of good in all the relations and avocations of human life, and not less so in the political pursuits and in the discharge of the duties of the citizen.

This Constitution, the product of concession and compromise, may not be in all its parts perfect; yet we hope the same spirit which actuated us will pervade you, and procure for it your support and approval.

The article of the Constitution under which the convention was assembled, makes it the im-

perative duty of the convention, "to re-adopt, change, or alter the present Constitution." We have changed and altered that Constitution, but before we proclaim it as the organic law of the Commonwealth, we have determined to submit the same to you for your approval or rejection.

We would prefer to have closed the labors of the convention, by adjournment without day, and leave the duty of ascertaining the result of your judgment upon the new Constitution, and the annunciation of it as the supreme law of the land, to some other agency, did we believe we had the rightful power to require this duty to be performed by others; and more especially by officers over whose official conduct the convention, after adjournment, would have no control; whose obedience it could not command, and whose disobedience it could not punish.

The Constitution must emanate from the convention as the only constitutional organ of the people to carry into effect their will, upon the vital question, whether they will retain the old Constitution or adopt the one which is proposed. This issue should not be placed upon a contingency beyond the control of the convention and the people. The convention thought they were not permitted to leave the question of what shall be the Constitution of Kentucky, to be finally decided by any other human tribunal than the people themselves, through their delegates in convention assembled. We will, therefore, re-assemble on the first Monday in June, under the hope that our labors will be approved, and with a determination to submit to the expressed will of the people, and faithfully to give that will whatever it may be, its full power and effect.

BEVERLY L. CLARKE, of Simpson.

C. A. WICKLIFFE, of Nelson.

R. APPERSON, of Montgomery.

ARCH. DIXON, of Henderson.

JN'O. D. TAYLOR, of Mason.

Mr. CLARKE. I will just remark, that this address met the approbation of all the gentlemen whose duty it was to prepare it. It contains barely a statement of the facts as that committee believed. Not facts entertained by any particular member of the convention, but those which we believed to exist in the action of the convention down to the present moment.

We have not been unanimous in the adoption of every article of the constitution, and this address is predicated on what is supposed to be the sense of the convention as determined by a majority. Though I am opposed to some things which it contains, I am prepared to say that I intend to support the new constitution, and to use every honorable effort in my power to secure its adoption by the people. I hope and trust the address will meet the favorable consideration of this convention.

Mr. M. P. MARSHALL. I concur in the main features of that address, but I think it has failed to embody my sentiments and that of others, on a very important matter. Whilst I wish slavery to stand as it does, and that there should be no interference with master and slave, I cannot concur in the sentiment that slavery is a source of wealth or of political power. I wish it to be understood that I believe slavery is a social and political evil, and not a source of political power or wealth.

There is another thing in which I cannot concur. I believe we had the power to submit the constitution to the people, and there was no necessity of returning here again.

Mr. HARDIN. I have not attended to the reading of the address. I have got to go to heaven by faith; and as I have great confidence in the committee, I am willing to take the address in the same way. I shall do what I can to get the constitution adopted.

Mr. TURNER. I am in favor of the institution of slavery as it now exists in Kentucky, and about that part of the address I have no scruples. Where it speaks of our not having power to put the adoption of the constitution on a contingency, I cannot agree with the address. I desire the word majority should be put in so that it shall not go out that we all agreed to that principle. This will not weaken the constitution, but give it power before the people. I cannot sign the principle that I believed it was necessary to come back.

Mr. C. A. WICKLIFFE. If the address purported to be the individual views of members, if the subject of it was to go out as the expression of the opinion of each member, perhaps the remarks of the gentleman from Madison would be entitled to consideration. But it will be observed that the address speaks in the name of the convention and of the act of the convention. It was in contemplation by the committee, if the address should be adopted, to move that it be signed by the president of the convention. Therefore it speaks as it does upon the point alluded to. It will certainly appear that there was a division of this house on the question referred to. We thought as we were preparing an address, and as part thereof, an abstract of the decisions of the convention, we could not employ other language than we did.

Perhaps I have more cause to regret the participation I have had in this portion of our action than any member on this floor. Yesterday morning I took occasion to allude to an article published in "The Commonwealth," which I thought reflected in terms too strong on the action of this convention. I did that without any expression, without the feeling of any emotion of unkindness toward the conductors of that print. And I alluded to the fact, that from the high source in which the condemnation, so strongly expressed, of the action of the majority of the convention, was published to the world, from the respectability of the organ, and from the further fact of the confidence of this house in it as its printer and organ, I felt myself more justified in the remark I made, in giving the reasons which influenced me and a majority of the convention in the course we have taken.

Sir, am I alone, in this house, of the opinion that the remarks made in that paper were too strong in their condemnation of the action of this convention. If I am, then perhaps I deserve to be selected as the peculiar object of severe denunciation. I have been used to the vulgar assaults of editors, and therefore, personally, the one in the morning's "Commonwealth," does not affect me; and the only reason why I have obtruded on the house a notice of it is, that the article seems to present me as having expected from the conductors of that press, be-

cause of their being public printers, a species of subserviency to the wishes of this convention, of which if they were guilty, I should scorn and condemn them. The long personal, social, and friendly relations between myself and the senior conductor of that press, would forbid me to entertain such an opinion of him. My opinion of him as a gentleman and christian have been favorable. Amid all the conflict and abuse of party, our friendships have remained unbroken, and I hope will ever so remain.

With the junior editor, my acquaintance has been more limited and less familiar, and respect for myself and this house would have prevented me from using expressions calculated in the slightest degree to authorize the impression to be made, that my object was to stifle the freedom of debate, thought, or action of that press. I am a lover of the freedom of the press; I tolerate its abuse and vituperation even of myself, for the sake of that freedom. Upon this subject I have nothing more to say, nor shall I dread its threatened assaults. I consider that this convention have decided that it was necessary and appropriate to submit this constitution to the people, and take a recess in the meantime, and then, if it should be adopted, to meet and proclaim it as the organic law. And, sir, you will allow me, in taking leave of any further active discussions upon this floor, to return my thanks to the convention for the kindness and liberality with which they have treated me, and to say to each member, that if in word or deed I have given offence, or wounded the feelings of any one, it was not intended, and that I deeply regret having done so.

Mr. APPERSON. I, like the gentleman from Madison, thought we had a right to submit this constitution to the people, and there were many who agreed with me. Whilst we give reasons, let us give the reasons of a majority. Whatever a majority have determined on, I design to support. I believe what we have done will redound to the general good. There are things in the constitution which I did not admire, and did not advocate; but, on the whole, I think we have done as well as the people expected; indeed, admirably well. I think the address embodies the sentiments of a majority, and as such I yield to it.

Mr. MAUPIN. I hope this address will be unanimously adopted, and that we, like a band of brothers, shall go home determined to do all we can to secure the adoption of the constitution.

Mr. GARRARD. I hope delegates will not set up their individual opinions against the action of the majority of the convention. I believe no good can come from a further discussion of the subject, and I move the previous question.

Mr. BALLINGER. I hope the gentleman will withdraw that motion for a moment. I wish to say a word or two.

Mr. GARRARD. I will do so to accommodate the gentleman.

Mr. BALLINGER. I am not willing to sign this address without the alteration suggested by the gentleman from Madison. I am opposed to saying it was necessary for this convention to return here. There is another matter that I do not entirely wish to endorse; and that is,

when we say there has been no unnecessary time spent here in debate. That I do not believe. I cannot go for the address without the alteration I proposed.

Mr. GARRARD. My view is, that the members will not sign the address, and I think we may adopt it with propriety. I renew my motion for the previous question.

The main question was ordered to be now put.

The question was taken on the adoption of the address, and it was agreed to.

Mr. C. A. WICKLIFFE. I wish to offer a resolution that the address be signed by the president of the convention.

Mr. CHAMBERS. I move to amend by adding, "and countersigned by the secretary."

The amendment was agreed to, and it was

*Ordered*, That the address be signed by the President, and countersigned by the Secretary, and that the printers to the convention print sixty thousand copies of said address, to be appended to the copies of the new constitution heretofore ordered to be printed.

#### RESOLUTION TO ADJOURN.

On the motion of Mr. MERIWETHER, it was *Resolved*, That when this convention adjourn on Friday the 21st, inst. it will adjourn to meet on the first Monday in June next."

#### DELEGATES TO SIGN THE CONSTITUTION.

On the motion of Mr. C. A. WICKLIFFE, it was

*Resolved*, That the constitution, as enrolled, be signed by the president and delegates of the convention, and countersigned by the secretary.

#### BINDING OF JOURNAL.

On the motion of Mr. MITCHELL, it was

*Resolved*, That the printers to the convention be directed not to bind the journal of the proceedings of the body, until its final adjournment in June next, so as to have it complete in one volume.

#### COMMITTEE OF REVISION.

The committee of revision, by Mr. McHENRY, its chairman, reported other articles of the constitution, and the convention approved of the arrangement and amendments which had been made in them.

#### FEDERAL AND STATE POWERS.

Mr. GAITHER gave notice that the select committee, of which he was chairman, to whom was referred a resolution on the subject of the powers of the general and state governments, would be ready to report to the convention when it re-assembled in June.

#### SLACKWATER NAVIGATION.

Mr. KAVANAUGH desired the views which he entertained in reference to the section he had the honor of offering a few days ago, declaring the proceeds of the slackwater navigation of the state, part of the sinking fund, to be placed on record, especially as a speech was published in this morning's paper, (Mr. Lisle's,) on the other side.

In offering that section he said, I wish it to be distinctly understood that I am the friend of common schools. I have been favorable to securing the school fund by a constitutional pro-

vision, and I have voted accordingly, I hold that that fund has been already set apart and secured, and cannot be infringed or violated by the adoption of the section which I offered, because the legislature in any state of case, is bound to pay the interest on that fund.

The proceeds of the slackwater navigation of the state have always rightfully and properly been part of the sinking fund; but the legislature last year directed and set apart their proceeds to pay the interest on the school fund. This provision was intended to go into effect next year, and the interest on the school fund, by the provision in the constitution, must be paid, no matter what may be done with the avails of our slackwater navigation. As the constitution has set apart the sinking fund to pay the public debt, doubt might arise as to whether it was intended that the slackwater navigation was to be part of the sinking fund. I believe it was so intended. My object then in offering the section was to carry out the intention of the provision setting apart the sinking fund for the payment of the state debt. I am for paying that debt, and holding the sinking fund for that purpose. But if that fund is to be taken for other purposes, the provision in the constitution setting it apart to pay our debt, will amount to nothing, and the debt will remain unpaid. If that fund is held and sacredly applied to the payment of the debt, it will accomplish it; and that is what I am for, and that was the reason of my offering the section.

I again say that good faith also requires the payment of the interest on the school fund; and that I am for it, and have so voted; and so far from being against common schools, I am for them, and would, individually, be willing to be taxed ten cents on the hundred dollars if it would bring a good education within the reach of all the children in the state; but I would lay no tax on the people for that purpose without their consent. This is what I have always said. Any tax which the people themselves require for educational purposes, will always be cordially and cheerfully met and paid by me without a murmur. In justice to myself I have thought it proper to make this statement.

#### ENGROSSMENT OF THE CONSTITUTION.

The convention having disposed of every article as it was reported from the committee of revision and arrangement, and as it was being engrossed, an adjournment to 9 o'clock, P. M., was moved and agreed to.

It was subsequently discovered that the engrossment would not be accomplished until a late hour of the night, and therefore the convention adjourned to to-morrow morning at 7 o'clock.

FRIDAY, DECEMBER 21, 1849.

The convention assembled at 7 o'clock, A. M.

#### VOTE OF THANKS TO THE PRESIDENT.

The President having retired from the chair, Mr. WALLER moved the following resolution, which was unanimously adopted.

*Resolved*, That the thanks of this convention be presented to the honorable James Guthrie, for the able, dignified, and impartial manner in which he has presided over the deliberations of this body; and that in retiring therefrom he carries with him the best wishes of every delegate.

#### VOTE OF THANKS TO THE REPORTERS.

On the motion of Mr. MITCHELL, it was unanimously

*Resolved*, That the thanks of this convention are due and are hereby tendered to Richard Sutton, Esq., the reporter of this convention, and his associates, for the able and faithful manner in which they have discharged their arduous duties.

#### VOTE OF THANKS TO THE OFFICERS AND CHAPLAINS.

On the motion of Mr. G. W. JOHNSTON, it was unanimously

*Resolved*, That the thanks of this convention be and they are hereby tendered to Thomas J. Helm, secretary; Thomas D. Tilford, assistant secretary; Culvin Sanders, sargeant-at-arms; and John M. Helms, door-keeper, for the faithful discharge of their duties as officers of the same.

*Resolved*, That the thanks of this convention are also tendered to the ministers of the gospel of the city of Frankfort for opening its daily session with prayer to a throne of grace.

#### SIGNING OF THE CONSTITUTION.

Mr. BRADLEY from the committee on enrollment, presented the constitution correctly engrossed, as follows:

#### PREAMBLE.

WE, the representatives of the people of the State of Kentucky, in Convention assembled, to secure to all the citizens thereof the enjoyment of the rights of life, liberty, and property, and of pursuing happiness, do ordain and establish this Constitution for its government.

#### ARTICLE FIRST.

*Concerning the distribution of the powers of the Government.*

SECTION 1. The powers of the Government of the State of Kentucky shall be divided into three distinct departments, and each of them be confided to a separate body of magistracy, to-wit: those which are Legislative to one; those which are Executive to another, and those which are Judiciary to another.

SECTION 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

#### ARTICLE SECOND.

*Concerning the Legislative Department.*

SECTION 1. The Legislative power shall be vested in a House of Representatives and Senate, which together shall be styled the General Assembly of the Commonwealth of Kentucky.

SECTION 2. The members of the House of Representatives shall continue in service for the term of two years from the day of the general election, and no longer.

SECTION 3. Representatives shall be chosen on the first Monday in August, between the hours of six o'clock in the morning and seven o'clock

in the evening, in every second year; and the mode of holding the elections shall be regulated by law.

SECTION 4. No person shall be a Representative, who, at the time of his election, is not a citizen of the United States, and hath not attained to the age of twenty-four years, and resided in this State two years next preceding his election, and the last year thereof in the county, town, or city, for which he may be chosen.

SECTION 5. The General Assembly shall divide the several counties of this Commonwealth into convenient precincts, or may delegate such power to such county authorities as they may by law provide; and elections for Representatives for the several counties entitled to representation, shall be held at the places of holding their respective courts, and in the several election precincts into which the counties may be divided: *Provided*, that when it shall appear to the General Assembly that any city or town hath a number of qualified voters equal to the ratio then fixed, such city or town shall be invested with the privilege of a separate representation, in either or both houses of the General Assembly, which shall be retained so long as such city or town shall contain a number of qualified voters equal to the ratio which may, from time to time, be fixed by law; and, thereafter, elections for the county in which such city or town is situated, shall not be held therein; but such city or town shall not be entitled to a separate representation, unless such county, after the separation, shall also be entitled to one or more Representatives. That whenever a city or town shall be entitled to a separate representation in either house of the General Assembly, and by her numbers shall be entitled to more than one Representative, such city or town shall be divided, by squares which are contiguous, so as to make the most compact form, into Representative Districts, as nearly equal as may be, equal to the number of Representatives to which such city or town may be entitled; and one Representative shall be elected from each district. In like manner shall said city or town be divided into Senatorial Districts, when, by the apportionment, more than one Senator shall be allotted to such city or town; and a Senator shall be elected from each Senatorial District; but no ward or municipal division shall be divided by such division of Senatorial or Representative Districts, unless it be necessary to equalize the Elective, Senatorial, or Representative Districts.

SECTION 6. Representation shall be equal and uniform in this Commonwealth, and shall be forever regulated and ascertained by the number of qualified voters therein. In the year 1850, again in the year 1857, and every eighth year thereafter, an enumeration of all the qualified voters of the State shall be made; and to secure uniformity and equality of representation, the State is hereby laid off into ten districts. The first district shall be composed of the counties of Fulton, Hickman, Ballard, McCracken, Graves, Calloway, Marshall, Livingston, Crittenden, Union, Hopkins, Caldwell, and Trigg. The second district shall be composed of the counties of Christian, Muhlenburg, Henderson, Daviess, Hancock, Ohio, Breckinridge, Meade,

Grayson, Butler, and Edmonson. The third district shall be composed of the counties of Todd, Logan, Simpson, Warren, Allen, Monroe, Barren, and Hart. The fourth district shall be composed of the counties of Cumberland, Adair, Green, Taylor, Clinton, Russell, Wayne, Pulaski, Casey, Boyle, and Lincoln. The fifth district shall be composed of the counties of Hardin, Larue, Bullitt, Spencer, Nelson, Washington, Marion, Mercer, and Anderson. The sixth district shall be composed of the counties of Garrard, Madison, Estill, Owsley, Rockcastle, Laurel, Clay, Whitley, Knox, Harlan, Perry, Letcher, Pike, Floyd, and Johnson. The seventh district shall be composed of the counties of Jefferson, Oldham, Trimble, Carroll, Henry, and Shelby, and the city of Louisville. The eighth district shall be composed of the counties of Bourbon, Fayette, Scott, Owen, Franklin, Woodford, and Jessamine. The ninth district shall be composed of the counties of Clarke, Montgomery, Bath, Fleming, Lewis, Greenup, Carter, Lawrence, Morgan, and Breathitt. The tenth district shall be composed of the counties of Mason, Bracken, Nicholas, Harrison, Pendleton, Campbell, Grant, Kenton, Boone, and Gallatin. The number of representatives shall, at the several sessions of the General Assembly, next after the making of the enumerations, be apportioned among the ten several districts, according to the number of qualified voters in each; and the Representatives shall be apportioned, as near as may be, among the counties, towns and cities in each district; and in making such apportionment the following rules shall govern, to-wit: Every county, town or city having the ratio shall have one representative; if double the ratio, two representatives, and so on. Next, the counties, towns or cities having one or more Representatives, and the largest number of qualified voters above the ratio, and counties having the largest number under the ratio shall have a Representative, regard being always had to the greatest number of qualified voters: *Provided*, That when a county may not have a sufficient number of qualified voters to entitle it to one Representative, then such county may be joined to some adjacent county or counties to send one Representative. When a new county shall be formed of territory belonging to more than one district, it shall form a part of that district having the least number of qualified voters.

SECTION 7. The House of Representatives shall choose its Speaker and other officers.

SECTION 8. Every free white male citizen, of the age of twenty-one years, who has resided in the State two years, or in the county, town, or city, in which he offers to vote, one year next preceding the election, shall be a voter; but such voter shall have been, for sixty days next preceding the election, a resident of the precinct in which he offers to vote, and he shall cast his vote in said precinct, and not elsewhere.

SECTION 9. Voters, in all cases except treason, felony, breach or surety of the peace, shall be privileged from arrest during their attendance at, going to, and returning from elections.

SECTION 10. Senators shall be chosen for the term of four years, and the Senate shall have power to choose its officers biennially.



SECTION 11. Senators and Representatives shall be elected, under the first apportionment after the adoption of this Constitution, in the year 1851, and every two years thereafter.

SECTION 12. At the session of the General Assembly next after the first apportionment under this Constitution, the Senators shall be divided by lot, as equally as may be, into two classes; the seats of the first class shall be vacated at the end of two years from the day of the election, and those of the second class at the end of four years, so that one half shall be chosen every two years.

SECTION 13. In the apportionment of representation, the number of Representatives in the House of Representatives shall be one hundred, and the number Senators thirty-eight.

SECTION 14. At every apportionment of representation, the State shall be laid off into thirty-eight Senatorial Districts, which shall be so formed as to contain, as near as may be, an equal number of qualified voters, and so that no county shall be divided in the formation of a Senatorial District, except such county shall be entitled, under the enumeration, to two or more Senators.

SECTION 15. One Senator for each district shall be elected by the qualified voters therein, who shall vote in the precincts where they reside, at the places where elections are by law directed to be held.

SECTION 16. No person shall be a Senator who, at the time of his election, is not a citizen of the United States; has not attained the age of thirty years, and who has not resided in this State six years next preceding his election, and the last year thereof in the district for which he may be chosen.

SECTION 17. The election for Senators, next after the first apportionment under this Constitution, shall be general throughout the State, and at the same time that the election for Representatives is held, and thereafter there shall be a biennial election for Senators to fill the places of those whose term of service may have expired.

SECTION 18. The General Assembly shall convene on the first Monday in November, after the adoption of this Constitution, and again on the first Monday in November, 1851, and on the same day of every second year thereafter, unless a different day be appointed by law, and their sessions shall be held at the seat of Government; but if the public welfare require, the Governor may call a special session.

SECTION 19. Not less than a majority of the members of each house of the General Assembly shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and shall be authorized by law to compel the attendance of absent members in such manner and under such penalties as may be prescribed thereby.

SECTION 20. Each house of the General Assembly shall judge of the qualifications, elections, and returns of its members; but a contested election shall be determined in such manner as shall be directed by law.

SECTION 21. Each house of the General Assembly may determine the rules of its proceedings, punish a member for disorderly behavior, and with the concurrence of two-thirds, expel a

member; but not a second time for the same cause.

SECTION 22. Each house of the General Assembly shall keep and publish, weekly, a journal of its proceedings, and the yeas and nays of the members on any question shall, at the desire of any two of them, be entered on their journal.

SECTION 23. Neither house, during the session of the General Assembly, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SECTION 24. The members of the General Assembly shall severally receive from the public treasury a compensation for their services, which shall be three dollars a day during their attendance on, and twelve and a half cents per mile for the necessary travel in going to, and returning from, the sessions of their respective houses: *Provided*, That the same may be increased or diminished by law; but no alteration shall take effect during the session at which such alteration shall be made; nor shall a session of the General Assembly continue beyond sixty days, except by a vote of two-thirds of each house, but this shall not apply to the first session held under this Constitution.

SECTION 25. The members of the General Assembly shall, in all cases except treason, felony, breach or surety of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to, and returning from, the same; and for any speech or debate in either house, they shall not be questioned in any other place.

SECTION 26. No Senator or Representative shall, during the term for which he was elected, nor for one year thereafter, be appointed or elected to any civil office of profit under this Commonwealth, which shall have been created, or the emoluments of which shall have been increased, during the said term, except to such offices or appointments as may be filled by the election of the people.

SECTION 27. No person, while he continues to exercise the functions of a clergyman, priest, or teacher of any religious persuasion, society or sect, nor while he holds or exercises any office of profit under this Commonwealth, or under the government of the United States, shall be eligible to the General Assembly, except attorneys at law, justices of the peace, and militia officers: *Provided*, That attorneys for the Commonwealth, who receive a fixed annual salary, shall be ineligible.

SECTION 28. No person who, at any time, may have been a collector of taxes or public moneys for the State, or the assistant or deputy of such collector, shall be eligible to the General Assembly, unless he shall have obtained a quietus, six months before the election, for the amount of such collection, and for all public moneys for which he may have been responsible.

SECTION 29. No bill shall have the force of a law, until, on three several days, it be read over in each house of the General Assembly, and free discussion allowed thereon, unless, in cases of urgency, four-fifths of the house, where the bill shall be depending, may deem it expedient to dispense with this rule.

SECTION 30. All bills for raising revenue shall

originate in the House of Representatives, but the Senate may propose amendments, as in other bills: *Provided*, That they shall not introduce any new matter, under the color of an amendment, which does not relate to raising revenue.

SECTION 31. The General Assembly shall regulate, by law, by whom and in what manner writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SECTION 32. The General Assembly shall have no power to grant divorces, to change the names of individuals, or direct the sales of estates belonging to infants, or other persons laboring under legal disabilities, by special legislation; but by general laws shall confer such powers on the courts of justice.

SECTION 33. The credit of this Commonwealth shall never be given or loaned in aid of any person, association, municipality, or corporation.

SECTION 34. The General Assembly shall have no power to pass laws to diminish the resources of the Sinking Fund, as now established by law, but may pass laws to increase it; and the whole resources of said fund, from year to year, shall be sacredly set apart and applied to the payment of the interest and principal of the State debt, and to no other use or purpose, until the whole debt of the State is fully paid and satisfied.

SECTION 35. The General Assembly may contract debts to meet casual deficits or failures in the revenue, but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars; and the moneys arising from loans creating such debts, shall be applied to the purposes for which they were obtained, or to repay such debts: *Provided*, That the State may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defence.

SECTION 36. No act of the General Assembly shall authorize any debt to be contracted on behalf of the Commonwealth, except for the purposes mentioned in the thirty-fifth section of this article, unless provision be made therein to lay and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it: *Provided*, That the General Assembly may contract debts without submission to the people, by borrowing money to pay any part of the public debt of the State, and without making provision in the act authorising the same for a tax to discharge the debt so contracted, or the interest thereon.

SECTION 37. No law, enacted by the General Assembly, shall embrace more than one object, and that shall be expressed in the title.

SECTION 38. The General Assembly shall not change the venue in any criminal or penal prosecution, but shall provide for the same by general laws.

SECTION 39. The General Assembly may pass laws authorising writs of error in criminal or penal cases, and regulating the right of challenge of jurors therein.

SECTION 40. The General Assembly shall have no power to pass any act, or resolution, for the appropriation of any money, or the creation of any debt, exceeding the sum of one hundred dollars, at any one time, unless the same, on its final passage, shall be voted for by a majority of all the members then elected to each branch of the General Assembly, and the yeas and nays thereon entered on the journal.

#### ARTICLE THIRD.

##### *Concerning the Executive Department.*

SECTION 1. The Supreme Executive power of the Commonwealth shall be vested in a Chief Magistrate, who shall be styled the Governor of the Commonwealth of Kentucky.

SECTION 2. The Governor shall be elected for the term of four years, by the qualified voters of the State, at the time when, and places where, they shall respectively vote for Representatives. The person having the highest number of votes shall be Governor; but if two or more shall be equal and highest in votes, the election shall be determined by lot, in such manner as the General Assembly may direct.

SECTION 3. The Governor shall be ineligible for the succeeding four years after the expiration of the term for which he shall have been elected.

SECTION 4. He shall be at least thirty-five years of age, and a citizen of the United States, and have been an inhabitant of this State at least six years next preceding his election.

SECTION 5. He shall commence the execution of the duties of his office on the fourth Tuesday succeeding the day of the commencement of the general election on which he shall be chosen, and shall continue in the execution thereof until the end of four weeks next succeeding the election of his successor, and until his successor shall have taken the oaths, or affirmations, prescribed by this Constitution.

SECTION 6. No member of Congress, person holding any office under the United States, nor minister of any religious society, shall be eligible to the office of Governor.

SECTION 7. The Governor shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the term for which he was elected.

SECTION 8. He shall be Commander-in-Chief of the army and navy of this Commonwealth, and of the militia thereof, except when they shall be called into the service of the United States; but he shall not command personally in the field, unless he shall be advised so to do by a resolution of the General Assembly.

SECTION 9. He shall have power to fill vacancies that may occur, by granting commissions, which shall expire when such vacancies shall have been filled according to the provisions of this Constitution.

SECTION 10. He shall have power to remit fines and forfeitures, grant reprieves and pardons, except in cases of impeachment. In cases of treason, he shall have power to grant reprieves until the end of the next session of the General Assembly, in which the power of pardoning shall be vested; but shall have no power to remit the fees of the Clerk, Sheriff, or Commonwealth's Attorney, in penal or criminal cases.

SECTION 11. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices.

SECTION 12. He shall, from time to time, give to the General Assembly, information of the state of the Commonwealth, and recommend to their consideration such measures as he may deem expedient.

SECTION 13. He may, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place if that should have become, since their last adjournment, dangerous from an enemy, or from contagious disorders; and in case of disagreement between the two houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months.

SECTION 14. He shall take care that the laws be faithfully executed.

SECTION 15. A Lieutenant Governor shall be chosen at every election for Governor, in the same manner, continue in office for the same time, and possess the same qualifications. In voting for Governor and Lieutenant Governor, the electors shall distinguish for whom they vote as Governor, and for whom as Lieutenant Governor.

SECTION 16. He shall, by virtue of his office, be Speaker of the Senate, have a right, when in committee of the whole, to debate and vote on all subjects, and when the Senate are equally divided, to give the casting vote.

SECTION 17. Should the Governor be impeached, removed from office, die, refuse to qualify, resign, or be absent from the State, the Lieutenant Governor shall exercise all the power and authority appertaining to the office of Governor, until another be duly elected and qualified, or the Governor absent or impeached, shall return or be acquitted.

SECTION 18. Whenever the government shall be administered by the Lieutenant Governor, or he shall fail to attend as Speaker of the Senate, the Senators shall elect one of their own members as Speaker for that occasion. And if, during the vacancy of the office of Governor, the Lieutenant Governor shall be impeached, removed from office, refuse to qualify, resign, die, or be absent from the State, the Speaker of the Senate shall, in like manner, administer the government: *Provided*, That whenever a vacancy shall occur in the office of Governor, before the first two years of the term shall have expired, a new election for Governor shall take place, to fill such vacancy.

SECTION 19. The Lieutenant Governor, or Speaker *pro tempore* of the Senate, while he acts as speaker of the Senate, shall receive for his services the same compensation which shall, for the same period, be allowed to the Speaker of the House of Representatives, and no more; and during the time he administers the government, as Governor, shall receive the same compensation which the Governor would have received, had he been employed in the duties of his office.

SECTION 20. If the Lieutenant Governor shall be called upon to administer the government, and shall, while in such administration, resign, die, or be absent from the State during the recess

of the General Assembly, it shall be the duty of the Secretary, for the time being, to convene the Senate for the purpose of choosing a Speaker.

SECTION 21. The Governor shall nominate, and, by and with the advice and consent of the Senate, appoint a Secretary of State, who shall be commissioned during the term for which the Governor was elected, if he shall so long behave himself well. He shall keep a fair register, and attest all the official acts of the Governor, and shall, when required, lay the same, and all papers, minutes, and vouchers, relative thereto, before either house of the General Assembly; and shall perform such other duties as may be required of him by law.

SECTION 22. Every bill which shall have passed both houses, shall be presented to the Governor. If he approve, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, a majority of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be considered, and if approved by a majority of all the members elected to that house, it shall be a law; but in such cases, the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill, shall be entered upon the journals of each house, respectively. If any bill shall not be returned by the Governor, within ten days (Sundays excepted,) after it shall have been presented to him, it shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return; in which case it shall be a law, unless sent back within three days after their next meeting.

SECTION 23. Every order, resolution, or vote, to which the concurrence of both houses may be necessary, except on a question of adjournment, shall be presented to the Governor, and before it shall take effect, be approved by him; or being disapproved, shall be re-passed by a majority of all the members elected to both houses, according to the rules and limitations prescribed in case of a bill.

SECTION 24. Contested elections for Governor and Lieutenant Governor shall be determined by both houses of the General Assembly, according to such regulations as may be established by law.

SECTION 25. A Treasurer shall be elected biennially, by the qualified voters of the State; and an Auditor of Public Accounts, Register of the Land Office, Attorney General, and such other State officers as may be necessary, for the term of four years, whose duties and responsibilities shall be prescribed by law.

SECTION 26. The first election, under this Constitution, for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Register of the Land Office, and Attorney General, shall be held on the first Monday in August in the year 1851.

#### ARTICLE FOURTH.

##### *Concerning the Judicial Department.*

SECTION 1. The judicial power of this Com-

monwealth, both as to matters of law and equity, shall be vested in one Supreme Court, (to be styled the Court of Appeals,) the Courts established by this Constitution, and such inferior Courts as the General Assembly may, from time to time, erect and establish.

SECTION 2. The Court of Appeals shall have appellate jurisdiction only, which shall be co-extensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may, from time to time, be prescribed by law.

SECTION 3. The Judges of the Court of Appeals shall hold their offices for the term of eight years, from and after their election, and until their successors shall be duly qualified, subject to the conditions hereinafter prescribed; but for any reasonable cause, the Governor shall remove any of them on the address of two thirds of each house of the General Assembly: *Provided, however*, That the cause or causes for which such removal may be required, shall be stated at length in such address, and on the journal of each house. They shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during the time for which they shall have been elected.

SECTION 4. The Court of Appeals shall consist of four Judges, any three of whom may constitute a Court for the transaction of business. The General Assembly, at its first session after the adoption of this Constitution, shall divide the State, by counties, into four districts, as nearly equal in voting population, and with as convenient limits as may be, in each of which the qualified voters shall elect one Judge of the Court of Appeals: *Provided*, That whenever a vacancy shall occur in said Court, from any cause, the General Assembly shall have the power to reduce the number of Judges and districts; but in no event shall there be less than three Judges and districts. Should a change in the number of the Judges of the Court of Appeals be made, the term of office and number of districts shall be so changed as to preserve the principle of electing one Judge every two years, and the term for which the Clerk shall hold his office, shall be made to correspond with that of the Judges.

SECTION 5. The Judges shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all process shall be, "The Commonwealth of Kentucky." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Kentucky, and conclude "against the peace and dignity of the same."

SECTION 6. The Judges first elected shall serve as follows, to-wit: one shall serve until the first Monday in August, 1852; one until the first Monday in August, 1854: one until the first Monday in August, 1856, and one until the first Monday in August, 1858. The Judges, at the first term of the Court succeeding their election, shall determine, by lot, the length of time which each one shall serve; and at the expiration of the service of each, an election in the proper district shall take place to fill the vacancy. The Judge having the shortest time to serve shall be styled the Chief Justice of Kentucky.

SECTION 7. If a vacancy shall occur in said Court from any cause, the Governor shall issue a writ of election to the proper district to fill such vacancy for the residue of the term.

SECTION 8. No person shall be eligible to the office of Judge of the Court of Appeals, who is not a citizen of the United States, a resident of the district for which he may be a candidate two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any Court of record, when added to the time he may have practiced law, shall not be equal to eight years.

SECTION 9. The Court of Appeals shall hold its sessions at the seat of government, unless otherwise directed by law; but the General Assembly may, from time to time, direct that said Court shall hold sessions in any one or more of said districts.

SECTION 10. The first election of the Judges of the Court of Appeals shall take place on the second Monday in May, 1851, and thereafter, in the district as a vacancy may occur, by the expiration of the term of office; and the Judges of the said Court shall be commissioned by the Governor.

SECTION 11. There shall be elected, by the qualified voters of this State, a Clerk of the Court of Appeals, who shall hold his office, at the first election, until the first Monday in August, 1853, and thereafter for the term of eight years from and after his election; and should the General Assembly provide for holding the Court of Appeals in any one or more of said districts, they shall also provide for the election of a Clerk by the qualified voters of such district, who shall hold his office for eight years, possess the same qualifications, and be subject to removal in the same manner as the Clerk of the Court of Appeals.

SECTION 12. No person shall be eligible to the office of Clerk of the Court of Appeals, unless he be a citizen of the United States, a resident of the State two years next preceding his election, of the age of twenty-one years, and have a certificate from a Judge of the Court of Appeals, or a Judge of the Circuit Court, that he has been examined by the Clerk of his Court, under his supervision, and that he is qualified for the office for which he is a candidate.

SECTION 13. Should a vacancy occur in the office of Clerk of the Court of Appeals, the Governor shall issue a writ of election, and the qualified voters of the State, or of the district in which the vacancy may occur, shall elect a Clerk of the Court of Appeals, to serve until the end of the term for which such Clerk was elected: *Provided*, That when a vacancy shall occur from any cause, or the Clerk be under charges upon information, the Judges of the Court of Appeals shall have power to appoint a Clerk *pro tem.*, to perform the duties of Clerk until such vacancy shall be filled, or the Clerk acquitted.

SECTION 14. The General Assembly shall direct, by law, the mode and manner of conducting and making due returns to the Secretary of State, of all elections of the Judges and Clerk or Clerks of the Court of Appeals, and of determining contested elections of any of these officers.

SECTION 15. Whenever an appeal or writ of error may be pending in the Court of Appeals, on the trial of which a majority of the Judges thereof cannot sit; or on account of interest in the event of the cause; or on account of their relation to either party; or where the Judge may have decided the cause in the inferior Court, the General Assembly shall provide, by law, for the organization of a temporary and special Court, for the trial of such cause or causes.

SECTION 16. A Circuit Court shall be established in each county now existing, or which may hereafter be erected in this Commonwealth.

SECTION 17. The jurisdiction of said Court shall be, and remain as now established, hereby giving to the General Assembly the power to change or alter it.

SECTION 18. The right to appeal or sue out a writ of error to the Court of Appeals shall remain as it now exists, until altered by law, hereby giving to the General Assembly the power to change, alter, or modify said right.

SECTION 19. At the first session after the adoption of this Constitution, the General Assembly shall divide the State into twelve judicial districts, having due regard to business, territory, and population: *Provided*, That no county shall be divided.

SECTION 20. They shall, at the same time that the judicial districts are laid off, direct elections to be held in each district, to elect a Judge for said district, and shall prescribe in what manner the elections shall be conducted, and how the Governor shall be notified of the result; and the first election of the Judges of the Circuit Court shall take place on the second Monday in May, 1851.

SECTION 21. All persons qualified to vote for members of the General Assembly, in each district, shall have the right to vote for Judges.

SECTION 22. No person shall be eligible as Judge of the Circuit Court, who is not a citizen of the United States, a resident of the district for which he may be a candidate, two years next preceding his election, at least thirty years of age, and who has not been a practicing lawyer eight years, or whose service upon the bench of any Court of record, when added to the time he may have practiced law, shall be equal to eight years.

SECTION 23. The Judges of the Circuit Court shall hold their office for the term of six years from the day of their election. They shall be commissioned by the Governor, and continue in office until their successors be qualified, but shall be removable from office in the same manner as the Judges of the Court of Appeals; and the removal of a Judge from his district shall vacate his office: *Provided*, That their first term of office shall expire on the first Monday in August, 1856.

SECTION 24. The General Assembly, if they deem it necessary, may establish one additional district every four years, but the judicial districts shall not exceed sixteen, until after the population of this State shall exceed one million five hundred thousand.

SECTION 25. The Judges of the Circuit Courts shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall be equal and uniform throughout

the State, and which shall not be diminished during the time for which they were elected.

SECTION 26. If a vacancy shall occur in the office of Judge of the Circuit Court, the Governor shall issue a writ of election to fill such vacancy, for the residue of the term: *Provided*, That if the unexpired term be less than one year, the Governor shall appoint a Judge to fill such vacancy.

SECTION 27. The Judicial Districts of this State shall not be changed except at the first session after every enumeration, unless when new Districts may be established.

SECTION 28. The General Assembly shall provide by law for some person to preside in each of the Circuit Courts, when from any cause, the Judge shall fail to attend, or, if in attendance, cannot properly preside.

SECTION 29. A County Court shall be established in each county now existing, or which may hereafter be erected within this Commonwealth, to consist of a Presiding Judge, and two Associate Judges, any two of whom shall constitute a court for the transaction of business: *Provided*, The General Assembly may at any time abolish the office of the Associate Judges, whenever it shall be deemed expedient; in which event they may associate with said Court, any or all of the Justices of the Peace for the transaction of business.

SECTION 30. The Judges of the County Court shall be elected by the qualified voters in each county, for the term of four years, and shall continue in office until their successors be duly qualified, and shall receive such compensation for their services as may be provided by law.

SECTION 31. The first election of County Court Judges shall take place at the same time of the election of Judges of the Circuit Court. The Presiding Judge, first elected, shall hold his office until the first Monday in August, 1854. The Associate Judges shall hold their offices until the first Monday in August, 1852, and until their successors be qualified.

SECTION 32. No person shall be eligible to the office of Presiding or Associate Judge of the County Court, unless he be a citizen of the United States, over twenty one years of age, and shall have been a resident of the county in which he shall be chosen, one year next preceding the election.

SECTION 33. The jurisdiction of the County Court shall be regulated by law; and, until changed, shall be the same now vested in the County Courts of this State.

SECTION 34. Each county in this State shall be laid off into districts of convenient size, as the General Assembly may, from time to time, direct. Two Justices of the Peace shall be elected in each district, by the qualified voters therein, for the term of four years, whose jurisdiction shall be co-extensive with the county; no person shall be eligible as a Justice of the Peace, unless he be a citizen of the United States, twenty one years of age, and a resident of the district in which he may be a candidate.

SECTION 35. Judges of the County Court, and Justices of the Peace, shall be conservators of the Peace. They shall be commissioned by the Governor. County and district officers shall vacate their offices by removal from the district or

county in which they shall be appointed. The General Assembly shall provide, by law, the manner of conducting and making due returns of all elections of Judges of the County Court and Justices of the Peace, and for determining contested elections, and provide the mode of filling vacancies in these offices.

SECTION 36. Judges of the County Court and Justices of the Peace, shall be subject to indictment or presentment for malfeasance or misfeasance in office, or wilful neglect in the discharge of their official duties, in such mode as may be prescribed by law, subject to appeal to the Court of Appeals; and, upon conviction, their offices shall become vacant.

SECTION 37. The General Assembly may provide, by law, that the Justices of the Peace in each county shall sit at the Court of Claims and assist in laying the county levy and making appropriations only.

SECTION 38. When any city or town shall have a separate representation, such city or town, and the county in which it is located, may have such separate Municipal Courts, and executive and ministerial offices as the General Assembly may, from time to time, provide.

SECTION 39. The Clerks of the Court of Appeals, Circuit, and County Courts, shall be removable from office by the Court of Appeals, upon information and good cause shown. The Court shall be judges of the fact as well as the law. Two-thirds of the members present must concur in the sentence.

SECTION 40. The Louisville Chancery Court shall exist under this Constitution, subject to repeal, and its jurisdiction to enlargement and modification by the General Assembly. The Chancellor shall have the same qualifications as a Circuit Court Judge, and the Clerk of said Court as a Clerk of a Circuit Court, and the Marshal of said Court as a Sheriff; and the General Assembly shall provide for the election, by the qualified voters within its jurisdiction, of the Chancellor, Clerk, and Marshal of said Court, at the same time that the Judge and Clerk of the Circuit Court are elected for the county of Jefferson, and they shall hold their offices for the same time: *Provided*, That the Marshal of said Court shall be ineligible for the succeeding term.

SECTION 41. The City Court of Louisville, the Lexington City Court, and all other Police Courts established in any city or town, shall remain until otherwise directed by law, with their present powers and jurisdictions; and the Judges, Clerks, and Marshals of such Courts shall have the same qualifications, and shall be elected by the qualified voters of such cities or towns, at the same time, and in the same manner, and hold their offices for the same term as County Judges, Clerks, and Marshals, respectively, and shall be liable to removal in the same manner. The General Assembly may vest judicial powers, for police purposes, in Mayors of cities, Police Judges, and Trustees of towns.

#### ARTICLE FIFTH.

##### *Concerning Impeachments.*

SECTION 1. The House of Representatives shall have the sole power of impeachment.

SECTION 2. All impeachments shall be tried

by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation. No person shall be convicted without the concurrence of two-thirds of the members present.

SECTION 3. The Governor and all civil officers, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases, shall not extend further than to removal from office, and disqualification to hold any office of honor, trust, or profit, under this Commonwealth; but the party convicted shall, nevertheless, be subject and liable to indictment, trial, and punishment by law.

#### ARTICLE SIXTH.

##### *Concerning Executive and Ministerial Officers for Counties and Districts.*

SECTION 1. A Commonwealth's Attorney for each circuit, and a Circuit Court Clerk for each county, shall be elected, whose term of office shall be the same as that of the Circuit Judges; also an Attorney, Clerk, Surveyor, Coroner, and Jailor, for each county, whose term of office shall be the same as that of the Presiding Judge of the County Court.

SECTION 2. No person shall be eligible to the offices mentioned in this article, who is not at the time twenty-four years old, (except Clerks of County and Circuit Courts, Sheriffs, Constables, and county Attorneys, who shall be eligible at the age of twenty-one years,) a citizen of the United States, and who has not resided two years next preceding the election, in the State, and one year in the county or district for which he is a candidate. No person shall be eligible to the office of Commonwealth's or County Attorney, unless he shall have been a licensed practicing Attorney for two years. No person shall be eligible to the office of Clerk unless he shall have procured from a Judge of the Court of Appeals, or a Judge of the Circuit Court, a certificate that he has been examined by the Clerk of his Court, under his supervision, and that he is qualified for the office for which he is a candidate.

SECTION 3. The Commonwealth's Attorney and Circuit Court Clerk, shall be elected at the same time, and in the same manner, as the Circuit Judge. The County Attorney, Clerk, Surveyor, Coroner, and Jailor, shall be elected at the same time, and in the same manner, as the Presiding Judge of the County Court.

SECTION 4. A Sheriff shall be elected in each county, at the same time and manner that the Presiding or Associate Judges of the County Court are elected, whose term of office shall be two years, and he shall be re-eligible for a second term; but no Sheriff shall, after the expiration of the second term, be re-eligible, or act as deputy for the succeeding term.

SECTION 5. A Constable shall be elected in every Justice's District, who shall be chosen for two years, at such time and place as may be provided by law, whose jurisdiction shall be co-extensive with the county in which he may reside.

SECTION 6. Officers for towns and cities shall be elected for such terms, and in such manner, and with such qualifications, as may be prescribed by law.



SECTION 7. Vacancies in offices under this article shall be filled, until the next annual election, in such manner as the General Assembly may provide.

SECTION 8. When a new county shall be erected, officers for the same, to serve until the next stated election, shall be elected or appointed in such way and at such times as the Legislature may prescribe.

SECTION 9. Clerks, Sheriffs, Surveyors, Coroners, Constables, and Jailers shall, before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as shall be prescribed by law.

SECTION 10. The General Assembly may provide for the election or appointment of such other county or district ministerial and executive officers as shall, from time to time, be necessary and proper.

SECTION 11. A County Assessor shall be elected in each county at the same time and for the same term that the Presiding Judge of the County Court is elected, until otherwise provided for by law, who shall have power to appoint such assistants as may be necessary and proper.

#### ARTICLE SEVENTH.

##### *Concerning the Militia.*

SECTION 1. The Militia of this Commonwealth shall consist of all free, able-bodied male persons (negroes, mulattoes, and Indians excepted,) resident in the same, between the ages of eighteen and forty-five years; except such persons as now are, or hereafter may be, exempted by the laws of the United States or of this State; but those who belong to religious societies, whose tenets forbid them to carry arms, shall not be compelled to do so, but shall pay an equivalent for personal services.

SECTION 2. The Governor shall appoint the Adjutant General, and his other staff officers; the Majors General, Brigadiers General, and Commandants of Regiments shall, respectively, appoint their staff officers; and Commandants of Companies shall appoint their non-commissioned officers.

SECTION 3. All other militia officers shall be elected by persons subject to military duty, within the bounds of their respective companies, battalions, regiments, brigades, and divisions, under such rules and regulations, and for such terms, as the General Assembly may, from time to time, direct and establish.

#### ARTICLE EIGHTH.

##### *General Provisions.*

SECTION 1. Members of the General Assembly, and all officers, before they enter upon the execution of the duties of their respective offices, and all members of the bar, before they enter upon the practice of their profession, shall take the following oath or affirmation: I do solemnly swear, (or affirm, as the case may be,) that I will support the Constitution of the United States, and be faithful and true to the Commonwealth of Kentucky, so long as I continue a citizen thereof, and that I will faithfully execute, to the best of my abilities, the office of \_\_\_\_\_ according to law; and I do further solemnly swear, (or affirm,) that since the adoption of the pres-

ent Constitution, I being a citizen of this State, have not fought a duel, with deadly weapons, within this State nor out of it, with a citizen of this State, nor have I sent or accepted a challenge to fight a duel with deadly weapons, with a citizen of this State; nor have I acted as second in carrying a challenge, or aided, advised, or assisted any person thus offending—so help me God.

SECTION 2. Treason against the Commonwealth shall consist only in levying war against it, or in adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or his own confession in open court.

SECTION 3. Every person shall be disqualified from holding any office of trust or profit for the term for which he shall have been elected, who shall be convicted of having given or offered any bribe or treat to procure his election.

SECTION 4. Laws shall be made to exclude from office and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other crimes or high misdemeanors. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practices.

SECTION 5. No money shall be drawn from the Treasury, but in pursuance of appropriations made by law, nor shall any appropriations of money for the support of an army be made for a longer time than two years, and a regular statement and account of the receipts and expenditures of all public money shall be published annually.

SECTION 6. The General Assembly may direct, by law, in what manner, and in what Courts, suits may be brought against the Commonwealth.

SECTION 7. The manner of administering an oath or affirmation, shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God.

SECTION 8. All laws which, on the first day of June, one thousand seven hundred and ninety two, were in force in the state of Virginia, and which are of a general nature, and not local to that State, and not repugnant to this Constitution, nor to the laws which have been enacted by the General Assembly of this Commonwealth, shall be in force within this State, until they shall be altered or repealed by the General Assembly.

SECTION 9. The compact with the State of Virginia, subject to such alterations as may be made therein agreeably to the mode prescribed by the said compact, shall be considered as part of this Constitution.

SECTION 10. It shall be the duty of the General Assembly to pass such laws as shall be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that summary mode of adjustment.

SECTION 11. All civil officers for the Commonwealth, at large, shall reside within the State, and all district, county, or town officers, within their respective districts, counties, or towns, (trustees of towns excepted,) and shall keep their

offices at such places therein as may be required by law; and all militia officers shall reside in the bounds of the division, brigade, regiment, battalion, or company, to which they may severally belong.

SECTION 12. Absence on the business of this State, or the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under this Commonwealth, under the exceptions contained in this Constitution.

SECTION 13. It shall be the duty of the General Assembly to regulate, by law, in what cases, and what deductions from the salaries of public officers shall be made, for neglect of duty in their official capacity.

SECTION 14. Returns of all elections by the people, shall be made to the Secretary of State, for the time being, except in those cases otherwise provided for in this Constitution, or which shall be otherwise directed by law.

SECTION 15. In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the votes shall be personally and publicly given, *viva voce*: *Provided*, That dumb persons, entitled to suffrage, may vote by ballot.

SECTION 16. No member of Congress, nor person holding or exercising any office of trust or profit under the United States, or either of them, or under any foreign power, shall be eligible as a member of the General Assembly of this Commonwealth, or hold or exercise any office of trust or profit under the same.

SECTION 17. The General Assembly shall direct, by law, how persons who now are, or who may hereafter become securities for public officers, may be relieved or discharged on account of such securityship.

SECTION 18. Any person who shall, after the adoption of this Constitution, either directly or indirectly, give, accept, or knowingly carry a challenge to any person, or persons, to fight in single combat, with a citizen of this State, with any deadly weapon, either in or out of the State, shall be deprived of the right to hold any office of honor or profit in this Commonwealth, and shall be punished otherwise in such manner as the General Assembly may prescribe by law.

SECTION 19. The Governor shall have power, after five years, to pardon all persons who shall in any wise participate in a duel, either as principals or second, and to restore him or them to all the rights, privileges, and immunities to which he or they were entitled before such participation.

SECTION 20. The right of property is before and higher than any constitutional sanction; and the right of the owner of a slave to such slave, and its increase, is the same, and as inviolable as the right of the owner of any property whatever.

SECTION 21. At its first session after the adoption of this Constitution, the General Assembly shall appoint not more than three persons, learned in the law, whose duty it shall be to revise and arrange the statute laws of this Commonwealth, both civil and criminal, so as to have but one law on any one subject; and also, three other persons learned in the law, whose duty it

shall be to prepare a code of practice for the Courts, both civil and criminal, in this Commonwealth, by abridging and simplifying the rules of practice and laws in relation thereto; all of whom shall, at as early a day as practicable, report the result of their labors to the General Assembly, for their adoption and modification, from time to time.

SECTION 22. So long as the Board of Internal Improvement shall be continued, the President thereof shall be elected by the qualified voters of this Commonwealth, and hold the office for the term of four years, and until another be duly elected and qualified. The first election shall be held at the same time, and be conducted in the same manner, as the first election of Governor of this Commonwealth under this Constitution, and every four years thereafter; and the General Assembly shall provide, by law, the method of filling vacancies and settling contested elections for this office; but nothing herein contained, shall prevent the General Assembly from abolishing said Board of Internal Improvement, and the office of President thereof.

#### ARTICLE NINTH.

The seat of government shall continue in the town of Frankfort, until it shall be removed by law: *Provided, however*, That two thirds of all the members elected to each house of the General Assembly shall concur in the passage of such law.

#### ARTICLE TENTH.

##### *Concerning Slaves.*

SECTION 1. The General Assembly shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners, previous to such emancipation, a full equivalent in money for the slaves so emancipated, and providing for their removal from the State. They shall have no power to prevent immigrants to this State from bringing with them such persons as are deemed slaves by the laws of any of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this State. They shall pass laws to permit owners of slaves to emancipate them, saving the rights of creditors, and to prevent them from remaining in this State after they are emancipated. They shall have full power to prevent slaves being brought into this State as merchandise. They shall have full power to prevent any slaves being brought into this State, who have been, since the first day of January, one thousand seven hundred and eighty nine, or may hereafter be imported into any of the United States from a foreign country. And they shall have full power to pass such laws as may be necessary to oblige the owners of slaves to treat them with humanity; to provide for them necessary clothing and provision; to abstain from all injuries to them, extending to life or limb; and in case of their neglect or refusal to comply with the directions of such laws, to have such slave or slaves sold for the benefit of their owner or owners.

SECTION 2. The General Assembly shall pass laws providing that any free negro or mulatto hereafter immigrating to, or being emancipated in, and refusing to leave this State, or having

left, shall return and settle within this State, shall be deemed guilty of felony, and punished by confinement in the Penitentiary thereof.

SECTION 3. In the prosecution of slaves for felony, no inquest by a grand jury shall be necessary; but the proceedings in such prosecutions shall be regulated by law, except that the General Assembly shall have no power to deprive them of the privilege of an impartial trial by a petit jury.

#### ARTICLE ELEVENTH.

##### *Concerning Education.*

SECTION 1. The capital of the fund called and known as the "Common School Fund," consisting of one million two hundred and twenty five thousand seven hundred and sixty-eight dollars and forty-two cents, for which bonds have been executed by the State to the Board of Education, and seventy-three thousand five hundred dollars of stock in the Bank of Kentucky; also, the sum of fifty-one thousand two hundred and twenty-three dollars and twenty-nine cents, balance of interest on the School Fund for the year 1848, unexpended, together with any sum which may be hereafter raised in the State by taxation, or otherwise, for purposes of education, shall be held inviolate, for the purpose of sustaining a system of Common Schools. The interest and dividends of said funds, together with any sum which may be produced for that purpose by taxation, may be appropriated in aid of Common Schools, but for no other purpose. The General Assembly shall invest said fifty-one thousand two hundred and twenty-three dollars and twenty-nine cents in some safe and profitable manner; and any portion of the interest and dividends of said School Fund, or other money or property raised for school purposes, which may not be needed in sustaining Common Schools, shall be invested in like manner. The General Assembly shall make provision, by law, for the payment of the interest of said School Fund: *Provided*, That each county shall be entitled to its proportion of the income of said fund, and if not called for, for common school purposes, it shall be re-invested from time to time for the benefit of each county.

SECTION 2. A Superintendent of Public Instruction shall be elected by the qualified voters of this Commonwealth, at the same time the Governor is elected, who shall hold his office for four years, and his duties and salary shall be prescribed and fixed by law.

#### ARTICLE TWELFTH.

##### *Mode of revising the Constitution.*

SECTION 1. When experience shall point out the necessity of amending this Constitution, and when a majority of all the members elected to each house of the General Assembly shall, within the first twenty days of any regular session, concur in passing a law for taking the sense of the good people of this Commonwealth as to the necessity and expediency of calling a Convention, it shall be the duty of the several Sheriffs, and other officers of elections, at the next general election which shall be held for representatives to the General Assembly, after the passage of such law, to open a poll for, and make return to the Secretary of State, for the time being,

of the names of all those entitled to vote for representatives, who have voted for calling a Convention; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for calling a Convention, the General Assembly shall, at their next regular session, direct that a similar poll shall be opened, and return made, for the next election for representatives; and if, thereupon, it shall appear that a majority of all the citizens of this State, entitled to vote for representatives, have voted for calling a Convention, the General Assembly shall, at their next session, pass a law calling a Convention, to consist of as many members as there shall be in the House of Representatives, and no more; to be chosen in the same manner and proportion, at the same time and places, and possessed of the same qualifications of a qualified elector, by citizens entitled to vote for representatives; and to meet within three months after their election, for the purpose of re-adopting, amending, or changing this Constitution; but if it shall appear by the vote of either year, as aforesaid, that a majority of all the citizens entitled to vote for representatives did not vote for calling a Convention, a Convention shall not then be called. And for the purpose of ascertaining whether a majority of the citizens, entitled to vote for representatives, did or did not vote for calling a Convention, as above, the General Assembly passing the law authorizing such vote shall provide for ascertaining the number of citizens entitled to vote for representatives within the State.

SECTION 2. The Convention, when assembled, shall judge of the election of its members and decide contested elections, but the General Assembly shall, in calling a Convention, provide for taking testimony in such cases and for issuing a writ of election in case of a tie.

#### ARTICLE THIRTEENTH.

That the general, great, and essential principles of liberty and free government may be recognized and established; **WE DECLARE,**

SECTION 1. That all freemen, when they form a social compact, are equal, and that no man, or set of men, are entitled to exclusive, separate public emoluments or privileges from the community, but in consideration of public services.

SECTION 2. That absolute, arbitrary power over the lives, liberty, and property of freeman, exists no where in a republic—not even in the largest majority.

SECTION 3. That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, happiness, security, and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform, or abolish, their government, in such manner as they may think proper.

SECTION 4. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority ought, in any case whatever, to control or interfere with the rights of conscience; and

that no preference shall ever be given, by law, to any religious societies or modes of worship.

SECTION 5. That the civil rights, privileges, or capacities, of any citizen, shall in no wise be diminished or enlarged on account of his religion.

SECTION 6. That all elections shall be free and equal.

SECTION 7. That the ancient mode of trial by jury shall be held sacred, and the right thereof remain inviolate, subject to such modifications as may be authorized by this Constitution.

SECTION 8. That printing presses shall be free to every person who undertakes to examine the proceedings of the General Assembly, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, and print, on any subject, being responsible for the abuse of that liberty.

SECTION 9. In prosecutions for the publication of papers investigating the official conduct of officers or men in a public capacity, or where the matter published is proper for public information, the truth thereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the Court, as in other cases.

SECTION 10. That the people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches, and that no warrant to search any place, or to seize any person, or thing, shall issue, without describing them as nearly as may be, nor without probable cause, supported by oath or affirmation.

SECTION 11. That in all criminal prosecutions, the accused hath a right to be heard by himself and counsel; to demand the nature and cause of the accusation against him; to meet the witnesses face to face; to have compulsory process for obtaining witnesses in his favor; and in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; that he cannot be compelled to give evidence against himself; nor can he be deprived of his life, liberty, or property, unless by the judgment of his peers, or the law of the land.

SECTION 12. That no person shall, for any indictable offence, be proceeded against criminally, by information, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger, or by leave of the Court, for oppression or misdemeanor in office.

SECTION 13. No person shall, for the same offence, be twice put in jeopardy of his life or limb; nor shall any man's property be taken or applied to public use, without the consent of his representatives, and without just compensation being previously made to him.

SECTION 14. That all Courts shall be open, and every person, for an injury done him in his lands, goods, person, or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial, or delay.

SECTION 15. That no power of suspending laws shall be exercised, unless by the General Assembly, or its authority.

SECTION 16. That excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted.

SECTION 17. That all prisoners shall be bailable by sufficient securities, unless for capital offences, when the proof is evident or presumption great; and the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

SECTION 18. That the person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison after delivering up his estate for the benefit of his creditors, in such manner as shall be prescribed by law.

SECTION 19. That no *ex post facto* law, nor any law impairing contracts, shall be made.

SECTION 20. That no person shall be attainted of treason or felony by the General Assembly.

SECTION 21. That no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the Commonwealth.

SECTION 22. That the estates of such persons as shall destroy their own lives, shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof.

SECTION 23. That the citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of Government, for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

SECTION 24. That the rights of the citizens to bear arms in defence of themselves and the State, shall not be questioned; but the General Assembly may pass laws to prevent persons from carrying concealed arms.

SECTION 25. That no standing army shall, in time of peace, be kept up, without the consent of the General Assembly; and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

SECTION 26. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

SECTION 27. That the General Assembly shall not grant any title of nobility, or hereditary distinction, nor create any office, the appointment to which shall be for a longer time than for a term of years.

SECTION 28. That emigration from the State shall not be prohibited.

SECTION 29. To guard against transgressions of the high powers which we have delegated, we declare, that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate; and that all laws contrary thereto, or contrary to this Constitution, shall be void.

#### SCHEDULE.

That no inconvenience may arise from the alterations and amendments made in the Constitution of this Commonwealth, and in order to carry the same into complete operation, it is hereby declared and ordained:

SECTION 1. That all the laws of this Commonwealth, in force at the time of making the said

alterations and amendments, and all rights, actions, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, shall continue as if the said alterations and amendments had not been made.

SECTION 2. The oaths of office herein directed to be taken may be administered by any Judge or Justice of the Peace, until the General Assembly shall otherwise direct.

SECTION 3. No office shall be superceded by the alterations and amendments made in the Constitution of this Commonwealth, but the laws of the State relative to the duties of the several officers, Executive, Judicial, and Military, shall remain in full force, though the same be contrary to said alterations and amendments, and the several duties shall be performed by the respective officers of the State, according to the existing laws, until the organization of the Government, as provided for under this new Constitution, and the entering into office of the new officers to be elected or appointed under said Government, and no longer.

SECTION 4. Immediately after the adjournment of the Convention, the Governor shall issue his proclamation, directing the several Sheriffs and other returning officers of the several counties of this State, authorized by law to hold elections for members of the General Assembly, to open and hold a poll in every county of the State, and in the city of Louisville, at the places and precincts designated by law for the holding the Presidential election in 1848, upon the first Monday and Tuesday of May, 1850, for the purpose of taking the sense of the good people of this State, in regard to the adoption or rejection of this Constitution; and it shall be the duty of the said officers to receive the votes of all persons entitled to vote for members of the General Assembly under the present Constitution. The said officers shall open a poll with two separate columns: "*For the new Constitution,*" "*Against the new Constitution,*" and shall address each voter presenting himself, the question: "Are you in favor of adopting the new Constitution?" and if he shall answer in the affirmative, his vote shall be recorded in the column for the new Constitution, and if he shall answer in the negative, his answer shall be set down in the column against the new Constitution. The said election shall be conducted for two days and in every other respect, as the State election for Representatives to the General Assembly are now conducted; and on the Thursday succeeding the said election, the various Sheriffs conducting said election at the different precincts, shall assemble at the court houses of their respective counties, and compare the polls of said election, and shall forthwith make due returns thereof to the Secretary of State, in conformity to the provisions of the existing laws upon the subject of elections of members of the General Assembly. The County Courts of the various counties of the Commonwealth shall, at their March or April terms of their said Courts, appoint as many Judges, Clerks and Deputy Sheriffs to superintend and conduct said elections as shall be necessary.

SECTION 5. That the General Assembly of the Commonwealth of Kentucky, about to assemble, be and they are hereby requested to make all

necessary provisions, by law, for the proper carrying out of the submission of the new Constitution to the people of this Commonwealth, as provided for in section four of this schedule.

SECTION 6. That when this Convention adjourns, it will adjourn to re-assemble, in the town of Frankfort, on the first Monday of June, 1850, with the view and for the purpose of ascertaining the result of the vote upon the new Constitution. If the same shall have been ratified by a majority of all those voting for and against it, this Convention will then publish and proclaim this Constitution as the Constitution of Kentucky, and proceed further to provide for putting the new Government into operation. If it shall be found that a majority of all those voting for or against it, has been cast against it, then said Constitution shall be declared rejected, and this Convention will forthwith re-adopt and republish the present Constitution as the Constitution of the State.

SECTION 7. It shall be the duty of the General Assembly, which shall convene in the year 1850, to make an apportionment of the representation of this State, upon the principle set forth in this Constitution; and until the first apportionment shall be made, as herein directed, the apportionment of Senators and Representatives among the several districts and counties in this State, shall remain as at present fixed by law: *Provided*, That upon the adoption of this Constitution all Senators shall go out of office, and in the year 1850, an election for Senators and Representatives shall be held, and those elected shall hold their offices for one year and no longer.

SECTION 8. All recognizances heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the Commonwealth. All criminal prosecutions and penal actions which have arisen, or may arise, before the re-organization of the judicial department under this Constitution, and which shall then be depending, may be prosecuted to judgment and execution, in the name of the Commonwealth.

SECTION 9. The General Assembly shall provide, by law, for the trial of any contested election of Auditor, Register, Treasurer, Attorney General, Judges of Circuit Courts, and all other officers, not otherwise herein specified.

SECTION 10. The General Assembly shall provide by law for the making of the returns by the proper officers, of the election of all officers to be elected under this Constitution; and the Governor shall issue commissions to the Auditor, Register, and Treasurer, as soon as he has ascertained the result of the election of those officers respectively.

SECTION 11. That the Sheriffs and other officers of the election shall be liable to all such fines and penalties for a failure to discharge the several duties imposed on them in this schedule, as are now imposed upon them by law, for a failure to perform their duty in conducting other general and State elections.

SECTION 12. Should the County Court of any of the counties of this Commonwealth fail or refuse to appoint Judges, Clerks, or Sheriffs, to

superintend the election, as provided for in article four of this schedule, the high Sheriff of said county shall appoint such Judges, Clerks, and deputy Sheriffs.

Section 13. Should any of the Sheriffs or deputies, in any of the counties of this Commonwealth die, resign, or from any other cause be prevented from attending with the poll books, as directed in section four of this schedule, for the comparison of the votes on the adoption or rejection of the new Constitution, it shall be the duty of the County Court Clerk, or his deputy in such county, to attend with said poll books, and aid in such comparison.

JAMES GUTHRIE, *Pres. of the Convention, and member from the City of Louisville.*

ATTEST:

THO. J. HELM,  
Secretary of the Convention.

THO. D. TILFORD,  
Assistant Secretary.

From the county of Adair,  
NATHAN GAITHER.

From the county of Allen,  
GEORGE W. MANSFIELD.

From the County of Anderson,  
GEORGE W. KAVANAUGH.

From the counties of Ballard and McCracken,  
RICHARD D. GHOLSON.

From the county of Barren,  
ROBERT D. MAUPIN,  
JOHN T. ROGERS.

From the county of Bath,  
JAMES M. NESBITT.

From the county of Boone,  
CHARLES CHAMBERS.

From the county of Bourbon,  
GEORGE W. WILLIAMS.

From the county of Boyle,  
ALBERT G. TALBOTT.

From the county of Bracken,  
WILLIAM C. MARSHALL.

From the counties of Breathitt and Morgan,  
JOHN HARGIS.

From the county of Breckinridge,  
HENRY WASHINGTON.

From the county of Bullitt,  
WILLIAM R. THOMPSON.

From the counties of Butler and Edmonson,  
VINCENT S. HAY.

From the county of Caldwell,  
WILLIS B. MACHEN.

From the counties of Calloway and Marshall,  
EDWARD CURD.

From the county of Campbell,  
IRA ROOT.

From the counties of Carroll and Gallatin,  
JOHN T. ROBINSON.

From the counties of Carter and Lawrence,  
THOMAS J. HOOD.

From the county of Casey,  
JESSE COFFEY.

From the county of Christian,  
NINIAN E. GRAY,  
JOHN D. MORRIS.

From the county of Clarke,  
ANDREW HOOD.

From the counties of Clay, Letcher and Perry,  
JAMES H. GARRARD.

From the counties of Cumberland and Clinton,  
MICHAEL L. STONER.

From the county of Crittenden,  
HENRY R. D. COLEMAN.

From the county of Daviess,  
PHILIP TRIPLET.

From the counties of Estill and Owsley,  
LUTHER BRAWNER.

From the county of Fayette,  
JAMES DUDLEY,  
ROBERT N. WICKLIFFE.

From the county of Fleming,  
MARTIN P. MARSHALL,  
SELUCIUS GARFIELDE.

From the counties of Floyd, Pike and Johnson,  
JAMES M. LACKEY.

From the county of Franklin,  
THOMAS N. LINDSEY.

From the county of Garrard,  
JOHNSON PRICE.

From the county of Grant,  
WILLIAM HENDRIX.

From the county of Graves,  
RICHARD L. MAYES.

From the county of Grayson,  
JOHN J. THURMAN.

From the county of Green,  
THOMAS W. LISLE.

From the county of Greenup,  
HENRY B. POLLARD.

From the county of Hardin,  
JAMES W. STONE,  
THOMAS D. BROWN.

From the county of Harrison,  
HUGH NEWELL,  
LUCIUS DESHA.

From the county of Hart,  
BENJAMIN COPELIN.

From the county of Henderson,  
ARCHIBALD DIXON.

From the county of Henry,  
ELIJAH F. NUTTALL.

From the counties of Hickman and Fulton,  
THOMAS JAMES.

From the county of Hopkins,  
WILLIAM BRADLEY.

From the county of Jefferson,  
DAVID MERIWETHER,  
WILLIAM C. BULLITT.

From the county of Jessamine,  
ALEX. K. MARSHALL.

From the county of Kenton,  
JOHN W. STEVENSON.

From the counties of Knox and Harlan,  
SILAS WOODSON.

From the county of Larue,  
JAMES P. HAMILTON.

From the counties of Laurel and Rockcastle,  
JONATHAN NEWCUM.



From the county of Lewis,  
LARKIN J. PROCTOR.

From the county of Lincoln,  
JOHN L. BALLINGER.

From the county of Livingston,  
WILLIAM COWPER.

From the county of Logan,  
JAMES W. IRWIN,  
WILLIAM K. BOWLING.

From the city of Louisville,  
JAMES RUDD,  
WILLIAM PRESTON.

From the county of Madison,  
SQUIRE TURNER,  
WILLIAM CHENAULT.

From the county of Marion,  
GREEN FORREST.

From the county of Mason,  
PETER LASHBROOKE,  
JOHN D. TAYLOR.

From the county of Meade,  
THOMAS J. GOUGH.

From the county of Mercer,  
THOMAS P. MOORE.

From the county of Monroe,  
JOHN S. BARLOW.

From the county of Montgomery,  
RICHARD APPERSON.

From the county of Muhlenburg,  
ALFRED M. JACKSON.

From the county of Nelson,  
BEN. HARDIN,  
CHARLES A. WICKLIFFE.

From the county of Nicholas,  
BENJAMIN F. EDWARDS.

From the county of Oldham,  
WILLIAM D. MITCHELL.

From the county of Owen,  
HOWARD TODD.

From the counties of Ohio and Hancock,  
JOHN H. MCHENRY.

From the county of Pendleton,  
JOHN WHEELER.

From the county of Pulaski,  
MILFORD ELLIOTT.

From the county of Russell,  
NATHAN MCLURE.

From the county of Simpson,  
BEVERLY L. CLARKE.

From the county of Shelby,  
ANDREW S. WHITE,  
GEORGE W. JOHNSTON.

From the county of Spencer,  
MARK E. HUSTON.

From the county of Taylor,  
WILLIAM N. MARSHALL.

From the county of Todd,  
FRANCIS M. BRISTOW.

From the county of Trigg,  
ALFRED BOYD.

From the county of Trimble,  
WESLEY J. WRIGHT.

From the county of Union,  
IGNATIUS A. SPALDING.

From the county of Warren,  
CHASTEEN T. DUNAVAN.

From the county of Wayne,  
JAMES S. CHRISMAN.

From the county of Whitley,  
THOMAS ROCKHOLD.

From the county of Washington,  
CHARLES COOPER KELLY.

From the county of Woodford,  
JOHN L. WALLER.

Mr. MCHENRY offered the following resolution:

*Resolved*, That this convention adopt, and that the delegates present do now proceed to sign, the constitution as now presented by the committee on enrollment.

Mr. MCHENRY moved the previous question, and the main question was ordered to be now put.

The question then recurred, "shall the resolution be adopted."

Messrs. C. A. WICKLIFFE and STEVENSON called for the yeas and nays thereon, and they were yeas 95, nays 1.

YEAS—Mr. President, (Guthrie,) Richard Apperson, John L. Ballinger, John S. Barlow, William K. Bowling, Alfred Boyd, William Bradley, Luther Brawner, Francis M. Bristow, William C. Bullitt, Charles Chambers, William Chenaunt, James S. Chrisman, Beverly L. Clarke, Jesse Coffey, Henry R. D. Coleman, Benjamin Copelin, William Cowper, Edward Curd, Lucius Desha, Archibald Dixon, James Dudley, Chasteen T. Dunavan, Benjamin F. Edwards, Milford Elliott, Green Forrest, Nathan Gaither, Solucius Garfield, James H. Garrard, Thomas J. Gough, Ninian E. Gray, Ben. Hardin, John Hargis, Vincent S. Hay, William Hendrix, Andrew Hood, Thomas J. Hood, Mark E. Huston, James W. Irwin, Alfred M. Jackson, Thomas James, George W. Johnston, George W. Kavanaugh, Charles C. Kelly, James M. Lackey, Peter Lashbrooke, Thomas N. Lindsey, Thomas W. Lisle, Willis B. Machen, George W. Mansfield, Alexander K. Marshall, Martin P. Marshall, William C. Marshall, William N. Marshall, Robert D. Maupin, Richard L. Mayes, Nathan McClure, John H. McHenry, David Meriwether, William D. Mitchell, Thomas P. Moore, John D. Morris, James M. Nesbitt, Jonathan Newcum, Hugh Newell, Elijah F. Nuttall, Henry B. Polard, William Preston, Johnson Price, Larkin J. Proctor, John T. Robinson, Thomas Rockhold, John T. Rogers, Ira Root, James Rudd, Ignatius A. Spalding, John W. Stevenson, Jas. W. Stone, Michael L. Stoner, Albert G. Talbott, John D. Taylor, William R. Thompson, John J. Thurman, Howard Todd, Philip Triplett, Squire Turner, John L. Waller, Henry Washington, John Wheeler, Andrew S. White, Charles A. Wickliffe, Robert N. Wickliffe, George W. Williams, Silas Woodson, Wesley J. Wright—95.

NAY—Garrett Davis—1.

So the resolution was adopted.

The delegates present then proceeded to sign the constitution, in the order they are printed in the preceding pages.

## PRESENTATION OF BOOKS.

On the motion of Mr. C. A. WICKLIFFE, the resolution adopted a few days since directing a copy of the journal and debates of the convention to be presented to delegates, officers, reporter, and chaplains, was so amended as to direct that additional copies be delivered to the reporter to the convention, for presentation to his assistants.

## PRESIDENT'S VALEDICTORY.

The PRESIDENT having resumed the chair, and the business of the convention having been accomplished, he rose to deliver his valedictory address, and spoke nearly as follows:

## GENTLEMEN OF THE CONVENTION:

I congratulate you upon the completion of your labors.

I also avail myself of this opportunity to return you my thanks for the kind manner in which you have given your assistance to the chair in preserving order, and the forbearance with which you have treated the waywardness of my temper upon sudden emergencies.

When I was elected to this situation, I was conscious how much I should require your indulgence. To you, then, I am deeply indebted for being enabled to get through the duties with so little difficulty to myself. And if, at any time during the period I have presided over you, there has appeared any thing harsh in my conduct, I beg to say, that it was not indicative of unkindness towards any one, and that I was influenced only by a desire to enforce the rules of order and decorum which are so essential to the progress of business. I hope every gentleman in this convention will be satisfied that I was influenced by no other motive.

I will take this occasion further to remark, that it has been my fortune to have taken part in the proceedings of twelve or thirteen sessions of the legislature of this state, and I have never seen so much order and decorum observed as I have witnessed in the deliberations of this convention.

I might say to this convention something in relation to the constitution itself, but I feel it would be scarcely necessary upon this occasion. I am glad, however, that in laying the foundations of this government, we have walked in the footsteps of those who preceded us, and laid them in justice, to the preservation of the lives, the liberties, and the property of the citizens. Having done this, all else in relation to the organization of the government is but a matter of expediency, to be tested by time.

A representative democracy, like ours, is based upon the will of the people, and as all cannot participate in the government, we select the free white male inhabitants over the age of twenty-one years, and give them the rights of suffrage. They elect our executive, they elect our legislature, and now we have confided to them the election of all our judicial and ministerial officers.

The government being divided into three distinct sets of offices, the executive, the legislative, and the judicial, the officers who will fill these several departments will receive their appointment from the hands of the people them-

selves; and this system of self-government works beautifully in its operations upon society, and is scarcely seen, or scarcely felt. The state is divided into counties, and they have municipal powers for the government of their internal affairs. In these counties there are cities and towns, and they also have municipal regulations to govern, direct, and control their peculiar interests, while the executive and legislative departments control the matters appertaining to the state at large, and at the same time the judiciary enforces the public justice of the country, and the rights of individuals as they arise under the constitution and the laws. In our constitution we instruct the executive and legislative departments in relation to the great and essential principles of liberty, which we tell them they shall not touch; we instruct the judiciary in regard to those great and essential principles, and to take care that neither the executive nor the legislative departments interfere with them to the prejudice of private right; and in the laws passed by the legislature and executive, we further instruct the judiciary in reference to all matters of contract and private right; and they will go forth with the warrant of the people to decide upon the public justice of the country, and the rights of private individuals.

In this scheme, the judiciary is the great executive branch of the government which brings the constitution and the laws in direct operation upon the people; and, for the preservation of the private rights of the citizen, it is essential that this body of magistracy should be learned, able, and upright men; and, I believe, the success of the scheme of an elective judiciary will depend essentially upon our being able to obtain such men.

I could have wished, personally, that we had provided adequate compensation in order that we might procure competent men to fill these offices. We have left these salaries to the legislature; and in going back to the people with this constitution, it will be our duty to impress upon them the necessity and importance of giving sufficient salaries, in order that the best talents of the state may be brought into our tribunals, so that public justice shall be administered correctly, and the private rights of the citizen be properly cared for, and promptly decided. If adequate salaries should not be given, the poor man, with talents, will not be able to take these offices, and they will necessarily fall into the hands of a secondary order of men who have some property inherited, and who are not in possession of the requisite abilities for the discharge of these high duties. It is essential in a government like ours, that due encouragement should be given to all the talents of every portion of the community, so that they may fill the highest offices of government. I beg, therefore, to impress upon you that the success of this experiment of an elective judiciary will mainly depend upon giving the best compensation for the best talent, thus calling the best men to fill these situations.

I have no earthly doubt that this constitution will be accepted by the people. I do not believe that the emancipationists, as a body, will rise up and battle against the will of the people of Kentucky, expressed by this convention in

relation to that particular matter. They are in a minority, and many of them are intelligent men, and men of property, and standing. I do not believe they will be willing to agitate the country again on that subject, and attempt to create discord and dissatisfaction in the community; but that, as good citizens and republicans, they will bow to the will of the majority.

I do not believe that the office holders, as a body, will go against this constitution. Those of them who are men of talents and standing will consider that they have as fair a chance for office as any other individuals, and will not attempt to set up their individual interests against those of the great majority of the people. I doubt not that we will find that portion of them using their best influences to sustain this constitution. Those of them who have not high attainments and influential friends will be able to do but little to resist the great popular will. For these reasons I fear nothing, either from the emancipationists or the office holders, in relation to the success of this constitution. There are some individuals who come to this question of selecting judges from the people with reluctance; and, twelve months ago, how many doubted on this subject who are with the movement now? And how many, who doubted up to the time of the assembling of this convention, will cease to doubt when this constitution has been presented to them; especially when they consider the immense majority of the people of Kentucky who are in favor of it, and have listened to the argument and experience that have been had upon this subject? The volume of intelligence in the great mass of the people, is greater than the volume of intelligence that exists in any number of individuals you can select, in relation to the appointment of officers; the volume of integrity of purpose, in relation to public right, is far greater in the districts, where the laws are to be applied, than in any body of men we can select; and hence I believe that those who have doubted and hesitated will come in and support this constitution, because they will see the impossibility of rolling back the great tide of popular feeling that has been exhibited in favor of restoring these offices to the people, and I trust that this constitution will be sustained by a large and overwhelming vote.

We have every reason to believe that this constitution will be adopted. From this place I have seen cast almost every vote that has been given in making this constitution. The people were not governed by party considerations, in selecting the delegates to this convention, and in this convention I have witnessed no vote in making this constitution that I could trace to

party. Every vote, so far as I have been able to observe, has been the act of both parties, coming up singly to the purpose of doing the will of the people in relation to the fundamental law of the land; and if these two parties should unite as heartily and zealously in carrying this constitution into effect as this body have united in framing it, there can be no possible doubt about the result.

Gentlemen, we are about to separate. We shall, perhaps, never all meet again. If we should it will be a rare occurrence. When we return to our constituents, I have no doubt, we shall be received with kindness. It has not unfrequently happened that concessions have been made, and the people will see the necessity of making concessions themselves. You have discharged your duties to the country zealously and impartially, and have entitled yourselves to the favor of your constituents.

Gentlemen, I hope on your return to your homes, you will find that your families have been graciously preserved during your absence by a kind providence, and that you will be long spared to be useful to them, and to your country in the various stations you may be called upon to fill; and that none of you may ever have reason to regret the part you have taken in framing this constitution.

#### CLOSING PRAYER.

The Rev. G. W. BRUSH, offered up the following prayer:

ALMIGHTY God, our Heavenly Father; at the close of the labors of this convention, during which Thou hast granted unto us so many blessings, we desire to lift up our hands, our hearts, and our tongues in a united expression of gratitude and thanksgiving. Thou hast preserved the lives and the health of the members of this convention; and Thou hast given us peace, quiet, harmony, and friendship. We are therefore greatly indebted to Thee; and we pray that Thy blessing, may go with the labors of this convention to the people of the commonwealth, and that this reorganization of the government may be a blessing to us, and to our children after us. Grant us now thy pardoning mercy wherein we may have acted amiss, that we may leave this place with the blessing of our God. Hear us in these our imperfect petitions; accept our humble acknowledgments, and, ultimately, through thy great mercy, bring each one of us to reign with Thee in everlasting life: and to the Father, Son, and Holy Spirit shall be eternal and everlasting praises; Amen.

The PRESIDENT then proclaimed that this convention stands adjourned to the first Monday in June next.



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